

Written Version of U.S. Questions on Proposal by the African Group for a Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries and Archive Centers (Document SCCR/20/11)

SCCR 21 (November 8-12, 2010)

Article 1 (Definitions): The definition of “Copyright” refers to “all economic and moral rights that an author has in his works.” Would the African Group consider defining these rights with reference to the Berne Convention and the WIPO Copyright Treaty (WCT)?

Article 5 (Limitations and exceptions to copyright):

5(a)(3): How would the requirement that “copies of the work are supplied exclusively to be used by disabled persons” be implemented in practical terms? Would there be a role for trusted intermediaries? If not, who would make the eligibility determination and how would it be made?

Article 7 (Educational and research institutions):

7(d): Would there be any limits on the ability of educational and research institutions “to make copies of works acquired legally, without the authorization of the right holder?” Does it matter if the work is commercially available?

It appears that 7(b) does not apply to uses pursuant to 7(d), but only to uses pursuant to 7(a). Is there a reason the same requirement not to “unreasonably prejudice the legitimate interests of the right holder” would not apply to 7(d)?

7(e): Is there any requirement for educational and research institutions to undertake a diligent search prior to making copies of orphaned works? If not, how will they determine that the works are orphaned? What if the rights holder(s) cannot be identified but other copies (including used copies) are available in the commercial marketplace?

Article 8 (Libraries and archives):

8(e): Is there any requirement for libraries and archives to undertake a diligent search prior to making copies of orphaned works? If not, how will they determine that the works are orphaned? What if the rights holder(s) cannot be identified but other copies (including used copies) are available in the commercial marketplace?

Article 13 (Circumvention of technical measures): Is there any requirement that the work be lawfully acquired before circumvention of technical protection measures is permitted?

Article 14 (Relationship with contracts):

14(a): Would the provision that contractual provisions for exemptions from application of limitations and exceptions are null and void mean that an agreement that a trusted intermediary enters into with eligible users of accessible works would be null and void?