

Standing Committee on Copyright and Related Rights

Twenty-ninth Session
Geneva, December 8 to 12, 2014

CONSOLIDATION OF PROPOSED TEXTS CONTAINED IN DOCUMENT SCCR/26/3

prepared by African Group, Brazil, Ecuador, India and Uruguay

Submitted by African Group, Brazil, Ecuador, India and Uruguay to substitute the proposed texts presented by these Delegations for the eleven topics contained in document SCCR/26/3.

TOPIC 1: PRESERVATION

1. It shall be permitted for libraries and archives to reproduce published and unpublished works, or materials protected by related rights, regardless of their format, without the authorization of the copyright owner;
2. The copies made in accordance with paragraph (1) may be used in place of the original works or materials preserved or replaced, for purposes such as education, research and preservation of cultural heritage, and for the uses permitted by this instrument/treaty, in accordance with fair practice.
3. The reproduction referred to in paragraph (1) shall be made for non-profit uses, in the general interest of the public and for human development, without conflicting with the normal exploitation of the work or unreasonably prejudicing the legitimate interests of the author. This activity may be exercised in situ or remotely.

TOPIC 2: RIGHT OF REPRODUCTION AND SAFEGUARDING COPIES

1. It shall be permissible for a library or archive to reproduce and to supply, by any means, any works, or materials protected by related rights, lawfully acquired or accessed by the library or archive, to its users or to another library or archive for subsequent supply to their users, for the purposes of education, private study, research or interlibrary document supply, provided that such uses are compatible with fair practice as determined by national law.
2. Libraries and archives shall be permitted to reproduce and supply a copy of a work, or of a material protected by related rights, to a library or archive user, in any other case where a limitation or exception in national legislation would allow the user to make such copy.

TOPIC 3: LEGAL DEPOSIT

1. Member States/Contracting Parties may determine that specific libraries and archives or any other institution shall serve as designated repositories in which at least one copy of every work published in the country, regardless of the format, is to be deposited and permanently retained.
2. A designated repository or repositories shall demand the deposit of copies of published copyright works, or copies of published material protected by copyright or related rights.
3. It shall be permitted for the designated legal deposit repository or repositories to reproduce, for purposes of preservation, publicly available content and to demand the deposit of reproductions of copyright works or works protected by related rights, which have been communicated to the public or have been made available to the public.

TOPIC 4: LIBRARY LENDING

1. It shall be permissible for a library or archive to lend copyright works, materials protected by related rights, lawfully acquired or accessed by the library or archive, to a user or another library or archive for subsequent supply to any of its users, by any means, including digital transmission, provided that such use is compatible with fair practice as determined in national law.
2. Notwithstanding the provisions of paragraph (1), any Contracting Party/Member State which expressly provides for a public lending right, may keep such right.

TOPIC 5: PARALLEL IMPORTATIONS

1. It shall be permissible for libraries and archives to acquire and import legally published works to be incorporated into their collections in cases where a Member State/Contracting Party does not provide for international exhaustion of distribution right after the first sale or other transfer of ownership of a work.

TOPIC 6: CROSS-BORDER USES

1. Member States/Contracting Parties shall provide that if a copy of a work, or material protected by related rights, in any format available, is made under a limitation or exception or in accordance with its national law, that copy may be distributed, lent or made available by a library or archive to another library or archive in another Member State.

TOPIC 7: ORPHAN WORKS, RETRACTED AND WITHDRAWN WORKS, AND WORKS OUT OF COMMERCE

1. Libraries and archives shall be permitted to reproduce, make available to the public and otherwise use any work, or material protected by related rights, for which the author or other rightsholder cannot be identified or located after reasonable inquiry.
2. It shall be a matter for national law to determine whether certain commercial uses of a work, or material protected by related rights, referred to in paragraph (1) would require payment of remuneration.
3. Member States/Contracting Parties may provide that, should the author or other rightsholder subsequently identify him or herself to the library or archive, he or she shall be entitled to claim equitable remuneration for future use, or require termination of the use.
4. Except as otherwise provided by national law or through the decision of the court in relation to a specified work, it shall be permitted for libraries and archives to reproduce and make available, as appropriate, in any format for preservation, research or other legal use, any copyright work, or material protected by copyright or related rights, which has become inaccessible, but which has previously been communicated to the public or made available to the public by the author or other rightsholder.
5. Any Member State/Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions.

TOPIC 8: LIMITATIONS ON LIABILITY FOR LIBRARIES AND ARCHIVES

1. A librarian or archivist acting within the scope of his or her duties shall not be liable for copyright infringement, when the alleged action is performed in good faith, in the belief, and where there are reasonable grounds for believing, that:
 - (a) the work, or material protected by related rights, is being used as permitted within the scope of a limitation or exception in this instrument, or in a way that is not restricted by copyright; or
 - (b) the work, or material protected by related rights, is in the public domain or under an open content license.
2. When a Contracting Party/Member State provides for secondary liability regimes, libraries and archives shall/should be exempt from liability for the actions of their users.

TOPIC 9: TECHNOLOGICAL PROTECTION MEASURES

1. Member States/Contracting parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent libraries and archives from enjoying the limitations and exceptions provided for in this instrument/treaty.

TOPIC 10: CONTRACTS

1. Any contractual provisions which provide exemptions from the application of the limitations and exceptions adopted by Member States/Contracting Parties according to the provisions of this instrument/treaty, or otherwise prohibit or restrict their exercise or enjoyment, shall be null and void.

TOPIC 11: RIGHT TO TRANSLATE WORKS

1. Libraries and archives may, for the purpose of teaching, scholarship or research, translate, in any format, works lawfully acquired or accessed when those works are not available in a language, provided that the source, including the author's name, is indicated whenever possible.

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