

ONLINE ACCESS COLLECTIONS IN SPANISH LEGAL LIBRARIES: CHALLENGES AND EFFORTS

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SUMMARY: I. *Introduction*. II. *Management Challenges*. III. *Management Challenges During COVID Confinements*. IV. *Conclusions*. V. *Bibliography*.

I. INTRODUCTION

Under the concept of legal library, a heterogeneous set of institutions with specialized collections in the fields of law and jurisprudence are amalgamated, which, however, can be very different in their objectives, type of users, available resources and sub-specialization subject matter.

Simply consulting the *Directory of Legal Libraries* (*Directorio de Bibliotecas Jurídicas*) in the city of Madrid, we find references to institutions as diverse as the library of Congress of Deputies (*Congreso de los Diputados*), the documentation center of the Ministry of Interior (*Ministerio del Interior*), the Faculty of Law in Complutense University (*Facultad de Derecho de la Universidad Complutense*) or the private libraries of Clifford, Cuatrecasas and Deloitte law firms. Some of these libraries have great financial and human resources while others suffer from a notable scarcity of resources; some of them exclusively serve a restricted type of user with a very specific profile, while others are libraries open to the general public; certain centers are integrated into larger networks that determine their action policies (such as the Universities Libraries Network (*Red de Bibliotecas Universitarias*) REBIUN), while a few library institutions have almost total independence and autonomy.

In general, Spanish law libraries began a progressive digital transformation at the beginning of the 21st century (some collections and online ser-

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vices start their journey even earlier) so that, currently, 90% of the centers offer all their services to the user and performs all their work in a hybrid manner (face-to-face/telematics). However, the aforementioned heterogeneity means that, in practice, many of the challenges inherent to digital collections and online services are not faced in the same way in all libraries but rather depends on the possibilities of each institution. There are no single solutions.

In this regard, the Spanish experience shows that the two contextual factors that, right now, determine to a greater extent how digital challenges are being faced are: the human resources available in each library¹ and the difficulties of practical application of their legal regulations.

On the other hand, although in the previous paragraphs we have pointed out that the diversity of legal libraries entails different ways of approaching digital transformation, we have not yet commented on the marked plurality of online resources themselves. As we will see, the difficult managing of telematic resources comes from their heterogeneity at all levels (commercial, technological, relative to use rights, etc.), which prevents us from applying the same solution for all types of on line collections even within a single library.

So, what are the general challenges faced, regardless of the specific characteristics of the resource? We highlight four of them:

- Professional interdependence and global viability of the project.
- The legal aspects of the collections and how we will manage their implications.
- Integrate the location of all digital resources (dispersed in different sources) in a single catalogue, link manager, discovery tool or similar.
- To guarantee access, general security and preservation of digital content, at least in the short and medium term.

In addition to these general challenges, it will be interesting to comment on other, transitory but transcendent, challenges observed during the general confinement of the population due to the covid-19 pandemic in 2020.

¹ The Spanish library system suffers from a severe lack of generational change, for which reason many collections have been left in the care of workers without adequate qualification or, directly, they have been abandoned until it is possible to fill the position of librarian. For more information on the low coverage of these positions, see: Ministerio de Política Territorial y Función Pública, *Orientaciones para el cambio en materia de selección en la Administración General del Estado*, España, 2021, available at: <https://www.mptfp.gob.es/dam/es/portal/funcionpublica/secretaria-general-funcion-publica/Actualidad/2021/05/orientacionescambio.pdf>

II. MANAGEMENT CHALLENGES

1. *Professional Interdependence and Global Viability of the Project*

If we compare the feasibility analysis to develop a new printed collection with the feasibility analysis of an online collections project, we will immediately conclude that the second is much more complex because a greater number of factors (and actors) have to be taken into account.

To develop a new printed collection, basically, it was enough to know that we had enough money and space in the bookstacks: the process began and ended in the library itself. However, most online library projects require the active involvement of other people or units outside the library (computing unit, legal affairs, data protection officers, external companies, etc.), because of that, the viability of each initiative is also conditioned by external factors that should not be underestimated.

