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**COUNCIL OF EUROPE/EBLIDA GUIDELINES ON
LIBRARY LEGISLATION AND POLICY IN EUROPE**

Digital content, Books and Archives

2000

Note for the reader

These Guidelines¹ were discussed during the Conference on “Libraries and Democracy: the responsibilities of the State, local authorities and professionals” (Strasbourg, 23-25 November 1998), co-organised by the French Ministry of Culture and the Council of Europe, and were prepared by the working group sessions at that Conference:

- on “Democracy in library practice”: Chairman and Rapporteur: Mr Paul STURGES, Professor, Department of Information and Library Studies, Loughborough University of Technology, United Kingdom;
- on “Libraries as active agents within the book and information chains: legislative policy issues”: Chairman: Mr Bálint MAGYAR, Member of Hungarian Parliament, former Minister of Culture and Education; Rapporteur: Mr Wim KAMMERMAN, Director, Libraries, Literature and Media, Ministry of Culture, Netherlands;
- on “Libraries in the framework of national book and information policies: between legal provisions and performance standards”: Chairman and Rapporteur: Mr Bendik RUGAAS, Director of the National Library of Norway, former Minister of Planning and Co-ordination;
- on “Protection of the written heritage: general and ad hoc provisions”: Chairman: Mrs Ekaterina GENIEVA, Director, Open Society Foundation, Russia; Rapporteurs: Mr Giuseppe VITIELLO, Programme Adviser, Digital content, Books and Archives, Council of Europe and Mr Marc-André WAGNER, Directorate of Books and Reading, Ministry of Culture, France.

The proceedings of the Conference, edited by Alison RIVERS and Ada DEFLORIO, are available free of charge (DECS/CULT/POL/book(99)7, please contact Giuseppe Vitiello at giuseppe.vitiello@coe.int). Their publication on the web site is foreseen for March 2000.

A questionnaire on library legislation, the aim of which was to assess the typology, the quality and the “density” of library legislation in Europe, was circulated to signatory States of the European Cultural Convention in June 1998 and the results of this survey were used to open the debate. The investigation on library legislation in central and eastern European countries was made during the Conference “Twenty-first Century Information Society: the role of library associations” (Budapest, 10-13 May 1998) organised by the Open Society Institute, in collaboration with the Council of Europe

The Guidelines were subsequently adopted by the Culture Committee at its 19th meeting (12-14 October 1999) and approved by the Council for Cultural Co-operation at its 68th Session (19-21 January 2000), on the basis of comments received from various national delegations to these Committees.

These Guidelines have been approved by the International Federation of Library Associations and Institutions (IFLA).

Special thanks to Mrs Ingrid MAURITZEN, Legal Adviser to the National Library of Norway for having edited the Guidelines and drafted the commentary to the Guidelines (to be included in a forthcoming publication).

¹ These Guidelines are not of a binding nature and do not commit governments to apply them. They are nevertheless intended to provide guidance for policy-makers, politicians and professionals in drawing-up legal instruments and governmental policies concerning libraries and other information institutions.

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GUIDELINES ON LIBRARY LEGISLATION
AND POLICY IN EUROPE**

Introduction

Libraries form an essential and irreplaceable component of the cultural, educational and informational infrastructure of a society. Furthermore, they form an irreplaceable part of the cultural heritage.

This idea is particularly important in contemporary Europe for a number of reasons:

- i. it guarantees the protection of the fundamental human right of freedom of expression and public access to information;
- ii. it encourages a democratic development of new technology and globalisation, where libraries are key actors in a culture-oriented European policy on information and communication technologies;
- iii. it complements the tendencies of globalisation by emphasising the local dimension and the thriving of multilingual and multicultural societies;
- iv. it supports the institutional and economic reforms taking place in Eastern Europe, which calls to mind the importance of libraries in the democratisation of States;
- v. it secures the development and preservation of national collections, in whatever form or whatever the content.

Since it is generally accepted that no country belongs fully to the democratic world as long as its inhabitants do not have equal right and free access to information, it is essential that these principles be applied through European co-operation, at international level.

