Librarians in Europe and India: Legal Issues

Memo on EU copyright :

The protection of intellectual property is governed by various international conventions to which the EU has signed up to, such as

- the Bern, Brissels and Paris Conventions,
- the World Intellectual Property Organisation (WIPO) Copyright Treaty
- the WIPO Performances and Phonograms Treaty
- and the World Trade Organisation (WIPO) with the agreement on trade-related aspects of intellectual property rights (TRIPS)

In addition, Article 17(2) of the Charter of Fundamental Rights states that 'Intellectual property shall be protected'.
By adopting the Directive on the Enforcement of Intellectual Property Rights (also labeled the 'IPR enforcement directive'), the EU brought itself into line with these international commitments, but goes a good deal further on a number of enforcement issues.
European customs authorities have seized large quantities of counterfeited and pirated consumer products meant to be protected by IPR (mainly trademark rights and trade names, design rights, copyright and its related rights). The sectors most affected include clothes, food, CDs, toys, audiovisual products and software.
The 'IPR enforcement directive aimed primarily at tackling this phenomenon of counterfeiting and piracy. In order to safeguard businesses' incentives to produce and innovate, it gave national authorities increased powers to pursue infringers and obtain compensation for rights-holders.
In spite of the different nature of intellectual property rights like copyrights, trade marks, authors' rights, designs, geographic indications, etc.,the IPR enforcement directive aims to bring all these areas under one set of standardised rules. The directive raised concern among a number of industries, consumer organisations and civil liberties groups who claim universities, internet providers and ordinary people could end up being prosecuted.

Introduction to Indian Copyright :

The Copyright Act, 1957 came into effect from January 1958. This Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994 and 1999, with the amendment of 1994 being the most substantial.
Prior to the Act of 1957, the Law of Copyrights in the country was governed by the Copyright Act of 1914. This Act was essentially the extension of the British Copyright Act, 1911 to India . Even the Copyright Act, 1957 borrowed extensively from the new Copyright Act of the United Kingdom of 1956.
The Copyright Act, 1957 continues with the common law traditions. Developments elsewhere have brought about certain degree of convergence in copyright regimes in the developed world.
The Indian Copyright Act today is compliant with most international conventions and treaties in the field of copyrights. India is a member of the Ber ne Convention of 1886 (as modified at Paris in 1971), the Universal Copyright Convention of 1951 and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of 1995. Though India is not a member of the Rome Convention of 1961, the Copyright Act, 1957 is fully compliant with the Rome Convention provisions.
Two new treaties, collectively termed as Internet Treaties, were negotiated in 1996 under the auspices of the **World Intellectual Property Organization (WIPO)**. These treaties are called the **'WIPO Copyrights Treaty (WCT)'** and the **'WIPO Performances and Phonograms Treaty (WPPT)'.** These treaties were negotiated essentially to provide for protection of the rights of copyright holders, performers and producers of phonograms in the Internet and digital era. India is not a member of these treaties as yet.

The SURVEY

Public library collections are subject to the public domain scheme that governs assets owned by the State or a public institution that are assigned either to public use or the execution of public services. They are therefore unalienable, imprescriptible, unseizable, and library professionals must ensure a high degree of vigilance in terms of legal issues that may arise on a daily basis and that relate to all aspects of their work. Furthermore, legal and regulatory issues surrounding the assets of libraries are complex; the expression "library assets" has no legal weight, as we have seen, and refers to very diverse objects in terms of their type, age, material and origin: gifts, purchases and deposits, national assets kept on deposit, municipal assets, private assets on deposit, etc. The institution that houses these assets does not always own them. One cannot therefore overly generalize or exclude certain cases. Librarians are not lawyers and, when cases are complex, they must refer to specialists, starting with the government's legal services. We will exclude the case of public archive documents deposited in libraries, as this is an anomalous situation and, furthermore, the law applicable to archives is based on very specific rules that are distinct from those that apply to library documents.

