

**Workshop on Copyright Limitations and Exceptions for Libraries and
Archives**

NLSIU, Bangalore | 05 March, 2016

WIPO INITIATIVES

Nehaa Chaudhari

The Centre for Internet and Society

CIS : Website - cis-india.org | Twitter - [@cis-india](https://twitter.com/cis-india)

**PERSONAL : Email - [nehaa\[at\]cis-india\[dot\]org](mailto:nehaa@cis-india.org) | Twitter-
[@nehaachaudhari](https://twitter.com/nehaachaudhari)**

OUTLINE

(PART A) : Introducing WIPO/SCCR

- ❖ What is WIPO?
- ❖ WIPO Committees
- ❖ Stakeholders (Member States and Observers)
 - Groups (of Member States) and positions
 - Role of Observers
- ❖ The Standing Committee on Copyright and Related Rights
 - Past work and current agenda
 - What does a meeting of the SCCR look like?

(PART B) : The Proposed Text for Limitations and Exceptions for Libraries and Archives

- ❖ Current international framework for libraries
- ❖ Why do the libraries and archives want such an instrument?
- ❖ Discussing (one) proposal
- ❖ Next steps

PART

A

THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

- Specialized agency of the United Nations
- Established in 1967, by the Convention Establishing the World Intellectual Property Organization. Convention was amended in 1979.
- Article 3 of the Convention – WIPO Objectives - “to promote the protection of [intellectual property](#) throughout the world....”
- Stakeholders
 - Member States – 188 States are members of WIPO
 - Observers – need to be accredited by the WIPO

WIPO COMMITTEES

- Decision making and negotiating bodies
 - **Governing Bodies** : highest decision making bodies. Established by the WIPO Convention. Include **WIPO General Assembly + WIPO Coordination Committee + WIPO Conference**
 - **Permanent Committees** : Constituted by any of the Governing Bodies, as required. Include **Program and Budget Committee + Committee on Development of Intellectual Property + Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore + Committee on Enforcement + Committee of Experts**
 - **Standing Committees**: Ad-hoc Committees, established by the General Assembly for a specific purpose – for instance, determining the need for a treaty/executing a new treaty ++ Include **Standing Committee on Copyright and Related Rights + Committee on WIPO Standards + Standing Committee on the Law of Patents + Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

...CONTD.

- **Diplomatic Conferences** : Convened on the **decision** of one of the Standing/Permanent Committees. Convened to finale negotiations on a new treaty. Most recent according to WIPO:
 - [Diplomatic Conference for the Adoption of a new Act of the Lisbon Agreement - The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications](#)
 - [Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities](#)
 - [Diplomatic Conference on the Protection of Audiovisual Performances](#)
- **Working Groups** : May be established by any committee/any other body. Usually to examine a particular issue in some detail.

STAKEHOLDERS [MEMBER STATES]

- Member States are those countries that are ‘members’ of the WIPO (Hence, ‘member’ States [State = Nation])
- Grouped into 7 informal groups
 - (i) the Asian group (**India is member**)
 - (ii) the African group
 - (iii) the Group of Latin American and Caribbean Countries (GRULAC)
 - (iv) Central Europe and Baltic States (CEBS) group
 - (v) Central Asian and East European States (CAEES) group (vi) Group B (comprising developed countries)
 - (vii) China.
 - *“Although these groups are not ‘formal’ and are not recorded in any WIPO document, these groups form the basis for representation in Selection Panels and Working Groups; election of Chairs; and provision of funding assistance in WIPO.”*
[Permanent Mission of India to the United Nations, Geneva, available at <http://pmindiaun.org/pages.php?id=326>]
 - (viii) **European Union**

STAKEHOLDERS [OBSERVERS]

○ Observers

- Non-governmental/inter-governmental organizations
- Have to be ‘accredited by WIPO’ – will be put up in front of the Member States at the next possible meeting, and Member States will resolve to accredit.
- Include public interest organizations/civil society organizations /academic organizations (Third World Network, Knowledge Ecology International, Centre for Internet and Society , India, Electronic Frontier Foundation, Program on Information Justice and Intellectual Property, Karisma Foundation++)
- Also includes industry associations/bodies (Asia Pacific Broadcasting Union, International Publishers Association ++)
- Also includes associations/representatives of stakeholders (Libraries-International Federation of Libraries and Archives + Electronic Information for Libraries + representatives from museums, authors, ++)
- Role includes:
 - Listen to proceedings and report (except closed-door/informal discussions)
 - Share research with/lobby Member States and provide technical assistance
 - Make interventions
 - Drafting assistance
 - ++

THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

- Meets twice a year (generally). Met thrice in 2014.
- Constituted for determining the need for, and bringing into effect:
 - A treaty for limitations and exceptions for persons with disabilities (**Concluded (limited)** – the Marrakesh Treaty for Persons with PRINT Disabilities)
 - A treaty for the protection of audio-visual performances (**Concluded** – Beijing Treaty on Audio- Visual Performances)
 - A treaty for the protection of broadcasting organizations (**Current agenda item**)
 - A treaty for limitations and exceptions for libraries and archives (**Current agenda item**)
 - A treaty for limitations and exceptions for teaching, education, research and persons with disabilities (**Current agenda item**)
- What does an SCCR meeting look like? (Discussion)

PART

B

CURRENT INTERNATIONAL FRAMEWORK FOR LIBRARIES

- Subject to the 3 step test
 - Berne Convention – Article 9(2)
 - TRIPS Agreement- Article 13
- Other important instruments are the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty
- 2001 – Copyright Directive of the European Union
 - (Open the Directive in the Workshop Reading Material)
 - (Discuss the highlighted points from the Preamble – see Reading Material) – **See paragraphs (4), (5), (6), (13), (14), (31), (32) of the Preamble, illustratively.**
 - To adapt legislation to reflect technological developments
 - Enacted to harmonize copyright law across the European Union, including limitations and exceptions, and to give effect to the WCT and the WPPT

...CONTD.

- (Copyright Directive contd.)
 - What does it to?
 - It understands “the right of reproduction” (Article 2) to be different from the “the right of making available to the public” (Article 3)
 - Member States “SHALL” provide.... is the language used to discuss copyright provisions, but, Member States “MAY” provide...is the language used to discuss limitations and exceptions. **Therefore, provisions protecting copyright + interests of rights holders are mandatory, and those on limitations and exceptions are not.**
 - Exceptions and limitations are listed in Article 5
 - Confirms the three-step test (Article 5(5))
 - Members MAY apply these
 - Directive has the potential to restrict limitations and exceptions - Members, in principle, may only enact those limitations and exceptions that are in the list, but, if they had more in their national laws, they were allowed to retain those.
 - Library exception is in Article 5(2) – allows reproduction made by libraries, educational establishments, museums or archives, which are **non-commercial**
 - Recognition of Technological Protection Measures in Article 6

WHY ARE LIBRARIES AND ARCHIVES ASKING FOR A NEW TREATY FOR LIMITATIONS AND EXCEPTIONS?

- **Asks for a new treaty are dictated by**
 - Emerging library practices, to take complete advantage of the ‘digital’ medium (e.g. **digitization, digitization for preservation, inter-library loan**)
 - Emerging practices by rights holders, to take advantage of the changes in the law that benefit them (e.g., **technological protection measures – licences restricting multiple copies, licences limiting number of uses ++**)
 - Desired changes in the law
 - Need to harmonize across different jurisdictions
 - To influence those countries that do not have ANY library exception to implement such exceptions
 - To influence those countries that have WEAK library exceptions to implement such exceptions.
 - To act as a model for countries to follow.
 - To address discrepancies/inconsistencies within the law (e.g. **technological protection measures are allowed, but the use and exercise of such measures often results in a scenario where legitimate fair dealing use is blocked**). [Note – neither action is illegal – this is a gap in the law that needs addressing]
 - Examples of crucial issues:
 - **Anti circumvention provisions** - Do not cease on the expiry of the term of copyright protection + Cannot distinguish between legitimate and illegal uses
 - **Licensing agreements with overriding effects?** - File format migration and preservation is prevented. Legitimate fair dealing/fair use by end users blocked?
 - **Cross border issues** : Interoperability of national limitations and exceptions

SOME DOCUMENTS IN THE SCCR ON LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

