

CREATING BREATHING ROOM FOR ARCHIVES AND HERITAGE: THE ADVOCACY FOR EXCEPTIONS TO COPYRIGHT IN FAVOUR OF LIBRARIES AND ARCHIVES

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WIPO and the SCCR

The World Intellectual Property Organisation (WIPO, or OMPI in French) is responsible for the development of policy on international intellectual property (IP) law, including patents, trade marks, indications of geographical origin and copyright. As part of that responsibility it administers existing IP treaties, notably the Berne Convention on copyright, and facilitates the negotiating and concluding of new ones. It also gives support to developing countries to help them improve protection for IP created there.

WIPO's Standing Committee on Copyright and Related Rights (SCCR) is responsible for policy and negotiations on copyright (economic rights), authors' (moral) rights and performers' rights relating to literary and artistic works, films, sound recordings (phonograms), broadcasts and databases. It has had several notable successes, including the conclusion of the WIPO Copyright and Performances & Phonograms Treaties of 1996, the Beijing Treaty on Audio Visual Performances of 2012 and the Marrakesh Treaty on exceptions and limitations in favour of visually impaired people of 2013.

Exceptions and limitations

Copyright is an exclusive right granted to creators and entrepreneurs by national legislatures. It is however a negative right. It gives no definitive right to the owner to use the work, since other rights might intervene, but the owner can prevent others using it. Until the Marrakesh Treaty was concluded, all copyright treaties had increased the rights of rights owners. In concluding that treaty, it was at last acknowledged that society deserves some return for the grant of rights in the form of facilities to use and enjoy copyright works within fairly strict limits.

In 2008, the SCCR agreed to look at exceptions and limitations to copyright in favour of libraries and archives. It commissioned a report on the existence and extent of such exceptions and limitations in the IP laws of WIPO member states from Professor Kenneth Crews of Columbia University in the USA, which was presented to the meeting in November 2008 (Crews, 2008). Since then, the SCCR has been considering several documents, presented by various member states and groups of states, that could form the basis of an international instrument. To a large extent several of these documents were based on a draft treaty prepared by the International Federation of Library Associations (IFLA) (IFLA, 2013). In those negotiations, the developing states and groups of states (Africa, the Caribbean, Central and South America, Asia and India, the Middle East) have been calling urgently for a treaty, on the grounds that, in particular, cross-border exchange of copies is essential for cultural and economic development, but this is strongly opposed by developed states, notably the EU, which assert that provision in national laws is all that is required.

Role for the ICA

The ICA's presence at SCCR is essential for success, but more is needed. The Marrakesh Treaty succeeded because of the presence at SCCR of many NGOs representing the blind. Without their continued demonstration of the need for action, nothing would have happened. IFLA is largely responsible for progress so far on libraries and archives, and libraries are well represented at SCCR. Archives must be represented too, preferably by national NGOs from the developed and developing world as well as by the ICA. Hitherto, the ICA has been

accompanied only by the USA and Scotland. They have been excellent, but we need more. ICA members are urged to do two things. Firstly to find funding and volunteers so that they can send representatives of their national associations to Geneva for a week twice a year. Secondly, and most important of all, to lobby their national governments, especially in the EU and developed states, to support a treaty.

Bibliography

Crews, Kenneth (2008). *Study on copyright limitations and exceptions for libraries and archives*. Paper number SCCR/17/2, World Intellectual Property Organisation Standing Committee on Copyright and Related Rights.

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