Regarding the technical/economic viability of the project, we are often interested in digital resources whose access or reading requires hardware/software different from that available in our institution. The solution to these needs can be quick, easy and inexpensive (e.g. purchasing a small set of e-readers) or it may be expensive and require a long-term project (e.g., a migration of platforms and content), but, in both cases, it will be necessary to study and foresee in detail how the technological and budgetary problems inherent to the project will be solved. In libraries, dependent on the Spanish Administration, bureaucratic complications are also common.

For example, a common situation when developing our own digital collections is that a significant expansion of space is necessary on our storage servers, or that a *cloud computing* contract must be formalized. In the case of libraries dependent on the General State Administration (*Administración General del Estado, AGE*), a contract of this type entails a complex administrative procedure that lengthens the project implementation times considerably; among the phases of this process, a prior evaluation of the impact on data protection is included,² which if negative, may force us to completely reorganize our plans. It may also be the case that our institution's Information Technology department discourages the project if it is considered likely to increase computer vulnerability. And, of course, it could be the case that we have budget for the initial digitization, but not for the acquisition of new

² Agencia Española de Protección de Datos, *Guía para clientes que contraten servicios de cloud computing*, España, AEPD, 2018, pp. 19-24, available at: <https://www.aepd.es/es/documento/guia-cloud-clientes.pdf-0>.

servers or for the long-term maintenance of a cloud storage service (which would no longer be a one-time expense but structural).

In short, it is worth finding out about all the indirect processes associated with the project and all the possible obstacles, however, we must assume that even then some unknown element may appear that alters our planning.

2. *Legal Aspects and Licensing*

Regarding the challenges associated with the legal aspects of the collections, unlike the digitization of historical collections or works with a CC BY license, the online resources of Spanish legal libraries are mostly very recent publications, subject to copyright and contract law (licenses), with a confusing legal framework compared to that of printed works and, considerably, more expensive for libraries.

For beginning, the widespread use of licenses and the expansion of contract law as the preferred form of regulation of online publications put at risk the benefits that traditional copyright granted to libraries through certain exceptions in their favor. Although, in theory, the parties subject to a contract are supposed to be free to negotiate the terms of the contract as they wish, in practice and for different reasons that we do not go into detail, libraries almost always must limit themselves to accepting or rejecting the standard license. The main reason is the pre-eminence of the publisher over the library (except in large consortium purchases), but often there are also technological and publication model limitations, which we will address later.

To specify differences, we can say that in the “analogue market”, are bought books or journals which: belong to the library *sine die*; they are easily loaned; they can be object of reprography with clear maximum limits (without prejudice to copyright compensation); and, users can consult each volume unlimitedly, over and over again, also knowing that the content of the book will not change over time.

On the contrary, in the “digital market” the normal thing to do is to subscribe accesses and/or downloads to an electronic collection, or to a single title; for a limited time; with stability of the content not always guaranteed; and, with conditions of use specified by standard licenses that, for certain issues, are not clear either.

Usually, when acquiring an electronic object, the licenses do specify some aspects such as: the maximum number of downloads allowed or concurrent users allowed; if the access is permanent or there is a limited subscription period; the access method (e.g. IP recognition or identification by

user/password); the possibility or not of partial printing; etc. In the case of large databases and online packages, the publisher's faculty to vary without notice the works that compose it (as well as the versions or formats of the content) is also usually specified, and even, in exceptional cases, it is specified the power of the publisher to "*prevent the online access to the Electronic Book, as well as the annotations and comments that the user could have made in it*" (translation of the literal quote of the general conditions of sale of ProView³ in Spain).

On the other hand, standard licenses do not usually refer to other important aspects for libraries such as reuse, lending (especially interlibrary loan) and the preservation of electronic objects. Often this seems to be due to the fact that regulation is not considered necessary since the development and publishing technique of the resource itself incorporates DRM (Enterprise Digital Rights Management) technologies to restrict access and prevent any type of reuse, reproduction or download.

