

WIPO



SCCR/19/14

ORIGINAL: English/Arabic

DATE: March 17, 2010

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Nineteenth Session
Geneva, December 14 to 18, 2009

**REPORT ON THE AFRICAN-ARAB REGIONAL SEMINAR ON COPYRIGHT
LIMITATIONS AND EXCEPTIONS: ADDRESSING THE NEEDS OF AFFECTED
CONSTITUENCIES AND EXECUTIVE SUMMARY**

Document prepared by the Secretariat

The annex to this document contains an executive summary and a full report of the African-Arab regional seminar on copyright limitations and exceptions: addressing the needs of affected constituencies, submitted by Egypt, on December 7, 2009.

[Annex follows]

ANNEX

**Report on the
African-Arab Regional Seminar on Copyright Limitations and Exceptions: Addressing
the Needs of Affected Constituencies
Cairo, Ministry of Foreign Affairs, 2nd of November, 2009**

Executive Summary

1. The Ministry of Foreign Affairs of Egypt organized and hosted, in cooperation with the Secretariat of the World Intellectual Property Organization (WIPO), the African-Arab Regional Seminar on “Copyright Limitations and Exceptions: Addressing the Needs of Affected Constituencies” which was held in Cairo on the 2nd of November, 2009. The Seminar was attended by officials from: Benin, Kenya, Nigeria, Senegal, and South Africa from the African Region; Algeria, Jordan, Lebanon, Sudan, and Syria from the Arab Region; in addition to the participation of an official from Brazil in an observer capacity. The Seminar was attended by a number of officials from Egypt. It was also attended by officials from the WIPO, and World Trade Organization (WTO) Secretariats, in addition to representatives from academia and civil society.
2. The Seminar, which was inaugurated by H.E. Naela Gabr, Assistant Foreign Minister for International Organizations, discussed a number of issues relating to the African and Arab perspective on copyright limitations and exceptions. This included the need to establish an appropriate framework for considering the issue as it relates to access to knowledge, libraries, archives, museums, dissemination and use of copyrighted works for education and research, and the rights of persons with disabilities, and as informed by an appropriate balance between the interests of right-holders and the public. More recently, the adoption of the WIPO Development Agenda acknowledged the need to further facilitate access to knowledge and to foster creativity and innovation.
3. With regard to the African and Arab perspective, emphasis was underlined by participants on the need to approach the issue of copyright limitations and exceptions in an integrated manner, without limiting its treatment to specific constituencies to the exclusion of others. In this regard, the impact of the issue on development and its relation to the WIPO Development Agenda recommendations was emphasized.
4. The Seminar discussed the following key topics, namely: copyright limitations and exceptions in international treaties and beyond: developing countries and access to knowledge; fair use, fair dealing and other open-ended exceptions: the application of the 3-Step Test; limitations and exceptions for libraries, archives and museums; dissemination and use of copyrighted works for education and research; intellectual property and the rights of persons with disabilities and the needs of the visually impaired and other persons with reading disabilities, where a roundtable discussion was held attended by various stakeholders including representatives of the World Blind Union.
5. The discussion concluded with the need to intensify efforts in the relevant fora including the WIPO Standing Committee on Copyright and Related Rights (SCCR) to engage in an integrated treatment of the issue. Participants also agreed on the need to achieve a

balance whereby copyright and related rights should not hamper public policy and development priorities, including the rights of users of protected rights.

Full Report

1. The Ministry of Foreign Affairs of Egypt organized and hosted, in cooperation with the World Intellectual Property Organization (WIPO), the African-Arab Regional Seminar ‘Copyright and Limitations and Exceptions: Addressing the Needs of Affected Constituencies’ which was held in Cairo on November 2, 2009. The Seminar was attended by officials from Benin, Kenya, Nigeria, Senegal and South Africa from the African Region; Algeria, Jordan, Lebanon, Sudan and Syria from the Arab Region; in addition to the participation of an official from Brazil in an observer capacity. The Seminar was attended by the WIPO, and World Trade Organization (WTO) Secretariats, in addition to representatives from academia and civil society.

2. The Seminar, which was inaugurated by H.E. Naela Gabr, Assistant Foreign Minister for International Organizations, discussed a number of issues relating to the African and Arab perspective on copyright limitations and exceptions. This included the need to establish an appropriate framework for considering the issue as it relates to access to knowledge, libraries, archives, museums, dissemination and use of copyrighted works for education and research, and the right of persons with disabilities, and as informed by an appropriate balance between the interests of right-holders and the public. More recently, the adoption of the WIPO Development Agenda acknowledged the need to further facilitate access to knowledge and to foster creativity and innovation.

