



WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

STATEMENTS BY EIFL 2017

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1 – 5 May 2017 SCCR/34**

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WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

34th Session: Geneva, 1 – 5 May 2017

Agenda item 7: Limitations and exceptions for libraries and archives

Point 7 de l'ordre du jour: Limitations et exceptions pour les bibliothèques et les services d'archives

Statement delivered in French – English translation below

Merci M. le président.

Je parle au nom d'Electronic Information for Libraries (EIFL).

Tout d'abord, nous tenons à vous féliciter pour votre élection en tant que président de ce comité de même que vos vice-présidents. Nous tenons également à remercier le groupe africain, le Grulac, le groupe Asie-Pacifique et tous les autres délégués pour leur soutien et pour avoir saisi l'interrelation entre la mise en place de limitations et les Objectifs de Développement Durable (ODD), surtout en leur point 4, qui prône un accès large à une éducation de qualité.

Monsieur le président, l'Internet est global mais les exceptions au droit d'auteur s'arrêtent à chaque frontière avec tout ce que cela implique. C'est d'ailleurs une des raisons de notre présence ici aujourd'hui. La technologie numérique a changé le monde. Mais, des lois sur le droit d'auteur obsolètes ou ne reconnaissant pas suffisamment la façon dont les gens ont accès et utilisent l'information et comment les étudiants d'aujourd'hui étudient et apprennent, empêchent les gens de tirer pleinement profit de cet internet!

En outre, ces lois obsolètes risquent de rendre le droit d'auteur non pertinent. Nous pensons que le droit d'auteur est important et que les limitations et les exceptions sont fondamentales pour une infrastructure d'information moderne, ainsi que des accès ouverts et d'autres modèles de licences.

Nous sommes très heureux que certains pays, dont l'Union européenne, aient introduit leurs propres réformes du droit d'auteur. Nous sommes aussi ravis que d'autres pays aient élargi leurs exceptions ou en aient introduit de nouveaux. Mais quelques pays qui modernisent leurs lois ne suffiront pas pour résoudre un problème plus large, la demande d'accès transfrontalier à l'information pour la science, la recherche et la culture. Et la nécessité de veiller à ce que personne ne soit laissé en rade dans la quête de l'accès à la connaissance.

Des preuves exhaustives et des exemples réels de problèmes concrets présentés par les bibliothèques et les archives à ce comité au cours des deux ans passés ont été compilés dans un document unique. Je vous invite à le consulter et des copies imprimées sont disponibles sur place. Il est également disponible en ligne, en recherchant le titre du document "L'Internet est global mais les exceptions du droit d'auteur s'arrêtent à la frontière", et vous y trouverez ces exemples.

Nous soutenons fortement la déclaration de l'IFLA et nous espérons que des progrès seront faits très rapidement dans le cadre du SCCR.

Nous vous remercions pour votre attention !

English translation

I am speaking on behalf of Electronic Information for Libraries (EIFL).

First of all, we would like to congratulate you on your election as Chair of this committee, and your Vice Chairs. We would also like to thank the African Group, GRULAC, the Asia-Pacific Group and all the other delegates for their support and for understanding the inter-relationship between the implementation of limitations and exceptions and the achievement of the UN Sustainable Development Goals (SDGs), in particular Goal 4 Ensure inclusive and quality education for all and promote lifelong learning.

Mr. Chairman, the Internet is global, but copyright exceptions stop at the national border. In a nutshell, that's why we are here today. Digital technology has changed the world. But copyright laws that are obsolete or do not adequately recognize the way people access and use information and how students today learn and learn, prevent people from taking full advantage of this Internet!

Furthermore outdated laws risk making copyright law irrelevant. We believe that copyright is important and that limitations and exceptions are fundamental to a modern information infrastructure, along with open access and other licensing models.

We are very pleased that some individual countries, including the European Union, are undergoing their own copyright reforms. We are delighted that some countries have either expanded their exceptions or introduced new ones. But a few countries modernizing their laws won't help to solve the wider problem, the demand for cross-border access to information for science, research and culture. And the need to ensure that no one is left stranded in the quest for access to knowledge.

Extensive evidence and real examples of concrete problems presented by libraries and archives to this Committee over the past two years has been compiled in a single document - I invite you to read it. There are printed copies available here. It is also available online, please search for the title of the document "The Internet is global but the copyright exceptions stop at the border", and you will find it.

We support the statement by IFLA and hope that progress on libraries and archive can be made in SCCR.

Thank you for your attention!

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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Agenda item 9: Other matters

Proposal for Analysis of Copyright Related to the Digital Environment Document presented by the Group of Latin American and Caribbean Countries (GRULAC), SCCR/31/4 in December 2015

Presentations by Ms Guilda Rostama and Professor Pierre Sirinelli

Thank you, Mr. Chair. There were many proposals in document SCCR/31/4 of special interest to libraries including the management of copyright limitations and exceptions in the digital environment, digital exhaustion, licenses, territoriality, and the interpretation of the three-step test.

I would like to thank the two professors for their presentations today on the preliminary report of the expert meeting convened by WIPO in May 2017.

We support the comments of El Salvador concerning participation of Member States in the selection of experts and subsequent discussions of these important issues.

We would be very interested in the findings of the scoping study with regard to the review of copyright laws for digital uses that was mentioned during the first presentation.

When we looked at data from the Study on Copyright Limitations and Exceptions for Libraries and Archives prepared by Professor Crews (SCCR/30/3), we found that in countries that have amended their copyright laws in the last five years, digital copying is expressly barred in over one third of them, even for preservation reasons.