Librarians responsible for public assets must, in their tasks, conciliate conservation and access. These terms are often understood as applying to the protection or physical management of documents, however, from a regulatory and legal perspective, these roles relate to multiple fields of law, including public law, private contract law, intellectual (or copyright) law, human rights and laws related to ownership.

1. Legal Features of the Libraries' Conservation Role

The libraries' conservation role is essential, yet, unlike archives, museums and historical monuments, is not governed by a specific law. However, it is governed by generic laws, regulatory texts and various international agreements that may apply to various aspects of a librarian’s role.

Normative and Regulatory Context

The absence of laws does not override compliance with the directives and regulations of the Indian government.

Protection of National Assets against Damage and Theft

Willful Damage

► Armed conflicts: although today armed conflicts seem to be relatively unlikely, the international Hague Convention on this topic fully applies to the conservation and preservation of the public collections in libraries. It is also significant in terms of prevention, with the convention's tracking mechanism implemented by UNESCO and delegated to professional public asset protection organizations, such as the International Federation of Libraries Associations (IFLA)[1]: they are grouped within the International Committee of the Blue Shield which, in particular via its national committees, conducts awareness raising campaigns for the prevention of disasters caused by armed conflict or, more broadly, natural

[1] In particular, IFLA Core Activity on Preservation and Conservation (PAC), and specifically, the International Council of Museums (ICOM), the International Council of Monuments and Sites (ICOMOS) and the International Council on Archives (ICA).

and industrial disasters. These international committees are currently concerned about damages to the public assets of countries at war – or victims of natural disasters – and conduct the tracking and publicity required to seek international aid.

Sales, Gifts or Elimination of Works

It is not easy to dispose of public documents and compliance with regulatory texts is mandatory. The rules applicable to the public domain must be followed, and therefore those governing the withdrawal of relevant objects. The only difficulty is psychological: to convince the body in question to retire books requires support and clear explanations before the fact, in order to avoid any future misunderstanding. We all believe that a library book is generally inalienable by its nature. Therefore, a withdrawal of any nature must be justified.
In any event, like most decisions to be taken, it must be based in law and the ownership scheme governing the relevant documents must be checked and understood. Types of ownership are listed above.

With regard to public documents that belong to the public body either via a purchase or gift, the texts governing the public domain must be observed and, in the case of gifts, also the terms of the gift or bequest. Failure to comply with certain terms, in particular, those applicable to the transfer of ownership, may cancel the entire donation.

With regard to State deposits further to successive confiscations or distinct agreements (for specific funds, for example), authorization must be sought of competent authorities: this will be the State representative who will apply the required procedure. The Ministry of Culture must also be informed. In this case, the legislator has provided for, and requires, the State's opinion as expressed by the Minister of Culture for any project to **retire** public documents that belong to Indian archives and libraries.

Trafficking and Illegal Imports

The acquisition of old documents to enrich the collections of a public library is not always risk-free. Indeed, it is essential to ensure that the transaction is legal, whether it involves a purchase or gift. The acquirer or supplier's good faith is not sufficient to guarantee that the documents were not stolen in India or abroad or, even in the case of a purchase or legal gift, the document was not illegally imported into India[2].

Even when good faith is apparent, one can find one's self in the possession of stolen goods and obviously duty bound to return the documents (for which there is no systematic compensation) or even indicted, in particular for documents stolen abroad and/or illegally imported, if no verification process was engaged to the extent possible and reasonable.
Various international conventions have addressed trafficking and illegal importing issues; however, the Unidroit Convention (Rome, 1995) had the greatest impact on the law in this complex area. This should not impede the ambition of librarians in their search to enrich collections; they must simply check as best they can the origin of documents, without excessive confidence or suspicion.

Deposits and Gifts

[2] See above for the categories of cultural assets that may be the subject of an export prohibition in the European Union.

