



**WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

**STATEMENTS BY EIFL 2016**

**STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)**

**9 – 13 May 2016 SCCR/32**

**14 – 18 November 2016 SCCR/33**

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- Parallel Importation
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**ASSEMBLIES OF THE MEMBER STATES OF WIPO:  
FIFTY-SIXTH SERIES OF MEETINGS**

**October 3 to 11, 2016**

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## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

32nd Session: Geneva, 9 May – 13 May 2016

### Agenda item 5: Protection of broadcasting organizations

#### [Statement submitted in writing]

I'm speaking on behalf of Electronic Information for Libraries (eIFL.net) and the International Federation of Library Associations and Institutions (IFLA).

As stated at previous sessions of the Committee in relation to this topic, a new layer of rights that affects access to content is of concern to libraries because it imposes an additional barrier to access to knowledge, particularly content in the public domain.

However since current discussions relate to post-fixation rights, the issue of exceptions becomes critical.

In principle, it is essential that access to information for social and public interest reasons, the development of educational materials and distance education, the preservation of content for future generations, and use by persons with disabilities is not harmed or undermined.

Since the Rome Convention provides for the use of transmissions for news broadcasts and for education and scientific research, the principle of provisions for access is established.

The problem is that a new layer of rights will impose extra costs and complexity on public institutions through having to deal with an additional set of rightsholders. For sure, it will add to the orphan works problem that is already huge, and where policy makers around the world are trying to find solutions.

The solution is for a robust set of exceptions that are flexible, and can withstand changes to technology and new uses of content.

And they must not be taken away by terms in contracts, or technological protection measures.

Therefore we support a strong public interest provision that establishes the principle, as set out in document SCCR 27.2 rev., Alternative C as follows:

## *Article 2. General Principles*

*'Nothing in this Treaty shall limit the freedom of a Contracting Party to promote access to knowledge and information and national educational and scientific objectives, to curb anticompetitive practices or to take any action it deems necessary to promote the public interest in sectors of vital importance to its socio-economic, scientific and technological development.'*

In the same document, we support Alternative C for Article 10 [paragraphs 1 to 3] that has two provisions.

Paragraph 1 allows contracting parties to provide the same kinds of limitations and exceptions as they provide in connection with the protection of copyright.

Paragraph 2 sets out *inter alia* specific exceptions that may also be applied including uses by libraries, archives or educational institutions for the purposes of preservation, education and/or research.

Because we know that new technology creates new opportunities, such as text and data mining, and new problems such as orphan works, the exceptions must be robust and forward-looking. They must not be frozen in time, or outdated as soon as the ink has dried on any new instrument. Contracting Parties must have flexibility to adapt and add new exceptions as and when they are needed.

To conclude, any new international instrument must get the balance right between the protection of broadcast organizations and the public interest, as well as the rights of other rightholders in the copyright system.

Thank you.

END



## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

32nd Session: Geneva, 9 May – 13 May 2016

### Agenda item 6: Limitations and exceptions for libraries and archives

#### Topic 5 Parallel Importation

I am speaking on behalf of Electronic Information for Libraries (EIFL) on Topic 5 Parallel Importation.

Libraries buy books for their users, who need the books to teach their subject, study for exams, or to conduct research. Some libraries specialize in particular subjects and they build specialist collections in these areas.

When a required work is not available for sale on the local market, or not within a reasonable time, or when the content of the imported edition is different from the locally available edition, a library needs to be allowed to legally purchase the work from another country.

In other words, for libraries it's an access to information issue.

The problem is that a blanket national exhaustion rule means that libraries are not allowed to import a book, for non-commercial purposes, because of rules designed primarily to regulate consumer markets relating to the sale of goods.

Ironically, libraries in the wealthiest markets with the greatest abundance of information resources, have among the world's fewest restrictions on importation.

