



IFLA Statement on Government Provision of Public Legal Information in the Digital Age

Introduction

The freedom to seek and receive information is recognized as a basic human right by Article 19 of the *United Nations' Universal Declaration of Human Rights*. This right of access to information is particularly important in regard to public legal information. People of countries throughout the world should be able readily to access the laws that govern them. Providing such access is a responsibility of governments and is necessary for transparency and accountability, for civil engagement, and for a just society.

In the pre-digital era, libraries and librarians collected and provided access to print copies of the authentic and official versions of legal materials, and also preserved these materials for the future.

In the digital age, many governments now provide online versions of primary sources of law, including statutes, case law, and regulations, directly to citizens. This can make it possible for the public to have equitable and continuous access to these resources, assuming wide and affordable Internet access.

Nonetheless, simply posting legal information online is not enough. Government providers also need to take responsibility for ensuring that the content they post is available to all¹, at no fee², that the content is authentic and trustworthy, and that it is preserved for public use over time in cooperation with memory institutions.

However, a number of countries have not recognized these issues or have not yet addressed them fully. Some governments do not yet offer online access to their public legal information. In other countries that do offer such access, it may be limited by exclusive agreements for publication or (online) distribution of official gazettes that allow the creation of paywalls. Even a government that is already providing equitable and continuous no-fee access to legal content in digital format may not be protecting that content by authenticating it using technological measures or may not be taking the necessary steps to preserve the content for long-term access by the public.

The following statement draws on principles established in previous declarations and resolutions of IFLA as well as several from other organizations, notably the *United Nations*

¹ Public legal information should also be made accessible to people with print disabilities, in line with the commitment under Article 21 of the UN Convention on the Rights of Persons with Disabilities:
<http://www.un.org/disabilities/convention/conventionfull.shtml>

² Often linked to the charging of fees, governments sometimes claim copyright over public legal information. This is problematic, but beyond the scope of this statement.

*2030 Agenda for Sustainable Development*³. It is intended to confirm the continued applicability of these principles to public legal information in digital format, and to set out what governments can do to deliver on them.

Access

Governments are the originators of public legal information such as statutes, cases, and regulations⁴. The growth of the Internet has presented governments of countries around the world with the opportunity to provide their citizens with greatly improved access to legal information and to govern with transparency.

In this regard, the *United Nations 2030 Agenda for Sustainable Development* saw all of the UN's Member States agree to promote peaceful and inclusive societies for sustainable development, access to justice for all, and effective, accountable and inclusive institutions at all levels. Within this, access to information is essential, as established by sub-goal 16.10:

Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and agreements.

In addition to work at the UN, 70 countries have signed the *Open Government Declaration*⁵, which commits them to upholding the principles of open and transparent government, while the 2002 *Montreal Declaration* set out that freely accessible legal information is “part of the common heritage of humanity” and is essential to the rights and obligations of members of a just society. Access to public legal information “promotes justice and the rule of law.”

As these agreements indicate, no-fee online access to legal information benefits both public users and the government by enhancing engagement and facilitating citizen participation in policy-making.

Authentication

The adoption of digital technology has changed the ways that governments create, manage, and deliver legal information to users. In some countries, online legal sources are replacing the former print versions of official legal information, often leading to (short-term) savings. In contrast, some other countries that previously have lacked an official print publication scheme for their laws are now finding that online publication offers a solution to providing public access to these materials for the first time.

³ http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E – see Annex 1 for a list of relevant declarations and resolutions.

⁴ In some cases, public legal documentation refers to third party standards, which thereby gain legal effect. Such standards fall within the scope of this statement.

⁵ <http://www.opengovpartnership.org/about/open-government-declaration>

However, as countries adopt technologies to make their legal information available digitally, they must consider some new and complex issues, one of which is authentication.

The fact that digital information is vulnerable to alteration introduces a special challenge in this context, presenting the risk of unauthorized versions. Citizens need assurance that documents available from government websites have integrity, that they are unaltered, and that their origin is clearly indicated and verifiable through technological measures. They must have confidence that the content can and will be recognized as authoritative and reliable statements of law. Digital legal information should be as official and as trustworthy as the print versions. This content must be protected by technological measures against the possibility of accidental changes or cybersecurity threats such as hacking.

Preservation and Long-Term Access

To maintain the rule of law and promote justice, there must be long-term archiving and preservation of public legal information, including laws previously in force, so that this information will be continuously available. “Born digital” legal information (content with no print equivalent) is vulnerable to technological obsolescence, media migration, and potential degradation over time.

As set out in 2012 in the *UNESCO/UBC Vancouver Declaration*⁶, countries of the world must understand “good management of trustworthy digital information as fundamental to sustainable development” and must take the responsibility to “develop strategies for open government... to create and maintain trust and reliance in digital government records.”

