



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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