In the case of interlibrary loan, there is also a certain lack of definition and a controversy, so the issue is usually avoided. The loan of printed books between libraries is a fully accepted activity, however, in the resulting digital context it is difficult to differentiate it from an electronic supply of copies. Actually, in Spain, the interlibrary loan of a printed book is exempt from any type of tax, while scanning a magazine article or book chapter and sending it to another library is taxed at 21% VAT (Value Added Tax) because it is considered supplying of electronic documents, that is, reprographic activity.

Changing the focus and with regard to the relationship between the technical library work and the contractual aspects of digital resources, the great diversity of existing licenses that establish different reading/consultation, loan and reproduction regimes for each resource, forces our libraries to keep a careful record of the uses that we can give to each title or digital package. Some of this information can be entered directly into the MARC bibliographic record in fields 540 and 542, or it can be entered in note fields in other e-resource management applications. However, it is quite common to create a parallel follow-up document, which is reviewed every time we sign a new contract or renew a subscription, containing all the (known) usage specifications for each digital title.

To conclude this review of legal challenges, in my opinion, it should be noted that the aforementioned evolution towards a promotion of con-

³ Textual quote taken from the general conditions of sale of "ProView", owned by Thomson Reuters, in Spain, available at: <https://www.thomsonreuters.es/es/tienda/condiciones.html>.

tract law, as well as its repercussions, is also observed in the regulations on remuneration for copyrights through management entities. And, if before we talked about the pre-eminence of a publisher over a small library, in this case the pre-eminence is absolute because in collective copyright management negotiations one of the parties works almost as a monopoly.

In Spain, currently, nine copyright management entities coexist (plus another two additional sub-entities), however, in legal libraries, it is common to sign agreements only with those that represent authors of books and textual journals, since among our collections there are usually no audiovisual, musical or artistic materials. These managers establish fees to be paid by any user who wants to use the work of the authors they represent at their own discretion. These rates are public, they are not subject to any type of ministerial approval⁴ and the negotiation margin is scarce or does not exist. In the case of Spanish institutions, normally, it is chosen to subscribe a general annual license that allows the use of the entire repertoire of the management entity: the cost of such a license varies significantly according to the sector of activity to which each institution belongs and according to its number of components (employees, students, users) and/or the reprography volume.

In this sense, it should be noted that the fees associated with digital uses (that is, documents made available through a closed and internal network plus e-mails) are usually high comparing to those of traditional reprography: for example, in the current academic year 2021/2022, universities must pay €1.59/student (plus VAT) for rights for photocopies of books and magazines, but this cost amounts to €5.31 student (plus VAT) for digital uses.

3. *Source Dispersion*

Regarding the challenge of how to integrate digital collections in our catalogue, it should be noted that as thousands of online resources have been accumulated from different commercial databases, it has become essential to have a single point of consultation, common to all of them, which allows for the location of a specific resource with a single search. As an example, the library of the Center for Political and Constitutional Studies (*Centro de Estudios Políticos y Constitucionales* or *CEPC*) currently has some 24,000 online access

⁴ For more information on intellectual property rights management in Spain, visit the web of Ministerio de Cultura y Deporte del gobierno español, en la sección “Gestión colectiva”, available at: <https://www.culturaydeporte.gob.es/cultura/propiedadintelectual/la-propiedad-intelectual/preguntas-mas-frecuentes/gestion-colectiva.html>.

books and journals from 15 different commercial packages. This means that without a general tool to access all of them, we would have to search 15 different databases, plus the general catalogue, to find out whether or not a title is among our collections.

In general libraries, the tendency to solve this problem is to implement discovery tools, library services platforms (LSP) or other applications that combine access to all resources (e-books, printed materials, database contents, etc.) in a single query point. With these tools, the description of the resources is automatic as long as there is a commercial agreement between the *discovery* provider and the publishers, but it has to be done manually or semi-automatically (transforming and loading the data packages that some publishers allow) in the rest of the cases. The problem does not come from technology but from trading policy.⁵

Given the general absence of commercial agreements between Spanish legal publishers and international providers, libraries have to assume the increased workloads derived from tackling this task, either with our own staff, or by subcontracting the integration. This task is so onerous and exhausting that many centers, even those with the greatest resources, give up getting that “single access point” and delegate to the end user the tediousness of a search that has to be carried out repeatedly in different applications or catalogues.