In this context, the Council of Europe has decided to examine the field of libraries in order to draft a set of principles with a view to strengthening and, where appropriate, harmonising the relevant national legislation and policy of the member States.

If the complex nature of the problem makes any attempt at uniformity of legislation and rules illusory, it brings out strikingly the immense need for a joint effort to formulate a set of principles that conform to democratic values, that are compatible with the constitutional principles of member States, and that are likely to inspire their policies in relation to library legislation and policy.

These Guidelines adhere to the same principles as the international conventions promoted by the Council of Europe and other international organisations in related fields, and in particular:

the Convention for the protection of Human Rights and Fundamental Freedoms, Article 10;

the Universal Declaration of Human Rights, Article 19, United Nations General Assembly Res. 217 A;

the United Nations International Covenants on Economic, Social and Cultural Rights, 16.12.1966, Article 19;

the Council of Europe Framework Convention for the Protection of National Minorities, 01.02. 1995;

the European Union Council Directive 92/100 EEC of 19 November 1992 on rental right and lending rights and on certain rights related to copyright in the field of intellectual property;

the Commission proposal for a European Parliament and Council Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society, COM (97) 628 final – 97/0539 COD;

the IFLA-UNESCO Manifesto for public libraries (1994);

the IFLA Statement on Libraries and Intellectual Freedom (March 1999);

the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995);

the IFLA-UNESCO Guidelines for legal deposit legislation (1981);

the Recommendations included in the Report on Deposit collections of electronic publications, published by the European Commission (1996).

The current Guidelines underline the necessity of:

- i. ensuring coherence, at the different levels in the hierarchy of legal norms, between rules relating to library legislation and rules applied in other related fields;
- ii. enlarging the scope of traditional provisions for libraries, in order to take into account all different issues relevant for library legislation;
- iii. striking a balance between the interests of all individuals and corporate bodies concerned and the different categories of book and information professionals.

It should be recalled that library legislation should take account of the different conditions and interests of the member States in order to be effective.

It is therefore recommended to responsible authorities of member States

- i. to adopt legislative or other measures which are in conformity with the principles outlined in the Guidelines, and to bring existing legislation into line with the same principles,
- ii. to disseminate the Guidelines as widely as possible to the bodies and persons concerned.

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I. Freedom of expression and free access to information

1. Libraries are created for the benefit of their user communities so as to further their rights of access to information and ideas.
 - i. Library services should be provided to citizens without regard to race, nationality, religion, culture, politics, age, physical or learning impairment, gender, or sexual orientation.
 - ii. A core of basic information materials, tools and services financed from public funds should be free of charge to the user and equally available to all members of their user community regardless of their ability to pay.
 - iii. Material should not be excluded or access to networks denied on other grounds than the law in force.
 - iv. Libraries should acquire materials and provide access to resources on the basis of quality and relevance to the need of the user community.
 - v. Collections and resources should take into account the diversity of the communities they serve in the range of content, languages and formats that are provided.
 - vi. Libraries should seek to provide the best levels and quality of intellectual and physical access to their materials and resources.
 - vii. Library service points should be conveniently located, accessible to all, with equipment provided to cater for the needs of those suffering from sight, hearing or other forms of impairment.
2. Principles for collection development
 - i. The collection development of the library should be based on independent professional judgement of the librarian, without distortion from any political, sectarian, commercial or other influence, in consultation with representative bodies of users, community groups and other educational, information and cultural institutions.
 - ii. Collection development policies should be constantly reviewed in order to reflect changing needs and opportunities. Collection development should be a transparent process, and the policies on which it is based should be made public.

- iii. Minorities should be provided with material in their own language, relating to their own culture, reflecting the culture of the wider community to them in their own language. Furthermore, library collections should represent the cultures of minorities to the wider community.
- iv. Libraries should form part of a system or systems within a country co-operating in matters of acquisition and the exportation of collections, and forming a close working relationship with other cultural, educational and information institutions.
- v. Libraries should provide access to materials that are not part of the library collections by means such as national and international interlending and document delivery services, including the use of electronic information services and networked information.