In 2013, the U.S. Supreme Court found that the U.S. Copyright Act provides an international exhaustion rule. Thus, if a U.S. library wants for its collection a work that for some reason is not on sale in the U.S., it can purchase a lawful copy of the work wherever it is sold *anywhere in the world* and import it into the U.S.

The EU has adopted regional exhaustion. This means that if a library in my home country, Ireland, wants a book that is not on sale in Ireland, it can purchase a copy wherever it is sold in the 27 other countries of the EU.

Contrast that situation with a library in a country with a small market, especially if it shares a common language with a much larger market. Or with a library in a country where local buying power for books is low. Many works are not on sale there because it's not worth the effort for the publisher.

Where a national exhaustion rule applies, a library can't purchase and import legal copies of the works without negotiating special import licenses with the publishers. The

transaction costs of obtaining such licenses are prohibitive, even if the library had the capacity to do so.

We welcome the proposals of the African Group, Ecuador and India on this topic.

The consolidated text in document SCCR/29/4 enables libraries and archives to acquire and import legally published works. The works may either be purchased, or obtained in some other way e.g. by gift or donation. The work must be published, and incorporated into the library collection.

Finally, we note that the Australian Government's independent research and advisory body - the Productivity Commission - recommends that all restrictions on parallel import for books should be repealed, in its Draft Report published in April 2016.

We look forward to further interactions with member states on this matter.

Thank you for your attention.

END



## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

**32nd Session: Geneva, 9 May – 13 May 2016**

### **Agenda item 6: Limitations and exceptions for libraries and archives**

#### **Topic 6 Cross-border uses**

I am speaking on behalf of Electronic Information for Libraries (EIFL).

I will talk about cross-border document delivery i.e. requests by library users for material not available in their home institution, or in any other library in the country.

I will give two examples of requests denied due to copyright and licensing restrictions:

The first example is from a university lecturer in Armenia who wanted two chapters of a book on teaching using drama. The book was published in 1987, is out of print and not available anywhere in Armenia. The closest library with the book is 1,000km away. The request was denied for copyright reasons.

The second example is from a patron at a US university who needed two pages from an early twentieth century literary journal found only at the British Library in the UK. But the Library was not allowed to send the pages to the US.

In both cases, the users completely failed to understand the reasons.

I should note here that in 2012 the British Library, one of the world's largest research libraries, ceased its overseas copyright-based document service to protect the Library from claims of copyright infringement. The service was replaced by a publisher-approved licensing scheme.

Data shows that the service, a lifeline for hard-to-find information for the research community, has fallen off a cliff edge. The number of satisfied requests fell by over 98% from 38,100 in 2011 to just 635 in 2015. The number of countries served fell from 59 to 26 during this time.

Librarians in the EIFL network, who benefit from low cost access from publishers which is most appreciated, began to complain that they could no longer get other articles their users wanted or they were too expensive, for example, an article requested by a library in south-east Europe cost \$80.

The question is where are people going now for that information?

Some may be availing of initiatives by publishers to broaden access, such as pay-per-view and other direct delivery options.

For many individuals, pricing is a barrier – a single pay-per-view article in a scientific journal costs around \$40. I invite you to check prices online for yourselves.

And a publisher can license only the material for which they hold the rights. What about all the other material in libraries for which no licence is available? There must be a legal way to access this material.

A recent article in Science magazine on Sci-Hub, the world's largest unauthorized site for academic articles, reveals 28 million download requests over a six month period from all regions of the world and covering most scientific disciplines.

A publisher is quoted in the article as saying “It suggests an almost complete failure to provide a path of access for these researchers”.

Exceptions, and libraries as an established access channel, can help prevent illegal ways of sharing.

Of course it's not the whole solution but it is, along with open access and other models, an important safety valve to relieve the pressure on a clearly pressured system.

An exception as proposed in document SCCR/29/4 for cross-border uses for non-commercial purposes, made under an exception in national law, would provide such a safety valve. Is this not commonsense?

