

WIPO GRULAC Regional Meeting on Limitations and Exceptions to Copyright 4-5 July 2019, Santo Domingo, Dominican Republic

The third and last WIPO regional seminar on exceptions and limitations took place in Santo Domingo on the 4-5 July following those in Singapore and in Nairobi.

Seventeen Member States from Latin America and the Caribbean were in attendance, alongside WIPO officials, and representatives of libraries, archives, museums, education and research institutions, collective management organisations and publishing companies. The provisional list of participants is available [online](#).

This followed a three-day seminar organised by WIPO for Heads of Copyright Offices, with a strong focus on promoting licensing-based solutions with strong participation by collective management organisations.

As with the other two workshops, the mandate for the workshop came from the [SCCR Action Plans](#) – both to analyse the situation of libraries, archives, museums, research and education in Latin America and the Caribbean, and to explore possible areas for action.

The event started with a panel of presentations by Professor Kenneth Crews, Professor David Sutton, Professor Yaniv Benhamou and Professor Raquel Xalabarder. The experts summarised their recent studies, and underlined some of the challenges faced by libraries, archives, museums, education and research institutions in relation to copyright.

The presentations – in particular the typology of library and archive limitations and exceptions developed by Professor Crews (see the infographic summarising it in [English](#) and in [Spanish](#)), - underlined the limited extent of exceptions in the region. Six countries out of 33 have no exceptions at all, and even where they exist, they are not necessarily adapted to digital uses.

Others noted the reality of cross-border working facilitated by the internet. Sometimes, this was due to the fact that heritage itself is cross-border, thanks to migration, war and colonialism. Sometimes, it is simply because it makes sense to collaborate. The risk though was that copyright laws did not work well in these situations.

Following the presentations, there was an afternoon and a morning of workshop discussions in smaller groups of countries, each with a chair and rapporteur¹. Each group was tasked with looking at the current state of legislation in their countries, in particular as concerns preservation, reproduction, access and cross-border. Some structured their work around a questionnaire prepared by the WIPO Secretariat, while others focused on questioning the academics.

In the light of the event organised by WIPO on the previous days, debate focused extensively on the merits or not of licensing, and the degree to which this provided a solution. Member States shared perspectives from their own national laws, and plans to make changes.

¹ Table 1: Argentina (Rapporteur), Costa Rica, Cuba, the Dominican Republic, El Salvador, Guatemala (Chair), Honduras, Mexico and Nicaragua. Table 2: Antigua and Barbuda (Co-Chair), The Bahamas, Barbados, Dominica, Granada, Haiti, Jamaica, St Kitts and Nevis (Rapporteur), St Lucia, Suriname and Trinidad and Tobago (Co-Chair). Table 3: Brazil, Chile (Rapporteur), Colombia (Chair), Ecuador, Paraguay, Peru, Uruguay and Venezuela.

Rightholders tended to argue against exceptions, and suggest that licensing could meet all demand, whereas libraries, archives, museums and educators underlined the many situations where the market was not performing nor could perform, and where particularly in the case of archival collections held by libraries, archives and museums there are no rightsholders to compensate. Therefore, more favourable laws were needed to address this need and reality. They also stressed the uncertainty they faced in working across borders, thanks to the lack of an international law.

A number of Member States argued that an international instrument would be helpful, while others focused more on other means of promoting national reform or otherwise responding to the needs of libraries, archives, museums, education and research. Nonetheless, the limited time available for discussion, and an encouragement to focus on national solutions meant that very little exploration of cross-border issues took place.

At the end of the discussions, the chairs and rapporteurs from each group shared their findings with the rest of the room. Rapporteurs recognised the significant challenges faced by libraries, archives, museums, education and research, and the need for legal change. Licensing could also play an important role in providing access in certain situations.

Key points in the conclusions:

Preservation: this should be allowed for all types of work, with one group suggesting that such exceptions have cross-border application. There was general agreement that museums should also be covered, and one group suggested educational institutions could be included. One group noted the impact of contracts, and another the need to focus on non-commercial uses. There was agreement that preservation exceptions should be without prejudice to any other exceptions or uses.

Private Copying: there were discussions about where and how many copies could be made, but also acceptance that this was a core function of libraries. One group noted that the problems faced in this area could be resolved by an international instrument.

Access: there was agreement on the importance of access as part of the work of libraries and educational institutions in particular, with questions focusing on where, how, and under what conditions access could be given. Where remuneration was appropriate, collective management was potentially helpful; but in other cases, exceptions were the best solution.

Cross-Border: it was recognised that differing situations between countries, and a lack of provision in national law made cross-border collaboration difficult. Some called for exceptions for cross-border lending, including of orphan works, while others called for flexibility, and others questioned the scope of licensing to facilitate this.