

Limitations and Exceptions at WIPO: a timeline 2004 – 2019

Background to WIPO's work on limitations and exceptions

Work on limitations and exceptions at WIPO's Standing Committee on Copyright and Related Rights (SCCR) has been extensive, substantive and has enjoyed support from most regional groups and member states.

In 2004, member states began to examine the issue of limitations and exceptions to ensure their adaptation to the global, digital environment in support of important public interest goals, such as promoting education, research, and access to information. The context for the work was the adoption in 2007 of the WIPO Development Agenda to ensure that development considerations form an integral part of WIPO's work. The areas of norm-setting, flexibilities, public policy and the public domain are among key recommendations of the Development Agenda. Further, the global IP system seeks to balance an innovation incentive and the need for access to knowledge, both of which contribute to a sustainable global innovation ecosystem¹ and achievement of the Sustainable Development Goals. It is limitations and exceptions that help to achieve the necessary balance.

The Marrakesh Treaty for persons with print disabilities, adopted by member states in 2013, is the great result of SCCR work on limitations and exceptions. It is the first international treaty to focus on user rights and, as WIPO's most popular treaty to date, is a success story for the international copyright system. After 2013, work continued on the needs of other beneficiary groups - namely libraries, archives and museums; education and research; persons with other disabilities. Discussions in SCCR are guided by the 2012 mandate of the General Assembly that commits member states to continue work towards an 'international legal instrument' (in whatever form).

¹ WIPO and the Sustainable Development Goals, <https://www.wipo.int/publications/en/details.jsp?id=4354>

The African Group at WIPO has played a significant role throughout the negotiations. In 2010 and 2011, the African Group made proposals for a Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives. Other regional groups (GRULAC), as well as individual member states², have also made text-based proposals.

While much work has been done, practical progress has moved slowly. In particular, the European Union (EU) maintains that international action is not necessary because, it says, national law can adequately address the needs of beneficiaries, such as libraries, archives and museums. However, the EU's position at WIPO looks increasingly at odds with its own actions within the EU. Not only has the EU adopted the Marrakesh Treaty, it has just completed a major copyright reform to adapt mandatory copyright exceptions within the EU for the digital, cross-border environment.

Below is a timeline setting out key moments in discussions on limitations and exceptions at WIPO.

Limitations and Exceptions at WIPO: a timeline

2004

Proposal by Chile (SCCR/12/3) for the inclusion of the subject of exceptions and limitations for the purposes of education, libraries and disabled persons in the agenda item "other issues for review".

2005

Proposal by Chile (SCCR/13/5) that the Committee explore national models and practices around exceptions and limitations, analysis of the exceptions and limitations needed to promote creativity and innovation, and **'agreement on exceptions and limitations for purposes of public interest that must be envisaged as a minimum in all national legislations for the benefit of the community'**; especially to give access to the most vulnerable or socially prioritized sectors.

² Argentina, Brazil, Chile, China, Ecuador, El Salvador, India, Pakistan, Peru, United States, Uruguay.

2006

WIPO commissions the first study on limitations and exceptions, 'Automated Rights Management Systems and Copyright Limitations and Exceptions' (SCCR/14/5)

2007

Development Agenda is adopted by the General Assembly containing 45 recommendations grouped into six clusters. Of particular relevance is Cluster B: Norm-setting, flexibilities, public policy and public domain. Key recommendations include the following:

- WIPO shall make available advice, **including norm-setting**, that takes into account the flexibilities contained in the TRIPS Agreement and other international intellectual property agreements, especially those flexibilities that are of interest to developing countries and LDCs (Recommendations 14 and 17).
- Discussions should be initiated on how, within WIPO's mandate, **to further facilitate access to knowledge** and technology for developing countries and LDCs to foster creativity and innovation (Recommendation 19).
- The WIPO Secretariat should address in its documents for norm-setting activities issues such as flexibilities, **exceptions and limitations for Member States** and the possibility of additional special provisions for developing countries and LDCs (Recommendation 22).

2008

Limitations and exceptions becomes a stand-alone agenda item (SCCR/16/1).

Proposal by Brazil, Chile, Nicaragua and Uruguay for Work Related to Exceptions and Limitations for educational activities, people with disabilities, libraries and archives, and limitations and exceptions to promote technological innovation (SCCR/16/2).

2010

Proposal for a Draft Treaty from the African Group on Persons with Disabilities, Educational and Research Institutions, Libraries and Archives (SCCR/20/11).

The Secretariat presented an updated set of results from a survey of national exceptions and limitations (SCCR/21/7), while the African Group and Group B made proposals on alternative roadmaps for work on exceptions and limitations ([KEI Website](#)).

2011

The African Group submitted an updated proposal for a Draft Treaty on Persons with Disabilities, Educational and Research Institutions, Libraries and Archives (SCCR/22/12).

Brazil submitted 'The Case for a Treaty on Exceptions and Limitations for Libraries and Archives: Background Paper by IFLA, ICA, EIFL and Innovarte' (SCCR/23/3).

The United States proposed Objectives and Principles for Exceptions and Limitations for Libraries and Archives (SCCR/23/4).

Brazil, Ecuador and Uruguay submitted a proposal concerning compulsory exceptions for libraries and archives (SCCR/23/5)

The Committee adopted a Working Document Containing Comments on and Textual Suggestions towards an Appropriate International Legal Instrument (in whatever form) on Exceptions and Limitations for Libraries and Archives (SCCR/23/8) (prepared by the Secretariat).

2012

A Provisional Working Document towards an Appropriate International Legal Instrument (in whatever form) on Limitations and Exceptions for Educational, Teaching and Research Institutions and Persons with other Disabilities containing Comments and Textual Suggestions was prepared (SCCR/24/8).