END



## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

32nd Session: Geneva, 9 May – 13 May 2016

### Agenda item 6: Limitations and exceptions for libraries and archives

#### Topic 7 Orphan Works, Retracted and Withdrawn Works

I am speaking on behalf of Electronic Information for Libraries (EIFL) on Topic 7 Orphan Works, Retracted and Withdrawn Works.

**On orphan works**, some countries are legislating in an attempt to solve the problem.

In others, such as the US, libraries use ‘fair use’ to engage in the mass digitization of their special collections of archival material, photographs, and ephemera such as pamphlets and posters. For example, New York Public Library has digitized its collection of materials relating to the New York World’s Fair of 1939 and 1940. These materials are now available online, and form the basis of an educational curriculum.

In contrast to the millions of likely orphan works made available by U.S. libraries under fair use, in Europe only 1,729 works have become available so far under the Orphan Works Directive that came into force in October 2014.

This is because the requirements, in particular, the diligent search mechanism is too onerous to lead to real results.

We hope that the shortcomings will be addressed in the Commission’s review of copyright rules in order to realize the aim of the Directive to “facilitate large-scale digitization of Europe’s cultural and educational heritage.”

We believe that libraries outside of the US and EU should also have the opportunity to digitize orphan works. We appreciate the consolidated proposed text addressing orphan works and withdrawn works in document SCCR/29/4.

Paragraph 1 in Topic 7 provides for an exception to the rights of reproduction, adaptation and communication to the public for works for which the author or rightsholder cannot be identified or found after reasonable inquiry.

I notice that the word ‘copyright’ seems to be missing from the text. It should read “Libraries and archives shall be permitted to reproduce, make available to the public and otherwise use any work, or material protected by COPYRIGHT AND related rights”.

The next paragraph provides that if the rightsholder subsequently shows up, they may claim equitable remuneration for future uses, or can require termination of the use.



The provision leaves it to member states to determine whether commercial uses would require payment of a fee.

Mr. Chairman, the orphan works problem is huge. It affects every country in the world. The current situation is in no-one's interest.

Keeping orphan works locked up harms creativity and innovation: the very things that copyright is supposed to encourage.

Making orphan works available supports education, creative industries and economic activity based on digitized cultural resources.

SCCR is the appropriate body to address the orphan works problem and in doing so, would do a great service to copyright and the copyright system.

**On Retracted and Withdrawn Works**, libraries and archives have a mandate to preserve the public record for the future.

In the analogue environment, exhaustion to the distribution right provides the legal means to ensure its basic operation. If an article in a print journal is withdrawn for any reason, the library has the hard copy to preserve and provide access for research or scholarship (subject to preservation exceptions). The rightsholder cannot remove the item from the library.

In the digital environment, where the right of distribution does not apply, there are no such safeguards. Journal articles can, and do, disappear from databases.

A well-known example arose in the case of the MMR vaccine in the UK in 1998. A paper published in the medical journal, *The Lancet*, claimed that the combined vaccine for measles, mumps, and Rubella, known as MMR, caused autism spectrum disorders. The claims, that were widely reported in the mainstream media, led to a sharp drop in vaccination rates. As a result, there were increased cases of measles and mumps among children that led to deaths and permanent injury.

The medical claims contained in the article were subsequently discredited. The research paper was partially retracted by the journal in 2004, and fully retracted in 2010.

Researchers in epidemiology investigating the drop in vaccination rates will want to have access to that paper. If the article was published in the print version of the journal, it will be preserved in a library. If it was only published online, there is no guarantee.

The principle behind the provision on retracted and withdrawn works therefore is to help achieve the goal of permanent access and preservation in the digital environment.

Because if the library doesn't have the item, it can't preserve it.

We thank member states for their proposals addressing retracted works, and the consolidated text in document SCCR/29/4.

The provision, contained in paragraphs 4 and 5 of Topic 7, provides an exception to the rights of reproduction and communication to the public for works that were previously communicated to the public.