Deposits and gifts to libraries are frequent; we note that a significant portion of public collections have entered, and continue to enter, libraries by this means. A gift may specify conditions that were discussed beforehand and the same may apply to a deposit, which must always be the subject of an agreement voted by a decision-making body (a municipal council, for example) and signed by the head of the executive branch (the mayor). When discussing specific or restrictive terms, it is better to avoid complex ones that excessively bind the collectivity in the immediate and, moreover, for the future. We do not know what financial, human and material means our successors will dispose of to continue with the undertakings we make.
Beyond conservation issues, it is better to avoid making commitments on limitations to intellectual property or reproduction right issues, as these are often the source of disputes in terms of deposits and gifts. In the case of deposits, the library is only authorized to manage reproduction issues if this is clearly stated in the deposit agreement. We recommend written authorization be requested of the depositor before any reproduction, which will prevent disputes arising in the future, especially if the reproduction of the document may provide financial benefits to the depositor or reader: for example, in the case of rare musical scores, which may be used to prepare a concert or recording, or images that may be reproduced (in a book, postcards …). We have also observed that knowledge must be taken of past gifts and deposits in order to prevent the risk of a dispute arising: this is easy when the prior managers of the funds have left behind them archives that are simple to consult and much less easy in other cases where the institution's records must be consulted.

2. Legal Features of the Libraries' Distribution Role

The distribution role of public asset libraries specifically covers activities related to access to documents (consultation, exhibition, publication) and their reproduction (transfer to traditional photographs, photocopies and digitization).
To analyze the legal aspects of documents in terms of access and reproduction, one must distinguish rights related to the content of the creation and those related to the possession of the document itself.

a. Specific Rights and Relative Powers related not to the Object, but to the Content of the Creation

In terms of the creative aspect, public documents fall within the scope of the laws on literary and artistic property, in particular for literary (texts) or artistic works (illustrations, artistic bookbinding ...). The rights related to the content of the creation principally involve authors' rights, however other rights may be accessory to this creation, such as neighboring rights, trademark rights and also human rights. These issues must be studied at an international level, in particular with the development of NICT and the use of the Internet to make documents available to the public. In this regard, it would be ideal to comply with the laws of every nation. In any event, the laws of India do not provide significant protection to authors and personality rights, so reference should be made to international texts.

One often tends to confuse the rights of authors with the Anglo-Saxon *copyright*: authors' rights are intended to be a natural right that protects the author's personality (without formality); however, in the Anglo-Saxon system, used in India, a copyright presents various distinctions in relation to the rights of authors and tends to protect the user of the work. In the European approach to this issue, the principle of the author's right is the one to be kept in mind.

Authors' Rights

Authors' rights protect all works of authorship that are original. The law and jurisprudence list works that may be protected:

► Primary works and their titles: all writings, musical, audiovisual, multimedia and other compositions, as well as typographic creations, drawings, paintings, sculptures, engravings, architecture, etc.[3]

► Derivative works (translations, adaptations, anthologies, etc.).

The authors' rights of agents and service providers:
We note that the act of loyally photographing or reproducing (with no specific reframing, for example) in any form whatsoever (photograph, microfilm, direct or microfilm digitization) is not considered a photograph creation: no related author's rights exist.

► Library agents: when the work falls within the scope of intellectual property, the work they perform in the context of their employment belongs to the institution, but there are many outstanding questions to be addressed on this subject.

► External service providers:

- Graphic artists: we recommend that estimates include an assignment clause for the authors' rights related to the graphic creation, whether for paper documents or the creation of a web site; for their part, moral rights are not assignable, which means that the graphic work may not be changed in a web site, for example, without the creator's agreement.

Neighboring Rights

These essentially relate to the audiovisual world and apply to artists-performers, and sound recording and radio broadcast producers; libraries responsible for public collections are therefore not really involved, except when they conserve records or audiovisual recordings. These specific cases are not discussed herein. In the context of a public collection, one may ask specialized institutions for additional information.

