SCCR L&E History and Latest Developments

February 2023
Limitations & Exceptions (L&Es) at SCCR

- Milestones by date
- Studies
- Proposals by member states
- Action Plans 2018-2019
- African Group Proposal for a Work Program 2022-2023
Milestones

2004 1st proposal to add L&Es on education, libraries & disability to “Other Issues” by Chile (SCCR/12/3)

2007 General Assembly adopted Development Agenda - Cluster B: Norm-setting, flexibilities, public policy and public domain

2008 1st workplan proposal on L&Es by Brazil, Chile, Nicaragua, Uruguay (SCCR/16/2); L&Es become standalone agenda item

2009 1st treaty proposal, WBU treaty, by Brazil, Ecuador, Paraguay (SCCR/18/5)


2011 1st treaty proposal focussed on libraries and archives, Background Paper by IFLA, ICA, EIFL and INNOVARTE, by Brazil (SCCR/23/3)

2012 General Assembly mandate to ‘continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms)

2013 Marrakesh Treaty for persons with print disabilities adopted

2020 Marrakesh Treaty ratified by 100 member states, confirming its place as WIPO’s most successful treaty of recent times
Latest Studies L&Es
LAMs, Education, Other Disabilities

Libraries, Archives, Museums (LAMs)
• Libraries and Archives, Crews Updated and Revised 2017 (SCCR/35/6)
• Typology Analysis Libraries and Archives, Crews, 2019 (SCCR/38/4, SCCR/39/5)
• Background Paper on Archives and Copyright, Sutton, 2019 (SCCR/38/7)
• Report on Copyright and Challenges of Museums, Benhamou, 2019 (SCCR/38/5)
• Typology Analysis Museums, Benhamou, 2019 (SCCR/38/6)

Education and Research
• Copyright L&Es for Teaching in Africa, Fometeu, 2009 (SCCR/19/5)
• Educational Activities Updated, Seng, 2017 (SCCR/35/5 REV).
• Typology analysis Educational Activities, Seng, 2019 (SCCR/38/8)
• Report on Practices and Challenges in Relation to Online Distance Education and Research Activities, Torres and Xalabarder, 2019 (SCCR/39/6)
• Coming up Presentation of scoping study on L&Es on research, 2023 (SCCR/43)

Other Disabilities (other than print disabilities)
• Revised Scoping Study, Reid and Ncube, 2019 (SCCR/38/3)
Proposals 1
LAMs, Education, Other Disabilities


2013 The U.S. updated its proposal on Objectives and Principles for Exceptions and Limitations for Libraries and Archives (SCCR/26/8)

2013 Working Document Containing Comments and Textual Suggestions towards an Appropriate International Legal Instrument (in whatever form)
  • Libraries and archives - adopted (SCCR/26/3)
  • Education, teaching and research institutions, Other disabilities - provisional (SCCR/26/4 PROV.)
Proposals by African Group, GRULAC, Brazil, Ecuador, Uruguay, India, Pakistan, China, U.S. + comments by all member states
Proposals 2
LAMs, Education, Other Disabilities

2014 The U.S. submitted Objectives and Principles for Exceptions and Limitations for Educational, Teaching, and Research Institutions (SCCR/27/8)

2014 African Group, Brazil, Ecuador, India and Uruguay submitted a consolidation of the Proposed Texts on libraries and archives (SCCR/29/4) 11 topics - preservation, reproduction and safeguarding copies, legal deposit, lending, cross-border, orphan works, limitation on liability, TPMs, contracts, translation, parallel importation

2016 Argentina proposal for the structure of a possible L&E instrument, combining a minimum set of exceptions at the national level, and provisions allowing for works to be used across borders (SCCR/33/4)

2017 Chair’s Informal Chart on Limitations and Exceptions - Principles, Concerns, Suggested Approach (SCCR/34/CHART ON LIBRARIES AND ARCHIVES, SCCR/34/CHART ON EDUCATION AND RESEARCH)
**Action Plans 2018-2019 SCCR/36/7**

“To provide the Committee with suggestions for areas where international cooperation is needed.”

**Activities:**
- Updated the studies, prepared typologies
- Regional seminars Singapore, Nairobi, Santa Domingo and international conference in Geneva (October 2019)
- Report on seminars and conference: summary of discussions, suggestions for the way forward, including role of member states and WIPO, 2020 (SCCR/40/2)

**Lack of exceptions in a majority of countries for:**
- preservation for cultural heritage;
- communications in online learning and research;
- cross-border uses for education, research, activities of LAMs.