Since retraction concerns moral rights, paragraph 5 provides for respect of moral rights. A member state can limit the application of the provision, or can decide not to apply the provision at all.

Paragraph 4 makes clear that the provision is subject to any court decisions in respect of a particular work, or as otherwise provided by national law.

Libraries and archives work to ensure that the public record is complete and accessible for the future, long after the work has lost its commercial value or the owner has disappeared.

Unless libraries have legal backing, a proper record for digital material cannot be guaranteed.

Thank you for your attention.

END



## **WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**32nd Session: Geneva, 9 May – 13 May 2016**

### **Agenda item 7:**

#### **Limitations and exceptions for education for persons with other disabilities**

I am speaking on behalf of Electronic Information for Libraries (EIFL).

We support Limitations and Exceptions for persons with other disabilities, such as people who are deaf.

Deafness is described as an invisible disability because you can't see it in the same way as someone who has a physical disability. But that doesn't make life any easier for those affected. The major barrier for deaf people is trying to communicate like everyone else does. Because of this communication difficulty, deaf people tend to rely on technologies such as subtitles and captioning for communication and information.

Many delegations have rightly described the Marrakesh Treaty, and the issue of access to information, as a humanitarian issue. Yet the copyright issues that occur in creating accessible format copies for deaf people, such as adding subtitles and captions to material, raise similar issues to those addressed in the Marrakesh Treaty.

This is an issue of parity. Libraries, such as university libraries and public libraries, should be allowed to serve all their users equally. In some countries, a single library serves both communities, for example in Kyrgyzstan, the Republic Library for Blind and Deaf People in Bishkek provides literature in the Kyrgyz language for people in both communities.

EIFL suggests that the Committee would consider making a recommendation or agreed principle to the General Assemblies that the provisions of the Marrakesh Treaty apply *mutatis mutandis* to persons with other disabilities, so that the equal treatment is granted to all persons regardless of their disability.

Thank you for your attention.

END



## **WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**32nd Session: Geneva, 9 May – 13 May 2016**

### **Agenda item 8: Other Matters**

#### **Proposal for Analysis of Copyright Related to the Digital Environment**

EIFL aligns itself with the statement of IFLA.

We welcome the Proposal for an Analysis of Copyright Related to the Digital Environment (document SCCR/31/4) that puts centre stage creators and users.

We support the idea of a ‘big picture’ practical analysis of how copyright is, or is not, serving both groups.

Issues of particular interest to my group contained in the proposal include: the management of copyright; limitations & exceptions in the digital environment; enforcement mechanisms; digital exhaustion; licences; territoriality; and interpretation of the three-step test.

Therefore there are many issues in the proposal that touch upon the work of libraries.

An analysis of the ‘digital ecosystem’ would be enlightening and a very helpful addition to the work of the Committee.

We thank GRULAC for the initiative.

Thank you.

END



## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

33rd Session: Geneva, 14 – 18 November 2016

### Agenda item 5: Protection of broadcasting organizations

I am speaking on behalf of the International Federation of Library Associations and Institutions (IFLA) and Electronic Information for Libraries (EIFL).

IFLA and EIFL represent thousands of libraries with important collections of audio-visual material that reflect our cultural and documentary heritage.

As part of their public interest mission, libraries are in charge of preserving this material, and making it available to students, researchers, and the public at large. We thereby help ensure access to knowledge.

Any new layer of rights that affects access to content - particularly that which is already in the public domain - is therefore potentially antithetical to libraries' mission.

The proposed broadcasting treaty would risk damaging the public interest, unless several safeguards are put in place.

We will not tackle exceptions and limitations this time around, but it goes without saying that these should be full, robust, and ideally mandatory.

But as concerns the discussions today, it cannot be the case that a new transmission of previously broadcast material creates new rights. This risks taking works out of the public domain, with no benefit to the original creators.

New rights for broadcasters must NOT make the search for all potential rightholders more onerous – and more likely to fail, adding to the problem of orphan works. This is the risk if post-fixation rights are incorporated into the treaty.