Rights assigned to literary and artistic property, specifically in terms of authors' rights and neighboring rights, are of two very distinct types: proprietary rights and moral rights.

Proprietary Rights

Proprietary rights (to be specifically understood from a "financial" perspective) are limited in time from the date of creation to 70 years after the 1st of January of the calendar year that follows the death of the author[4]. Proprietary rights include performance rights ("communication of the work to the public", publications …) and reproduction rights ("establishing the work by any process that allows for its indirect communication to the public"). At the conclusion of the above timeline, the works fall within the public domain.

To ascertain whether or not a work falls within the public domain, it must first be qualified (a collaborative, collective, posthumous or composite work) in order to determine the start point for the application of the protection. Once the start point for the protection has been

[3] A typographic font created by a graphic artist is therefore protected by authors' rights: to be remembered when considering a change in service provider.

[4] There are exceptions that affect the start point of the timeline for collaborative, anonymous, pseudonymous, collective or posthumous works; the same applies to war years, which are not included in the 70 years. The application period for proprietary rights has raised many questions for experts and created vast case law; for specific cases, you must therefore seek the advice of an expert in authors' rights.

established, one adds 70 years (or 25 years for posthumous works) to the 1st of January following the start point (death or publication). Then, one must determine whether or not this work benefits from an extension due to a war. If this is the case, legal safety requires the addition of an extra timeline to the 70 years.

This "public domain" situation therefore applies to most works conserved in the public funds of libraries in India. However, the proprietary aspects of authors' rights for recent documents must be complied with: it is not infrequent to find in public funds of libraries bibliophilic works, whether illustrated or not, modern manuscripts, drawings, engravings or correspondence, for example, for which the author's proprietary rights still survive in favor of the author himself or his heirs. In the case of printed books, authors assign their rights by contract to a publishing firm and, with regard to drawings, paintings or engravings, artists sometimes assign their rights to a collective; collectives then manage the rights and potentially act as the librarian's contact point.

Should you wish to distribute, communicate or reproduce documents of this type, you must first contact the publisher or, in the case of works of art, these collectives, to ascertain whether the artist has assigned his rights[5]. When a library authorizes an individual or publisher to publish or use a reproduction of a document in its collections, it should indicate in writing that the authorization is granted subject to compliance with the author's rights and without requiring the library to effect verifications with publishers or collectives. Should the library fail to clearly indicate the above, it must effect all the verifications or may not authorize the reproduction of documents that are still protected by authors' rights.

Moral Rights

In principle, moral rights do not generate any financial revenue and are perpetual. Moral rights include rights related to disclosure (the author's right to place his work in contact with the public), paternity (the author's right to claim or conceal the authorship of the work), respect (to guarantee the moral and physical integrity of the work) and the right to repent and withdraw (the right to end use against payment of an indemnity); the latter right is very specific and rarely applies to libraries.
With regard to public documents in libraries, the implications of moral rights are many, as the rights are perpetual and unassignable, except through succession. Therefore, the descendants of an author whose works have fallen within the scope of the public domain may seek judicial resolution in their favor on the grounds of moral rights: disclosure, paternity, respect, repentance and withdrawal …

In terms of intellectual property, specifically authors' rights, we insist on the independence between intellectual property and the material possession of the object; the fact a book, manuscript, photograph, drawing, musical score, etc. are possessed does not confer the right to use same within the meaning of authors' rights, except in the specific cases of posthumous and creative works. We will see below that the use of creative posthumous works that fall within the public domain may confer original rights on libraries (or, rather, the collectivity that owns the creative document): an author's right, combined with a 25 year proprietary right[6]. This is the only case in which a library may act as an author (on behalf of the collectivity).

[5] See the contact information for the principal collectives attached as an appendix.
[6] Subject to the distribution agreement (moral right) obtained from the assigns.

