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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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**PROPOSAL BY CHILE
ON THE ANALYSIS OF EXCEPTIONS AND LIMITATIONS**

Document prepared by the Secretariat

The Annex to this document includes a proposal by Chile on the analysis of exceptions and limitations, received together with a letter dated November 22, 2005.

[Annex follows]

ANNEX

Standing Committee on Copyright and Related Rights
Proposal by Chile on the Analysis of Exceptions and Limitations

At the twelfth session of the Standing Committee on Copyright of the World Intellectual Property Organization, Chile identified the relevance of prioritizing and setting aside working time for this Committee to strengthen international understanding of the need to have adequate limitations, learning from existing models and moving towards agreement on exceptions and limitations for public interest purposes which, like minimum standards, were to be envisaged in all legislations for the benefit of the international community.

On the basis of that statement, Chile wished to suggest three areas of work to be undertaken in the Standing Committee on Copyright and Related Rights:

1. Identification, from the national intellectual property systems of Member States, of national models and practices concerning exceptions and limitations.
2. Analysis of the exceptions and limitations needed to promote creation and innovation and the dissemination of developments stemming therefrom.
3. Establishment of agreement on exceptions and limitations for purposes of public interest that must be envisaged as a minimum in all national legislations for the benefit of the community; especially to give access to the most vulnerable or socially prioritized sectors.

I. Background

The proposal by Chile is an initiative which falls within a consensus in place for over a century. Recognition of the importance of having minimum exceptions has been achieved since the introduction of the Berne Convention of 1886.

In recent years, new rights for rightsholders have been recognized progressively at international level, and also previously granted rights have been extended to the new forms of use in the digital environment.

In that respect, the Agreement on Trade-Related Aspects of Intellectual Property Rights with the World Trade Organization incorporated for the first time the rental right. The so-called WIPO Internet treaties, for their part, incorporate the rights of distribution and making available, extend the right of communication to the public and implement a series of clarifications both with respect to databases and to computer programs and the storage of data on digital media. This interest into extending and clarifying the rights of rightsholders has not been as marked for the exceptions needed to establish a balance in the intellectual property system, especially in the digital environment.

Digital technology has opened up new opportunities in the production, distribution and use of protected creations. In this new scenario, users are able to access works and, from those works, and by virtue of their own talent, create new works, thereby including themselves in the virtuous circle of creation.

Moreover, it is characteristic of this new reality that, although this facility to copy, manipulate and distribute constitutes a threat for many rightsholders and the knowledge industries in terms of exploitation in the digital network environment, those same technologies also provide them with greater possibilities of control over the use of their works, rendering new forms of exploitation of protected materials possible.

II. Fundamentals

The principle of balance is most certainly the value which best reflects the expectations of society in respect of intellectual property systems, that value being enshrined in all treaties relating to that form of property.

To maintain this balance between rightsholders and users, between authors and other rightsholders, and also among the rightsholders themselves, the intellectual property system makes use of the principles of exceptions and limitations. They have always coexisted with the rights of the rightsholders.

Limitations are inherent in the intellectual property system, emerging as boundary posts between two dimensions. On the one hand, knowledge and expressions of human creativity are seen as public property yet, on the other hand, the very same intangible property is covered by intellectual property rights excluded from this common use since it is considered that intellectual property is a suitable stimulus for promoting creation and investment in that property.

Exceptions confirm the need to harmonize copyright with other values of the legal system, since they recognize that even when that right applies to a specific work, certain uses are exempt from requiring authorization or payment of a fee to the rightsholder. Justification of those exceptions is established on the basis of legal principles of fundamental importance such as the protection of the fundamental rights of users, the promotion of free circulation of information and the dissemination of knowledge.

In this way, exceptions and limitations to copyright constitute instruments for delimiting and protecting a heritage of public property and areas of freedom for the use of knowledge and products of human creativity, needed not only to guarantee the right of humankind to participate in cultural activity and scientific and economic progress, but also to facilitate and promote the creative activity of authors and cultural industries which require those exceptions to carry out a part of their activities.

III. Minimum Exceptions and Limitations at International Level

Comparison of the various national legislations has revealed a disparity in the scope of exceptions and limitations to copyright, particularly in the area of digital uses. Consequently, within a given category of exceptions, substantial differences may exist in the way those exceptions are handled, both in terms of depth and scope.

In a globalized world, this difference in handling exceptions and limitations at national level may constitute an obstacle both for the disclosure and transfer of ideas, and also for the acceptable use of works by disabled persons, libraries and public archives.

The lack of a minimum common international standard for exceptions and limitations can inhibit the making available to the public of works which incorporate other works or are derived directly therefrom. This risk affects both the dissemination of works produced today under traditional licenses as under open licenses, thus affecting both models for exploiting works currently in use.

Finally, this situation may also limit international activities or initiatives of public interest, particularly those relating to distance learning.

Various national and international organizations have drawn attention to the importance of recognizing exceptions and limitations along the lines set out in this Proposal. At the thirty-second General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) the Members of the Organization agreed to update national legislation in this area, with specific emphasis on the balance between the interests of rightsholders and the general public interest.

In Chile, various sectors of civil society have given support for this concern and have made major contributions to progress in reaching the agreement needed to modify the present intellectual property system with a view to integrating exceptions and limitations in line with this new reality.

We are convinced that the initiation in the World Intellectual Property Organization of a process aimed at reaching a consensus on minimum exceptions and limitations which would guarantee a sound balance between rightsholders and users would promote development of creation and innovation, cultural exchange, technology transfer, and would promote in particular the international legitimacy of the copyright system without affecting the legitimate rights of the rightsholders.

[End of Annex and of document]