It would be counter-productive if WIPO were to make this problem worse at a time that individual countries are trying to solve the issue of orphan works.

In short, the **solution** must be to keep any new rights to a minimum – both in terms of subject and scope, to avoid any damaging term extensions, and to ensure that new rights must be accompanied by a robust set of exceptions that are flexible, reasonable, and able to accommodate unforeseen changes in technology and new uses of content.

Thank you.

END



## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

33rd Session: Geneva, 14 – 18 November 2016

### Agenda item 6: Limitations and exceptions for libraries and archives

#### Topic 8 Limitations on liability of libraries and archives

I am speaking on behalf of Electronic Information for Libraries (EIFL).

Limitation on liability is an important provision for information professionals involved in the practical application of copyright exceptions.

What is the issue?

Librarians strive to comply with the law. They need to understand and apply the law as part of their daily work. Indeed, they are often the first source of information on copyright for their users and within their institutions.

Yet few librarians have the benefit of formal legal training, and most do not have access to specialist legal advice.

For example, in a survey of 35 academic and public libraries in Serbia, not a single institution had access to professional legal support.

A new resource, the 'EIFL Core Library Exceptions Checklist' helps librarians to evaluate their domestic law for compliance with library activities. What we're finding from its use is a widespread uncertainty around what the law may, or may not, allow especially when technology is involved.

From the evidence, it's easy to understand why.

The WIPO study on limitations and exceptions for libraries and archives reveals a crazy complexity in the application of copyright exceptions across jurisdictions.

The conditions include who may copy e.g. libraries that receive public funding or publicly accessible libraries; what may be copied e.g. published or unpublished works, extracts, articles or full works; under what conditions e.g. for library need, commercial availability; and how items may be copied e.g. photocopying, or with the 'aid of other technical means other than publishing'.

And as almost no countries have addressed cross-border issues, the cross-border transfer of content is fraught with legal uncertainty, even before licence terms for electronic resources are factored in.

Even copyright lawyers can sometimes find it difficult.

A limitation on liability would enable librarians acting in good faith, having reasonable grounds to believe that they have acted in accordance with the law, to take full advantage of the scope and opportunity of exceptions as intended by the legislator.

Because if a librarian or archivist can be held personally liable in the case of an innocent misinterpretation of the law, the effect on access to knowledge is chilling.

END



## **WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**33rd Session: Geneva, 14 – 18 November 2016**

### **Agenda item 6: Limitations and exceptions for libraries and archives**

#### **Topic 9 Technological measures of protection**

I am speaking on behalf of Electronic Information for Libraries (EIFL).

The WIPO Copyright Treaty and the WPPT require Contracting Parties to “provide adequate legal protection and effective legal measures against the circumvention of effective technological measures...that restrict acts...which are not authorized by the authors concerned or permitted by law.”

Unfortunately many countries, even some that not party to the WCT, have implemented this requirement - to prohibit circumvention of technological measures - to restrict acts that otherwise would be permitted by law - that is, to restrict acts that fall within the scope of an exception or limitation.

This is problematic for libraries.

For example, encryption on a DVD purchased by the library for its collection can prevent the library from making a copy of short segments for classroom use, even when such copies are permitted by law.

It can prevent the making of a preservation copy because the digital content must be ripped from the media, and the TPM removed, to allow the data files to be converted as technology and standards evolve.

Significantly, technological measures can be applied to works in the public domain, thus in effect extending the term of copyright protection indefinitely.

Moreover, TPMs become obsolete when the platforms on which they operate cease to exist or the publisher stops supporting access, rendering digital content inaccessible. The average life of a TPM is said to be between three and five years.

Libraries, with an institutional responsibility to provide access to knowledge, need to be able to circumvent TPMs to engage in lawful activities.

The WIPO study on limitations and exceptions for libraries and archives shows that in those countries where anti-circumvention measures have been introduced, half provide exemptions for libraries and archives. This means that half do not.