Governments should ensure that public legal information in digital format is preserved for future generations despite technical failure, aging of hardware, or technological change. Safeguards should be in place to maintain the integrity of the content and to provide for back-up and disaster recovery. To ensure that this content will continue to be available to and usable by the public, there must be plans in place to migrate to new platforms as technology advances, while retaining accessibility, and to provide stable web addresses (to avoid loss of access through “link rot”). Intergovernmental organisations also need to take responsibility for ensuring that their rulings and other documents in digital format are preserved for public use over time by adopting a digital preservation policy; however, that is beyond the scope of this statement.

In the print world, libraries played a major role in addressing this need, by collecting and saving print copies of legal materials. In the digital age, the responsibility of retaining and preserving the law over time and in its many forms has been shifting to governments, often in partnership with libraries, archives, or memory institutions. It is essential to ensure that these partnerships are effective in order to achieve the goals set out in the Vancouver Declaration.

⁶ <http://www.ifla.org/files/assets/hq/news/documents/vancouver-declaration-2012.pdf>

Recommendations

In the light of the above, and within the context of the UN-mandated objective of making public information available to citizens, IFLA calls on governments to do the following regarding public legal information:

- Ensure that all public legal information produced in digital format is available to the public on an equitable, no-fee basis.
- Protect official publications of law in a digital format through authentication using technological measures, in order to ensure that the content is trustworthy, and make this clear to people.
- Incorporate technology-based authentication measures as part of the creation of online sources of public legal information rather than adding such technology later. Especially in the case of developing countries, addressing this concern from the start will save time and money in the long run.
- Develop and implement effective policies and programmes for the preservation of trustworthy legal materials in digital format, in partnership, as appropriate, with libraries, archives, or other memory institutions. When adopting new technologies to make legal information available digitally, ensure that these are built in such a way as to facilitate preservation for long-term public accessibility.
- Make preserved materials permanently accessible to the public without charge.
- Incorporate strategies for providing online access to public legal information into national development plans to implement the UN 2030 Agenda.

Prepared by IFLA Law Libraries Section

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IFLA Statement on Government Provision of Public Legal Information in the Digital Age – ANNEXES

Annex 1: References and Supporting Documents

Universal Declaration of Human Rights, Article 19

<http://www.un.org/en/universal-declaration-human-rights/>

Article 19 states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

UN Convention on the Rights of Persons with Disabilities (2006)

<http://www.un.org/disabilities/convention/conventionfull.shtml>

Article 21 - Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

Access to Foreign Law in Civil and Commercial Matters

Joint Conference of the European Commission and Hague Conference on Private International Law, Access to Foreign Law in Civil and Commercial Matters, 15 Feb. 2012 (https://assets.hcch.net/upload/foreignlaw_concl_e.pdf).

Recommended that governments should “...make available without cost to users legislation and relevant case law online. Such information should be authoritative, up-to-date, and also include access to law previously in force.” Recommendation 8: “...States should make

available without cost to users legislation and relevant case law online. Such information should be authoritative, up-to-date, and also include access to law previously in force.”

Included as an Annex to the report above is a best practices document: *Guiding Principles to be Considered in Developing a Future Instrument*. These principles were developed during a 19-21 October 2008 meeting convened by the Hague Conference on Private International Law, a 72-member inter-governmental organization that develops multilateral legal instruments. Experts attending the session represented the library and information communities, educational institutions, legal information institutes (free access to law movement), legal community, and others. They discussed global co-operation for disseminating digital legal information. The Guiding Principles affirm principles of free access, integrity and authoritativeness, and preservation.

1. State Parties shall ensure that their legal materials, in particular legislation, court and administrative tribunal decisions and international agreements, are available for free access in an electronic form by any persons, including those in foreign jurisdictions.
2. State Parties are also encouraged to make available for free access relevant historical materials, including preparatory work and legislation that has been amended or repealed, as well as relevant explanatory materials.
4. State parties are encouraged to make available authoritative versions of their legal materials provided in electronic form.
5. State parties are encouraged to take all reasonable measures available to them to ensure that authoritative legal materials can be reproduced or re-used by other bodies with clear indications of their origins and integrity (authoritativeness).
7. State Parties are encouraged to ensure long-term preservation and accessibility of their legal materials referred to in paragraphs 1 and 2 above.

Open Government Declaration (2011)

The Open Government Declaration (<http://www.opengovpartnership.org/about/open-government-declaration>) is based on principles of open and transparent government in order to “foster a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government.” Countries participating in the Open Government Partnership affirm their commitment to increase the availability of information about governmental activities, to support civic participation, to implement the highest standards of professional integrity throughout our administrations, and to Increase access to new technologies for openness and accountability.