Opening Ceremony:

3. The Seminar was inaugurated by H.E. Naela Gabr, Assistant Foreign Minister for International Organizations, who stated that she looked forward to a constructive substantive discussion on the subjects of the seminar. She noted that intellectual property (IP) and its basic governing rules has become an area of major interest to a wide range of stakeholders concerned with public interest and economic development objectives, as well as officials in the cultural and educational sectors. She stressed that the IP system and institutions should aim to support innovation in different fields, as well as creating balance between right holders and the public. She highlighted that the adoption of the Development Agenda by WIPO Member States reflects the efforts being dedicated towards creating and maintaining this balance.

In this regard, Ms. Gabr highlighted that copyright should be among the domains that reflects the balance between copyright and the public interest, including access to knowledge and the right to education, and that the way to achieve this balance is through copyright limitations and exceptions. She noted that the WIPO Standing Committee on Copyright and Related Rights (SCCR) has recently focused its work on limitations and exceptions, and the possibilities of negotiating an international treaty on minimum limitations in the field of copyright and related rights for libraries, archives, and museums, to promote dissemination and use of copyrighted works for purposes of education and research, and to meet the needs of disabled persons. She stated that Egypt supports the work of the SCCR as a means of promoting the economic and social development of WIPO Member States, and urged that

each of these issues be given equal priority, without considering one issue as having greater importance than the others.

4. Mr. Sherif Saadallah, Executive Director, Department of External Relations, WIPO, stated that the copyright system aims to support innovation and creativity. The WIPO Development Agenda aims at striking a balance between the interests of rightholders in exploiting creative works on the one hand, and the interests of society in access to and diffusion of knowledge, on the other hand. He added that rapid technological developments have increased the importance of limitations and exceptions to copyright over the past years, and that the WIPO treaties have a and there are many Copyright and Related Rights rules, within the Frame of WIPO treatment, that can be drawn at the national level. He said that WIPO has worked intensively on copyright issues in recent years, through providing technical assistance to Member States, facilitating discussions in the SCCR, and commissioning studies and research in order to provide Member States with greater understanding of these issues. He highlighted that the goal of this seminar was to spread public awareness of copyright, to assist in capacity building for developing countries within a secure legal framework, and to enable Member States to take advantage of flexibilities in the copyright and related rights system.

5. Mr. Mohamed Noor Farahat, Director of Copyright Protection Office, Cairo, confirmed the importance of this seminar as a means of promoting innovation, culture and development within a copyright framework aiming at greater access to knowledge. He highlighted that efforts would lead to harmonizing national and international practices on one hand, including balancing the interests of rightholders and society in regard to technological development. In this context, he stressed the importance of WIPO's work on limitations and exceptions as an item on the agenda of the SCCR, and the relevance of this work in implementing the WIPO Development Agenda.

He further commended WIPO's comparative studies on limitations and exceptions in the national legislation of WIPO Member States. He pointed out that the Egyptian Copyright Standing Committee considers these studies as positive steps within WIPO context, and that the consideration of limitations and exceptions should not be limited to one field such as visually impaired persons, but it should follow an inclusive approach to promote the interests of society in terms of development and access to knowledge. He drew attention to Articles 170, 171, 172, 173 of the Copyright Law of Egypt, which established copyright limitations and exceptions in the public interest.

Copyright Limitations and Exceptions in International Treaties and Beyond: Developing Countries and Access to Knowledge

6. Mrs. Geidy Lung, Senior Legal Officer, Copyright and Related Rights Sector, WIPO, highlighted WIPO's interest in achieving balance between the interests of rightholders (publishers, performers, etc.) and the public interest. She made a presentation of the coverage of limitations and exceptions in the treaties administered by WIPO, beginning with the Berne Convention of 1886 (revised in 1967 and in 1971, when an Appendix was added providing special licenses for developed countries). She presented the Rome Convention of 1961 (which protects performers, producers of phonograms and broadcasting organizations), the TRIPS Agreement which is part of the World Trade Organization (WTO) agreements and the two WIPO "Internet Treaties" concluded in 1996, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

She noted that of the 23 agreements administered by WIPO, six are treaties in the field of copyright and related rights. She highlighted WIPO's efforts to support different countries in implementing the standards of international agreements in light of rapidly-changing technological developments affecting the creation and use of works protected by copyright. She noted the importance of the two "Internet treaties" in ensuring copyright protection in an era characterized by digital technology, including through the right of 'making available' and the coverage of temporary reproductions provided in the treaties.