Mr. Chairman, WIPO created this problem through the WCT and the WPPT, so it is up to WIPO to fix it.

Member states recognized this problem in the context of the Marrakesh Treaty, and created an appropriate solution. Article 7 of the Marrakesh Treaty provides that “Contracting parties shall take appropriate measures ... to ensure that when they provide adequate legal protection ... against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.”

Thus Article 7 provides useful precedent for language on technological protections to be included in an instrument for libraries, archives and museums.

Because without some language, any exceptions and limitations recognized for libraries will become useless, and much of the copyrighted material created in the digital era will be inaccessible.

END



## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

33rd Session: Geneva, 14 – 18 November 2016

### Agenda item 6: Limitations and exceptions for libraries and archives

#### Topic 10 Contracts

##### [Statement submitted in writing]

I am speaking on behalf of Electronic Information for Libraries (EIFL).

The vast majority of digital content acquired by libraries is subject to a licence between the library and the rightsholder (usually the publisher).

In 2010, a Review commissioned by the UK Strategic Advisory Board for Intellectual Property Policy found robust evidence that licences for educational content in libraries routinely conflict with statutory copyright exceptions.

It also found that among publicly-funded institutions, libraries are “certainly the most affected by usage restrictions in copyright contracting”.

For example, while national copyright law might permit the lending of a copy, or the creation of a preservation copy, the licence can prohibit or restrict this activity. In essence, the public law of copyright is being superseded by the private law of contract.

Moreover, the Review found that even in a sector, such as libraries that should be in position to negotiate, evidence is that statutory limitations and exceptions are becoming irrelevant. This is because the bargaining strength of the parties is unequal: publishers dictate the terms and libraries often have to accept, because they need to obtain access to the specialized content.

The issue is international because the licences are usually governed by the law of a foreign jurisdiction, typically the law of England & Wales, the Netherlands, or the state of New York, irrespective of where the library is located. The licences are usually written in English, regardless of the national language. In many jurisdictions, it is unclear whether these restrictions on otherwise lawful activity are in fact enforceable.

Mr. Chairman, we recognize that licences are part of the digital eco-system. For example, a licence to a digital work can reasonably define the number of permitted simultaneous users.

At the same time, publishers should not be allowed to prohibit the exercise of copyright exceptions enacted by the legislature, in effect short-changing the tax-payer that is funding libraries.

Legislators are increasingly recognizing the problem, and are coming up with solutions.

In 2014 when the UK adopted an exception for text and data-mining, it prohibited the enforcement of contractual provisions intended to override the exception, and at the same time, it also protected the library exceptions.

The proposed European Directive on copyright in the Digital Single Market (2016) likewise protects a proposed new exception on text and data-mining from being overridden by contract. Indeed, both the 1991 software Directive and 1996 database Directive declared that contractual provisions contrary to the Directive's respective exceptions were null and void.

Libraries need the same protection as software developers and text and data miners. Exceptions granted by a legislature should not unilaterally be overturned by copyright owners.

END



## WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

33rd Session: Geneva, 14 – 18 November 2016

### Agenda item 6: Limitations and exceptions for libraries and archives

#### Topic 11 Translation

##### [Statement submitted in writing]

I am speaking on behalf of Electronic Information for Libraries (EIFL).

The ability to read in one's own language is essential for social and economic inclusion. Studies show that children learn far better in their mother tongue. The World Summit on the Information Society affirmed that the fostering of content in diverse languages must be given high priority. The advantages of reading and education in one's native language is long recognized by UNESCO.

A significant amount of the world's written output is in major languages such as Chinese, English or Spanish that places large amounts of material out of reach of other language speakers, thus acting as a practical barrier to information and knowledge.

At the same time, new online search tools mean that more material than ever before is discoverable. For example, WorldCat, an online union catalogue searches the collections of 72,000 libraries in 170 countries in multiple languages for all kinds of digital content including article citations, research materials, and digital versions of rare items that aren't otherwise publicly available.