3. Regarding principles for access to electronic networks, libraries should:

- i. fully exploit the potential of networked information, in particular the Internet, that provides access to information in a way that is not possible with collections of hardcopy materials;
- ii. seek to obtain electronic access to information resources on behalf of users and also provide public access points with suitable levels of support and guidance enabling independent use of networked information;
- iii. not knowingly permit access to Internet material that is illegal within the jurisdiction where it is accessed. Concerning other material it is left to the users to determine what information they wish to access;
- iv. formulate Internet use policies to express the objectives and methods in providing public access to networked information;
- v. respect user rights including the right of confidentiality and privacy;
- vi. constantly review their policies on public access points and their application in practice in consultation with bodies and associations of the civil society, in order to ensure that the aims and objectives of the service be achieved.

II. Libraries within the national book and information policies

4. Library legislation and policy measures should:

- i. secure the necessary legal status and professional platforms for all types of libraries within a national information policy framework;
- ii. balance the focus on general principles and the more detailed listing of standards and performance;

- iii. provide a platform that can clarify the relations between libraries and other agents in the “book world” as well as in the larger universe of knowledge;
- iv. cover all types of information carriers, not least digital information available on the Internet, in order to guarantee the free access to information for all citizens;
- v. point out library services as a necessary force in sustaining and developing democracy. Furthermore, central and local authorities should provide the necessary organisational, economic and control mechanisms to enable this function and to ensure library services their proper place in a national information policy;
- vi. offer guidelines for quality performance measurement relating to the different types of libraries and their missions.

5. Authorities and institutions should:

- i. provide clear structures for all levels of the library sector, clarifying roles, duties and responsibilities for the bodies dealing with library governance;
- ii. strive to develop the necessary infrastructure to foster co-operation between different types of libraries, recognising their special missions and tasks in a wider framework of national information provision.

6. Library services. Types of libraries, level of service, performance indicators

- i. Technical standards and standards relating to telecommunications, electronic networks and related equipment should, as far as possible, be applied to facilitate national and international information exchange.
- ii. The increasing production and distribution of contents in a digital form is blurring traditional categories of libraries. Libraries and library networks, irrespective of their funding agency, should have the responsibility to serve the library community and society at large.
- iii. Pupils and students should be taught proper information retrieval and handling procedures to make better use of the information facilities available in both the education system and in society at large, and this should be incorporated into guidelines and curricula at all levels of education.
- iv. Library services to special groups of users should be spelt out in legislation and/or regulations and provided partly through services regulated/contained in the ordinary library provisions, partly through special libraries and partly through centralised services.
- v. Studies should be undertaken to explore how new developments in the use of information technology applied in other sectors of society, eg. “smart card” services, could be applied in developing digital library services.

- vi. Library authorities at national level should consider developing library services within a national and international information policy aimed at convergence of the institutions in the ALM (archives, libraries, museums) sectors.

7. Library financing. Central and local government

- i. The relation between the expected service level and the provision of adequate resources to achieve this should be clear regardless of the type of library and the level of authority governing the library.
- ii. The financing of libraries should generally be a public responsibility. Library services partly funded from other sources should not interfere with the librarians' professional integrity and selection of library materials and it should not undermine the fundamental principles of free access and the offer of certain basic services free of charge.
- iii. Library authorities and libraries together should develop organisation structures, supervisory and controlling mechanisms that will ensure the best possible value for public money spent on library services by designing instruments for proper performance measurements and quality control for different types of libraries.
- iv. The libraries' budgets should reflect the impact of new technologies and resources should be provided to ensure adequate training of staff and users to make proper use of the new tools and services.

8. Education and training

- i. Library education should be reflected in the national legislative provision and library policy as imperative for library services to secure a sufficient supply of professional librarians and other personnel.
- ii. Library authorities should encourage the exchange of library staff through the development of European staff exchange programmes.

III. Libraries and the knowledge industries

- 9. In laws dealing with copyright and neighbouring rights libraries should be recognised as organisations with a public function – paid for by public funds – to facilitate the availability and use of information.
 - i. Governments should establish a legal position for libraries in copyright and neighbouring rights.
 - ii. Libraries should be allowed to perform their public function regardless of the kind of material they handle, be it printed, audio-visual or digital information.