Trademark Rights

A trademark is a sign that serves to distinguish a product or service. Unlike literary and artistic property rights and neighboring rights, the protection of trademarks presupposes a submission to the national institute for industrial property (INPI). While, in principle, a trademark is protected for 10 years from its date of registration by the INPI, this registration is renewable indefinitely so that the trademark may be protected forever, unlike literary and artistic property rights and neighboring rights. Therefore, placing protected trademarks on line without authorization constitutes an offence.

In terms of digitization projects, this means that you must check with the INPI to ascertain whether the collection trademark, title of the work, title of the newspaper (or even a logo on a postcard!) is still registered as a trademark and, if necessary, seek the authorization of the depositor to place it on line, even for documents that are within the public domain (printed books, newspapers and postcards ...).

Personality Rights

Case law considers not only the right to privacy, but also rights related to image and voice. Said rights are personality rights and present a specificity in relation to intellectual property rights in that they do not survive the death of the individual. They do not apply to printed books, as that which is printed is distributed and does not engage the librarian but the publisher and author. However, one must be cautious with regard to cases of creative contemporary documents: manuscripts, correspondence, family archives … In relation to rights applicable to "the voice", this right applies to sound recordings that may be effected, for example, during ethnological or sociological surveys and are kept in a library, as well as recordings made by the library itself during conferences, colloquiums and other events.

Before making them available for consultation, and, moreover, before reproducing them for distribution, one should ensure that the content does not disclose information on persons still alive that may prejudice their privacy. For example, information on their emotional life, religious practices, sexual orientation, a private address, etc., must not be communicated and reproduced without the individual's express authorization, whether said individual is known or unknown[7].
Much more importantly, facts that fall within these categories, should they have been published already, may not be disclosed again without the renewed authorization of the relevant individual, regardless of whether said individual authorized the initial publication or simply tolerated it. Vigilance is therefore crucial when documents or excerpts, such as newspapers articles, are placed on line or when recent private correspondence is consulted.

Rights relating to Image

Today, this right is separate from the right to privacy. Any person may prohibit a third party from reproducing and publishing his image. Therefore, a photograph may prejudice an individual's right to his image and to his privacy. The right applies whether the individual is in a private or public place. Like the right to privacy, the consultation and publication of a person's image requires his express and specific consent[8]; the image-related right ends upon

[7] The librarian's knowledge of this information in the context of his work (filing, cataloguing) obviously implies a confidentiality duty. Said duty extends to interns and term employees, who should be advised in advance.
[8] Case law accepts, however, the free reproduction of the image of a person in the form of a caricature.

the individual's death. The consultation of private documents held in a specific funds, the reproduction or distribution on the Internet and the simple exhibit of these documents therefore require the express and specific consent of the relevant individuals.

A Few Concrete Cases related to the Use of Documents Protected by Authors' Rights

Exhibits of documents still protected by the author's proprietary right

The authors' right principle should be applied when exhibiting documents (principle of the representation right)

▶ With regard to modern and "ordinary" books, the fact they are published already falls under "public representation" and there is therefore no need to apply a specific procedure

▶ With regard to the exhibition of "specific" documents (bibliophilia books, painted, sketched or engraved works, photographs, artistic bookbinding, etc.), the librarian must take the precaution of asking the author (or artist) or his assigns (heirs or collective) for authorization and explain the planned use of the objects. This does not mean a fee will be due; this authorization is necessary and often granted without difficulty in the context of libraries providing a public service.

Library reproduction of documents still protected by the author's proprietary right

Librarians are not entitled to reproduce documents that are still protected by the author's proprietary rights. This prohibition remains valid even for copies made for distribution on an institution's internal network to facilitate consultation in the library, however does not cover reproduction as a conservation measure. Here again, authorization must be sought of the author or his assigns (heirs or collective) and the type and objective of the planned reproduction explained.

Those responsible for public funds rarely authorize photocopy reproduction of books or documents. The right of reprographic reproduction is not relevant here, therefore, as it does not include photography (standard photography) or digitization (scanning or digital photography).