Mrs. Lung noted that the two treaties cover limitations and exceptions in the form of a general rule of interpretation known as the "three-step test". She described the current work of WIPO in regard to limitations and exceptions in the SCCR and the Committee on IP for Development, with emphasis on the needs of persons with disabilities, libraries and educational institutions.

7. Mr. Hannu Wager, Counsellor, Intellectual Property Sector, World Trade Organization, addressed the relationship between WIPO treaties dealing with copyright and the TRIPS Agreement. He pointed out that TRIPS Agreement focuses on public interest concerns, supporting innovation and technology transfer as well as social and economic welfare. He confirmed the importance of balance between the interests of holders of rights in innovation and creativity and the public interest in access to the fruits of both.

He noted that countries may implement the standards in the WIPO treaties and the TRIPS Agreement in line with their own development objectives, and considering the size of the markets in each country individually. He added that ongoing discussions in the WTO are based on proposals from developing countries aimed at creating a balanced IP system within the TRIPS framework, matching the levels of protection for IP with the level of development of each country.

8. Dr. Hassan Badrawi, Assistant Minister of Justice of Egypt, addressed the national and international copyright and related rights framework, pointing out that limitations have the character of specifications as well as being limitations on rights. He said that IP is based, at the international level, on balance between creators and beneficiaries from different cultural sectors. In this context, he stressed the importance to developing and least-developed countries of considering the flexibilities available to them under international copyright agreements. In this context he cited examples in the Berne Convention including Article 10, regarding exceptions for teaching purposes and for reporting current events, the compulsory license for reproduction of musical works in Article 13, and the Appendix which enables developing countries to develop non-exclusive and non-transferable licenses for reproduction and translation of works for educational purposes. He pointed out the importance of Article 9 of the Berne Convention, which established the "three-step test" as a limitation on the right of reproduction, noting that it was later included in the TRIPS Agreement.

Mr. Badrawi also referred to the Rome Convention, which provides protection for the beneficiaries of related rights. He highlighted that Article 15 of Rome Convention allows Member States to establish limitations and exceptions in a few exceptional cases, including education and research. He also noted the flexibilities available to developing countries under the TRIPS Agreement, for example to establish exceptions which does not interfere with a normal exploitation of the work or harm the legitimate interests of the rightholder.

Fair Use, Fair Dealing and Other Open-Ended Exceptions. The Application of the 3-Step Test

9. Dr. Henning Grosse Ruse-Khan from the Max Planck Institute in Munich, gave a presentation that discussed the legal aspects of permitted uses under limitations and exceptions specific to education and libraries. He also addressed “fair use” and other open-ended exceptions, and discussed the “three-step test” within the framework of the Berne Convention and the TRIPS Agreement.

10. Mr. Mohamed Hegazy, Head of IP in the Industrial Technology Development Institute, discussed the issue of limitations and exceptions in the Egyptian law, concentrating on practical implementation. He said that the Egyptian law had excepted some uses in the context of protection based on TRIPS and Berne Agreements, like permitting any person to make a copy out of a certain work without financial benefit

Limitations and Exceptions for Libraries, Archives and Museums

11. Mrs. Hala Essalmawi, IP Officer in the Library of Alexandria, provided a historical view of knowledge diffusion. She highlighted the role of the Library of Alexandria in this field, and stated that the right to access knowledge is essential to development of civilizations and that any restriction of which would have destructive consequences. She explained that developing countries suffer from difficulties in accessing knowledge, confirming the importance of promoting awareness of this issue at the national and international level including in the context of the activities of educational institutions.

12. Mrs. Denise Nicolson, Librarian, University of Witwatersrand, South Africa, discussed the role of libraries and archival limitations and exceptions. She said that the right of access to knowledge is a basic human right and is essential for development, explaining its importance for activities such as translation, access to content by handicapped persons, a tool against illiteracy, and for teaching activities in medical institutions. She described the current copyright system in Africa as not supportive of development goals, to the disadvantage of broad sectors of society including writers and researchers. She explained the 45 recommendations of the WIPO Development Agenda as highly relevant to promoting access to knowledge. She called for support for a proposed treaty of access to knowledge, for improved access to content by disabled persons, and for continued efforts to strike a balance between the interests of rightholders and the public interest in access to knowledge. She added her position that the flexibilities provided under the TRIPS Agreement are not in the interests of developing countries.