As a result, librarians are asked by patrons to facilitate access to this foreign language material. New technologies such as machine translation tools are enabling such services.

There are three criteria for the translation exception. It would enable libraries to facilitate translation - they're not doing the translation themselves - of works that are not available in the language of the user, and upon individual request.

It is distinct from provisions that enable general or mass translation of materials.

The Stockholm Conference for the revision of the Berne Convention (1967) affirmed an implied exception to the right of reproduction with respect to translation. Both Chile and Japan allow translation by libraries and archives at the request of a user for the purposes of research or study, or investigation.

An exception would facilitate education and learning by individual library users in local and indigenous languages, especially those that are underserved by mainstream publishing.

It would ensure that in places where publishers do not, or cannot, make works available to people in their chosen language, that the local library can assist. The result would be to increase access to knowledge in particular to individuals from small or minority language groups.

END



## **Assemblies of the Member States of WIPO: Fifty-Sixth Series of Meetings**

**October 3 to 11, 2016 (Geneva, Switzerland)**

### **AGENDA ITEM 5**

#### **GENERAL STATEMENTS INTERNATIONAL NGO: EIFL.NET**

I am speaking on behalf of Electronic Information for Libraries (EIFL), that partners with libraries in 60 developing and transition countries in Africa, Asia, and Europe.

Mr. Chairman, we believe in the multilateral system.

That is why we are engaged in the work programme of the Standing Committee on Copyright and Related Rights on limitations and exceptions, where we seek an international instrument to protect the public service mission of libraries and archives.

There are two reasons. First, only multilateral action can set a basic standard for copyright laws across all jurisdictions, especially for digital activities.

Second, only multilateral action can enable seamless, cross-border exchange of information to support the work of today's scientists and scholars who work collaboratively across disciplines and borders. For example, 'big data', mentioned yesterday by the delegate from South Korea, is driving international research and discovery.

We are grateful to the African Group, Brazil, Ecuador, India, Uruguay, and the United States for proposals on libraries and archives.

We have valued the opportunity, based on a non-paper prepared by the Chair, to discuss the text-based proposals contained in document SCCR/29/4 and to present our evidence of how copyright law is failing libraries and their users today.

We thank the Secretariat for the excellent updated study on limitations and exceptions for libraries and archives prepared by Prof. Kenneth Crews.

To move ahead, we seek constructive engagement from all member states, especially those that are reforming their own copyright laws.

In a digital world that offers new opportunities to expand access to knowledge, copyright laws in every country must be fit for purpose, and must enable lawful access across borders.

On the Marrakesh Treaty, we congratulate member states on its entry into force. We were especially delighted when Mongolia became the tenth country to join as our partner, the Mongolian Libraries Consortium and the local blind community engaged in successful cooperation to support the ratification process. EIFL urges every country to join the treaty and we encourage you to engage with libraries to support national implementation.

Finally, advancement of flexibilities, such as limitations and exceptions exemplified in the Marrakesh Treaty, supports implementation of the Development Agenda upon which EIFL, through our work in developing countries, places great value.

We wish you a very successful Assembly.

END



## **Assemblies of the Member States of WIPO: Fifty-Sixth Series of Meetings**

**October 3 to 11, 2016 (Geneva, Switzerland)**

### **AGENDA ITEM 11**

#### **REPORT ON THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

##### **INTERNATIONAL NGO: EIFL.NET**

I speak on behalf of Electronic Information for Libraries (EIFL), that works with libraries in developing and transition countries.

We thank member states for engaging with libraries and archives at SCCR.

Today much of the best research takes place as a result of international collaborations. Think of climate change or the treatment of chronic diseases.

Libraries are expected to support the information needs of researchers working across disciplines and borders. But evidence shows that inadequate and incompatible national exceptions stand in the way.