**Work on L&Es must continue in a holistic and forward looking way:**
- WIPO should provide legislative and technical assistance, esp. for cross-border uses and balanced copyright laws
- WIPO should develop a range of tools e.g. models, recommendations, guidance, and toolkits on licensing options and L&Es
COVID-19 Pandemic

COVID highlighted importance of L&Es and flexibilities e.g.

- Different rules for online and offline teaching
- Usage terms in e-resource licences that didn’t fulfill needs during lockdowns
- Role of digital research tools, and sharing of research results

Community responses

- Research libraries called on European Commission (EC) to issue urgent guidance for researchers, education and libraries to do their work without fear of litigation
- Library copyright specialists in US reaffirmed role of fair use in supporting remote teaching and research
- Publishers temporarily lifted access restrictions on certain e-resources

Government responses

- Hungary: decree easing copyright rules for online education in an emergency
- EC asked scientific journals to make COVID-19 publications and data immediately accessible to support public health efforts
- UNESCO mobilized 122 countries to promote open science, including by sharing and making universally available research results.
Proposal for a Work Program on L&Es by the African Group 2022 (SCCR/42/4/REV)

- **Reaffirms** the 2012 mandate

- **Work should reflect priorities** identified in Action Plan Report (2020) –
  - ensure all laws enable preservation and use of preserved material
  - promote adaptation of exceptions for online education and research including across borders

- **Organize expert presentations** on choice of law for cross-borders uses incl EU model, Argentina proposal

- **Convene Friends of the Chair** to prepare objectives or models

- **Convene information sessions** with Member States, experts, copyright offices and beneficiaries on new and emerging issues e.g. text and data mining, UNESCO Recommendation on Open Science (2021), models for contract override, safe harbour protections, TPMs

- **Develop toolkits** to help craft laws and policies that support education, research and cultural participation
Proposal for a Work Program on L&Es by the African Group 2022 (SCCR/42/4/REV)

Coming up at SCCR/43, 13-17 March 2023

• Presentation by the Secretariat of a Toolkit on Preservation

• Presentation by the Secretariat of a scoping study on research exceptions

• Holding of an expert session on cross-border problems when using copyright-protected works in the online, cross-border environment

• Invitation to African Group for an update on the Proposal for a Draft Work Program on Exceptions and Limitations (SCCR/42/4 REV.), and Members/IGOs/NGOs to comment on possible next steps
How do you say A2K?

Access to Knowledge • Ona Ògbọn àti Oye • 知识流通 •  الوصول إلى المعرفة • Okufuna okumanya • Kuwa na uwezo wa kupata maarifa • Dugg buntu xamxam • Åkses ke Pengetahuan • Acesso ao Conhecimento • Dostup do Znanija • Bilgiye enshim • Dostep do wiedzy • Acceso al Conocimiento • Accès au savoir • Pristup do Znanja • Sifuna ulwazi • 치실헬권 • Pristup k znanju • Простъбът за път • Γνώση • Adgang til kundskab • Adgang til viden • Zugang zu Wissen • Dostup do znalosti • Toegang tot Kennis • Klíč k vědění • अपने के लिए प्रवेश • Waniko yeruzivo • Tilgang til kunnskap • دسترسی до знання • Pristup znanju • Приспособлене до знания • Accès à la connaissance • Pristup ku znalostiam • Teachth ar eolas • U swíkilele ndlelo • बहुसंख्यक सामग्री • Rok no an • Accesso alla conoscenza • Билим апцым жотишве • Krikkukaana Vaapu • 知識流通 • Komunikimi me dijën • Denumata Praveshaya • Katamelletso ho Tsebo • Gye nyansa • Dostop do znanja • Ukufinelela ulwazi • /rsamulagenjwe • Kufinyelela Ilwathini • Kuva nemukana wakupanga rzivo • Ñàwëxówë ñòmmë • Puleleho tsebong • Toegang tot inligting • Telse žinoti • Njīm ya Isopano yoperenzë chidziwilso • Hebbbede gândal • Moryella wa ho ithula • Huna e mand • Ukufikeleleka Kulwazi • Ukufinelela Olwazini • Kufikelela kutiva •