

## **Standing Committee on Copyright and Related Rights**

**Forty-Second Session**  
**Geneva, May 9 to 13, 2022**

### STATEMENTS

*compiled by the secretariat from statements submitted by participants*

## GENERAL STATEMENTS/ STATEMENTS ON MULTIPLE TOPICS

The Delegation of Trinidad and Tobago. Thank you, Chair. Chair, we wish to congratulate you and the Vice-Chairs on your election and commend you all on your commitment to stewarding the work of this Committee. In supporting the statement made earlier today by the Dominican Republic on behalf of GRULAC, Trinidad and Tobago's delegation applauds the tireless work of the SCCR. Allow me to speak on this particular agenda item, but also on some other items that will be addressed later in this Session. First, we note the latest developments relating to the Revised Draft Text for the WIPO Broadcasting Organizations Treaty. We are expectant that the discussions on this Revised Draft will bear fruit on the outstanding issues. The Telecommunications Authority of Trinidad and Tobago has indicated their full support for advancing discussions on the Revised Draft text. Broadly speaking, Chair, we applaud the focus of the SCCR as it relates to the protection of broadcasting organizations, limitations and exceptions for libraries and archives, and limitations and exceptions for educational and research institutions and for persons with other disabilities. Chair, we are pleased to announce that an MOU has been finalized and duly executed between the National Library and Information Systems Authority of Trinidad and Tobago ("NALIS") and the Accessible Books Consortium ("ABC") of WIPO. This MOU will facilitate access by NALIS, as the authorized entity under the Copyright Act of Trinidad and Tobago, to the ABC's large library of accessible format copies of works for beneficiary persons in Trinidad and Tobago in pursuance of the Marrakesh Treaty. We wish to thank WIPO for its continued support in making this a reality for beneficiary persons around the world. We also see great value in the initiative related to the Copyright-related Impacts of the COVID-19 Pandemic on Educational, Research and Cultural Heritage Institutions and the People they Serve. We express our gratitude and congratulations on the success of yesterday's information session. We also take this opportunity to highlight the valuable contribution to the round table discussion yesterday afternoon by our representative from the Trinidad and Tobago based Campus of the University of the West Indies, and the particular perspectives provided in respect of various Caribbean institutions. Finally, Chair, of particular interest to Trinidad and Tobago is the discussion on Copyright in the digital environment relating to music, and the opportunity to interact with some of the study authors on possible next steps. In addition, we keenly anticipate the various discussions on the Resale Right, the Protection of Theatre Directors' Rights, and the Proposal for a Study Focused on the Public Lending Right.

The Program on Information Justice and Intellectual Property (PIJIP). The Program on Information Justice and Intellectual Property provides the following comments and information related to the agenda items being considered at the 42<sup>nd</sup> session of the WIPO Standing Committee on Copyright and Related Rights. We include with this submission a copy of our latest article -- Flynn, Sean; Schirru, Luca; Palmedo, Michael; and Izquierdo, Andrés. "Research Exceptions in Comparative Copyright." (2022) PIJIP/TLS Research Paper Series no. 75. <https://digitalcommons.wcl.american.edu/research/75> This Article categorizes the world's copyright laws according to the degree to which they provide exceptions to copyright exclusivity for research uses. We classify countries based on the degree to which they have a research exception in their law that is sufficiently open to be able to permit reproduction and communications of copyrighted work needed for academic (i.e. non-commercial) text and data mining (TDM) research. We show that nearly every copyright law has at least one exception that promotes uses for research purposes. We find six different approaches to the provision of research exceptions that implicate application to TDM. Notably, not all recent exceptions passed specifically to enable TDM receive the most open ranking in our typology. And a significant number of countries, marked red in our maps, do not provide a research exception or limit uses only to quotations. This report may be useful in helping countries find models for domestic copyright reform as well for consideration of guidelines or norms for harmonization between countries. At SCCR 41, the Africa Group and a number of countries requested that the next steps on the Broadcast Treaty focus on the limitations and exceptions provision. A core goal of

WIPO copyright and related rights treaties includes to achieve a balance of exclusive rights and exceptions to “serve the larger public interest, particularly education, research and access to information.” (WCT Preamble). A special attention to limitations and exceptions needed to protect development-oriented policies and a rich public domain is called for in the Development Agenda Recommendations 17, 19 and 22. Exceptions to broadcast rights are essential for the priorities identified in the limitations and exceptions agenda, including for digital preservation, and online and cross border education and research. The current limitations and exceptions provision in the Chair’s Consolidated Draft of the Broadcast Treaty is deficient. The Chairs’ Text allows exceptions to broadcast rights only for matters reflected in a country’s copyright law. The Rome Convention explicitly authorizes exceptions beyond those contained in copyright. The Broadcast proposal also fails to include the Rome Convention’s explicit authorization of special exceptions for “ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts,” and of “compulsory licenses ... to the extent to which they are compatible with this Convention.” The Broadcast Treaty presents an opportunity to improve the Rome Convention’s limitations and exceptions provision, including with lessons learned from the Action Plan on Limitations and Exceptions. First, it could solve the problem of broadcast rights blocking uses permitted by copyright by requiring that exceptions for copyright extend to broadcast rights, including for quotation, news of the day, and providing accessible formats for people with visual impairments. Second, it could expressly require exceptions to exclusive rights in broadcast for the priorities of the Action Plans, i.e. for preservation, online uses, and cross border uses for libraries, archives, museums, education, research and to provide access to people with disabilities. See CIVIL SOCIETY GROUPS CRITICIZE WIPO BROADCAST TREATY LIMITATIONS AND EXCEPTIONS (Oct 15, 2019) <http://infojustice.org/archives/41653> Significant time during any intercessional work should be devoted to the limitations and exceptions provision for the Broadcast Treaty. The African Group proposal appears to be a good faith and rigorous effort to find a way forward for the next steps of the Agenda that can take advantage of emerging consensus positions and define a process that once could imagine progress arriving from. Para 1. The focus of the work plan on education and research — not just institutions — is consistent with the studies and work of the SCCR. Daniel Seng’s study and the Africa Group’s 2011 proposal addressed exceptions for private study — not only through institutions. The word “instruments” does not mean only a binding instrument. The instrument could guide the implementation of best practices. For example, a joint resolution or other document could advise countries on best practices and clarify the international framework. Para 2. One of the key innovations of the work plan is that it explicitly follows the priorities set by the 2019 action plans. See ANALYSIS OF WIPO SCCR DRAFT REPORT ON REGIONAL SEMINARS AND INTERNATIONAL CONFERENCE ON LIMITATIONS AND EXCEPTIONS (SCCR/40/2) <http://infojustice.org/archives/43234>. Para 3. Since the Action Plans, the EU adopted the Directive on Copyright in the Digital Single Market (2019) which includes a unique provision enabling cross border educational instruction. An information session at the next SCCR could review the EU and other models for enabling critical cross border uses of works for education and other purposes. Regional groups could be asked to propose one or more experts from their regions to address cross border use issues and international models to address them. Para 4. Other Committees, most prominently the Intergovernmental Committee (IGC) on Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions, have adopted innovative methods to advance conversations between official meetings. It is notable that the proposal references the transparency and inclusiveness provisions of the Development Agenda # 44. Para 5. The convening of information sessions falls within the area of consensus that all SCCR members have supported. PIJIP will present a study on research exceptions for TDM at a SCCR 42 side event. Para 6. Member states have expressed support for work of the Secretariat on tool kits or other guidance to member states. This paragraph notes that guidance should be based on “the work completed to date,” such as the existing studies on Limitations and Exceptions. Tool Kits and guidance could also be developed in response to new studies conducted under Paragraph 5.

The International Authors Forum (IAF). The International Authors Forum (IAF) represents authors from the text, screenwriting and visual arts sectors and their interests in copyright. Its members are over 70 organisations representing well over 700,000 authors worldwide. IAF campaigns for authors in a variety of areas including fair contracts, remuneration rights and copyright issues. Article 27 of the Universal Declaration of Human Rights states that 'everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits'. Therefore, the ability of professional authors everywhere to make a living is vital if this participation in culture is to proliferate across the world. Article 27 further states that everyone 'has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author'. Ultimately, it is authors' works that are being considered in the matters discussed at the World Intellectual Property Organization (WIPO). There are individual authors whose rights are involved in all countries. Those rights must be given primary consideration to ensure the continued creation of the culture we value today. Authors must be rewarded for their contribution to society and maintain rights to control how their work is used. In recent years, we have seen significant pressure to devalue copyright and the mechanisms by which authors are remunerated for their work. This has been argued on the basis that the author will be somehow rewarded otherwise, having gone unpaid for their work. Such measures are also proposed simply as an easy cost to cut without consideration for the consequences of not compensating the author. This comes when multiple studies and surveys from around the world have found that the earnings of authors are in significant decline. It is more important than ever that we recognise the impact these policies can have on authors and a nation's culture and find ways to ensure that the work of WIPO helps authors share in the global growth of creative industries in the digital age. Authors around the world play an essential role in ensuring the prosperity of their societies. This makes it imperative that they have a conducive environment in which to work, are valued for their diverse creations, retain the right to make a decent living from their work, and are supported by a robust copyright framework. Yet, numerous studies and surveys from developed countries across the world have found that the earnings of authors are in significant decline, despite international growth in the creative industries that make use of their works. There is an urgent need for a better understanding of the issues authors worldwide currently face when it comes to earning a creative living. In many countries, authors have seen an overall decline in their earnings in recent years. It is hoped that opportunities can be taken to reverse the decline in authors' incomes and better remuneration rights can be established that ensure authors' earnings reflect the way their work is enjoyed. Potential measures for this include rights such as the Public Lending Right (PLR), Artist's Resale Right, also known as *droit de suite*, and a remuneration rights for online uses of work. Understanding the issue of authors' earnings will be an ongoing challenge, in many countries there are no in-depth studies on authors' earnings, and far more can be done to understand the international situation of the author. As the COVID-19 pandemic has an ongoing effect around the world there will be even more challenges to contend with. We hope the IAF study on authors' earnings will help to illustrate the need for action to ensure authors in every country can sustainably create and contribute to diverse cultures around the world. The IAF report, *Creating a Living: challenges for authors' incomes*, is available in [English](#), [French](#) and [Spanish](#). In the face of the COVID-19 pandemic authors' earnings have struggled significantly through a huge range of opportunities to work, while society has continued to rely on the content that they have created. At this time it is more important than ever to consider ways to support creators around the world, it is good to see that this is being considered in areas such as Resale Right and Public Lending Right, which can both be important measures to reward and support the development of creators around the world. We hope that in these areas there will be a positive consideration given the unique position and opportunity of WIPO and this Committee to enable information finding and sharing on these subjects to better equip national governments.