The updated WIPO study on limitations and exceptions for libraries and archives, presented by Prof. Crews at SCCR/30, shows that 17% of member states have no provision for libraries in their domestic copyright law. Nearly half do not explicitly allow libraries to make copies for research or study. In countries that have amended their copyright laws in the last five years, digital copying is expressly barred in over one third of them, even for preservation. As the delegate from Egypt mentioned, the national context does not suffice.

At SCCR/32, extensive evidence of information denied when exceptions stop at the border, or when licensing fails, was presented by librarians and archivists from 14 organizations representing thousands of institutions across the globe.

Mr. Chairman, we are pleased that the European Union recognizes the cross-border problem. While there are, in our view, flaws in the copyright reform package launched by the European Commission in September, we are pleased that it includes mandatory, cross-border exceptions in three areas: preservation by cultural heritage institutions, text and data mining and online education.



The objective is, I quote, “to guarantee the legality of certain types of uses in these fields, including across borders” because I quote, “the current lack of copyright law consistency across the EU affects scientific progress”.

And the EU invests a lot in scientific progress – the global budget for Horizon 2020, the EU framework programme for research and innovation, is 88 billion dollars.

Mr. Chairman, as countries are moving ahead, we believe that the multilateral system must also address the issues so as not to widen the digital divide.

Only an international, normative solution can set a basic standard for exceptions across all jurisdictions. And only international action can properly enable cross-border exchange.

As a concrete next step, we call on member states at SCCR/33 to support the holding of regional meetings to review the findings of the updated Crews report, to identify regional priorities for libraries and archives, and to work towards consensus on text-based solutions.

Thank you.

END



**Assemblies of the Member States of WIPO: Fifty-Sixth Series of Meetings**

**October 3 to 11, 2016 (Geneva, Switzerland)**

**AGENDA ITEM 24**

**MARRAKESH TREATY**

**INTERNATIONAL NGO:  
EIFL.NET**

I speak behalf of Electronic Information for Libraries (EIFL), that partners with libraries in 60 developing and transition countries in Africa, Asia, and Europe.

EIFL congratulates WIPO member states and the Secretariat on entry into force of the Marrakesh Treaty. We congratulate the World Blind Union, Knowledge Ecology International, David Hammerstein and many others who worked tirelessly to achieve this historic treaty.

EIFL undertook to support early ratification in partner countries for two key reasons.

Throughout the world, libraries are home to the largest collections of accessible materials. And only blind people's organizations, libraries and other so-called 'authorized entities' can send accessible format copies to other countries.

In my own country, Nepal – a Least Developed Country - a Right to Read campaign was established with the Nepal Library and Information Consortium, the Nepal Association of the Blind and other groups. Now we are working collectively to encourage ratification.

We are happy that the government of Nepal has welcomed the entry into force of the Treaty. We hope that ratification will be given the utmost priority by the new government.

The Treaty would bring huge benefits to the lives of 40,000 school and college-age children who are blind or visually impaired in Nepal. Only 10% receive education, and those who do are often excluded from learning because of lack of audio and Braille books, made worse by the earthquakes in 2015.

We are grateful to the Accessible Books Consortium for supporting the production of textbooks for school children.

Nepal is also a multilingual nation. For English speakers, accessible books from English-speaking countries, such as Australia, Singapore and Canada could be imported. For

speakers of other languages, materials could be imported from India, the first country to ratify the treaty.

EIFL is on hand to support ratification and implementation in all our other partner countries so that people with print disabilities can get access to all the books and reading materials they need, irrespective of their location. For example, we are currently working with librarians in Kyrgyzstan, Senegal, Lesotho, Lithuania, Moldova, Ghana and Uganda.

Finally Mr. Chairman, we cannot imagine a life without reading - that is essential to gaining knowledge and improving literacy. As Mr. Kofi Annan, former Secretary-General of the United Nations, said, "Literacy is a bridge from misery to hope".

For blind and visually impaired people, I firmly believe that the Marrakesh Treaty is a way to achieve that hope.

Thank you.

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