

**Report on the 19th Session of the Committee of Copyright and Related Rights
(SCCR) in Geneva, December 14 to 18, 2009**

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I. Information Meeting

Before the meeting of the SCCR, WIPO had organised a half-day information meeting on limitations and exceptions for educational activities. The author of five studies mandated by WIPO on this topic presented them, namely: Professor Joseph Fometeu, University of Ngaoundéré, Cameroun, on limitations and exceptions for copyright and related rights for teaching in Africa; Professor Juan Carlos Monroy, Universidad Externado de Colombia, Bogota, on the limitations and exceptions to copyright and related rights for the purpose of educational and research activities in Latin America and the Caribbean; Professor Victor Nabhan on limitations and exceptions for copyright for educational purposes in the Arab countries; Professor Daniel Seng, National University of Singapore, on copyright exceptions for the benefit of educational activities in Asia and Australia; and Professor Raquel Xalabarder, Open University of Catalonia, Barcelona, on copyright limitations and exceptions for educational activities in North America, Europe, Caucasus, Central Asia and Israel. Many of the studies refer to the international law framework of exceptions and limitations for educational purposes and then compare the legal provisions in the relevant countries, which often are not explicit on digital uses. At the same time, it was mentioned that especially in Africa, many countries are currently revising their national laws in order to adapt their exceptions and limitations to new needs. Obviously, as Victor Nabhan correctly pointed out, a comparison of the mere legal provisions in national laws may not comprehensively show the situation in a given country; in particular, even where the laws in Arab countries do not mention 'education', they are applied in practice so as to cover educational purposes by exceptions and limitations. The studies, accompanied by annexes on the different provisions in national laws, are available on the WIPO website (WIPO docs. SCCR/19/4, SCCR/19/5, SCCR/19/6, SCCR/19/7, and SCCR/19/8).

II. SCCR

1. General remarks

In his introducing words, Director General Gurry showed his willingness to continue the SCCR's work towards success; he mentioned the already successful work of the stakeholders' platform regarding the visually impaired persons and pointed at the second interim report (WIPO Doc. SCCR/19/10), as well as the further developed questionnaire on questions and limitations in its second draft version (WIPO SCCR/19/2) and mentioned as a complimentary aim to the stakeholders' platform the elaboration of an enabling legal framework. A further WIPO document is to assist discussions in this respect, namely the analytical document on limitations and exceptions (WIPO doc. SCCR/19/3), which covers, on the basis of earlier studies commissioned by WIPO, existing limitations and exceptions regarding distance learning, visually impaired persons, and libraries and archives; different legislative models for exceptions and limitations; provisions regarding the distribution right, including its exhaustion; and an overview of the international framework. On the other topics currently on the agenda, Gurry explained that at the last General Assemblies, there had been some indications for an opportunity to work successfully towards a treaty on audiovisual performances; he noticed a growing volume of consultations. In addition, he highlighted the importance of the activity of broadcasting organizations; in this respect, a major study on the socio-economic dimension of the unauthorised use of signals has been mandated, the first part of which on "current market and technology trends in the broadcasting sector" was published for the 19th session of the SCCR (WIPO doc. SCCR/19/12), and two parts on signal piracy and on access to information are to be expected in the near future.

Among the general remarks, one may mention the EC stressing the great importance of achieving an appropriate level of protection for audio-visual performers and the need for international protection of broadcasting organizations, as well as strongly endorsing the stakeholders' platform regarding the visually impaired persons, resulting in most useful practical solutions. On the latter issue, the African group stressed that an appropriate balance between author's rights and public interests

was necessary and that copyright protection as such is not an obstacle to access to information but contributes to promote creation. The group also stated that the existing treaties already allow to respond to the needs for exceptions and limitations and that one should look not only at one very particular issue but adopt a holistic view of all issues involved. Japan considered an audio-visual performances' treaty as extremely important and also was in favour of concluding a treaty on broadcasting organizations, while it promised constructive discussions on the limitations for visually impaired persons. Malaysia hoped that the issue of limitations would remain on the agenda until a concrete result would have been reached and was in favour of the conclusion of an audiovisual performances' treaty in September 2010; similarly, India was in favour of such a treaty and also considered common standards for limitations important.

Remarkably, another 17 new non-governmental organizations were admitted, most of which represented national organizations of visually impaired persons or consumers interests, thus considerably changing the balance among NGOs at WIPO.