## AGENDA ITEM 6: PROTECTION OF BROADCASTING ORGANIZATIONS

World Broadcasting Unions (WBU). The WBU, representing broadcasting organizations from all regions of the world, are united in this statement to be presented to SCCR 42. The updating of protections for broadcast signals has been under discussion at WIPO since 1997 following updating of the protections of other rights owners by WIPO treaties in 1996. Protection of broadcast signals under the Rome Convention of 1961 is obsolete in the 21st century digital communications environment. In 2019, on the recommendation of the SCCR, the General Assembly directed the SCCR to continue its work towards convening a Diplomatic Conference stating: “In view of the steady progress made in recent SCCR sessions, the GA invites the SCCR to continue its work towards convening a diplomatic conference for the adoption of a treaty on the protection of broadcasting organizations, aiming for the 2020/2021 biennium, subject to Member States reaching consensus in the SCCR on the fundamental issues, including specific scope, object of protection and rights to be granted.” (WO/GA/51/5Rev) After delay during the COVID-19 pandemic, in 2021 text-based work was resumed by the Acting SCCR Chair and the SCCR Vice-Chair at the “Friends of the Chair” group, and the “Revised Draft Text of the WIPO Treaty on Broadcasting Organizations” was published in March 2022 as SCCR 42/3. The World’s Broadcasting Organizations support the Revised Draft Text as generally reflecting their objectives for updated international protection of broadcast signals, and they urge Member States to support it as the basis for final work for preparation of a basic proposal for a Diplomatic Conference to finally adopt a treaty. Specifically, the WBU requests that the SCCR: > Commit to work to finalize a draft treaty text suitable to become a Basic Proposal for a Diplomatic Conference by the end of this year, planning such additional work in dedicated meetings as necessary; > Recommend to the WIPO General Assembly to convene a Diplomatic Conference in 2023 for adoption of a WIPO Broadcasting Treaty (WBT) conditional on a consensus draft treaty text being finalized by the SCCR.

COMMUNIA. I'm speaking on behalf of COMMUNIA, the international association that works to protect and defend the public domain and users rights. Much of the content that broadcasters transmit plays an essential informational, cultural and educational role in our society. Radio and television programs and archives are fundamental to have access to knowledge and information. They are sources of scientific research and are also used as educational materials. We recall that radio and TV-based remote learning have re-emerged in the past years, in response to the pandemic. Therefore it is essential that educators and researchers have broad and immediate access to broadcast content. Although the scope of the draft treaty has been reduced, the need for robust limitations and exceptions remains, when legal protection of broadcasters is shaped in the form of exclusive rights. The problem is that the draft text only says that countries “may” extend the same exceptions that exist for copyright, but, obviously, countries can choose not to do this. This is more restrictive than the Berne Convention, which has mandatory exceptions for news of the day and quotations, and permissive exceptions for educational and other uses. And may lead to the surprising result that broadcasts are subjected to fewer exceptions than the underlying copyrighted works. A treaty that creates an additional layer of rights needs to also mandate the corresponding exceptions. Otherwise it ignores the societal and cultural needs related with access and reuse of broadcasts, failing the society as whole. Thank you.

The African Regional Intellectual Property Organization (ARIPO). Thank you, Mr. Chairman, I congratulate you and the vice chairs on your election. We thank the Secretariat for the good preparation of this meeting and the work done so far which aims to make progress on the different items of the SCCR agenda. The African Regional Intellectual Property Organization (ARIPO) thank the Secretariat for organizing the information session on the impact of the Covid-19 pandemic on the copyright ecosystem. We appreciate the panelist for sharing information on how institutions, creative industries, and countries responded during the pandemic. Mr. Chairman, ARIPO looks forward to having constructive and fruitful engagements on all items of

agenda that are to be discussed in this Committee. ARIPO aligns itself with the African Group statement. On the protection of broadcasting organizations, ARIPO commends the work done by the Chair, Friends of the Chair and facilitators who prepared the Revised Draft Text for the WIPO Broadcasting Organizations Treaty. We take note that the draft text seeks to protect the broadcasting organizations by providing inter alia exclusive rights of authorization and flexibilities on other adequate and effective protection that different jurisdictions may use as highlighted under Article 6, 7, 8 and 9 of the draft text. We look forward to the presentation of the draft text to this Committee. Mr. Chairman, we hope this Committee will consider the draft text constructively to make progress towards having a text that has the consensus of this Committee which will lead towards convening a diplomatic conference on Broadcasting Treaty. Mr. Chairman and your team, may I thank you for this opportunity you have given me, and I wish you well as you Chair this Committee to have fruitful deliberations.

International Council on Archives. Thank you. I speak on behalf of the International Council on Archives and the Society of American Archivists. When thinking of archives, many think only of paper. However, archives and their sister heritage institutions preserve material in all formats: text, still and moving images, and sound recordings, both analogue and digital. Broadcast material represents a rich component of our global heritage, not just for news and entertainment, but for education and research. The revised draft text of the Broadcast Treaty is a one-sided document that fails to reflect a balanced copyright system. In the first place, its preamble lacks any mention of a public interest purpose. It speaks only of “a manner as balanced and effective as possible.” It is hard to imagine a more insipid and ineffective statement. In contrast, the Beijing and Marrakesh treaties acknowledge “the need to maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information,” The draft fails even more spectacularly when it comes to L&Es. It offers only the 3-step test, instead of the robust mandatory exceptions essential to a balanced copyright system. This committee has expended much effort in expanding and harmonizing the rights of copyright owners. The same effort must go into expanding and harmonizing L&Es, if WIPO is to fulfil its mission “to lead the development of a balanced and effective international IP system.” The current document is in no way ready for a diplomatic conference without an enhanced preamble and robust mandatory exceptions.

The International Federation of Library Associations and Institutions (IFLA). I speak on behalf of IFLA, the International Federation of Library Associations and Institutions. Congratulations Mr. Chair on your election. Thank you for the floor and for your work, alongside the Secretariat, in preparing for and facilitating this session. At IFLA, we count among our members institutions working to ensure the long-term survival of broadcast content, as a vital part of the historic record in diverse societies the world over. Technical and social challenges to preservation require flexibility in how institutions store, back-up, and engage with content. At a minimum, it is vital to extend existing exceptions and limitations to any broadcasting rights, while the Committee can do better still by mandating core exceptions for public interest goals such as preservation and access for education and research purposes. We therefore welcome the contributions of Indonesia, Canada, Trinidad & Tobago, and Peru, as well as Algeria & the African Group, the Dominican Republic & GRULAC, Singapore & the APG, Slovakia & CEBS, and others in calling for stronger consideration of the need for balance, in order to protect the work of libraries and other public interest institutions, and mitigate the risk that the content they preserve and to which they enable access might become functionally inaccessible. We are happy to have heard today support for strong limitations and exceptions.

Fundación Vía Libre and Fundación Karisma. Desde Fundación Vía Libre de Argentina y Fundación Karisma de Colombia, ambas organizaciones observadoras en OMPI e integrantes de la Alianza de la Sociedad Civil Latinoamericana para el Acceso Justo al Conocimiento<sup>1</sup> y en apoyo a la agenda de excepciones y limitaciones, sostenemos que el texto del Proyecto

revisado de texto del tratado de la OMPI sobre los organismos de radiodifusión (SCCR 42/3), en su artículo décimo, no incluye excepciones y limitaciones adecuadas para permitir y fomentar el acceso al conocimiento, la investigación y la educación. Ausencia de excepciones y limitaciones en la propuesta El objeto de protección del texto propuesto es la transmisión de la señal portadora de programas, y se busca mediante esta protección reducir los daños que puede ocasionar la piratería. Creemos que el especificar una política de excepciones y limitaciones concreta en el texto, facilita el cumplimiento de dicho objeto de protección al esclarecer los usos exceptuados que no infrinjan los derechos concedidos, y que esto se logra con mayor facilidad contando con un estándar acordado y vinculante, en el propio cuerpo del tratado. En particular, nos preocupa que el artículo décimo del texto propuesto remite a las regulaciones de cada estado miembro para resolver la política de excepciones y limitaciones aplicable a este ámbito, es decir, que las excepciones al ejercicio de los nuevos derechos que se crearán a partir de la aprobación de dicho tratado, dependerán de la regulación en esta materia ya existente en cada país o lo que este país quiera regular. Sostenemos que el texto de la propuesta del tratado debe incorporar de forma obligatoria las excepciones y limitaciones necesarias para que se garantice el acceso justo al conocimiento. Esta posición se basa en el hecho de que años de un modelo en el que 1 Alianza Latinoamericana de la Sociedad Civil para el Acceso Justo al Conocimiento: Datysoc de Uruguay, Derechos Digitales de Chile, Hiperderecho de Perú, IBDAutoral e InternetLab de Brasil, Fundación Karisma de Colombia y Fundación Vía Libre de Argentina. mientras los derechos de los titulares son obligatorios, los de las personas usuarias son voluntarios han generado una importante asimetría y, nos muestra que esto no está funcionando. Por otra parte, esto es especialmente preocupante por la ausencia de excepciones y limitaciones modernas que contemplen los nuevos usos y prácticas de acceso al conocimiento, sobre todo a la luz de los desafíos y dificultades vivenciados durante la pandemia del COVID-19, periodo en el las actividades educativas, la investigación científica y en general el rol de las instituciones culturales en nuestras sociedades latinoamericanas se han visto particularmente afectadas. Por otro lado, esta norma propuesta resulta más restrictiva que la incorporada en la Convención de Roma, y de hecho tampoco se articula con las demás normas internacionales de derechos de autor que incluyen flexibilidades importantes. Para nuestras organizaciones, que trabajan en estrecha relación con instituciones educativas, de investigación y culturales, es de notorio conocimiento que la falta de seguridad jurídica para llevar adelante las actividades básicas que reflejan sus objetivos, y en particular en la necesaria transición al ecosistema digital, produce una desmotivación injustificada para habilitar el acceso al conocimiento. La falta de seguridad jurídica se basa en la contradicción que existe entre los usos requeridos por parte de estas instituciones y el esquema actual de políticas de excepciones y limitaciones que existen en nuestra región<sup>2</sup>. Superposición de derechos y falta de claridad En cuanto a las disposiciones sobre programas almacenados y las transmisiones posteriores de los programas almacenados entendemos que estos derechos posteriores a la fijación generarán problemas de superposición de derechos, serias dificultades de comprensión y aumentarán los costos de transacción para archivos e investigadores. Necesidad de introducir transparencia al proceso de negociación A su vez, sostenemos que debe aumentar la transparencia en la negociación del tratado. Desde nuestra Alianza Latinoamericana de la Sociedad Civil, esperamos que las reuniones en torno a esta propuesta se abran y permitan la participación de todos los estados miembros que manifiesten su interés en participar, en particular de los países que forman parte del Grulac. Buscamos que el texto del tratado sobre Radiodifusión refleje los compromisos asumidos en la Agenda de la OMPI para el desarrollo, y consideramos que para ello es necesario que se abarquen las específicas excepciones al ejercicio de los 2 Ver: <https://flexibilidades.datysoc.org/mapa> derechos que se contemplan en el texto propuesto, es decir, el pretendido equilibrio del sistema de Derechos de Autor debe poder reflejarse en las disposiciones a incorporar en el tratado.