Consequently the copyright exemptions that apply to printed materials should, as far as possible, also apply to digital materials. Browsing in the library should be allowed.

- iii. Political bodies should ensure the legal and financial conditions, guaranteeing unhindered access of citizens to cultural, scientific, educational and social information through libraries, no matter in what form it is stored, transported or distributed.
10. For material not covered by the national lending right rules, rightsholders in consultation with users of information protected by copyright should establish which information will be freely accessible for public use. A fair amount should be agreed on as compensation for the use of information.
 - i. Governments have a special obligation to give access to the information produced by the Government.
 11. Libraries should make a reasonable effort to ensure that information made available through collective agreements, licensing or other forms is used within the provisions of these agreements.
 - i. Collective bargaining bodies should be established, which are mandated to negotiate with rightsholders or their organisations.
 - ii. Within the library the use of material made available through electronic networks, should be free of charge for the users.
 12. Libraries should permit copying and reproduction in libraries in accordance with national copyright legislation.

IV. The protection of library heritage

13. The legal deposit is the main instrument for the building up of national collections of a heritage nature. Its objectives should be stated as follows:
 - i. the accumulation of a national collection in order to preserve, develop and transmit the national culture to future generations;
 - ii. the compilation and publication of the national bibliography;
 - iii. access to stored publications.
14. Legal deposit acquisitions should not replace inadequate governmental book or information policies. To this purpose legal deposit should:

- i. Take the shape of compulsory regulations intended to oblige publishers/producers to deposit copies in national depository institutions. Voluntary deposit should not be discouraged if it achieves the same objective as compulsory regulation.
 - ii. Cover all categories of publications and appropriate policies for each of them should be set up. With the extension of legal deposit legislation to cover all types of information carriers including digital material, it becomes imperative to build a bridge between legal deposit legislation and copyright legislation. Such legislation should ensure access to deposit electronic material and offer a reasonable compensation to the copyright holder.
15. In order to increase the effectiveness of legal deposit provisions and ensure that its practice is not detrimental to other book actors, the following rules should apply:
- i. Depository institutions should be able to provide efficient bibliographic services of, and adequate access to, deposited publications, preferably through electronic networks in order to increase efficiency. National libraries and/or other national bibliographic agencies should actively co-operate with other governmental organisations and non-governmental organisations in order to better serve the entire library community, as well as society at large.
 - ii. Deposit of printed copies should be kept at a reasonable level, ranging from three to five copies according to national needs. Due to the high cost of preservation programmes, overlapping in policies linked to the legal deposit of sound, audio-visual, film, and electronic material should be carefully avoided.
 - iii. Deluxe or valuable publications should be deposited in a limited number of copies.
 - iv. The non-compliance with legal deposit regulations ought to be sanctioned with financial or other measures.
 - v. Compensation for the compliance to legal deposit mechanisms should be the production of timely and comprehensive national bibliographic services. In some cases, legal deposit may also be instrumental in the creation of archives for producers.
 - vi. Models for co-operation between depository institutions should be further analysed and encouraged.
 - vii. Future research and investigation is needed in order to explore the legal, technical and financial aspects of legal deposit of electronic publications.
16. Regarding questions relating to the transfrontier transfer of the written heritage, it is recommended that:

- i. documents of the written heritage, whether from libraries or not, be integrated in the definition and/or list of cultural goods protected under the rules on the control of exportation; in the particular case of heritage documents in libraries, their permanent exportation should not be permitted, only their temporary exportation being allowed;
- ii. the UNIDROIT Convention of 1995 on Stolen or Illegally Exported Cultural Objects be made the reference document on questions of theft or illegal exportation, as an extension to Council of Europe Parliamentary Assembly Recommendation 1372 (1998);
- iii. national regulations should be provided to control the transfrontier movement of cultural goods, compatible with the Directives of the European Council (Council Rule of 9 December 1992 and subsequent texts);
- iv. administrative and legal co-operation for the written heritage should be reinforced, due to its particular vulnerability;
- v. programmes intended to provide information of, and access to, written heritage transferred during the Second World War, should be encouraged.