2. Exceptions and limitations

Regarding exceptions and limitations, discussions continued on the document submitted for the first time at the 18th session of the SCCR as a governmental proposal by Brazil, Ecuador and Paraguay for a treaty as it had previously been proposed by the World Blind Union (WIPO doc. SCCR/18/5, with explanations in WIPO doc. SCCR/19/13). As in the previous session, opinions were split regarding this proposal. Its proponents and many Latin American countries spoke in favour of such treaty with binding exceptions and limitations in favour of the visually impaired persons, while the African group, as stated above, stressed the need for an appropriate balance between right owners' rights and users' interests as well as between different user groups and favoured a global approach on all kinds of exceptions and limitations. It was against the isolated treatment of one user group only. Individual African countries added that they were currently amending their laws not least in order to address exceptions and limitations at a national level, though not only regarding the visually impaired. Many countries, including in particular Sweden and the European Commission on behalf of the European Community, the UK, Australia, Spain, Greece and the USA reported about national solutions and activities

in this respect. The USA was more flexible about the option of discussing exceptions and limitations at the international level than in the previous session. It praised the study by Sullivan as thorough work (which did not see a treaty as the best means to solve the problems) and strongly supported the stakeholder-platform's work and, at the same time, showed itself open to discuss and explore ways to work towards some form of international consensus, such as by a model law, leaving open other options. While this process would need some time, the most pressing problem, namely cross-boarder distribution of special formats, should first be dealt with by any creative solution. It stressed that the diversity of laws and experiences must be respected and that member states must retain sufficient flexibilities to meet changing conditions. Also, the market could often bring about the best solutions, while mandatory rules were only needed in situations of market failure. The delegation of the USA did not believe that an international consensus on limitations and exceptions would weaken the international protection and spoke in favour of having a balanced solution of, on the one hand, appropriate exceptions and limitations in copyright law and, on the other hand, an improvement of the enforcement of copyright law.

A number of countries not only implicitly, but also directly expressed doubts about the effectiveness and usefulness of a treaty to reach the aim of taking into account the needs of the visually impaired persons (in particular Australia, New Zealand, Japan, Canada, Russia) and favoured flexibility that would reflect the relevant domestic circumstances. All delegations agreed that the secretariat should prepare an information document on examples of national practices and other measures. Relatively few delegations addressed questions on the individual articles of the draft treaty.

According to the adopted conclusions on this issue, the SCCR "accepted the initiation of focused open-ended consultations" aiming at an "international consensus" on such limitations and exceptions. It is worth mentioning that these conclusions were adopted instead of an earlier, much more ambiguous draft, which proposed to initiate "focused consultations aimed at producing a proposal for a Joint Recommendation of the Berne Assembly and the WIPO Assembly regarding copyright limitations and exceptions for persons with print disabilities", which "could be another step towards the development of a treaty providing a framework for" such

limitations and exceptions. Generally, all aspects of limitations and exceptions will remain on the agenda with the aim of establishing a work programme, following a global and inclusive approach, and recognising the need for concurrently addressing all the issues with a view of achieving progress in all of them. This latter part of the conclusions seems to dismiss the option of only focussing on the visually impaired persons and thus points towards opening up the amount of issues to be dealt with.

3. Audiovisual performances

Many delegations were favourable to further work towards a treaty on audiovisual performances; while some of them rejected reopening the 19 articles that had been provisionally agreed on at the 2000 Diplomatic Conference (in particular the USA), others, such as Brazil, considered them only as a good basis for discussions but stressed the need to take into consideration that new developments took place in the past ten years. At the same time, many delegations warned against rushing into a third diplomatic conference without being absolutely sure of a success. Despite the very general, positive statements in favour of a treaty on audiovisual performances, the undersigned did not discover any concrete indications for a change of positions as compared to 2000. According to the conclusions, the SCCR will consider at the next session whether there is consensus on a possible recommendation to the General Assembly to convene a diplomatic conference for the adoption of such a treaty.

4. Protection of broadcasting organizations

A number of delegations stated their continuing willingness to work towards a treaty on a signal-based approach; the USA, as many years before, stated that a treaty may be necessary, but that it should go beyond traditional broadcasting and at least cover internet transmissions. Also this issue will remain on the agenda.

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