The Centre for Internet and Society (CIS). I'm speaking on behalf of the Centre for Internet and Society, India. Mr. Chair we would like to congratulate you and the vice-chair on your election. The current draft text of the WIPO Broadcasting Organisations treaty carries a rather weak framework of limitations and exceptions, when we consider the long duration of protection of twenty years that has

been proposed. The limitations and exceptions are not aligned to the ongoing discussions on the L&E agenda, where there is an agreement evolving amongst many member states to revisit and revise limitations and exceptions for purposes of preservation, online and cross-border uses, and research for benefit of education, research, libraries, archives and museums. The framework does not rise to these standards, and also makes enacting of limitations and exceptions in national law optional. Seen from this perspective, the draft text of the WIPO Broadcasting Organisations treaty is neither a balanced treaty nor a modern one.

## **AGENDA ITEM 7 AND AGENDA ITEM 8: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES, FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES**

The Delegation of Uganda. The Delegation of Uganda aligns itself with the Statement made by Algeria on behalf of the Africa Group. This committee has a unique role in responding to the need for clear guidance and robust exceptions and limitations to support education, research and access to archives in the online environment, including all the situations experienced by users of the copyright system during the COVID pandemic. The pandemic has highlighted the role of exceptions needed to support online education and learning during lockdowns when there was no time for teachers, students or libraries to prepare. The work of this committee can support countries, such as Uganda, to address any shortcomings in national laws in the light of the pandemic. The proposed work plan provides a practical and constructive way forward in the discussions. It builds on previous work including the regional seminars on limitations and exceptions, including one in Nairobi, and the international conference in Geneva. Uganda welcomes the introduction of two priority areas identified in the conference report: preservation by libraries and archives, and online education including across borders via internet. The work plan also links with WIPO Development Agenda recommendations to facilitate access to knowledge<sup>1</sup>, and it contributes to WIPO's wider efforts towards achievement of the Sustainable Development Goals, in particular SDG 4 on education, and SDG 11 on safeguarding heritage. Before I leave the floor let me take the opportunity to inform you that last year Uganda ratified the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the Beijing Treaty on Audio Visual Performances. The deposit of the instruments of accession/ratification for the four treaties was made with the Director General on 28<sup>th</sup> January, 2022.

The Delegation of the Federal Republic of Nigeria. Mr. Chair, Nigeria aligns with the statement delivered by the delegation of Algeria on behalf of the Africa Group, on a Draft Work Program on Limitations and Exceptions, relating to the document SCCR/42/4. This delegation also wishes to join others who have earlier spoken to congratulate you, Mr. Chair, and the Vice chairs on your elections, as well as appreciate the Secretariat for the excellent work and exertions with respect to preparations made to convene this meeting to consider the Report. The subject of copyright limitations and exceptions is essential to education and research, and most importantly, as safeguards, especially within the realm of digital technology, including remote access and cross-border use. Chairperson, in view of the forced closure of schools and libraries, and the sudden transition to online education, due to the challenges posed by the COVID-19 pandemic, research and learning activities have been negatively impacted. In this regard, the lack of access to online educational material and continued practice of restrictive copyright regulations requires our urgent attention in this Committee. In the circumstances, the delegation of Nigeria is encouraged by the outcome of the WIPO Regional Seminar on L&Es in Nairobi, Kenya in 2019, with highlights and recommendations, focused on the dire need for reform of the copyright system to bring about a balanced regime. This has become pertinent, considering that the existing L&Es in African copyright legal frameworks are substantially

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<sup>1</sup> Recommendation 19



inadequate to support the research, education and the work of libraries and archives, especially in this digital era. This delegation therefore considers the outcome of the Nairobi Seminar as a significant tool to deepen the tenor of our deliberation and transfer into a concrete work program for the SCCR on the issue of limitations and exceptions. Finally, it is our expectation, Chairperson, that this Committee continues to work stridently and assiduously to finalise international legal instrument or instruments on limitations and exceptions for libraries, archives, museums and research for the use of all, and most importantly, for persons with disabilities. I thank you.

The European Writers' Council (EWC). The EWC thanks WIPO for the opportunity to submit a written comment on the topic of Exceptions and Limitations (E&L) to be discussed in the SCCR/42. We refer in general to E&L for authors in the book sector, as well as in particular to the Proposal by The African Group for a Draft Work Program on Exceptions and Limitations, including the related WIPO Secretariat's Report on Regional Seminars and International Conference on Limitations and Exceptions (SCCR/40/2). The European Writers' Council represents 160,000 authors in the book sector from forty-six writers' and translators' organisations in thirty EU-, EEA- and non-EU countries, who write and publish in thirty-one languages respectively, and in all genres, including educational and academic works. Their works are translated, published, and used worldwide. With this in background, we note as follows: There shall be no competition among human rights, namely between authors' rights and copyright – and other human rights such as those regarding information, access to culture, or education. The solutions to the individual crises of educational institutions will not be found in international limitations and exceptions. Article 27 paragraph 2 of the Universal Declaration of Human Rights states: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." This is a fundamental right. The moral sovereignty of every author is based on it, the options to decide on economic exploitation is based on it, and thus contributes to an author being able to work thematically independently. He/she is thus free from influence, dependence on funding or sponsors, or market ideals. Only a copyright that enables every citizen to contribute to culture and literature ensures that not only privileged elites can monetarily afford to create content, knowledge, opinions, and texts. Based on a long-term in-depth study by the EWC, we can already see in the implementation of Directive 2019/790 (EU), how destructive Exceptions and Limitations are for authors and the book sector as a whole. This applies in particular not only to non-compensated Limitation on the use of digitised works in educational institutions, but also to those that require compensation. In the case of the latter, in average five years of court proceedings will be necessary before contracts of collective rights management can be concluded. Until then, works will be used, but their creators, the authors, translators, illustrators, publishers, proofreaders, editors, etc., will not be remunerated. In the related papers mentioned above there is often mention of the "balance" between copyright and the public's right. With the digital evolution, the balance has long since shifted; worldwide, authors live more precariously, make less turnover, leave their profession, or suffer from shrinking market access – at the same time, with their works made at a private, commercial risk, they contribute to the educational mandate of the states and co-finance it through growing losses. In this context, the right to access to education should not be negligently played off against the authors' rights. A sustainable knowledge society depends on quality content with sustainable budget concepts. Damaging the very sources of this content through international legal instruments is not an appropriate strategy. Exceptions and Limitations cannot remedy the respective national, institutional deficits in the traditional systems. Adapted, modern, extended licensing systems, especially in the pandemic, have made it possible to ensure a satisfactory provision of teaching materials worldwide, and have great potential for expansion and negotiation, being easily adaptable to country-specific needs. Accordingly, the EWC does not endorse the proposal, "to promote the adaptation of exceptions to permit teaching, learning and research through digital and online tools, including across borders".

International Council on Archives (ICA). Thank you. On behalf of the International Council on Archives, whose members are dedicated to the preservation, care, and use of the world's archival heritage, I support the African Group's proposal for a work program to move the L&E agenda forward. Archivists respect the rights of copyright owners. But at the same time, the special nature of archival material -- unique, unpublished, never-in-commerce -- means that archivists must make copies to preserve their collections and support their users' research. To avoid copyright infringement, archives depend on exceptions. The nature of archival material means that licensing is an unworkable solution. Studies by Prof Crews clearly show that national copyright exceptions for archives and libraries vary widely and are often outdated. The pandemic has exposed the need for an appropriate international legal instrument that provides consistent exceptions to permit archives, libraries, and museums to fulfil their public interest mission in the global digital environment. Climate change poses an even greater threat to our global collective heritage. Our response must not be stalled by obsolete and inconsistent copyright laws. After more than a decade of studies and discussion, I'm pleased that there is a consensus for concrete action in support of preservation copying. But simply preserving is not enough. Archival material does not rest in a vault. It is preserved to be used, so any instrument must extend to permit socially beneficial uses such as research and private study that do not harm rights holders' interests. The African Group proposal moves us forward in specific ways on this important and urgent agenda. I urge Member States to support it.

The African Regional Intellectual Property Organization (ARIPO). Thank you, Mr. Chairman, we would like to commend you in the manner that you are chairing the Committee. On Exceptions and Limitations, The African Regional Intellectual Property Organization (ARIPO) appreciates the Committee work towards a fair and balanced copyright system that supports creativity and advances the public interest. Exceptions and limitations play an important role *inter alia* in the libraries, archives, research and academic fraternity to advance knowledge and skills for all persons. ARIPO aligns itself with the proposal made by the Africa Group on "Work Program on Exceptions and Limitations". We are of the view that, through this engagement it will inform the possible next steps on this item of agenda. ARIPO encourages its Member States to support and contribute constructively on the "Work Program on Exceptions and Limitations" to make progress. Mr. Chairman, may I thank you for this opportunity you have given me, and I wish you well as you Chair this Committee to have fruitful deliberations.

The International Federation of Library Associations and Institutions (IFLA). I speak on behalf of IFLA, the International Federation of Library Associations. Congratulations to the Chair and Vice Chair on your election! To be clear: we do not see exceptions and limitations as being the only solution to the challenges we face around access to education, research and culture - and in particular, the chronic under-supply of accessible, affordable digital content. Yet on the agenda item we have, as agreed by Member States, exceptions and limitations do play an essential role in helping to guarantee this right. Individual projects and goodwill are not and cannot be enough. In our discussions, we also need to address that the transition to digital risks being an opportunity to roll back protections for key education, research and cultural participation activities. We must be wary of giving carte blanche for contract terms and digital locks, rather than law, to determine what libraries and users can do, to prevent a silent de-balancing of copyright systems, leaving libraries and library users facing confusion and frustration. The world will not wait and has not waited. The shift to digital long pre-dates the pandemic. Climate change is a reality, putting collections at risk, from both sudden disasters and accelerated degradation over time. Preservation, and access to such preserved content on similar terms of access to originals, is essential, and is held back by the non-reform of copyright laws. This requires a response that provides direction that facilitates work across borders. The world's millions of libraries are not expecting this committee to do everything. They don't expect immediate or clear solutions - we know that this is hard. However, what they do expect is that this committee uses its potential to advance towards whatever tools will have the most effect, which we think is what the African Group proposal does. We hope that everyone will engage

constructively and concretely with it. To turn to our experts, I would like to ask for your ideas about the key unanswered questions and open challenges, especially those which have become clearer since we last met in person, which demand the sort of response that SCCR might be able to provide.