- SCCR – 31st Session (latest session as on date) – Chair Summary - http://www.wipo.int/edocs/mdocs/copyright/en/sccr_31/sccr31_ref_summary_by_chair.pdf
- SCCR – Presented in the 26th Session, has remained unchanged since - 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 – http://www.wipo.int/edocs/mdocs/copyright/en/sccr_26/sccr_26_3.pdf
- SCCR – 29th Session – has remained unchanged since – Consolidation of proposed texts contained in document SCCR/26/3 - Prepared by the African Group, Brazil, Ecuador, India and Uruguay - http://www.wipo.int/edocs/mdocs/copyright/en/sccr_29/sccr_29_4.pdf
- SCCR - Presented in the 26th Session, has remained unchanged since – Objectives and principles for exceptions and limitations for libraries and archives – Presented by the United States of America - http://www.wipo.int/edocs/mdocs/copyright/en/sccr_26/sccr_26_8.pdf
- SCCR – Presented in the 30th Session, has remained unchanged since - Kenneth Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives : Updated and Revised, http://www.wipo.int/edocs/mdocs/copyright/en/sccr_30/sccr_30_3.pdf

DISCUSSING - CONSOLIDATION OF PROPOSED TEXTS CONTAINED IN DOCUMENT SCCR/26/3 - PREPARED BY THE AFRICAN GROUP, BRAZIL, ECUADOR, INDIA AND URUGUAY

- - Preservation : Regardless of the format
- - Reproduction (+ supply) : by any means, of any works (lawfully acquired), to users/to other libraries/archives
- - Legal Deposit : Irrespective of format
- - Library Lending : Lend by any means, including digital transmission
- - Cross Border Uses : Permitted
- - Limitation of liability on Libraries and Archives : Good Faith + Exemption from liability for actions of their users
- - Technological Protection Measures : Libraries and archives not prevented from enjoying and exercising limitations and exceptions
- - Contracts : Those contracts overriding limitations and exceptions are to be null and void

NEXT STEPS – WHAT CAN AND SHOULD **YOU** Do?

- Get involved!
- What are the changes that you want to see in India's fair dealing provisions?
- What are the changes you want to see in the international framework?
- Does the law enable or hinder your work?
- Present case studies and actual examples
- Important for libraries to document their experiences
- Important for libraries to share their experiences, in all ways possible
- Work with the government – share experiences + seek information on the WIPO process and India's stance + comment on India's (and the international) position
- +++

REFERENCES AND SUGGESTED READING

- The following sources have been used as references in this presentation. They are also presented as suggested reading:
 - WIPO, Policy, available at <http://www.wipo.int/policy/en/>
 - Convention Establishing the World Intellectual Property Organization, 1967 (amended in 1979) , available at http://www.wipo.int/treaties/en/text.jsp?file_id=283854#P68_3059
 - Permanent Mission of India to the United Nations, World Intellectual Property Organization, available at <http://pmindiaun.org/pages.php?id=326>
 - The European Commission, Copyright in the Information Society, available at http://ec.europa.eu/internal_market/copyright/copyright-infso/index_en.htm
 - Teresa Hackett, Time for a Single Global Copyright Framework for Libraries and Archives, WIPO Magazine, December, 2015.
 - WIPO, Standing Committee on Copyright and Related Rights, available at <http://www.wipo.int/policy/en/sccr/>
 - Ruth Okedji, The International Copyright System: Limitations, Exceptions, and Public Interest Considerations for Developing Countries, available at http://unctad.org/en/docs/iteipc200610_en.pdf
 - Kenneth Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives : Updated and Revised, available at http://www.wipo.int/edocs/mdocs/copyright/en/sccr_30/sccr_30_3.pdf
 - CIS Work at the SCCR, available at <http://cis-india.org/a2k>

**Workshop on Copyright Limitations and Exceptions for Libraries and
Archives
NLSIU, Bangalore | 05 March, 2016**

THANK YOU!

Nehaa Chaudhari
The Centre for Internet and Society
CIS : Website - cis-india.org | Twitter - [@cis-india](https://twitter.com/cis-india)
**PERSONAL : Email - [nehaa\[at\]cis-india\[dot\]org](mailto:nehaa@cis-india.org) | Twitter-
[@nehaachaudhari](https://twitter.com/nehaachaudhari)**