



March 21, 2026

Sent via email: copyright.mail@wipo.int

Dear WIPO Secretariat,

On behalf of the Canadian Federation of Library Associations (CFLA) and the Canadian Association of Research Libraries (CARL), we are writing to provide comments on the draft Access Toolkit. As stewards of cultural heritage and collections, libraries have a comprehensive and balanced perspective of the issues and practicalities related to providing access to materials.

Throughout history, libraries, archives, and museums have been acquiring and providing access to the works in their collections and will continue to do so in the digital environment. In providing access to users, cultural heritage institutions are fulfilling their mandates and the legislative requirement to balance the rights of the public interest. They are the mechanism of balance as provided for in Berne and numerous other normative, international treaties and conventions. The language of this Toolkit does not uniformly represent this balance.

CFLA and CARL recognize the challenges in drafting a comprehensive resource that provides guidance while addressing jurisdictional differences in copyright law and effectively responding to the digital environment which has become central to providing access.

CFLA and CARL appreciate the Toolkit's objective, and we would like to highlight the example statute on pages 27–29 as a beneficial tool for advocates and policymakers worldwide to use as a foundation when pursuing three-step-test compliant exceptions enabling access to cultural heritage in their jurisdiction. We do, however, have some concerns.

Generally, we find the scope of the Access Toolkit incredibly broad and not aligned in complementarity to the Preservation Toolkit, though it often refers to it. While perhaps well-intentioned, the unintended consequence of this approach is the conflation of a variety of access methods and models with other issues and a resulting emphasis on private interests. Ultimately the document tries to do too much and as a result, fails to acknowledge and support fundamental library rights in

providing access to materials that have been paid for or otherwise legitimately obtained.

The Toolkit also fails to comprehensively address access in the digital environment. For example, it is lacking a discussion of how contracts and technological protection measures restrict access by prohibiting uses that may be permitted under a country's exceptions, such as Article 7 of the Marrakesh Treaty and national contract override provisions. Moreover, contracts are often interpreted as authoritative, sometimes to the extent of superseding legislation. These are critical issues for cultural heritage institutions and increasingly impact access to collections. Addressing these issues in the Toolkit and subsequently providing options to governments to address these situations in the charts and example statute in the appendix, would make it more comprehensive and useful to policymakers and information professionals. Further to this, the primary example in the Toolkit is "dedicated access terminals". While member states have statutes authorizing dedicated terminals in libraries, we would note that physical onsite access is not particularly practical or relevant in the digital landscape. Dedicated onsite terminals facilitate use but not access. Acknowledging this limitation would benefit policymakers and encourage approaches that do not unnecessarily constrain or limit access.

With respect to copyright, the public domain and existing exceptions and limitations, such as fair dealing and fair use, are under-represented in the Toolkit, which can be misleading. We would encourage the Toolkit to reinforce that public domain works are not subject to copyright restraints. While there may be practical access issues related to condition and format type, public domain works can be used freely without permission and should not be restricted by licensing or other measures. Subsequently, user rights, such as fair dealing and fair use and library exceptions should be amplified and reinforced as exemptions to infringement. For example, in Canada, the Supreme Court of Canada's affirmation of fair dealing as a users' right and as playing an essential role in balancing creator and user rights are not reflected in the Toolkit.

Lastly, we raise concerns about the sections pertaining to licensing, including open licensing and collective licensing. Existing draft language implies open licenses can be assigned to works copied and provided under exceptions, such as fair dealing and fair use, and to works in the public domain. An open license can only be assigned by a copyright holder, or a third party with their explicit permission. Works in the public domain or copied under exceptions do not fall within these parameters. We would also encourage reconsideration of the language on Open Access Policies. The current wording does not accurately reflect open access policies and confuses open access with access to works. With respect to collective licensing, the section fails to

accurately reflect collective licensing options and realities across jurisdictions. For example, at present in the Canadian context, collective licensing would not be an option for large scale digitization and access projects, nor could pay-per-use or other licensing models offered be relied upon to provide public access to library, archive and museum collections.

Libraries serve the public interest, and their societal role is to provide access to knowledge and cultural heritage. Library mandates embed human rights and commit to equitable access, which are ratified in international treaties, as noted above, and conventions, and subsequently reinforced in national legislation, through exceptions and limitations for libraries, archives and museums. The Toolkit implies that libraries and other cultural institutions have to negotiate terms and types of access to their collections in order to satisfy rightsholders' concerns about protecting their market. In this context, the legislated rights of libraries and users would be compromised in support of a move to private ordering of information, as determined by the intellectual property owner permissions and without reference to the public interest and public rights of access.

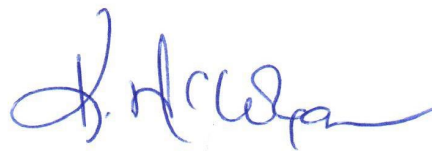
CFLA and CARL believe that with additional review and revision, the Toolkit may become a valuable resource for cultural heritage organizations, including libraries. We appreciate that the Toolkit acknowledges libraries as trusted institutions and that the underlying objective is to support responsible access to collections.

Thank you for the opportunity to comment.

Sincerely,



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CFLA representative at WIPO SCCR



Katherine McColgan
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cc. Margaret Law, Executive Director, CFLA
Michael Vandenburg, Executive Director, CARL