Scientific Technical and Medical Publishers (STM). May I congratulate you for your re-election and your vice-presidents to their election; I also congratulate all distinguished delegates, and the WIPO secretariat for coming again together here at SCCR 42. It is a real privilege and opportunity to be present here physically again, at this hybrid event, being able at least with many face to face to discuss and share national experiences and understand our differing observational standpoints. STM is the voice of scientific technical and medical publishers and its 148 members based in 21 countries are publishing 60 of the world's trusted science output. From the start of the pandemic, STM's members have acted rapidly and decisively to support the continued global response to the rapid worldwide spread of COVID-19 with immediate access to accurate and validated articles and monographs that the public can trust. In direct response to the health emergency, publishers provided free access to relevant peer reviewed publications to ensure that throughout the duration of the outbreak, research and data quickly reaches the widest possible audiences. Very quickly, STM reached out to members to coordinate and broaden the wider efforts to make relevant research quickly and freely available. Over the subsequent days and weeks, more than 32,000 articles, chapters and other resources have been made findable and useable in this manner. STM publishers worked to continue to identify and improve the use of resources in tandem with world governments and non-governmental organisations. This was a call of humanity and publishers have quietly and swiftly lived up to it. Licenses and copyright agreements have been made to ensure that resources are available under terms and in formats that enable human and also machine analysis and reuse. Crossref have also provided assistance to make it easier for researchers to identify, locate, and access content for text mining. All fast and voluntarily and based on licenses, rather than exceptions. These provisions will continue to aid the global response and continue making a difference. But even absent a world-wide crisis or regional emergency: STM publishers are committed to improve access and widen research and publishing opportunities, including through participating as founder in the initiative of R4L. In collaboration with UN organisations such as WIPO well hundreds of thousands of books and journals journals have become accessible to researchers at more than 10,500 institutions in over 125 lower- and middle-income countries with free or low-cost online access to up 194,000 leading journals and books in the fields of health, agriculture, environment, applied sciences and legal information. Mr Chair, STM's members are able to come to the party in widening access and creating publishing opportunities for authors from the South, North, East and West, because of copyright and licensing. An initiative like R4L is entirely created through the power of copyright licensing, and provides access crossborder. Licenses allow willing parties to define and structure and tailor access, rather than the blunt instrument of exceptions and limitations, much less straight-jacketed exceptions and limitations. Culminating in the WIPO action plan and based on the Summary delivered by the WIPO secretariat, I recall so many useful conversation when sharing and exchanging knowledge and experience is possible. Today I would like to recall the following question: if all countries adopted the same exception would it be understood uniformly? Absent a world court that gives a unifying and authoritative interpretation? Would an exceptions and limitations of the same wording have the same effect regardless of differing conditions on the ground? Would a crossborder exception not be an extraterritorial incursion? I am putting to you that the same, carefully nationally crafted exceptions, have the potential to go doubly wrong: in one country not to go far enough: no tangible access in some countries, and on other hand, goes too far and makes incursions and erosions into copyright rights without adequate consideration of nuance/ consequences of doing so. It is like too much sun or too little sun, too much water, or too little water. If the conditions are not homogenous enough, a local balance is required and that local balance is not the same and cannot be transplanted or super-imposed at the same time everywhere, this is the long confirmed experience of the publishing industry one

of the most diverse and fragmented creative sectors on this planet. Yet unifying greater access in this world whilst not jeopardizing incentive for creating and disseminating new knowledge is possible already through licensing and the balanced principles of the existing treaties and by sharing how these tools have been applied and may be applied in future and elsewhere. Mr Chair, back again at WIPO the house and home and compass of intellectual property, creativity and innovation, STM looks forward to constructively engaging with all delegations and observers under your Chairmanship and guidance.

The Authors Guild. Thank you Mr Chair, this is our first appearance as observers at WIPO. Congratulations to you and the vice chairs on your appointments and for a well-run meeting. The Authors Guild is the largest and oldest professional org for writers in the US. It serves as the collective voice of US authors. We support a rich and diverse literary culture and literacy for all. Our members include novelists, nonfiction writers, journalists, historians, poets, and translators, both traditionally published and self-published. Authors care enormously about broad public access to literary works as readers and because they wish to be read widely. As such, we support balanced exceptions and limitations that allow for preservation, research, certain educational uses, as well as access to persons with disabilities; and digital access is a key part of that -- as the pandemic has brought into relief. At the same time, we believe that copyright limitations and exceptions can only be balanced within the context of each country's particular circumstances and laws. As such, we do not support an international instrument, but strongly support providing tools and capacity building for member countries to help them develop exceptions and limitations within the contours of Berne. Balanced exceptions and limitations are necessary to ensure that cultural heritage can be preserved and that all have access to it. But it bears keeping in mind that it is not just access to past works that is important, but also access to future works, and most importantly the production of those future works. Exceptions are balanced only to the extent they do not interfere with future creativity by materially diminishing income streams. We have seen that when publishers' revenue per book decrease -- and especially those of the smaller publishers, they must make up for it by either increasing prices, decreasing what authors get paid, or concentrating future investments in likely best sellers. This results in a decrease in the diversity of what gets published. Many publishers also stay in business by reducing in one way or another what is paid to authors. US authors incomes declined by 42% from 2009 to 2018 and during the pandemic almost 70% saw a reduction of an average of half of their income. Our fellow author orgs around the world report similar statistics. The total effect is that fewer authors get paid enough from their work to make a livable income. Those writers -- people who often have spent their lives training and perfecting their craft -- must then take on other work --- and they publish less or not at all. Why should we care? Because this further decreases the diversity of what gets published. We live in a time when the publication and broad dissemination of diverse voices and perspectives is more important than ever. In order to have healthy future societies, we need to hear the stories of people all over the world, with all their different experiences and viewpoints, including and especially indigenous peoples and those whose voices have been suppressed. And those voices are the first to go when publishing economies need to rely on proven best sellers to survive. In sum, it is important to bear in mind the future of diverse creativity in any discussion about limitations and exceptions. Increased access will not make up for a lack of new work representing the experiences of future voices from all the corners of your countries and of the world. Let me add in conclusion that any discussion of limitations and exceptions for mass copying of works for AI training purposes (referred to as data mining) -- is premature. And to the extent considered, such exceptions must not allow mass copying for purposes of training AI machines to create new creative works -- because that will greatly damage the market for new works representing the experiences and viewpoints of future generations.

Fundación Vía Libre and Fundación Karisma. Desde Fundación Vía Libre de Argentina y Fundación Karisma de Colombia, ambas organizaciones observadoras en OMPI e integrantes de la Alianza de la Sociedad Civil Latinoamericana para el Acceso Justo al Conocimiento<sup>1</sup>,

queremos manifestar nuestro respaldo a la agenda de excepciones y limitaciones aprobada en 2012 por la Asamblea General. Creemos que la OMPI puede enfocar sus esfuerzos en los temas que ya han sido objeto de discusión interna y donde hay acuerdos para avanzar, especialmente sobre: Preservación; Usos en línea y digitales con foco en instituciones educativas, de investigación, bibliotecas y archivos; Usos transfronterizos; La anulación de las limitaciones y excepciones por contratos; Protección de puerto seguro para instituciones educativas y de investigación; Excepciones a las medidas técnicas de protección e información de gestión de derechos; Excepciones para personas con discapacidades no contempladas en el Tratado de Marrakech. En lo que respecta al área de la educación, entendemos que las normas de derechos de autor deben adaptarse a los cambios ocurridos en las prácticas de enseñanza y aprendizaje de las últimas décadas y reconocer también el hecho de que un número cada vez mayor de educadores se están convirtiendo en creadores de contenido educativo, y que las nuevas prácticas educativas suponen un docente activo que reutiliza con fines didácticos los contenidos disponibles en internet. Frente a ello, necesitamos construir entornos digitales y herramientas legales que apoyen a todas las personas educadoras como Alianza integrada también por Datysoc de Uruguay, Derechos Digitales de Chile, Hiperderecho de Perú, IBDAutoral e InternetLab de Brasil. co-creadoras de contenido, y no simplemente como consumidoras de productos de terceros. Bibliotecas, archivos y museos Por otra parte, las Bibliotecas, Archivos y Museos necesitan seguridad jurídica para cumplir de forma eficiente con sus objetivos y también para innovar brindando nuevos servicios al público o adaptando sus servicios clásicos a los cambios tecnológicos y a las nuevas modalidades de circulación de los bienes culturales. Usos transfronterizos También debemos recordar que actualmente las actividades de educación e investigación ya no se encuentran restringidas a un contexto estrictamente nacional, las fronteras ya no limitan el trabajo de equipos de investigación, ni la posibilidad de elegir un programa de estudio. Deben analizarse a la brevedad cuáles son los modelos viables para implementar un régimen de uso transfronterizo de obras. Medidas Tecnológicas de Protección Resaltamos a su vez que las medidas tecnológicas de protección pueden obstaculizar los usos amparados por limitaciones y excepciones al derecho de autor, por lo que estas medidas también deben ser limitadas para que no se transformen en un derecho absoluto o en un obstáculo al acceso justo al conocimiento. Recientes estudios muestran el impacto de la asimetría legal en y de América Latina La relevancia de avanzar en esta propuesta de trabajo importa particularmente en Latinoamérica. El modelo de los tratados que ha hecho obligatorio legislar sobre los derechos cuando son para los titulares y dejar en libertad a los Estados cuando se trata de las flexibilidades, es un modelo que, en la práctica, creó escenarios asimétricos en términos de equilibrio de derechos. Estas asimetrías deben ser tratadas a nivel internacional y la OMPI es el foro indicado para debatir soluciones. Encontramos que Latinoamérica es una de estas regiones en las que se evidencia claramente el atraso normativo en lo que respecta a excepciones y limitaciones. Podemos ver esto en un estudio de derecho comparado que analiza las leyes de 19 países de América Latina realizado por la profesora Patricia Díaz<sup>2</sup>. Díaz encontró, por ejemplo, que sólo 1 de los 19 países regula expresamente las excepciones para enseñanza en línea, sólo 7 de los 19 permiten el préstamo público de obras en formato físico en las bibliotecas, y ninguno prevé disposiciones específicas relacionadas con el préstamo digital controlado. Sólo 3 de los 19 países tienen algún tipo de régimen para obras huérfanas y sólo 1 de los 19 <sup>2</sup> Díaz Charquero P. Flexibilidades al derecho de autor en América Latina. Datysoc y Fundación Karisma; 2021. Accessed November 10, 2021. <https://flexibilidades.datysoc.org/> prevé una excepción para investigaciones y usos basados en minería de textos y datos (aunque limitada a bibliotecas y archivos). En nuestra región, la pandemia y la necesaria virtualización de espacios para la cultura, la educación y la investigación mostró aún más los impactos de la falta de flexibilidades al derecho de autor sobre todo en entornos digitales. A su vez, otra investigación de legislación comparada sobre excepciones y limitaciones para investigación en el entorno digital -especialmente minería de textos y datos- del Profesor Sean Flynn<sup>3</sup>, también muestra a Latinoamérica como región rezagada. Una región en donde las políticas de inteligencia artificial se están aprobando rápidamente pero sin reflexiones sobre cómo la innovación y desarrollo en este campo debe

articularse con las flexibilidades del derecho de autor. Un tercer estudio que evidencia la asimetría entre regiones y el rezago normativo, es el estudio elaborado por Teresa Nobre<sup>4</sup> para Education International en el que se indaga sobre qué tan legales son algunas prácticas corrientes en la docencia en el entorno digital. El estudio establece que las excepciones y limitaciones al derecho de autor en beneficio de la educación son a menudo demasiado restrictivas en América Latina y África comparadas con el Norte Global. La propuesta del grupo africano Finalmente expresamos que nos complace la propuesta del grupo africano que plantea sobre todo una ruta para continuar el debate sin que esto signifique que los estados miembros deban comprometerse a un cambio en su posición actual. La propuesta permite retomar los temas en los que ya hay consenso y alinearse con preocupaciones más recientes como las derivadas del entorno digital y las mencionadas en documentos como el de Ciencia Abierta de Unesco. Encontramos muy positivo en este sentido el apoyo que Grulac ha dado a la propuesta del grupo africano. Nobre T. Is It Legal? Education and Copyright in the Digital Age. Education International; :28. <https://tinyurl.com/Nobrererearch> Flynn S, Schirru L, Palmedo M, Izquierdo A. Research Exceptions in Comparative Copyright. Joint PIJIP/TLS Research Paper Series. Published online May 1, 2022. <https://digitalcommons.wcl.american.edu/research/75>

