



WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

STATEMENTS BY EIFL 2019

INDEX OF STATEMENTS

**STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)
21 – 25 October 2019 SCCR/39**

Agenda item 5: Limitations and exceptions for libraries and archives

Agenda item 7: Protection of broadcasting organizations

**STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)
1 – 5 April 2019 SCCR/38**

Agenda item 6: Protection of broadcasting organizations

Agenda item 7: Limitations and exceptions for libraries and archives

Library Copyright Exceptions: Typology Analysis. Question to Professor Kenneth Crews (submitted in writing).

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

39th Session: Geneva, 21 – 25 October 2019

Agenda item 5: Limitations and exceptions for libraries and archives

Mr. Chairman, as we heard, Zimbabwe recently ratified the Marrakesh Treaty and the law will be amended for the benefit of people who are blind and visually impaired.

I am proud of this. But we know that in Zimbabwe, without Marrakesh, we wouldn't even be talking about exceptions for blind people. The treaty made the issue a priority among all the competing issues that the government is facing, for example, dealing with the economy and food issues.

In many other countries where EIFL works, we can see marked progress on exceptions for people with print disabilities since Marrakesh, and much less progress on exceptions for libraries.

At the WIPO Regional Seminar for the African Group on Libraries, Archives, Museums and Educational & Research Institutions held in Nairobi, member states agreed that exceptions in Africa lag far behind the rest of the world, and that copyright barriers to the preservation of cultural heritage should be eliminated.

We look for your support on how to resolve this problem at the international level in an effective and timely way for libraries in Africa and the rest of the world that are working hard supporting literacy, education and attainment of the SDGs.

Thank you.

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

39th Session: Geneva, 21 – 25 October 2019

Agenda item 7: Protection of broadcasting organizations

Mr. Chairman, the proposed broadcast right affects access to broadcast content. Therefore libraries must ensure that the new right does not create new impediments to accessing that content.

There are two essential criteria:

1. Exceptions to the signal must be in line with exceptions to copyright and related rights.
2. the term of protection for the signal must not be greater than the term of protection for the content it is carrying.

The Revised Consolidated Text, SCCR/39/4 fails on both issues.

First, the article on Limitations and Exceptions is optional, not mandatory. It doesn't even provide for exceptions that are mandatory in other treaties, e.g. quotation in the Berne Convention, and the making of accessible format copies in the Marrakesh Treaty. It also doesn't provide for mandatory exceptions in other laws, such as the EU's Digital Single Market Directive on preservation of cultural heritage.

The exceptions must be mandatory, and countries should be allowed to introduce other exceptions according to national needs.

Second, the term of protection for the signal is effectively longer than the term for the content, and by allowing post-fixation rights to apply to mere re-transmissions, it is potentially perpetual. This will worsen the orphan works problem, just as countries around the world are trying to address the issue. The term of protection should be very short, and it should not re-apply to mere re-transmissions.

To ensure fair access for social, educational and public interest reasons, and to protect access to content in the public domain, or licensed under an open content licence, these issues must be address in the text.

Thank you.

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

38th Session: Geneva, 1 – 5 April 2019

Agenda item 6: Protection of broadcasting organizations

The creation of a new post-fixation right affects access to content. Therefore libraries must pay attention because it places an additional barrier to accessing knowledge, especially content in the public domain or freely licensed by the rightsowner.

It is not without consequences. I will remind of an example of what can happen when broadcast material is subject to multiple layers of rights.

A large library in Europe wanted to publish a sound recording from their archive that was originally broadcast in the 1950s. The recording was taken from a re-broadcast in the 1980s.

Although the performers' right had expired and the author's heirs waived their fees due to the cultural importance of the work, the library had to pay the broadcast organization c. \$10,000 for permission to use the recording because the signal protection also applied to the re-transmission.

For many libraries such costs are out of the question. As a result, the public is deprived of access to broadcast content for social, educational and public interest reasons. For sure it will add to the orphan works problem, that legislators around the world are trying to address.

To avoid the problem, the treaty must have robust, mandatory and future-proof exceptions for post-fixation rights.

Distinguished delegates, please consider the costs to the taxpayer and society, as mentioned by the delegate from India, when negotiating this treaty.

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

38th Session: Geneva, 1 – 5 April 2019

Agenda item 7: Limitations and exceptions for libraries and archives

We are grateful to member states for their statements in support for libraries and archives.

We deeply appreciate the recognition of the Director General, in his opening remarks, of the importance of libraries for humanity, and the need for solutions in the distribution of knowledge by libraries and archives in the globalized, digital world.

In this context, we would like to congratulate the European Union on the recent adoption by the European Parliament of the Digital Single Market Directive that updates copyright rules for the digital age.

Among other changes, cultural heritage institutions benefit from new mandatory exceptions for preservation and text and data mining across all EU member states, and the exceptions are protected from override by contract terms or TPMs. Thus a library in Poland, for example, can cooperate in a preservation project with a library in Lithuania to share socially valuable research material.

We look forward to learning more about why a supra-national, regional solution was needed in Europe, how consensus was achieved, and how the experience in Europe can be incorporated into discussions at WIPO, especially with regard to addressing copyright issues in cross-border situations.

Thank you.

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

38th Session: Geneva, 1 – 5 April 2019

Agenda item 7: Limitations and exceptions for libraries and archives

Library Copyright Exceptions: Typology Analysis.
Question to Professor Kenneth Crews (submitted in writing).

We would like to ask if Professor Crews could add to each of the topics a brief explanation (just 1-2 sentences) to explain the objective of the topic (see Professor Seng's typology SCCR/38/8). For example, for the topic 'Preservation of Works', it would explain the objective of long-term preservation and its importance for both physical and digital collections.

The explanation would complement the definition and would provide helpful context for delegates attending the WIPO regional seminars.

Thank you.