

Standing Committee on Copyright and Related Rights

Twenty-third Session

Geneva, November 21 to 25, 28, 29 and December 2, 2011

PROPOSAL ON LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

Document presented by Brazil, Ecuador and Uruguay

At the Twenty-First Session of the Standing Committee on Copyright and Related Rights (SCCR), a program of work was agreed on limitations and exceptions for the period 2011-2012, “to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), taking into account the proposals already tabled or any additional submissions.”

In accordance with that plan of work, at the current session we must make adequate progress on the three special days on which the discussion of limitations and exceptions for libraries and archives will be emphasized, benefiting from the experience already acquired at previous sessions.

Without prejudice to the opinion of the proponents regarding the nature of the instrument and taking into account the importance of the Committee’s decision regarding the nature of the instrument not obstructing progress in determining exceptions and limitations for libraries and archives, we support, as a work plan for agenda item 5, beginning with a “cluster approach”, based on the relevant texts proposed by Committee members, and leaving the issue of the nature of the instrument until such time as sufficient consensus has been reached regarding the exceptions and limitations it contains.

In this spirit, Brazil, Ecuador and Uruguay are tabling a proposal containing a series of exceptions and limitations specific to libraries and archives, for the purposes of discussing the proposal at this Committee session, together with the provisions referring to libraries and archives already envisaged in the African Group proposal (SCCR/22/12), the background paper put forward by Brazil and the text announced by the Delegation of the United States of America.

Brazil, Ecuador and Uruguay reserve the right to submit additional proposals in the course of the discussions.

PROPOSAL FOR COMPULSORY EXCEPTIONS

Library Lending

1. It shall be permitted for a library to lend copyright works, or materials protected by related rights, to a user, or to another library.
2. Notwithstanding the provisions of paragraph (1), any Contracting Party/Member State which expressly provides for a public lending right, may keep such right.

Reproduction and Distribution of Copies by Libraries and Archives

1. It shall be permitted for a library or archive to reproduce and to distribute a copy of a copyright work, or of material protected by related rights, to a library user, or to another library or archive, for purposes of:
 - a. education;
 - b. requests by users for research or private study;
 - c. interlibrary document supply;

provided that such reproduction and distribution is in accordance with existing international obligations, among them the Berne Convention.

2. Libraries and archives shall be permitted to reproduce and distribute a copy of a copyright work or material protected related rights, to a user, in any other case where a limitation or exception in national legislation would allow the user to make such copy.

Obligations concerning Technological Protection Measures

1. Member States /Contracting parties shall ensure that libraries and archives have the means to enjoy the exceptions and limitations provided in this instrument when technological protection measures have been applied to a work or other protected matter.

Limitation on Liability for Libraries and Archives

A librarian or archivist acting within the scope of his or her duties, shall/should be protected from claims for damages, from criminal liability, and from copyright infringement, when the action is performed in good faith:

- a. in the belief, and where there are reasonable grounds for believing, that the work, or material protected by related rights, is being used as permitted within the scope of a limitation or exception in this instrument, or in a way that is not restricted by copyright; or
- b. in the belief, and where there are reasonable grounds for believing, that the work, or material protected by related rights, is in the public domain or under an open content license.

When a Contracting Party/Member State provides for secondary liability regimes, libraries and archives shall/should be exempt from liability for the actions of their users.

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