The Centre for Internet and Society (CIS). Thank you, Mr. Chair. I'm speaking on behalf of the Centre for Internet and Society, India. The Proposal by the African Group for a Draft work program on Exceptions and Limitations has the potential to address issues faced in the domains of access to information, culture and education, keeping in mind that there have been systemic shifts in the knowledge ecosystem since pandemic, which will endure in the long term as well. In India, researchers at public and private institutions in both in science and social science disciplines over the period of 2020-2021, submitted to a court of law that they faced serious challenges in remotely accessing research, especially journal articles during the pandemic. In the same vein, a study by the Confederation of Open Access Repositories found that copyright and licensing were an impediment to discovery of, and access to, COVID-19 research outputs, inhibiting research collaborations. At WIPO, in the past few years, numerous exercises such as action plans and regional seminars implemented by this committee recognised limitations and exceptions for education and research as a priority. Digital Preservation emerged as a consensual solution that could be acted on - as identified in the regional seminar report as well. We believe that the Proposal by the African Group for a Draft work program on Exceptions and Limitations effectively prioritises these actionable aspects without prejudging the outcome of the negotiations on the limitations and exceptions agenda. Hence, we look forward to member states making progress by constructively considering and acting on the way forward laid in the Proposal.

The Society of American Archivists. The Society of American Archivists, North America's oldest and largest professional organization of archivists appreciates the opportunity to address the WIPO member states on issues critical to the viability of the international copyright system. Our world-wide members are responsible for billions of works of enduring research and social value. Archives consist of largely unpublished and never-in-commerce works that are merely the byproducts of everyday life, but these are fundamental to transparency, accountability, and world heritage. They are found in a vast array of institutions, and because of their uniqueness, every archives is global resource. When documents are unique, they exist in only one location. Without digital availability, however, the uniqueness places an unfair financial burden on anyone needing access to the knowledge in those works because of the high expense of long-distance travel. The COVID pandemic's travel and access restrictions have now imposed that unfairness on the whole world. Thus, the pandemic provides WIPO a perfect lens for understanding the impact of inconsistent copyright laws on preservation of global heritage and access to it. For example, at the large cultural heritage archives I have managed, the pandemic shutdowns required us to expand our practice of making copies of unique works for electronic delivery to international researchers working remotely. We experienced a 400 percent increase in the number of copies provided electronically Making and delivering these copies was possible only

because our national law incorporates thoughtful exceptions. Unfortunately, Kenneth Crews's 2017 study shows that 70 percent of WIPO Member States lack exceptions to support such fundamental archival work. This kind of activity during the ongoing pandemic underscores the need for international action that archivists have been voicing at SCCR for the past twelve years. Without clear international standards for exceptions, copyright blocks archivists from addressing three huge challenges: 1) doing the preservation copying needed to ensure that the climate crisis does not obliterate knowledge and heritage; 2) overcoming technological obsolescence that can erase the digital and A/V material central to modern culture; and 3) serving the global need for archival content by transmitting copies across borders. These needs were first outlined in a 2010 proposal from the Africa Group (SCCR20/11) and refined by SCCR a few years later while exploring eleven topical areas for exceptions. The most important areas for SCCR's current work, relating to preservation and cross-border access, are found in the 2017 Chair's Chart (SCCR34/5). We've already spent years with studies, expert reports, committee discussions, seminars, and a conference on these issues. Climate crisis and technological obsolescence call into question the wisdom of endless studies when the need for preservation copying is so great *now*. How could doing that for the non-commercial area of archives have any negative effect on the copyright ecosystem? The Africa Group's proposed Work Program can enable SCCR to take the lead *right now* to address the long-standing needs of archivists and the world citizens we serve. We need action *now*—not later—on the 2012 General Assembly Mandate to work towards an appropriate international legal instrument. [See: Paragraph 19 of SCCR's report to General Assembly, WO/GA/41/14 [https://www.wipo.int/edocs/mdocs/govbody/en/wo\\_ga\\_41/wo\\_ga\\_41\\_14.pdf](https://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_41/wo_ga_41_14.pdf)]

Education International (EI). I speak on behalf of Education International, the global federation of education trade unions. We are here to advocate for balanced global copyright reforms that advance the right to education, empower teachers as creator and users to adapt and choose materials and contribute to more equitable research opportunities essential for the development of inclusive and sustainable societies. We are concerned about restrictions on copyright exemptions for educational purposes including through licenses which will place more financial burdens on education systems and institutions, most of which already pay substantial licensing fees to provide students and teachers with access to essential learning materials. Current copyright laws put educators, researchers and students at risk. EI research[1] in 40 countries worldwide shows that copyright laws often do not allow teachers to do basic teaching activities such as showing a short YouTube video in a live online class or posting an article on a school platform. Teachers in Latin America, Africa and partially Asia-Pacific, are particularly disadvantaged in this regard. What teachers worldwide have in common are legal uncertainties for cross-border collaboration exchange. Considering the massive discrepancies between what is required from teachers and what copyright laws allow, we appreciate the leadership by so many countries in this room who recognise the important role of teachers for quality education, who do not close their eyes to the fact that current copyright laws put teachers in vulnerable positions and who are ready to move beyond vague statements about potential legal impossibilities. Teachers around the world rely on you, rely on WIPO, to make use of the expertise in this committee and to explore concretely how this committee can be helpful for solving national as well as international copyright challenges for education, research and cultural heritage organisations. This effort couldn't be more timely! As SDG4 on Quality Education is dramatically off track, the UN Secretary-General is convening the Transforming Education Summit this September to revitalise national and global efforts to achieve quality education for all. The world is looking to all UN bodies including WIPO as a specialised UN agency to make this effort a reality. The African Group proposal is an excellent starting point for this. Intersessional working groups on the topics mentioned in the proposal could and should already start, and why not in parallel with technical discussions on the broadcast treaty. We cannot wait another year! Finally, we would be interested to hear from the experts whether global minimum copyright standards for education and research could be one way to solve challenges related to cross-border collaboration and exchange.

The International Authors Forum (IAF). The International Authors Forum (IAF) is thankful for the opportunity to submit its statement on the topic of Exceptions and Limitations for discussion at SCCR42. Authors want the widest possible lawful access to their works. Authors welcome libraries, archives and educational institutions as vital points of access to their works, but there must be a balance of access and reward to ensure that they can continue to create the works that are enjoyed. Research in the UK, *An economic analysis of education exceptions* (2012, PriceWaterhouseCooper), identified that many authors, particularly of educational works, would potentially stop creating these works due to declining remuneration if a licensing scheme was not in place to fairly reward them for their efforts. Recent cases in Canada have shown that the unregulated expansion of the educational exception in their Copyright Modernization Act (2012) has led to significant losses of income for Canadian authors: a likely unintended consequence but an unjust, detrimental effect on authors nonetheless, considering it is their work that is being used without compensation. In the context of the COVID-19 pandemic authors in many countries have suffered but have still made significant efforts to make their works accessible to users in these difficult times, conscious of the benefits their work can bring to so many people. The need to support authors is more urgent than ever and this should not be a time to weaken the rights of creators. In a webinar IAF hosted on the subject of exceptions and limitations we heard loud and clear messages that the creative industries need some certainty to invest in creators who take a significant risk in creating their work typically with no certainty of remuneration. We also heard how in some countries authors and publishing industries are struggling where there are poorly designed exceptions and limitations, in comparison to countries where copyright legislation is flexible and responsive to both enable use and pay authors. The panellists at this event made clear that overly broad exceptions and limitations can have a significantly negative impact. This discussion can be watched online and is important for considering the view of authors on this subject. Authors play an important role in rights to access education and culture, as the initial creators of the creative works that users around the world access. With their works forming the foundation of educational resources around the world, authors continue to create resources for people to learn throughout their lives. A good environment for authors ensures authors can create quality education, as well as inclusive education for their communities. It should not be the case that a country has to rely on the dominant creative industries of western countries for educational materials. Student should have some access to educational materials that reflect the diverse cultures and languages of the world and the student. Authors believe that existing provisions contain enough flexibility for countries represented at WIPO to continue to work towards national solutions, such as licensing frameworks, which can be developed according to local needs. Authors recognise that each country must aim to respond to its local needs. However, in no country are authors able to work and create effectively when they are entirely either denied remuneration or inadequately paid. While each country represented at WIPO has libraries, archives and educational institutions seeking to secure access to works, it must not be forgotten that there are authors in each of the WIPO Member State whose rights and property are affected. In many countries, there are already copyright provisions in place that establish licensing frameworks which enable access through libraries, archives and educational institutions while ensuring fair payment to authors and respect of their rights regarding their works. In *An economic analysis of education exceptions* (2012, PriceWaterhouseCooper) it was found that almost 25% of authors in the UK derived more than 60% of their income from secondary licensing income, while a 10% decline in authors' income would lead to a 20% drop in output. There is a clear case for fair licensing and collective management organisations as a means to efficiently ensure the balance of access to works and reward to authors. IAF opposes any blanket expansion of copyright exceptions and limitations that would not properly consider the needs of authors and would prefer to see the work focused on ensuring authors can sustainably generate creative and educational works for readers. Instead of any such approach that would threaten the sustainability of authors' ability to create, where possible IAF would encourage consideration for positive solutions that can ensure



the ability of authors to create looking at best practices with considerations for the digital environment.

