

STATEMENT OF THE PROGRAM ON INFORMATION JUSTICE AND
INTELLECTUAL PROPERTY, 42ND SESSION OF THE STANDING COMMITTEE ON
COPYRIGHT AND RELATED RIGHTS

MAY 9-13, 2022

The Program on Information Justice and Intellectual Property provides the following comments and information related to the agenda items being considered at the 42nd session of the WIPO Standing Committee on Copyright and Related Rights.

I. NEW STUDY ON RESEARCH EXCEPTIONS IN COMPARATIVE COPYRIGHT

We include with this submission a copy of our latest article -- Flynn, Sean; Schirru, Luca; Palmedo, Michael; and Izquierdo, Andrés. "Research Exceptions in Comparative Copyright." (2022) PIJIP/TLS Research Paper Series no. 75. <https://digitalcommons.wcl.american.edu/research/75>

This Article categorizes the world's copyright laws according to the degree to which they provide exceptions to copyright exclusivity for research uses. We classify countries based on the degree to which they have a research exception in their law that is sufficiently open to be able to permit reproduction and communications of copyrighted work needed for academic (i.e. non-commercial) text and data mining (TDM) research. We show that nearly every copyright law has at least one exception that promotes uses for research purposes. We find six different approaches to the provision of research exceptions that implicate application to TDM. Notably, not all recent exceptions passed specifically to enable TDM receive the most open ranking in our typology. And a significant number of countries, marked red in our maps, do not provide a research exception or limit uses only to quotations. This report may be useful in helping countries find models for domestic copyright reform as well for consideration of guidelines or norms for harmonization between countries.

II. LIMITATIONS AND EXCEPTIONS IN THE BROADCAST TREATY

At SCCR 41, the Africa Group and a number of countries requested that the next steps on the Broadcast Treaty focus on the limitations and exceptions provision.

A core goal of WIPO copyright and related rights treaties includes to achieve a balance of exclusive rights and exceptions to "serve the larger public interest, particularly education, research and access to information." (WCT Preamble). A special attention to limitations and exceptions needed to protect development-oriented policies and a rich public domain is called for in the Development Agenda

Recommendations 17, 19 and 22.

Exceptions to broadcast rights are essential for the priorities identified in the limitations and exceptions agenda, including for digital preservation, and online and cross border education and research. The current limitations and exceptions provision in the Chair's Consolidated Draft of the Broadcast Treaty is deficient. The Chairs' Text allows exceptions to broadcast rights only for matters reflected in a country's copyright law. The Rome Convention explicitly authorizes exceptions beyond those contained in copyright. The Broadcast proposal also fails to include the Rome Convention's explicit authorization of special exceptions for "ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts," and of "compulsory licenses ... to the extent to which they are compatible with this Convention."

The Broadcast Treaty presents an opportunity to improve the Rome Convention's limitations and exceptions provision, including with lessons learned from the Action Plan on Limitations and Exceptions. First, it could solve the problem of broadcast rights blocking uses permitted by copyright by requiring that exceptions for copyright extend to broadcast rights, including for quotation, news of the day, and providing accessible formats for people with visual impairments. Second, it could expressly require exceptions to exclusive rights in broadcast for the priorities of the Action Plans, i.e. for preservation, online uses, and cross border uses for libraries, archives, museums, education, research and to provide access to people with disabilities. See CIVIL SOCIETY GROUPS CRITICIZE WIPO BROADCAST TREATY LIMITATIONS AND EXCEPTIONS (Oct 15, 2019) <http://infojustice.org/archives/41653>

Significant time during any intercessional work should be devoted to the limitations and exceptions provision for the Broadcast Treaty.

III. AFRICAN PROPOSAL FOR A WORK PLAN ON LIMITATIONS AND EXCEPTIONS

The African Group proposal appears to be a good faith and rigorous effort to find a way forward for the next steps of the Agenda that can take advantage of emerging consensus positions and define a process that once could imagine progress arriving from.

Para 1. The focus of the work plan on education and research — not just institutions — is consistent with the studies and work of the SCCR. Daniel Seng's study and the Africa Group's 2011 proposal addressed exceptions for private study — not only through institutions.

The word "instruments" does not mean only a binding instrument. The instrument could guide the implementation of best practices. For example, a joint resolution or other document could advise countries on best practices and clarify the international framework.

Para 2. One of the key innovations of the work plan is that it explicitly follows the priorities set by the 2019 action plans. See ANALYSIS OF WIPO SCCR DRAFT REPORT ON REGIONAL SEMINARS AND INTERNATIONAL CONFERENCE ON

LIMITATIONS AND EXCEPTIONS (SCCR/40/2)

<http://infojustice.org/archives/43234>.

Para 3. Since the Action Plans, the EU adopted the Directive on Copyright in the Digital Single Market (2019) which includes a unique provision enabling cross border educational instruction. An information session at the next SCCR could review the EU and other models for enabling critical cross border uses of works for education and other purposes. Regional groups could be asked to propose one or more experts from their regions to address cross border use issues and international models to address them.

Para 4. Other Committees, most prominently the Intergovernmental Committee (IGC) on Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions, have adopted innovative methods to advance conversations between official meetings. It is notable that the proposal references the transparency and inclusiveness provisions of the Development Agenda # 44.

Para 5. The convening of information sessions falls within the area of consensus that all SCCR members have supported. PIJIP will present a study on research exceptions for TDM at a SCCR 42 side event.

Para 6. Member states have expressed support for work of the Secretariat on tool kits or other guidance to member states. This paragraph notes that guidance should be based on “the work completed to date,” such as the existing studies on Limitations and Exceptions. Tool Kits and guidance could also be developed in response to new studies conducted under Paragraph 5.