I would like to ask if you are also considering in your work the evidence and examples of problems experienced by beneficiaries of certain exceptions, such as the library and archive community, when working in the digital environment as presented to this Committee by the community over the last number of years?

We believe that this would help to further inform the discussion and the possible conclusions.

Thank you.

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

35th Session: Geneva, 13 – 17 November 2017

Agenda item 5: Protection of broadcasting organizations

I'm speaking on behalf of Electronic Information for Libraries (EIFL).

When a new broadcast right goes beyond signal protection into post-fixation rights, libraries must take notice to ensure fair access to broadcast content for social, educational and public interest reasons.

Why do libraries show films? For example, in Senegal the library of the Universite of Cheikh Anta Diop (UCAD) in Dakar shows films to mark occasions such as World Environment Day to sensitize students to important environmental and conservation issues.

The fact is that a new layer of rights that affects access to content is an additional barrier to access to knowledge. Libraries would have to deal with an additional set of rightsholders to clear rights for access, creating extra costs and complexity on the rights clearance process. For sure, it will add to the orphan works problem that is already huge, and where policy makers around the world are trying to find legislative solutions.

Therefore any new instrument must contain a robust set of exceptions that are future-proofed for changes in technology and cannot be taken away by terms in contracts, or technological protection measures.

Consequently 'Limitations and Exceptions' set out in SCCR/34/4 IV. Other Issues should be strengthened.

First, Part 1. should specify that contracting parties shall incorporate in its legislation limitations and exceptions for specific uses including private use, reporting of current events, use for the purpose of teaching and research, making accessible for persons with disabilities, and for use by libraries and archives.

Second, the three-step test set out in Part 2. appears to go beyond the standard in the Berne Convention for quotations and news of the day, and is not part of the Rome Convention. To avoid unintended consequences, we recommend removing references to the three step text or, replacing the text with a statement that countries should ensure that rights granted in this treaty do not reduce the application of limitations and exceptions to copyright and related rights in national law.

This is to ensure that new rights do not extend to content that is in the public domain, to content that is licensed under an open content licence, or that was never intended to be subject to such long terms of protection.

With these changes, the document would be improved.

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

35th Session: Geneva, 13 – 17 November 2017

Agenda item 6: Limitations and exceptions for libraries and archives

Joint intervention with IFLA, ICA and ICOM

Thank you, Mr Chair.

I speak on behalf of International Federation of Library Associations (IFLA), Electronic Information for Libraries (EIFL), International Council on Archives (ICA) and the International Council of Museums (ICOM).

I will be brief, as we are eager to hear the presentations of those experts who have been asked to report on various areas of limitations and exceptions. First, we are very grateful to those Member States that have been committed for many years to action on limitations and exceptions, as an integral part of balanced copyright law. Studies commissioned by WIPO, particularly - for us - the three studies on L&Es for libraries and archives by Professor Crews, have been invaluable in demonstrating not only what is possible, but also gaps that make cross-border information exchange in the digital age very difficult, if not impossible.

Second, we are also grateful to the Secretariat for focusing on action – on results - as progress on L&Es is needed and long overdue. To that end, we support the proposed regional seminars to include including stakeholders but we also are hopeful that Member States, noting and drawing on the extensive exploration of L&Es over the past decade, will agree to consolidate, simplify, and accelerate the draft action plans so that the Member States of SCCR are prepared to fulfill SCCR'S mandate to determine the form and content of an appropriate legal interment in regard to limitations and exceptions for libraries, archives and museums as early as SCCR/37.

Thank you Mr. Chair.

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

35th Session: Geneva, 13 – 17 November 2017

Agenda item 6: Limitations and exceptions for libraries and archives

**Presentation by Prof Crews on updated
Study on Copyright Limitations and Exceptions for Libraries and Archives**

I am speaking on behalf of Electronic Information for Libraries (EIFL).

We thank the Secretariat for arranging the third edition of the study on copyright limitations and exceptions for libraries and archives.

Thanks to Prof Crews for undertaking the work. I have two points.

First, more than fifty of the charts have been revised and updated since the last edition in 2015. But when we look at the data in more detail, the substantive changes are small.

For example, since 2015 just three more countries allow copying for preservation, a basic library activity.

Just one country has allowed document supply, fundamental to support research.

Cross-border issues are not being addressed at all.

At this rate, we estimate that it will take another 70 years, until 2087, for the laws of every country just to catch up with basic activities today.

Second, in your presentation, you described a situation of relatively little innovation, uneven application of digital technologies and even increasing disharmonization.

My question is how can we address the situation to allow activities in an online, cross-border environment in which libraries in every country operate, in a timely and effective manner?

Finally, I would like to remind delegates of the compilation of evidence and examples of problems presented by libraries and archives at SCCR over the years.

It is available online. Just search for the title ‘The internet is global-but copyright exceptions stop at the border’.

Thank you.

WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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Agenda item 7: Limitations and exceptions for educational and research institutions and for persons with other disabilities

Presentation by Prof Senf

Updated Study And Additional Analysis Of Study On Copyright Limitations And Exceptions For Educational Activities

Thank you to Prof Seng for the updated study.

My question concerns contract terms for electronic resources.

In the updated study, you have identified a number of countries across different regions that have contract override provisions. How many of these provisions are newly enacted? Do you see a trend?

The updated study on libraries and archives also identified recently enacted contract provisions in a number of countries.

Most recently, the EU directive implementing the Marrakesh Treaty protects the exceptions for the making of accessible format copies from override by contract.

We think this could be an interesting topic for further exploration in SCCR.

Why? Such contract override terms seek to enable users to avail of the exceptions in copyright law, they are super relevant for access to digital information, and cross-cutting across all sectors of limitations and exceptions.

Thank you.