COMMUNIA. Dear Delegates, It will not be easy to convince your families, friends, neighbors that policymakers from across the world should spend time discussing how to improve copyright exceptions. There is absolutely no doubt that the restrictions copyright laws pose on access to knowledge and information condition the right to education and the right to research, and that educational and research exceptions benefit society as a whole. That is what will determine whether teachers can show a short news report during live-streamed online classes, whether researchers can conduct medical research or track disinformation online. Yet, the fact that copyright laws are hard to understand will be an obstacle to reforming copyright laws at national level. Therefore, when Global North delegations claim that each one of you can go back to your countries and introduce exceptions that work for education and research in the 21st Century, we say: that is easier said than done. Indeed, if you look at the national exceptions for education and research in the European Union, before the recent EU-wide copyright reform, you will see that not even the EU Member States were investing time in solving these issues if they had not been forced to do so through a binding regional instrument. It should also be said that the fact that copyright exceptions are now outdated only in the Global South does not make this issue less problematic for the Global North. Institutions in Europe and North America engage in cross-border education and research activities outside of their regions on a regular basis. Think about EU distance education programmes attended by students located in Latin America or international research programmes involving North American and Asian researchers. It is clear that the lack of the same minimum set of rights across the world prevents these cross-border activities from taking place, affecting both the North and the South. We understand that this Committee is not ready to make a decision on how to positively affect copyright frameworks to actually protect the right to education and research. At the same time this Committee has been discussing this agenda item for nearly 15 years. We believe that it is fair to say that the work undertaken by the Committee so far has not had much impact on the copyright provisions that frame how educators and researchers can have access to knowledge and information. The African Group proposal could change the course of action to make the work of the Committee more useful. We, thus, urge this Committee to use its best efforts to reach an agreement on how to move forward towards more positive and impactful outcomes.

## **AGENDA ITEM 9: OTHER MATTERS**

### *Digital Environment*

Delegation of India. We would firstly like to thank the GRULAC for introducing the proposal for analysis of Copyright related to digital environment through document SCCR/31/4 in 2015 and also thank the Secretariat for organizing today's session during SCCR/42, as well as authors and experts for providing us with the comprehensive studies on various aspects of copyright in the digital environment. These reports highlight the rapidly evolving digital music marketplace and challenges faced by the authors, composers and performers in obtaining fair remuneration for the use of their work and performance on streaming platforms. The studies are very useful in understanding the growing nature of music in the digital environment and addressing various issues faced by the authors, composers and performers around the world with respect to obtaining visibility and challenges in penetrating international platforms. To reduce the value gap, a balanced regime that enables authors, composers and performers to receive compensation for their work is important and there is a need to improve the market distribution models. It is imperative to have a solution both at domestic and international level and understand the broader implications within the existing copyright framework. We have also noted the legal consideration made under the document SCCR/41/3, on strengthening the technological infrastructure of Collective Management Organizations so as to enable them to

have enhanced reciprocity on an international level when the performances are used across borders. We further understand the importance of having effective technological tools at the disposal of CMO's to measure the length of exploitation of works and performances on digital platforms. We would also like to thank Ms. Irene Calboli and Mr. George Hwang for their study on the 'Online Music Market and main business models in Asia'. As noted by the authors, there exists many diverse economies varying from very mature music markets to developing ones, with linguistic and regional differences, therefore a country-by-country or regional in-depth analysis should be encouraged. We would also like to take the opportunity to suggest that the topic of copyright in digital environment be maintained in the committee and discussions be continued on the important and highly pertinent topic in the times we live with increased focus and attention of this committee. To this extent we support the proposal of GRULAC for an information session during SCCR/43 on music streaming market. Also the regional or country analysis maybe explored further through discussions during the next SCCR, whereby further information sessions may be organized and possibility of a work program may be discussed by the secretariat and Member States to foster an exchange of best practices and legal impact.

Association of European Performers organisations (AEPO-ARTIS), Federación Ibero-Latinoamericana de Artistas, Interpretes y Ejecutantes (FILAIE), International Federation of Musicians (FIM) and Societies' Council for the Collective Management of Performers' Rights (SCAPR). In December 2015, the SCCR received GRULAC's proposal "for an analysis of copyright related to the digital environment" (SCCR/31/4). The document noted that "[...] the low payment of creators, composers, songwriters and performers is today the most visible part of the impact caused by technological advances in the use of protected works in the digital environment. In the music industry in particular, [...] there are questions about the importance that has been attributed to these creators and performers and if it is enough" (p. 3). GRULAC considered that a right to equitable remuneration "could ensure greater balance in the relationship between these artists and record companies" (p. 8). In line with SCCR decisions, five studies on the issue have been commissioned by WIPO. One of them (SCCR/41/3), carried out by experts Chris Castle and Claudio Feijóo, focuses specifically on the situation of performers. The study confirmed the disturbing findings raised by GRULAC. It also highlighted the deficiencies in the protection granted to performers by international treaties and suggested paths for correcting the anomalies, in particular by way of entrusting the collection of remuneration from platforms to performers' collective management organisations (CMOs). We are grateful to the SCCR and WIPO's Secretariat for assuming their responsibilities by ensuring that the GRULAC proposal was followed up. Examining the issue from all angles, the Castle-Feijóo study constitutes an important stage. It should now be followed up and consolidated to achieve concrete expression for performers' legitimate expectations and take into account their priceless contribution to culture. The Covid-19 pandemic has just underscored the striking contradiction between the steep market growth and financial success of digital music platforms, on the one hand (in 2021, recorded music revenues reached US\$25.9 billion, with a 21.9 % growth in paid streaming revenues), and the paltry remuneration received by performers from online uses, on the other. Against this backdrop, the € 275M paid to Universal Music Group CEO in 2021 or the purchase by Spotify of naming right to FC Barcelona's stadium for € 280M can be perceived as provocative by the global artists community. These recent developments make a further follow up by the SCCR even more compelling. To this end, almost seven years after the publication of the GRULAC proposal, we would respectfully suggest to the Member States that they: Request that the Proposal for an analysis of copyright related to the digital environment be placed on the agenda of SCCR work as a separate item, instead of being dealt with under "Other Matters"; Discuss and identify concrete solutions to be translated into a suitable instrument such as a WIPO recommendation, resolution, or declaration to guarantee that performers receive a remuneration for all online uses of their performances; Consider a similar process with regard to the audiovisual streaming and download market, where the situation of performers raises the same concern as in the music field.

Association of European Performers organisations (AEPO-ARTIS), Federación Ibero-Latinoamericana de Artistas, Interpretes y Ejecutantes (FILAIE), International Federation of Musicians (FIM) y Societies' Council for the Collective Management of Performers' Rights (SCAPR). En diciembre de 2015, el SCCR recibió la Propuesta "de análisis de los derechos de autor en el entorno digital" (SCCR/31/4) presentada por el GRULAC. El documento señalaba que "[...] la baja remuneración de creadores, compositores y artistas intérpretes o ejecutantes es hoy la parte más visible del impacto que han tenido los avances tecnológicos en el uso de obras protegidas en el entorno digital. Específicamente en la industria musical, [...] no faltan los que se preguntan si se valora suficientemente la función de los creadores y los artistas intérpretes y ejecutantes" (p. 3). El GRULAC consideró que el derecho a una remuneración equitativa "podría garantizar un mayor equilibrio en las relaciones entre estos artistas y las casas discográficas" (p. 8). Siguiendo la línea de las decisiones del SCCR, la OMPI ha encargado cinco estudios sobre la materia en cuestión. Uno de ellos (SCCR/41/3), desarrollado por los expertos Chris Castle y Claudio Feijóo, se centra específicamente en la situación de los artistas intérpretes y ejecutantes. El estudio confirmó las inquietantes conclusiones planteadas por el GRULAC. Asimismo, destacó las deficiencias en la protección concedida a los artistas intérpretes y ejecutantes por parte de los tratados internacionales y sugirió vías para corregir las anomalías, en particular confiando la recaudación de la remuneración de las plataformas a las entidades de gestión colectiva de los artistas intérpretes y ejecutantes. Agradecemos al SCCR y a la Secretaría de la OMPI que hayan asumido sus responsabilidades garantizando el seguimiento de la propuesta del GRULAC. Examinando el tema desde todos los ángulos posibles, el estudio de Castle y Feijóo constituye un paso importante. Ahora debe seguirse y consolidarse con el fin de lograr una expresión concreta de las legítimas expectativas de los artistas intérpretes y ejecutantes y tener en cuenta su incalculable contribución a la cultura. La pandemia del Covid-19 ha subrayado la llamativa contradicción entre el fuerte crecimiento del mercado y el éxito financiero de las plataformas digitales de música, por un lado (en 2021, los ingresos de la música grabada alcanzaron los 25,9 millones de dólares, con un crecimiento del 21,9% en los ingresos derivados del streaming de pago), y la irrisoria remuneración recibida por los artistas intérpretes y ejecutantes de los usos online, por el otro. En este contexto, los 275 millones de euros pagados al CEO de Universal Music Group en 2021 o la compra por parte de Spotify del derecho de denominación del estadio del FC Barcelona por 280 millones de euros pueden ser percibidos como una provocación por parte de la comunidad de los artistas globales. Estos acontecimientos recientes hacen que un seguimiento por parte del SCCR sea, aun, más obligado. A tal efecto, y casi siete años después de la publicación de la propuesta del GRULAC, nos gustaría sugerir, con todo respeto, a los Estados Miembros que: Soliciten que la Propuesta de análisis de los derechos de autor en el entorno digital se incluya en el orden del día de las labores del SCCR como un punto separado, en lugar de tratarse dentro de "Otros asuntos"; Debatan e identifiquen soluciones concretas que se traduzcan en herramientas adecuadas tales como una recomendación, resolución o declaración de la OMPI para garantizar que los artistas intérpretes y ejecutantes reciben una remuneración por todos los usos online de sus interpretaciones y ejecuciones; Consideren un proceso similar para el caso del streaming y las descargas en el mercado audiovisual, en tanto que la situación de los artistas intérpretes y ejecutantes suscita la misma preocupación que en el ámbito musical.

