



## **Guiding Principles for IFLA's position concerning international treaties relating to Traditional Cultural Expressions and Expressions of Folklore and Traditional Knowledge**

### **Background**

The issue of traditional cultural expressions, folklore and traditional knowledge is being considered within the World Intellectual Property Organisation (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), with a view to the creation of new international instruments in this area. The following guiding principles have been produced to aid IFLA and other international library organisations in any future negotiations that take place in relation to these instruments.

#### ***1. IFLA's overarching strategy concerning Traditional Cultural Expressions and Expressions of Folklore and Traditional Knowledge***

IFLA supports the principle that Traditional Cultural Expressions and Expressions of Folklore and Traditional Knowledge may be protected, *as long as* suitable checks and balances are in place that do not unduly undermine the ability of libraries and archives to fulfil their core mandates and that do not erode the broader copyright balance.

**Rationale:** IFLA will focus its attention on the core principles relevant for libraries: the right of individuals freely to obtain, disseminate and use information; and the protection of core “user rights,” within a balanced copyright regime, such as the public domain. In reviewing and commenting on texts proposed to the IGC, IFLA will focus on whether they contain proper, sufficient exceptions and limitations balancing the rights conferred to traditional knowledge.

#### ***2. Managing Collections of Traditional Cultural Expressions and Folklore and Traditional Knowledge***

IFLA notes that it is important to differentiate between material that is donated to institutions or collected by institutions (or persons) under an explicit agreement of deposit, access and use with identifiable persons or identifiable representatives of a specific traditional group; and material that has been acquired by the institution without any such agreements. In reviewing and commenting on texts proposed to the IGC, IFLA will focus on whether they include provision both for the protection of the materials, and for the exceptions and limitations defining the levels of access and use of the material. As such,

- where there is no agreement between a library and owner of TCE/TK, the library would need to determine whether the material is covered by a WIPO instrument or not.
- Where there is an agreement between a library and owner of TCE/TK, the agreement should specify the permitted levels of access and use of the material. The critical question for the library or archive is determining what kind of restrictions it is willing to accept. Libraries and archives should strive for agreements that have access provisions similar to or more liberal than those specified in a WIPO instrument, and should not accept agreements with permanent no-access provisions.

**Rationale:** Donations should be treated like any other private archive or collection that is donated under specific agreements of availability. Libraries and archives are familiar with this type of archive, where the donor prescribes access and use conditions for the collection, such as restrictions on researchers, access to or use of sensitive content, or publication.

Such agreements, once made, must be respected unconditionally. This will reinforce trust between the recipient library or archive and current donors, and potentially increase opportunities for libraries and archives to secure and preserve donated material. To not respect such agreements would be damaging for the indigenous peoples concerned, and a loss for scholarship.

The question has been raised whether a library could be legally challenged on an agreement to limit access to traditional knowledge when the restrictions are in conflict with other legislated rights; e.g. the right to limit access to information on the basis of gender. Libraries do not in general have a legal right to access confidential information belonging to others. Any revelation of or investigation into a private person's or organization's secret or sacred material requires justifications and procedures specified in law. Whether a user should have the right to access information concerning specific Traditional Cultural Expressions and Folklore or Traditional Knowledge in spite of an agreement between the Donor and the institutions to the contrary is a matter of the judiciary to decide.

23 March 2012