

Standing Committee on Copyright and Related Rights

Forty-Second Session
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**PROPOSAL BY THE AFRICAN GROUP FOR A DRAFT WORK PROGRAM ON
EXCEPTIONS AND LIMITATIONS**

prepared by the African Group

INTRODUCTION

At the twentieth session of the Standing Committee on Copyright and Related Rights (SCCR), the African Group proposed a Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries and Archive Centers. The African Group is of the view that SCCR should continue building on the work carried out to date, and move towards a fair and balanced copyright system that supports creativity and advances the public interest including by promoting digital access to education and research, as well as to cultural heritage. The African Group submits this draft work program as a contribution to the work of the SCCR in the area of exceptions and limitations.

CONTEXT

The SCCR has been actively considering the issue of limitations and exceptions (L&Es) since 2004 (See SCCR/13/5). The 2012 General Assembly acknowledged the body of work and mandated that the Committee “continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms).” (WO/GA/41/14).

The Secretariat’s Report on Regional Seminars and International Conference on Limitations and Exceptions (SCCR/40/2) summarized a year of study and priority-setting activities on this agenda item. The Report notes considerable agreement among member states on priority areas of work, including:

- to ensure that reproductions and other uses of works for preservation should be permitted under exceptions in national copyright laws; and
- to promote the adaptation of exceptions to permit teaching, learning and research through digital and online tools, including across borders.

The Report notes broadly held views that limitations and exceptions should be subject to additional considerations, including overridability of limitations and exceptions by contracts, safe harbor protections for educational and research institutions (and their agents), and provisions regarding exceptions and technical measures of protection and rights management information. The Report records support for a diversity of instruments that could be of assistance, from treaties and resolutions to a range of tools such as models, recommendations, guidance, handbooks, and toolkits.

On this basis, the below proposed Work Program sets out concrete and practical steps that the Committee can take both in order to provide guidance and support to Member States in the short term, while also allowing it to work towards the adoption of an appropriate international legal instrument or instruments on exceptions and limitations.

WORK PROGRAM

1. The activities under the Work Programme should be based upon and built upon the prior work of the Committee and existing SCCR documents and are intended, without prejudging the final outcome, to provide the Committee with a basis for further pursuing its work in future.

2. Work under point 1 should begin with the discussion of proposed provisions by Member States, including those considered in previous Sessions and in Chair's Charts, on the priority issues identified in the Report on Regional Seminars and International Conference on Limitations and Exceptions (SCCR/40/2), including:

- a. to ensure that all laws enable the preservation activities of libraries, archives, and museums, including the use of preserved materials across borders;
- b. to promote the adaptation of exceptions to the online and cross border environment, such as by permitting teaching, learning and research through digital and online tools; and
- c. to review implementation of the Marrakesh Treaty and how to ensure that people with other disabilities (also covered by the Convention on the Rights of Persons with Disabilities) can benefit from similar protections, in particular in order to benefit from new technologies.

3. At the next SCCR, the Secretariat should invite presentations by experts on the problems of choice of law for cross-border uses of copyrighted works, with a focus on a case-study approach, such as cross-border implications of an online educational class with students in multiple countries, or where collaborating researchers or the subjects of their research are located in different countries. The session should consider international models for dealing with this problem, including the cross-border use provision proposed by Argentina (SCCR/33/4); the legal fiction model adopted in Article 5 of the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market, and such other models as are proposed for consideration by Member States.

4. The Chair should advance information sharing and consensus building on points 1-3 between SCCR meetings through processes which are transparent and inclusive in conformance with WIPO Development Recommendation #44, such as working groups of member states, supported by experts as appropriate and agreed, preparing objectives and principles and model provisions for consideration by the Committee.

5. The Secretariat should convene information sessions and exchanges with Member States, experts, copyright offices and other agencies, and beneficiary organizations, drawing on new or existing research studies as well as exchanges of best practices, where appropriate and without pursuing guidance documents, on the issues relevant to points 1-3 and on other issues including:

- limitations and exceptions for text and data mining research, taking into account new developments in this area;
- the UNESCO Recommendation on Open Science (2021) and its implications for international copyright laws and policies; and
- models for protection of limitations and exceptions from override by terms in contracts, safe harbor protections for educational, research and cultural heritage institutions (and their agents), and exceptions to technical measures of protection and rights management information to protect uses permitted by limitations and exceptions.

6. Drawing on the work completed to date, and without prejudice to the outcome of items 1-5, the Secretariat should develop tool kits to guide targeted technical assistance programs which help Member States exchange best practices and craft laws and policies which support education, research and cultural participation, developed in consultation with experts and stakeholders from beneficiary and rightsholders communities and through transparent consultation.

ANNEX: DEVELOPMENT AGENDA (DA) RECOMMENDATION LINKS

The proposed work program has links to DA recommendations 1, 7, 9, 14, 32 and 40:

1. WIPO technical assistance shall be, *inter alia*, development-oriented, demand driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country specific.

7. Promote measures that will help countries deal with intellectual property-related anticompetitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between IPRs and competition policies.

9. Request WIPO to create, in coordination with Member States, a database to match specific intellectual property-related development needs with available resources, thereby expanding the scope of its technical assistance programs, aimed at bridging the digital divide.

14. Within the framework of the agreement between WIPO and the WTO, WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement.

32. To have within WIPO opportunity for exchange of national and regional experiences and information on the links between IPRs and competition policies.

40. To request WIPO to intensify its cooperation on IP related issues with United Nations agencies, according to Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially the WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.

44. In accordance with WIPO's member-driven nature as a United Nations Specialized Agency, formal and informal meetings or consultations relating to norm-setting activities in WIPO, organized by the Secretariat, upon request of the Member States, should be held primarily in Geneva, in a manner open and transparent to all Members. Where such meetings are to take place outside of Geneva, Member States shall be informed through official channels, well in advance, and consulted on the draft agenda and program.

Complementing this Development Agenda, the proposed work plan would also form a part of WIPO's wider efforts to contribute to the achievement of the Sustainable Development Goals. This is a particular priority given that the 2021 Assemblies agreed that WIPO would join the UN SDG Group, and the intention in the Medium-Term Strategic Plan to play a more active role within the UN family of agencies to address global challenges encapsulated in the Goals.

In particular, the plan will help ensure that WIPO is supporting work to deliver on goals around education (SDG4), innovation (SDG9), safeguarding heritage (SDG11), combating poverty and promoting inclusion (SDGs 1, 5 and 10), access to information (SDG16) and means of implementation (SDG17). Crucially, it will respect the principle of leaving no-one behind, by working towards copyright frameworks that mean that no-one is denied their rights to information, education, science or cultural participation for want of resources.

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