Association of European Performers organisations (AEPO-ARTIS), Federación Ibero-Latinoamericana de Artistas, Interpretes y Ejecutantes (FILAIE), International Federation of Musicians (FIM) et Societies' Council for the Collective Management of Performers' Rights (SCAPR). En décembre 2015, le SCCR a pris connaissance de la proposition du GRULAC « pour un examen du droit d'auteur dans l'environnement numérique » (SCCR/31/4). Ce document constatait que « [...] la faible rémunération versée aux créateurs, aux compositeurs, aux auteurs et aux interprètes est la répercussion la plus manifeste des progrès techniques réalisés en ce qui concerne l'utilisation dans l'environnement numérique d'œuvres protégées. Dans l'industrie musicale en particulier, [...] nombreux sont ceux qui se demandent si le rôle des créateurs et interprètes est suffisamment valorisé. » (page 3) Le GRULAC considérait qu'un

droit à rémunération équitable « pourrait apporter un meilleur équilibre dans la relation entre [les] artistes et les maisons de disques. » (page 9) Conformément aux décisions du SCCR, cinq études sur le sujet ont été publiées par l'OMPI. L'une d'entre elles (SCCR/41/3), menée récemment par les experts Chris Castle et Claudio Feijóo, s'intéresse spécifiquement à la situation des artistes interprètes. Elle a confirmé le constat préoccupant dressé par le GRULAC en 2015. Cette étude souligne également les lacunes dans la protection des droits des artistes interprètes par les traités internationaux et suggère des pistes pour corriger les anomalies constatées, en particulier en confiant aux organismes de gestion collective des artistes interprètes (OGC) la perception d'une rémunération auprès des plateformes. Nous sommes reconnaissants au SCCR et au Secrétariat de l'OMPI d'avoir pris leurs responsabilités en s'assurant que des suites soient données à la proposition du GRULAC. L'étude Castle-Feijóo, qui examine le problème dans toutes ses dimensions, constitue à cet égard une étape importante. Il est désormais nécessaire de poursuivre et consolider ce travail afin de répondre concrètement aux attentes légitimes des artistes interprètes et prendre en compte leur contribution irremplaçable à la culture. La pandémie de Covid-19 a récemment mis en lumière la contradiction choquante entre, d'une part, la forte croissance du marché et les profits financiers des plateformes de musique numérique (en 2021, les revenus du marché de la musique enregistrée ont atteint 25,9 milliards de dollars US, avec une croissance de 21,9% des revenus du streaming) et, d'autre part, le niveau dérisoire des rémunérations perçues par les artistes pour les utilisations en ligne. Dans ce contexte, les 275 millions d'euros versés au PDG du groupe Universal Music en 2021, ou l'achat par Spotify des droits auprès du club de football FC Barcelone pour 280 millions d'euros peuvent être perçus comme une provocation par l'ensemble de la communauté des artistes. Ces événements récents rendent plus indispensable encore la poursuite des travaux du SCCR. À cet effet, près de sept années après la publication de la proposition du GRULAC, nous suggérons respectueusement aux États Membres : De demander l'inscription de la Proposition pour un examen du droit d'auteur dans l'environnement numérique à l'ordre du jour des travaux du SCCR en tant que point spécifique, et non pas parmi les « questions diverses » ; De débattre et d'identifier des solutions concrètes reposant sur un instrument adapté tel qu'une recommandation, une résolution ou une déclaration de l'OMPI, afin de garantir que les artistes interprètes reçoivent une rémunération pour toutes les utilisations en ligne de leurs interprétations ; D'envisager une démarche similaire en ce qui concerne le marché du streaming et du téléchargement audiovisuels, la situation des artistes interprètes y étant tout aussi préoccupante que dans le domaine musical.

International Federation of Musicians (FIM). La Fédération Internationale des Musiciens remercie le Secrétariat pour la manière équilibrée dont il assure la mise en œuvre du mandat du SCCR qui fait suite à la proposition du GRULAC « pour un examen du droit d'auteur dans l'environnement numérique » (SCCR/31/4). Les études relatives à la situation des artistes interprètes dans le marché numérique, publiées lors de la 41<sup>e</sup> session de ce comité, constituent un apport important au travail de réflexion engagé depuis 2015. En particulier, l'étude sur « Les artistes dans le marché de la musique numérique : considérations économiques et juridiques » (SCCR/41/3) confirme, documents à l'appui, le diagnostic initial du GRULAC. Les revenus perçus par les artistes principaux au titre des utilisations en ligne de leurs enregistrements sont trop souvent dérisoires, les artistes non-principaux ne percevant, quant à eux, aucune rémunération. Ce problème se conjugue aux effets du modèle de distribution au prorata, qui conduit les consommateurs à payer pour de la musique qu'ils n'écoutent pas. Un nombre croissant d'artistes de renom tels que Paul McCartney, les Rolling Stones, Barry Gibb, Kate Bush ou Tom Jones expriment ouvertement leur frustration, le streaming leur offrant des revenus inférieurs à ceux qu'ils perçoivent des radios, malgré une similitude frappante entre radios et playlists. Dans le même temps, la rémunération du PDG de Universal Music Group a atteint près de 300M \$US en 2021, suscitant l'incompréhension des artistes dont les revenus se sont effondrés pendant la pandémie. Cette situation dure depuis trop longtemps. Le moment est venu de traduire les droits des artistes en véritables rémunérations. L'étude de Chris Castle et Claudio Feijóo offre une base de travail solide qui devrait permettre au SCCR d'avancer sur ce

sujet en examinant différentes options, y compris celle d'une rémunération équitable perçue directement auprès des plateformes et distribuée aux artistes via leurs organismes de gestion collective. À cet effet, il nous semble opportun que cette question soit formellement inscrite à l'ordre du jour des travaux de ce comité. Nous pensons également qu'une recommandation, une résolution ou une déclaration constituent des options appropriées pour avancer vers la mise en place d'une garantie de rémunération pour tous les artistes interprètes de la musique.

The International Authors Forum (IAF). In the digital environment, creators' works are used more than ever and we would like to thank the members and speakers who have acknowledged the importance of appropriate remuneration to foster the work of creators. IAF hopes that analysis of Copyright Related to the Digital Environment propose by Group of Latin American and Caribbean Countries (GRULAC) could holistically consider the impact of the digital environment on authors and, in particular, the impact of business models in streaming on creators. We thank the GRULAC for its proposal on this important area of work and hope this issue will remain on the agenda. While the works of authors across the world are now being accessed online more than ever before, creators are not always fairly remunerated for such access. Screenwriters, for example, often remain unpaid for the use of their work online despite audio-visual works generating significant revenues for on-demand services. It is often difficult to resolve this lack of remuneration, given the huge inequality in the negotiating relationship between producer and screenwriter. Authors' organisations such as the Federation of Screenwriters in Europe (FSE) and the Federation of European Film Directors (FERA) have called for the need for an additional right as well as better creator contracts to resolve this. Therefore, authors urgently need remuneration rights that reflect the myriad uses of their works in the digital age. An Unwaivable Right to Remuneration (URR) for online uses would ensure that authors are properly rewarded for their contribution to the vast libraries of work now being made available by on-demand streaming services. At a webinar hosted by IAF earlier this year on URR we heard about the success of URR in Spain, Italy, France and Belgium. We would urge WIPO to consider the role of URR in the digital environment, particularly given the rising dominance of streaming platforms.

#### *Resale Right*

Central European and Baltic States (CEBS) Group. Mr. Chair, The CEBS Group would like to once again express its gratitude to the delegations of Senegal and Congo for proposing the topic of resale right at the international level, in particular at SCCR. We also thank the Secretariat for the update and the representatives of the Task Force for their work. The CEBS Group supports making the resale right a standing agenda item of the Committee and looks forward to the discussions on this important topic in the future work of this Committee.

The African Regional Intellectual Property Organization (ARIPO). Thank you, Mr. Chairman, we commend the Chair for your stewardship and leadership as you Chair this Committee. The African Regional Intellectual Property Organization (ARIPO) supports the proposal made by Senegal and Congo on Resale Rights. ARIPO aligns itself with the Africa Group statement and looks forward to having constructive and fruitful engagements on resale rights by this Committee. ARIPO encourages its Member States to support and contribute constructively to the proposal made by Senegal and Congo on Resale Rights, and further encourages its Member States who are yet to include the resale rights in their national legislations to do so and put in place or strengthen the institutional structures to administer the resale rights. Mr. Chairman, may I thank you for this opportunity you have given me, and I wish you well as you Chair this Committee to have fruitful deliberations.

DACS. Thank you Chairman for the opportunity for DACS to take the floor on this important topic. Thank you to the Chair and Secretariat for facilitating a fruitful discussion today. DACS is a UK CMO for visual artists and has collected and distributed Artist's Resale Right royalties

since the law came into place in the UK in 2006. Since this time DACS has paid out over £100 million to visual artists and their estates. Royalties from Artist's Resale Right are a vital source of income for thousands of visual artists, allowing them to reinvest in their practice. Many artists report to DACS the high costs involved in being an artist: paying for studio space, paying to store and insure their works, paying towards the cost of facilitating their works to be exhibited. Resale royalties have enabled artists to meet these costs, which in turn produces a benefit to the public to access their works in museums and galleries. Artists were hard hit by the Covid-19 pandemic in the UK. A survey of artist in 2020 informed us that three-quarters of artists were immediately financially impacted by Covid-19, due to cancelled exhibitions and projects; loss of studio space and loss of opportunities to showcase their work. Now more than ever Artist's Resale Right royalties are providing a crucial life-line to artists to keep them making their work. Visual artists contribute so much to society: they help us to learn, to think creatively and to connect with one another and our communities. The visual arts supports social and economic growth in the UK and throughout the world. DACS supports the inclusion of the Artist's Resale Right into the normative agenda of the SCCR, and the work that the Task Force is undertaking. DACS would be pleased to contribute to the work of the SCCR.

European Visual Artists (EVA). Dear Mr Chairman, thank you for allowing EVA to take the floor again. The resale right for the authors of original works of art is a flagship right for painters, sculptors, designers, photographers and other visual artists whose works are selling on the secondary art market. It has been invented 100 years ago in France and is enabling that artists and their families receive a share of the profit others gain by reselling their works on the secondary art market. In general it's a small percentage of the resale price but very valuable income for the individual artist. When more member countries will apply the resale right in the future, more artists can benefit from resales across borders and take part in the globalized art market. The right is an important income source and an irreplaceable tool of information for artists on the success of their works on the secondary market. While being highly welcome by authors the right has no impact on the art market (for artists testimonies please consult [www.resale-right.org](http://www.resale-right.org)). During the Covid-19 pandemic it became even more appreciated when the artists were hit very hard by the immediate closure of all public venues where art is exposed, sold and resold. On the other side some Art market professionals, in particular the bigger houses showed resilience by switching to online formats. The numerous excellent documents prepared by the Task Force, by Marie-Anne Ferry-Fall and Professor Sam Ricketson and many others, with the fundamental study by Professor Sam Rickston (2016) and the economic study By Professors Farchy and Graddy (2017), and finally by the WIPO International Conference have provided with highly valuable expert knowledge on the resale right to this committee. Most delegations of this committee showed constant overwhelming support over the past years. While we continue advocating for the inclusion of the matter into the regular agenda of the SCCR, we also support as a next step the development of a toolbox to encourage more member countries to put in place collective management for the resale right. The tools and practices applied by collective management organisations facilitate the management on national and international level for the authors and for art market professionals. As already mentioned in our statement on E&L we believe that a strengthening of collective management for visual artists globally would be beneficial for all visual artists. EVA will be pleased to further contribute to the important work and the debates of the SCCR.