User reproduction of documents still protected by the author's proprietary right

An increasing number of readers and researchers want to reproduce documents they are interested in themselves with a photograph device (whether traditional or digital). Because of the specific private copy right, the librarian may authorize a reader or researcher to make a copy "for private purposes" with his own traditional or digital photo camera. Renowned case law considers that no private copy exists except for the owner of the photographic device. To avoid problems, we recommend that readers use their own photographic devices, rather than borrow one. However, the library may provide a reproduction stand to avoid the acrobatic maneuvers of readers who attempt to frame a document to photograph it and ensure the protection of the document by also providing suitable lighting.

The issue of substance, that is whether this practice, which is becoming increasingly common, may be prohibited by a library, is difficult to determine: the issue is also valid for all documents, whether governed by authors' rights or within the public domain, although the legal arguments are different. It may be possible to prohibit this practice, as it disturbs the department and other readers and, furthermore, could damage the documents as they may fall when a photograph is taken without support or a stand to facilitate reproduction. However, one cannot reasonably argue on the basis of excess light, except on rare occasions. With regard to the risk of damage related to opening books flat on their spines to take a photograph, if this is done under supervision, is it more damaging than opening a

book over a number of hours to copy its content? In any event, the prohibition must be indicated and substantiated (technically or legally) in the library's internal regulations. Similarly, internal regulations must be explicit as to authors' rights and the use of documents. Internal regulations are only valid when voted and adopted after debate by an authoritative body, such as the municipal council.

Distribution on the Internet (or an Intranet network) of a document that is still protected by the author's proprietary rights

Network distribution of a library document (written, graphic or even sound) means that reproduction (digitization) has occurred, followed by representation (communication) to the public, whether extended or limited. Therefore, all the necessary authorizations must be obtained and it is better to have full authorization to reproduce and distribute over a network, rather than separate the process into stages.

When one wants to seek the authorization of the authors to place their works on line over the Internet, their works should be accurately listed for each creative field (texts/music/graphic arts/audiovisual works …). These distinct lists should then be submitted to the publishers or collectives, who may grant the authorizations required to use these works on the Internet against payment of a royalty, if said works are included in their repositories. Failing which, the holders of the digital rights to the works that are not on the list of the various bodies must be identified (the author or his assign) in order to seek the required authorizations[9]. When, despite the research, it appears that there is no known right, the Courts may then be seized.

Exhibition or distribution on the Internet (or an Intranet network) of a document in the public domain

Documents in the public domain are "free of proprietary rights[10]" however compliance with the author's moral right is mandatory; if the exhibition or the Internet distribution site does not prejudice the work and author, no issue will arise; in any event, the name of the author[11] of the work must be indicated. If this is the case, no specific authorization is to be requested; it is the responsibility of the producer of the exhibition or Internet site to comply with the integrity of the work and its author. With regard to documents that have already been disclosed (materials that are printed and distributed or which have already been exhibited), the author may no longer argue his right to control disclosure; his right to respect may be argued and there is some case law on this matter.

<u>Specific Case: Conditions Precedent to a Gift or Deposit</u>

At times, the consultation of documents is subject to a condition or authorization, specifically in the case of gifts and deposits. It may be a means to convince hesitant donors who are concerned with the papers of their ancestors being freely consulted or, ignorant of the reality of authors' rights, believe they must protect the rights of other persons, such as correspondents. It is essential to scrupulously comply with the conditions attached to these consultations if they have been set out in a deposit or gift agreement, entrenched by the head of the executive branch or a will that has been probated. Often, with the passing of time, traces of the written document that clearly sets out the terms are lost. For this reason, it

[9] We note that the identification of a holder of a right is facilitated if the work bears an IDDN, ISWC or ISTC number. If this is the case, one may simply go to the www.iddn.org site for the first number or contact the Cisac for the others, in order to identify the holder of rights. See the contact information at the end of the volume.
[10] Except in the case of creations (see below).
[11] Except if the author has claimed his paternity-related anonymity right.

is important to preserve the materials on which these conditions are indicated: boxes, folders, even acidic, on which the donor or librarian who received and handled the funds wrote: “not to be consulted until … ". Compliance is crucial, as heirs may seek to have the documents returned and gifts may no longer be granted. A library known to comply with the will of its donors will more easily continue to receive new gifts.