CEPC’s direct experience is that all our international databases are automatically integrated (although we have observed recurring update failures) compared to a single national package that is so. This force us to have to carry out manual and semi-automatic uploads of the new online titles more or less every two months. It should also be noted that in the case of CEPC we are still in an intermediate stage: we have managed to concentrate all commercial e-resources (accessible through connection to the publisher’s server) in a single search application, but this application is not yet integrated with the traditional opac (which includes our analogue resources plus some of our own digitizations). So, the users have to look at two different tools to explore the entire collection.

4. *Guaranteeing Data and Content*

Another set of challenges that we must bear in mind is related to guaranteeing data and content and strengthening general cybersecurity. This

⁵ Ávila, Lorena; Ortiz, Virginia y Rodríguez, David, “Herramientas de descubrimiento: ¿una ventanilla única?”, *Revista Española de Documentación Científica*, vol. 38, issue 1, mayo de 2014, available at: <https://redc.revistas.csic.es/index.php/redc/article/view/880/1208>.

is a multidisciplinary challenge in which threats of a very different nature must be distinguished such as: computer vulnerability, rapid technological changes, legal uncertainty about preservation copies, data and user comments protection, budget fluctuations, the variability of the contents, etc.

For beginning, we are going to point out an obvious, but relevant, distinction: in the case of e-resources owned or developed by our library (or the institution to which it belongs), it is the library itself that must be responsible for the entire process and face the problems inherent to safeguarding the resource in the short, medium and, where appropriate, long term; in contrast, when subscribing external resources, created and hosted on external servers, the biggest problem is one of external dependency and instability. Regarding the dangers of computer insecurity, currently, “cyber-risks” are common to all types of collections and services, both internal and external.

In fact, the incessant increase in cyber attacks that the Public Sector in Europe is suffering, together with all the risks that this entails, has led to the creation of initiatives to provide horizontal cybersecurity services, such as the Cybersecurity Operations Center of the General State Administration (*Centro de Operaciones de Ciberseguridad de la Administración General del Estado* or *SOC-AGE*) which, however, are still quite unknown in the library environment and are, therefore, underused. Although we librarians understand the importance of preparing for possible crises and information security breaches, in general, we lack the means and knowledge necessary to understand the problem in its entirety, much less to combat it effectively. Possibly, in this aspect even more than in others, the support of computer experts is necessary and, surely, we should start by promoting basic training courses in this field for our staff.⁶

Returning to strictly documentary matters, when we deal with subscriptions of online resources created and hosted on external servers, we have no control over the stability of the content, over the security of the platform or over the long-term security of access. And a little about the identification data.

Permanent access rights to content are the exception in electronic resources licensing, and this forward-looking warranty (which also has caveats) is generally impossible to negotiate, except if the publisher offers it as standard. When we subscribe to databases and digital resource packages, the sta-

⁶ Oltra Gutiérrez, Juan Vicente, “Ciberseguridad y bibliotecas: apuntes para una propuesta de formación sobre riesgo tecnológico en bibliotecas”, *Métodos de Información*, vol. 10, issue 19, 2019, pp. 75-126.

bility of this “rented” content is not assured for libraries because with most licenses, the content can be modified or removed from the platform.

This lack of stability is suffered in different ways. The first is budgetary: while a printed book was paid for only once and belonged to the library forever, digital subscriptions have to be renewed annually and tend to go up in price, therefore, we cannot guarantee users that we can continue subscribing a collection in the long-term. Obviously, this aspect affects the monographs more than serials, since printed journals also require expensive annual renewals.