Brazil proposed text for articles on educational, teaching and research institutions (SCCR/24/7).

Ecuador, Peru and Uruguay called for a general flexible exception for education (SCCR/24/6).

The General Assembly approved the recommendation of the Committee to 'continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), with the target to submit recommendations on limitations and exceptions for libraries and archives to the General Assembly by the 28th session of the SCCR'. A similar

recommendation was made regarding educational and research institutions and persons with other disabilities (WO/GA/41/14). (This recommendation is known as the '2012 mandate').

2013

Adoption of the Marrakesh Treaty for persons with print disabilities. The objective of the Marrakesh Treaty is to remove copyright barriers (that existed in most countries) to the making and distribution of copies of works in accessible formats. The treaty addresses the problem by creating mandatory exceptions for the benefit of print disabled people, and makes it legal to send and receive accessible format copies across national borders. Marrakesh represents a significant development in international copyright law because it is the first treaty devoted exclusively to creating international minimum standards for the benefit of users of copyright protected materials. As so-called 'authorized entities', libraries are key to its success, and are playing a lead role in supporting ratification and implementation into national law.

The Secretariat updated the Working Document on libraries and archives (SCCR/26/3), as well as for education (SCCR/26/4).

The United States updated its proposal on Objectives and Principles on Limitations and Exceptions for Libraries and Archives (SCCR/26/8).

2014

The US submitted Objectives and Principles for Exceptions and Limitations for Educational, Teaching, and Research Institutions (SCCR/27/8).

The African Group, Brazil, Ecuador, India and Uruguay submitted a consolidation of Proposed Texts Contained in Document SCCR/26/3. The document contained text-based proposals on 11 topics related to libraries and archives³ (SCCR/29/4).

2015

Document SCCR/29/4 shaped substantive discussions for the following two years (SCCR/30-33). It formed the basis of an informal Chart on Limitations and Exceptions for Libraries and Archives prepared by the Chair (SCCR/34/5).

³ Preservation, right of reproduction and safeguarding copies, legal deposit, library lending, parallel importation, cross-border uses, orphan works, limitation on liability for libraries and archives, technological protection measures, contracts, right to translate works.

2016

Argentina made a proposal for the structure of a possible instrument relating to exceptions and limitations, which would combine a minimum set of exceptions at the national level and provisions allowing for works to be used across borders (SCCR/33/4).

2018

SCCR adopts a two-year action plan on limitations and exceptions for libraries, archives and museums, education and research, persons with other disabilities (SCCR/36/7). The plan builds on prior work of the Committee, features additional research and new activities with timelines for reporting back to SCCR. It intends to provide the Committee with suggestions for areas where international cooperation is needed. It features the organization of three regional seminars⁴ and an international conference in Geneva in October 2019⁵.

At the WIPO Assemblies, the Director General, Mr Francis Gurry announced that the Marrakesh Treaty was “The fastest moving of the WIPO treaties, not only in the past year, but most probably in the history of the Organization”.

2019

At the opening session of SCCR/38, the Director General recognized the important role of libraries and archives for humanity and society. He encouraged member states to consider discussions on libraries and archives not as technical issues, but as broad societal issues amid the changing environment for knowledge distribution. A treaty, the DG said, would help to address what is needed to determine how these institutions will function in the digital, globalized world⁶.

On 29-30 April 2019, at the first regional seminar on limitations and exceptions that took place in Singapore for the Asia-Pacific region, there was broad consensus that business-as-usual was not an option, and international action was necessary - three of the four working groups recommended that an international legal instrument should be part of the package of work to be undertaken by WIPO⁷. The second regional seminar took place in Nairobi on 12-13 June.

⁴ Asia-Pacific, 29-30 April 2019 in Singapore; Africa, 12-13 June 2019 in Nairobi; Latin America and the Caribbean, 4-5 July 2019 in Santo Domingo.

⁵ 17-18 October 2019 in Geneva (just before SCCR/39).

⁶ Read the full remarks https://www.eifl.net/sites/default/files/resources/dg_sccr38.pdf

⁷ <https://www.ifla.org/node/92148>

Studies on limitations and exceptions

Throughout this process, the Secretariat has published important studies on limitations and exceptions. The work includes:

- Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised by Professor Crews (2017) (SCCR/35/6). The 2017 study analysed the copyright laws of 191 WIPO member states. Among other data, the study shows that 14% of countries (28) have no library exception in their copyright law, very few countries have adapted their laws for the digital environment, and most countries do not allow cross-border uses. In addition, the study reveals a huge complexity in the application of the provisions with regard to who may copy, what may be copied, and the purpose and the format of copies, often making it difficult for librarians to understand and comply with the law.
- Updated Study And Additional Analysis Of Study On Copyright Limitations And Exceptions For Educational Activities by Professor Seng (SCCR/35/5 REV). This study also highlights major variations from one country to the next, while making clear the benefits that more flexible exceptions can bring.
- Revised Report on Copyright Practices and Challenges of Museums by Dr. Yaniv Benhamou (SCCR/38/5) highlights many of the the similarities between the activities of museums, and those of libraries and archives such as preservation and cross-cutting issues (contract override, technological protection measures, limitations on liability).
- Revised Scoping Study on Access to Copyright Protected Works by Persons with Disabilities (SCCR/38/3) notes inter alia the number of countries that have provisions for disabilities other than print disabilities (that are covered by the Marrakesh Treaty).
- Background Paper on Archives and Copyright by Dr. David Sutton (SCCR/38/7) highlights the copyright challenges that arise from the particular characteristics of archival collections and archival functions, regardless of whether they are located in archives, libraries, or museums. The study emphasizes the cross-border issues affecting archival collections, parts of which may be located in different countries for historical reasons.