Declaration on Free Access to Law (Montreal Declaration)

The “free access to law” movement is the umbrella designation for a collection of legal information institutes (LIIs) throughout common law countries that have been organized to provide free and open online access to legal information, such as case law, statutes, and

regulations. In 2002, the LIIs met in Montreal and jointly issued a *Declaration on Free Access to Law*, which has subsequently been amended at meetings in Sydney (2003), Paris (2004), Montreal (2007) and Ithaca (2012). The declaration (<http://www.worldlii.org/worldlii/declaration/>) includes the following points:

- Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximizing access to this information promotes justice and the rule of law;
- Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;

The Memory of the World in the Digital Age (UNESCO/UBC Vancouver Declaration) (2012)

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/mow/unesco_abc_vancouver_declaration_en.pdf

Participants agreed:

1) as enshrined in Article 19 of the Universal Declaration on Human Rights, each individual has the right to seek, receive and impart information through any media and regardless of frontiers (article 19). Citizens exercise this right when they access information in digital form. Trustworthiness and integrity of documentary heritage and documentary systems are therefore a prerequisite for the continued exercise of this right;

7) there is a pressing need to establish a roadmap proposing solutions, agreements and policies, that ensure long term access and trustworthy preservation. This roadmap should address issues like open government, open data, open access and electronic government. It should dovetail with national and international priorities and be in full agreement with human rights.

Recommendations to UNESCO secretariat:

f) support the belief that good management of trustworthy digital information is fundamental to sustainable development by developing and implementing a global digital roadmap under the auspices of the Memory of the World Programme to encourage all relevant stakeholders, in particular governments and the industry, to invest in trustworthy digital infrastructure and digital preservation;

Recommendations to UNESCO's Member States:

a) develop and enforce laws that ensure rights of all citizens to relevant knowledge;

b) develop public policies enabling and supporting preservation of digital heritage in a rapidly changing technological environment;

c) promote cooperation between their legislative bodies and archives, libraries and museums and other relevant organizations, in order to develop legal frameworks that support preservation of, and access to, digital cultural heritage;

d) develop strategies for open government and open data that address the need to create and maintain trust and reliance in digital government records;

e) provide legal guarantees that information to which citizens are legally entitled be available in an open format;

[...]

l) promote the use of standards and widely recognized guidelines and best practices on digitization and digital preservation among the relevant national organizations and communities.

Lyon Declaration on Access to Information and Development (2014)

IFLA's 2014 [Lyon Declaration](http://www.lyondeclaration.org/) (<http://www.lyondeclaration.org/>) states that “increasing access to information and knowledge across society, assisted by the availability of information and communications technologies (ICTs) supports sustainable development and improves people’s lives.” The more than 600 signatories to the Declaration call on the Member Nations to “acknowledge that access to information, and the skills to use it effectively, are required for sustainable development, including “Adopting policy, standards and legislation to ensure the continued funding, integrity, preservation and provision of information by governments, and access by people.”

UN General Assembly, Transforming our World: the 2030 Agenda for Sustainable Development

21 October 2015, A/RES/70/1.

The *UN* *2030* *Agenda* (<https://sustainabledevelopment.un.org/post2015/transformingourworld>) presents a plan of action on 17 new global sustainable development goals. Goal 16 sets out the intention to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” Sub-goal 16.10 addresses access to information as follows: “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”

Annex 2: Examples of Countries Currently Using Authentication Technology

- In the European Union, the e-Official Journal (e-OJ) is produced in electronic format, supported by technology that includes public key infrastructure and signature and verification platforms, as well as back-up procedure, in case the technology fails. Editions of the e-OJ) published after July 2013 have legal force.

See: REICHERTS, Martine (2014) The authentic e-Official Journal of the European Union – one year on. Paper presented at: IFLA WLIC 2014 - Lyon - Libraries, Citizens, Societies: Confluence for Knowledge in Session 102 - Law Libraries with Government Information and Official Publications, Library and Research Services for Parliaments and Information Technology. In: IFLA WLIC 2014, 16-22 August 2014, Lyon, France. <http://library.ifla.org/id/eprint/924>

- France's electronic Journal Officiel, the official record of its legislation and regulations, is authenticated using an electronic signature based on key management infrastructure (IGC). Both the print and the electronic versions of the Journal Officiel have legal value and are released daily. Since mid-2014, the electronic version has been open access.

See: FRANÇOIS, Didier (2014) Authentication of the French Digital Official Journal. Paper presented at: IFLA WLIC 2014 - Lyon - Libraries, Citizens, Societies: Confluence for Knowledge in Session 102 - Law Libraries with Government Information and Official Publications, Library and Research Services for Parliaments and Information Technology. In: IFLA WLIC 2014, 16-22 August 2014, Lyon, France. <http://library.ifla.org/id/eprint/957>

- In the United States, the Government Publishing Office (GPO) currently provides no-fee online access to official, authenticated, preserved content from all three branches of the Federal Government through its portal [FDsys \(Federal Digital System\)](#). FDsys is scheduled to be replaced in 2017 with a new portal, [GovInfo.gov](#), which was launched as a beta website in Feb. 2016. GPO [authenticates documents on FDsys](#) by applying digital signatures to PDF files so users can verify documents have not been altered and are the official versions. GPO's [standards-compliant preservation repository](#) follows archival system standards and ensures content is preserved for future generations despite technical failure, aging of hardware, or technological change.