Dissemination and Use of Copyrighted Works for Education and Research

13. Dr. Bassem Awad, Chief Judge, Ministry of Justice of Egypt, expert on the special committee for creating an African IP Organization, addressed the African dimension of limitations and exceptions to copyrights and related rights. He stressed the importance of balance between copyright protection on one hand and the public interest on the other hand, as well as access to knowledge. He explained that the countries of the African continent, despite the fact that most of them lack the basic foundation for education and scientific research, do not take advantage of the flexibilities regarding limitations and exceptions provided in international IP agreements. Further, the laws of some countries provide a term of

protection of 70 years after the death of the author, which exceeds the international standard of 50 years. He stressed that IP legislation Africa should take maximum advantage of limitations and exceptions, in a way that supports development goals. He noted the importance of work at the national level to achieve the balance between rightholders and the public interest in access to knowledge.

14. Dr. Mohamed El Said, Commercial Law Lecturer, University of West Lancashire, United Kingdom, drew attention to the relationship between copyright on one hand and access to knowledge on the other hand, and the positive effects of diffusing knowledge and education on innovation, creativity and economic development. He spoke of the situation of education in the Arab world, highlighting the high levels of illiteracy (currently over 30%), plus the overall decline in levels of education, exemplified by the fact that as no Arab university is included among the 500 best international universities, compounded by scientific research and translation services which are well below the required standard. Only 1% of the global total of scientific publications comes from Arab sources. Dr. El Said highlighted the importance of incorporating limitations and exceptions related to scientific research and education in national IP legislation.

Roundtable: The needs of the visually impaired and other persons with reading disabilities: Member States' and Stakeholders' views

15. Mr. Olav Stokkmo, International Federation of Reproduction Rights Organizations (IFRRO), emphasized the importance of providing knowledge and literary works for visually disabled persons, including the necessary role of licensing and the role of publishers. He stressed that it is necessary to produce works in formats accessible to disabled persons, which is the objective of the VIP Stakeholders Platform currently taking place under WIPO auspices.

16. Mr. Ahmed Bedeir, International Publishers Union, Cairo, highlighted the small size of legitimate markets for published works in developing countries (where the first print run for any book often does not exceed 300 copies, whereas the first print run can reach 6.5 million copies in a country like the US). He stressed the importance of dealing with access to knowledge for disabled persons from a commercial point of view, considering the nurturing role of the publishing industry, including the relations between authors and publishers, which are not served by broadening limitations and exceptions. He said it is important to develop a sustainable model that provides motivation to authors, feasible commercial opportunities for publishers, and access to published works for reader, in what might be called a 'triple agreement'.

17. Dr. Mohamed Noor Farahat, Director of Copyright Protection Office, Cairo, pointed to the linkage between human rights and the needs of visually impaired persons. He stressed that the access problems suffered by such persons have become critical due to the larger and larger volumes of knowledge being generated, and the tools for disseminating knowledge, that have come about due to recent technological change. The real challenge, in his view, is to provide visually disabled persons with content in accessible formats in a way that does not collide with copyright, and without letting copyright rules limit access to knowledge. He posed the question whether a limitation or exception to copyright in favor of visually impaired persons represents a threat to copyright. In this context he noted the position expressed by several Latin-American governments that access to knowledge for visually impaired persons should be an exception to copyright, provided the use is not for commercial purposes. He

suggested a ‘three angles’ perspective for analysis of this problem, focusing respectively on knowledge production, knowledge diffusion and knowledge use. He said that most emphasis among these three should be placed in the middle, on knowledge diffusion, considering that the search for balance between the interests of rightholders and the public interest is most prominent in this middle space.

The way ahead for developing countries: African and Arab countries

18. Dr. Maha Bekheet Zaki, Head, Intellectual Property Unit, League of Arab States (LAS), Cairo, listed a number of considerations regarding limitations and exceptions, including: 1- the need for balance between the interests of copyright holders and the public interest in a development context; 2- the steps that African and Arab countries should take in order to benefit from limitations and exceptions in their national legislation, consistent with their own national development objectives; 3- the need for continuation of constructive dialogue between publishers, authors, and users around limitations and exceptions; 4- the need to develop national policies and strategies to support the development of flourishing cultural industries (publishing, musical productions, films etc.), to produce a more positive cultural atmosphere that would improve the perspective of publishers and authors towards limitations and exceptions.

[End of Annex and of document]