

Standing Committee on Copyright and Related Rights
Proposal by Brazil, Chile, Nicaragua and Uruguay for
Work Related to Exceptions and Limitations

Introduction

Brazil, Chile, Nicaragua and Uruguay commends the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization on the work it has recently undertaken on exceptions and limitations to copyright and related rights.

As expressed in the Chilean submission at the Thirteenth Session of the Standing Committee on Copyright and Related Rights in November 2005,¹ exceptions and limitations to copyright are important instruments for defining and protecting a heritage of public property and areas of freedom for the use of knowledge and products of human creativity, which are necessary not only to guarantee the right of humankind to participate in cultural activity and scientific and economic progress, but also to facilitate and promote the creative activity of authors and cultural industries which require those exceptions to carry out a part of their activities.

In light of the vital importance of exceptions and limitations to these widely-shared values, it is proposed that three areas of work be undertaken by the Committee:

1. Identification, from the national intellectual property systems of Member States, of national models and practices concerning exceptions and limitations.
2. Analysis of the exceptions and limitations needed to promote creation and innovation and the dissemination of developments stemming therefrom.
3. Establishment of 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

In this context, we appreciate the work undertaken by WIPO to provide several studies reviewing the implementation of national copyright systems' exceptions and limitations for particular classes of beneficiaries and the public interest.³ We look forward to having the reports presented to this committee by their' authors, to enrich the discussion that we are starting today.

This 16th session of the SCCR is the first meeting to formally include the topic of exceptions and limitations on the Committee's agenda. This opportunity requires us to adopt a work plan to structure our discussions and allows us to move forward in a constructive manner.

For that purpose, we propose that the Committee implement a plan taking into consideration those three levels of activities outlined in Chile's 2005 submission, with the objective of achieving

¹ PROPOSAL BY CHILE ON THE ANALYSIS OF EXCEPTIONS AND LIMITATIONS, Proposal to Standing Committee on Copyright and Related Rights, SCCR/13/5, November 22, 2005.

² Id.

³ In recent years WIPO has commissioned four studies on Exceptions and Limitations: *Study on Copyright Limitations and Exceptions for the Visually Impaired* by Judith Sullivan (SCCR/15/7); *Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment* by Professor Sam Ricketson (SCCR/9/7); *Automated Rights Management Systems and Copyright Limitations and Exceptions* by Nic Garnett (SCCR/14/5); and a study on limitations and exceptions for library use at the request of Chile which will be completed soon.

a consensus on minimum mandatory exceptions and limitations particularly with regard to educational activities, people with disabilities, libraries and archives, as well as exceptions that foster technological innovation: Examples of what we consider mandatory exceptions or user rights, would be the right for the disabled community to export and import works produced under a copyright exception, or an exception in favor of libraries to the public lending right when it has been recognized.

We are convinced that succeeding in this task will ultimately strengthen the legitimacy of the current copyright system and facilitate its effective enforcement, while at the same time promoting creation and innovation, cultural exchange, and technology transfer.

I. We suggest that the work plan should consist in four phases.

First, the SCCR should, with the assistance of the WIPO Secretariat and interested stakeholders undertake specific research and exchange information on the availability, scope and nature of exceptions and limitations currently present at the international level, as well as on the norms included in international treaties or conventions regulating exceptions and limitations.

Second, the SCCR should, with the assistance of the WIPO Secretariat and interested stakeholders undertake specific research and exchange information on the availability, scope and nature of exceptions and limitations currently present in Member States' national systems in the areas to be selected as well as its interaction with contractual practices and digital rights management.

Third, the SCCR shall discuss and evaluate the justifications and implications for exceptions and limitations within the areas prioritized by the Member States.

Fourth, based on the material collected in the first three phases, the Committee will undertake to select and delimit those exceptions that should form part of a prescriptive minimum global framework of exceptions, and also identify models for other exceptions that should be considered best practices.

Fifth and finally, the Committee should adopt a formal recognition of, and commitment to creating mandatory minimum exceptions and limitations through means it deems appropriate. For instance, this could take the form of a recommendation for action to be adopted by the WIPO General Assembly.

In this context, it is important to emphasize that while the set of mandatory minimum exceptions and limitations would be common to all Member States, that baseline would not preclude Member States from adopting broader exceptions in similar or the same subject areas according with their respective legal system and international law.

1. In order to advance on phase one and two, we propose that the short-term agenda of the SCCR include the following activities:
 - A two day Information Meeting to be called at the beginning of the next SCCR at which all WIPO-commissioned studies on exceptions and limitations would be presented by their authors and their results discussed, alongside other studies on the subject that members decide to include.
 - An Open Forum on technology and exceptions and limitations to copyright, with representatives from the technology industry, researchers, and academic community

dealing with technology, to analyze the implications of such exceptions and limitations for the development of the technology sector and also their interaction with rights management information systems..

- At a minimum an additional WIPO study should be prepared during 2008, addressing the following issues related to exceptions and limitations for educational purposes, taking into consideration current national practices as well as international law:
 - How do educators use copyrighted works for the purpose of education?
 - How do educators perceive current copyright norms affect their ability to provide educational services?
 - What are the requirements under which educational institutions and individuals providing education, or receiving education in both developing and developed countries, can qualify for uncompensated utilization of works?
 - What are the conditions or requirements under which compulsory licensing systems for educational purposes could be implemented in developing countries?
 - How can remuneration for compulsory licenses that are justified for educational purposes be reasonably calculated and fairly distributed?