The withdrawal of a title from a virtual library usually responds to the fact that the content provider is no longer able or willing to trade it (e.g. the rights holder has decided to change the distributor). For example, in on-line journal packages, the titles and coverage available fluctuate very often with hardly ever the provider notifying the library. In fact, collections split between two or more distributors are frequent (each distributor sells different years or issues of the same magazine). This has two consequences: first, the library is forced to periodically check that the accesses to the most demanded titles remain unchanged (it is impossible to check everything); secondly, if the title has stopped being distributed in a package already subscribed, we have to find out on which platform the new issues are marketed and analyze if we are interested in subscribing to them. Relatively often, we will not be able to subscribe to a single title but we will be forced to purchase a minimum set of publications from the new platform, while maintaining the previous subscription if we want to retain online access to retrospective issues.

With regards to content modifications, they usually respond to a new version with updated texts (the equivalent of a new edition) or formats. Even so, our users might be more interested in consulting the text of the previous version (some publishers do keep it available), or the old format, since it is possible that the new one requires software updates on the reading devices. And what, until now, users always lose with a “modification” are the personal notes that they could have made in the previous version of the resource through the additional services offered by some of these reading platforms when an individual user account is created (bookmarks, text highlighting or underlining, notes, etc.).

Regarding this, it should also be noted that the DRM included by some publishers or platforms only allow access to resources by opening specific user accounts associated with personal data. This prevents more widespread access within the library or institution, such as that offered by IP recognition.

Finally, the proliferation of accounts associated with personal data or e-mails is leading to complaints and misgivings by certain researchers who fear that their personal data and searches history may be hacked or transferred or, even, fear the possibility of pre-plagiarism. Actually, with regard to data protection, since July 2020 and as a result of the dissemination of the judgment of the Court of Justice of the European Union (*Tribunal de Justicia de la Unión Europea* or *TJUE*) on the data transfer regime between the European Union and the United States,⁷ the AGE's data protection delegates refuse to sign the standard forms for the management of personal data required by North American resource providers, which in some cases has even implied the administrative impossibility of contracting certain services or collections.

About our own digital resources, normally hosted on a server of our institution and accessed from our own database, catalogue or repository, to ensure access to the resource implies that our library should:

- Generate and store backups (independently archived whenever possible).
- Prevent malfunctions that cause damage and file corruption.
- Take extreme cybersecurity measures to avoid hackings.
- Ensure a correct and easy location of each resource.

Although permanent conservation is not common in legal libraries (the rapid obsolescence of the contents invites expurgation), if we want to guarantee the permanence of certain digital collections we will have to make the effort to maintain the software versions that allow the opening/reading of each file over time. Alternatively, or in addition, it is possible to work with emulations or even carry out periodic format migrations. In some cases, to ensure the preservation and custody of the contents, analogical reproductions (usually print-on-demand) from a born-digital resource are also being made.

⁷ The Tribunal de Justicia de la Unión Europea or TJUE (Court of Justice of the European Union) issued in July 16, 2020, a ruling on the data transfer regime between the European Union (EU) and the United States of America (USA) in the so-called Case 311/18 Facebook Ireland v/Schrems by which it was ruled that the level of security required in the EU is not achieved in personal data stored and processed by the US. The TJUE considered that the requirements of US national law and, in particular, some programs such as *Upstream* that allow their public authorities to access and copy personal data transferred from the EU, impose limitations on the protection of personal data that do not offer guarantees equivalent to those required in European Union law. For more information, see: Sentencia del Tribunal de Justicia (Gran Sala) del 16 de julio de 2020, disponible en: <https://eur-lex.europa.eu/legal-content/es/TXT/?uri=CELEX%3A62018CJ0311>.

This is the case, for example, with the Official Gazette of the Spanish State (*Boletín Oficial del Estado*) and with the different regional official gazettes, for which the existence of a printed edition limited to a few copies has been established by regulation (act or decree), obtained from the digital edition and aimed to guarantee the preservation and permanence of the contents. At CEPC, currently, we also follow a policy of this “reverse security copy” for works published by our institution that involves the works that were published exclusively on paper are gradually digitalized to contribute to their preservation (less use), however, to ensure long-term conservation of all the works born and sold in exclusively digital format, a small print-on-demand (10 copies) destined for internal custody, is also made.