At times, these conditions may apply to all types of distribution: if no additional indication exists, loans include loans for exhibits. Complying with these conditions means complying with the terms of a gift or bequest. Breaches have already caused assigns to attempt to retake possession of the goods, which often have a commercial value[12]. To risk having a trial for an exhibit is certainly uncalled for...

b. Specific Rights and Relative Powers related to the Right to Possession

The issue at hand is to ascertain whether an individual or corporation, because it is in possession of a work either as an owner or custodian, disposes of specific rights and may prohibit access and *a fortiori* reproduction and use thereof. Intellectual property (authors' rights) and the material possession of the object are independent; as we have seen, the fact a book, manuscript, photograph, drawing, music score, etc., are possessed does not confer a right to their use within the meaning of authors' rights.

The issue is therefore which rights are tied to the possession of documents by libraries in light of their activities: conservation, access and reproduction-distribution.

Rights to Access Public Assets

The consultation of documents in public libraries usually cannot be prohibited and this needs to be clearly understood. Exceptional limitation to consultation for conservation purposes is normal, but should not be abused. A citizen may legitimately request access and at least one reproduction of any type of document. In addition, the control practiced by certain librarians in relation to requests for proof of research and the reservation of access to “official and university researchers” may be considered an abuse of power. Every individual has the same rights in terms of public assets.

This republican principle – the idea being that the nation's heritage is at the disposal of all its citizens – has unfortunately been infringed by the legislator, guided in these matters by a perspective where financial concerns override equality.

Ownership Rights

Over the past years, much has been said on the rights of an owner of a good to its image. In libraries where documents fall, for the most part, within the public domain and services to the public, this right cannot be claimed and is no longer recognized. However, librarians must be attentive to the access, reproduction and communication of private funds on deposit for which owners may claim their right, even in the case of a deposit in the library. With regard to goods that are not visible from a public place, the owner may claim his right to closure and not leave his goods visible and thereby prevent reproduction. In the same fashion, one can understand that the owner of a private good deposited in a library may prevent access and reproduction … However, these excessive cases raise the issue of the meaning of the public service and abuse of ownership, and relate to the reasons for the deposit or gift. These

[12] These court proceedings are often won.

issues should be investigated carefully during the negotiation of contracts for deposits and gifts.

Royalty Rights for the Use of Documents in Public Institutions

In the case of goods within the public domain, compensation, referred to as a royalty, may be claimed in the case of the use documents in the possession of libraries. This royalty is distinct from legitimate reproduction expenses (traditional or digital photographic costs). The grounds argued by libraries for this royalty is either the "service rendered" or the "private occupation of the public domain" (the BnF, for example). In any event, one may question the legitimacy of the principle of the royalty itself. Indeed, documents in the public domain[13] being the very object of the public service makes it difficult for some lawyers to understand this logic.

However, this royalty is requested at times when the image of the documents is used, in other words, a type of distribution that is different from private use or personal research, for example[14]. As the legal texts are silent on the issue of the use of photographs of documents free from authors' rights and conserved in libraries, the trend is[15] to ensure the “profitability” of the use of the documents held in cultural institutions. In the case of libraries, it is true that the conservation of old funds represents a significant cost to the government (suitable buildings, scientific and technical personnel, promotion of the funds …) and one can understand this desire to invoice, often on the impetus of politicians. It all depends on what is meant by "public service" and, once again, the decision falls on the shoulders of the executive branch.