All this policy of preservation with reproductions and migrations of format is clearly possible in the case of works for which rights belong to our institution, however, it raises certain doubts when the rights belong to a third party. Article 37.1 of Royal Legislative Decree 1/1996, of April 12, which approves the revised text of the Intellectual Property Law (*Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual*), enables Spanish libraries to reproduce works for research or conservation purposes, but does not specify questions such as whether the work can be reproduced before it becomes impossible to purchase another copy or access or whether a significant format change would be considered reuse rather than reproduction.⁸

On the other hand, all these preservation measures that we have just proposed are frequently not feasible due to the very technology with which the resource has been published (e.g. reading exclusively in *streaming* and linked to the platform of a specific distributor) and, even the Spanish Web Archive (*Archivo de la Web Española*), in charge of the legal deposit of online publications and dependent on the National Library of Spain (*Biblioteca Nacional de España*) has serious technical problems for the collection of content on certain platforms.

III. MANAGEMENT CHALLENGES DURING COVID CONFINEMENTS

In general, Spanish law libraries were relatively well prepared to provide exclusively telematic services during the total lockdown of the population due

⁸ Serrano-Fernández, María, “Bibliotecas digitales universitarias y derechos de autor en España”, in Encabo Vera, Miguel Ángel (coord.), *Propiedad intelectual y acceso a la información digital. Nuevos desafíos para las universidades españolas y portuguesas*, Madrid, Reus-Uribe, 2019, pp. 48 y 49.

to the 2020 COVID pandemic. Despite of this, our institutions had never before carried out a “dress rehearsal” for an emergency of this type and the government’s announcement of confinement was made with little time to react, so many solutions had to be improvised on the fly. Some of the specific problems of this period related to online collections were:⁹

- Insufficiency of digital collections since large packages of journals and databases are usually available, but many printed books still lack a commercialized electronic version and are not susceptible to full scanning (e.g. out-of-print works with current copyright).
- Temporary blockages of the technological and communication infrastructures that were not prepared for the simultaneous access of so many workers and users.
- Difficulties in quickly providing workers and users with media that would allow them to work/investigate remotely (laptops, business telephones, massive assignment of VPN accesses or similar, etc.).
- Need to enable a telematic reference service (telephone, chat, WhatsApp, social networks) to help users in real time to locate available content and to quickly train certain users and workers in the use of online tools.
- Trouble readjusting work procedures or assigning tasks online to less-qualified staff.

IV. CONCLUSIONS

The increase in computer frameworks, collections and digital services that began some two decades ago is a path of no return that offers countless future opportunities for documentation centers and libraries, but also presents serious adaptation challenges. With regard to library management, in the medium and long term, the technological leap that emerging developments such as artificial intelligence or quantum computing could bring us will allow uses that are difficult to conceive today and that will be impossible to manage if we do not have the advice and collaboration of computer scientists and other highly specialized extra-librarian professionals.

From a legal point of view and with massive data (*big data*) already turned into a resource, not only informative but also strategic at a geopolitical level, the debates on the right to privacy of users, on ethics and the

⁹ Tèrmens Graells, Miquel, “Bibliotecas digitales en tiempos de pandemia”, *Clip de SEDIC*, issue 83, 2021, available at: <https://edicionsedic.es/clip/article/view/48>.

defense of digital rights and on the digital identity have been intensified extraordinarily. Aspects all of them that cannot be ignored in any organization, but even less so, in libraries of legal specialization.

The technical work around the documentary chain is also changing and, both current and future librarians will have to retrain themselves throughout their lives because this is a demanding and constantly transforming profession. This is not just about replacing the traditional catalogue with a PSB or the books under review with electronic purchases and immediate download. The present experience of most legal documentalists shows that, thanks to technologies, the average user is increasingly self-sufficient with online content and only turns to the library staff for the thorniest queries: this is where our most perceptible professional value lies.

As it has always happened, the future of libraries is to nourish two of our main capacities: adaptation and resilience.

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