If a State decides to request a royalty (distinct from the fees for traditional or digital photographic reproduction costs that are legitimately requested) for the use of documents in a library’s funds, the procedure should be carefully followed. Lawyers state that only the principle of the "service rendered" may be applied (the one related to use in the public domain, in this specific case, may not be invoked).
The executive branch must make the decision and the amount of the price for the "service rendered" must be calculated in accordance with the disturbance caused to the administration and not the profit sought by the requestor (the publisher, for example). The institution of a royalty for a service rendered presupposes the existence of a service that is not part of the mandatory public service incumbent upon the public administration[16] and this also falls under the responsibility of the executive branch. However, it would be preferable to achieve national harmonization, as "it is necessary to establish uniform rules, specifically in terms of pricing, in order to organize the conduct by local collectivities of their core competency".

However, a question exists as to the meaning of this royalty and its impact on the development of public services. Once again, a political decision. The publication of works (on paper or via the Internet) represents a significant investment for a publisher who is, however, an important player in the promotion of national assets: he should not be overly discouraged,

[13] Within the meaning of the law on intellectual property.
[14] Libraries may not request this royalty in the case of private use or research.
[15] The most often, in major State institutions.
[16] Decree No. 87-346 of 21 May 1987 related to the compensation for certain services rendered by the Ministry for Culture and Communication specifically indicates that “the following may give rise to compensation for services rendered when they are provided by the services of the Ministry for Culture and Communication to individuals or private or public bodies other than the State: sale, rental, consultation or loan of reproductions, in the form of photocopies, microfilms, photographs, photogrammetric excerpts, seal samples or any other process, documents of any type held or conserved by the Ministry's services."

all the more so as only one autonomous management body will directly own this revenue[17], which cannot, unless exceptionally, be more than relatively modest. Furthermore, the habit of numerous libraries to request one or two copies of a publication seems justified and reasonable.

Specific Case of Posthumous Creations in the Public Domain

Certain documents in the public domain have never been communicated: they may be manuscripts, correspondence, musical scores, etc. These are creations. One may consider that the fact these documents are kept in a library's reserves does not constitute disclosure, although they are set out in the catalogue.

Therefore, for a work of authorship that has never been communicated to the public, the owner of the original support material for the work may claim an “author’s right” for a period of 25 years after its initial communication to the public. This is the only case in which authors’ rights are tied to the ownership of the support materials.
For this reason, a government becomes the beneficiary of an author’s right for a document in the public domain and can therefore legitimately claim reproduction rights for potential distribution; the deliberating body must then be solicited and a legal contract most likely signed with the publisher[18]. One could even imagine an assignment of this right to a collective, for example for the use of a handwritten musical score in the form of concerts or the publication of an audio CD.

This author’s right would also allow the government to oppose the communication or distribution of a work. However, one should not forget the libraries’ public service role and the principle of the public domain and, therefore, except in exceptional cases, this aspect of the authors’ right is debatable. However, one could imagine a "user" arguing the difficulty in proving the creative nature of an old document to the collectivity. How can one prove that a musical score was never played in public or a manuscript never read in public? Finally, it remains to be ascertained who owns the documents in public libraries and can therefore claim an author’s right on the basis of ownership of the support materials!

Conclusion

Legal aspects intervene at each stage of librarians’ tasks and their public service objectives. At times, it is difficult to solve issues independently, as laws and jurisprudence are in constant evolution. Library professionals must become aware of the subject and rely on the advice of specialists in difficult cases. In a society where one tends to increasingly claim rights through a series of lawyers, is it not our role to preserve the freedom of access and right to knowledge our libraries provide?

[17] Without mentioning the time spent in transferring money from one State department to another in the case of institutional, university or subsidized publications.
[18] The object consists in having the contract signed by the scientific publisher, in other words, the researcher who prepares the text for the publisher: however, he is the one to pay the author’s fees so should sign the contract.