The International Confederation of Societies of Authors and Composers (CISAC). Thank you, Mr. Chairman. We would like to thank Miss Ferry-Fall and Professor Ricketson for the comprehensive update on the activity of the taskforce on the Artists' Resale Right. We would also like to thank the Committee for giving us the chance to take the floor remotely. We are pleased to see that the work of the task force is progressing swiftly, bringing added value to the discussions in the Committee and shedding more light on the different aspects of this issue. The various reports produced by the task force at the latest sessions complement the authoritative studies presented at the plenary since the RR was introduced in the agenda of the committee,

and I would mention in particular: the study of Professor Ricketson, that provided valuable insights into resale right legislation across the world; and the economic study by Professors Farchy and Graddy, presented in plenary session in 2017, which showed no evidence about an alleged negative impact of the RR on the art market. Mr. Chair, The RR is an important source of income for visual artists and their families. Not only it provides an equitable share in the value of their works, but also, it enables authors to maintain a connection with their works in the secondary market. Its importance has become more and more relevant under the pandemic, when artists were hit very hard by the immediate closure of all public venues where art is exposed, sold and resold. The RR has proven to be an important tool to foster creativity in visual arts and its implementation is increasing all across the world. More than 90 countries including all EU member states since 2001, have resale right legislation in place. In many other countries, possible implementation of the resale right is under discussion. But there is still a long way to go to ensure that all artists, without discrimination, can receive a fair share in the economic success of their works. Indeed, the absence of the right in countries representing major art markets prevents visual artists worldwide from fully benefiting from the right, since mutual recognition is required under international law. This means that that for an artist to receive the resale royalty, the right must be enacted both in his/her home country, as well as in the country where the work is sold. For this reason, it is important to ensure the effective harmonisation of the resale right and secure its availability around the world without discrimination. This would guarantee that visual artists all around the world, including native artists, have a way of sharing in the wealth created by their art, without having to rely on the trust or charity of art market middlemen. Mr. Chair, CISAC strongly encourages Member States to include the resale right as a standing item in the agenda of the SCCR. As an immediate next step for the task force, CISAC supports the proposal of working on a comprehensive toolkit which makes available to Member States practical information on the effective management of the right. We are confident that the wide range of practical inputs provided by the task force will dispel the doubts raised by some of the delegates and will encourage Member States to start as soon as possible substantive discussions on the proposal of Senegal and Congo towards a meaningful outcome. We remain at disposal to provide the Committee with information, evidence and testimonials from artists.

The International Authors Forum (IAF). The International Authors Forum (IAF) is thankful for the opportunity to submit its statement on Resale Right for discussion at SCCR42. Resale Right, through its global application, not only helps authors receive fair payment for work that will be sold before its value is known to them but can also be a means of fairness to artists when their work is resold into an international market. Resale Right provides a fair contribution to artists from the proceeds of ongoing sales in the global art market, as well as an incentive to continue creating. IAF wishes to express its thanks and support to the proposal from Senegal and Congo to include Resale Right as a standing item on the future agenda of the SCCR. It is important that artists in all countries can benefit from the resale of their creations. This is a matter of equity with how creators of other works are respected and rewarded for the continued enjoyment of their creation. Resale Right can comprise a significant part of an artist's income. A survey of artists in the UK found that 81% spent payments from Resale Right on their living expenses (DACs, 2016. *Ten Years of the Artist's Resale Right: Giving artists their fair share*). The study in document SCCR/35/7 provides evidence that the Resale Right does not have a negative impact on arts markets, while better supporting artists so is a net positive to support the arts. The Artists Resale Right can work as an important element of justice in the arts market. It both rewards artists when their work continues to be used It has been good to see reports from the Resale Right Task force at WIPO, the increase of information on this subject will be of benefit to all countries that already have or can establish Resale Right. Given the obvious benefits of the Resale Right to artists, IAF hopes that more countries will establish this right. As Resale Right acts as a matter of global fairness IAF hopes that the Task Force will be able to look at the opportunities reciprocity of Resale Right bring to achieve its intention of fairness. IAF strongly

supports the inclusion of Resale Right on the SCCR agenda and the progress of the Resale Right Task Force at WIPO.

### *Protection of the Rights of Theater Rights*

#### *Public Lending Right*

The Delegation of Sierra Leone. Good morning or good afternoon, depending on where you are. As you know, Sierra Leone and co-sponsors have formally requested the SCCR to commission to WIPO a study to provide detailed information on Public Lending Rights (PLR) systems, their advantages and disadvantages, the different ways in which they may be implemented, and how countries can access the support and capacity building needed to take a PLR scheme forward, if they choose. At the 40th session of the SCCR, we presented the proposal and requested support from Committee members. The proposal enjoyed support from several Committee members and was deferred for discussion at this session at the last SCCR due to the limitations of hybrid working. Before turning to the proposal, we would like to clarify a few procedural and administrative points. First, we understand the SCCR has a large number of items under consideration on its agenda. As such, we do not wish or intend for PLR to be added as a substantive item for discussion, and we are not asking for work on a legal instrument or a treaty under this topic. Our core objective is for countries, particularly developing countries, to learn about PLR systems and their potential. The study is a standalone project that would be carried out by WIPO and presented to Member States when it is ready at a future SCCR- the study on theatres' directors rights was processed in the same manner. As such it would have a defined beginning and end and would therefore not risk overburdening the agenda of the SCCR. The proposed study would simply provide an opportunity to learn more about an important element of the ecosystem that supports the creative industries across the world. Additionally, it is our understanding that the Secretariat has the resources available to undertake the study if requested by the Committee. We believe, given that many countries represented at WIPO do not currently have a Public Lending Right, it would be good to approach this in terms of sharing of neutral information and focused only on fact finding research like the background or the reason for the implementation of PLR in each Member State. It would be important to conduct an extensive review on this as the diversity of Public Lending Rights systems around the world suggests a variety of strengths and weaknesses and important considerations of how it can reflect national needs and overcome divides in the international creative industries. We have seen there are different approaches that address how it can support creators in different ways and different approaches to funding. We would also like to highlight that we are not requesting a substantive discussion on the merits of PLR at this meeting, rather we are proposing a study on PLR that would be as it would be useful to have more information from the study first in order to take an informed position. The discussion is on the procedural point of requesting the WIPO Secretariat to prepare a study/factual mapping of PLR/ to provide the Committee with more information about PLR. Therefore, supporting this request will not amount to having taken any substantive position on PLR. This proposal is not suggesting any normative work. It is not suggesting a long term addition to the standing agenda as we would expect such a study to have a defined beginning and end with a presentation of information gathered to the nations represented at WIPO. We should consider the unique opportunity of SCCR as a forum to discuss timely substantive policy issues relevant to the stakeholders in Intellectual Property. This study would be a very useful opportunity for a sharing and analysis of national experiences and discussion and consideration in this forum that brings together nations, experts and stakeholders in a spirit of collaborative work and transparency. Finally, it is important to stress that while our Delegation believes that PLR has a real potential as one form of remuneration scheme to improve the situation of authors in developing countries, we do not wish to prejudge the outcomes of the study. The study will be comprehensive and consider all aspects of PLR schemes. PLR can be a serious boost to our creative industries as it helps maintain creativity and strengthen and promote local languages, traditions, and cultures. Our African creators, and



truly many creators all around the world, have waited too long to reap in the benefits from the works that they create, and our societies and economies need to incentivize and develop our creative sector. We hope that the study will show how PLR can be implemented and how it can benefit local creators. This opportunity to share best practice and learn about potential opportunities to support more creators around the world should be taken. The flexibility and adaptability to local circumstances makes PLR a particularly good choice for us in developing countries seeking to support our poets, novelists, authors of academic books, and our libraries. As such, many African countries have expressed interest in PLR, including Malawi and Zanzibar that are actively working to implement PLR, and Burkina Faso, Ethiopia and Mozambique have an exclusive 'lending right' recognised in their copyright legislation. It is also included in the recently adopted ARIPO Model Law on Copyright and Related Rights. Our core objective is for Committee members to learn about PLR in order to decide with facts in hand whether introducing PLR is a good idea or not. This Committee was established, more than 20 years ago, with a mandate to "consider emerging issues" in the field of copyright and related rights. A Study on Public Lending Right, which is generating interest all across the world, will contribute to fulfill this mandate. Mr. Chair, Committee Members, we kindly invite you to join us in our request to mandate the Secretariat to carry out the study, without further delay. Too many projects and discussions have been stopped due to the pandemic. However, since the Secretariat is in a position to undertake this study if requested by the Committee, it is our sincere hope that we can make progress on exploring the strengths and weaknesses of these schemes. Thank you for your attention, we thank the co-sponsors, and we look forward to a fruitful discussion on PLR.

The African Regional Intellectual Property Organization (ARIPO). Thank you, Mr Chairman for giving me this opportunity to speak on behalf of the African Regional Intellectual Property Organization (ARIPO). ARIPO supports the proposal made by the Government of Sierra Leone, Malawi and Panama to have a study focused on "Public Lending Rights" (PLR). ARIPO aligns itself with the Africa Group statement on the PLR. Though there are 35 countries across the world with PLR system, the study could investigate the reasons behind the slow uptake of the Public Lending Rights scheme or systems and proffer sustainable and suitable approach for ARIPO Member States, Africa and the rest of the continents to consider establishing PLR schemes or systems. The study could also probe on which basis or approach the PLR should be introduced or improved for the countries who already have such a scheme. The study should take into consideration the different environments in the domestic and international frameworks and whether it has a significant benefit for socio-cultural support, equitable remunerations for rightsholders, promoting creativity, supporting linguistic, local culture and local writers, dissemination of information, and technological development. It is worth noting that among the ARIPO Member States, Tanzania - Zanzibar has introduced the PLR through the Copyright (Procedures for Rent or Reproduction of Copyright Works) Regulations published in the Legal Supplement Part II to the Zanzibar Government Gazette Vol CXXVII, No. 6775C of 23<sup>rd</sup> September 2019, under Part III of the Regulations sections 12 to 15 which provide for the PLR. The PLR scheme in Zanzibar currently applies to works written in the national language "Kiswahili". Malawi also has a provision on PLR in their Copyright Act of 2016, and they are in the process of drafting the implementing Regulations on Public Lending Rights. ARIPO assures its Member States, and Partners of its continued support for the development of the Copyright and creative sector and will continue to support initiatives that are geared towards improving the livelihood of creators and rightsholders with the view to promoting balanced intellectual property systems that considers the interest of developing and least developed countries. ARIPO encourages its Member States to support and contribute constructively to the proposal made by the Government of Sierra Leone, Malawi, and Panama. Mr. Chairman and your team, may I thank you for this opportunity you have given me, and I wish you well as you Chair this Committee to have fruitful deliberations.

The European Writers' Council. The EWC thanks WIPO for the opportunity to submit a statement related to the pending proposal prepared by the Republics of Sierra Leone, Panama, and Malawi and would like to respond to the Chair's invitation to make general comments and give input on possible next steps. We also refer to our submission to the proposal, contributed at the SCCR/41-meeting, available here (Statement 57). The European Writers' Council continues to fully support this proposal for a WIPO planned PLR study. The EWC represents 160,000 authors in the book and text sector from forty-six writers' and translators' organisations in thirty EU, EEA and non-EU countries including Belarus, Iceland, Montenegro, Norway, Switzerland, UK, and Turkey. The EWC is a member of the PLR International Steering Committee. PLR implements the principle that 'every use must be remunerated' which is based on the Universal Declaration of Human Rights and by which writers and translators are entitled to receive remuneration from every use of their work. With this in background, we note as follows: PLR is the backbone of sustainable resources of education, knowledge, and culture. The EWC supports the core aims of the proposal, "... a WIPO-sponsored study to provide a more detailed information on the different ways in which PLR can be introduced, on limitations and solutions, and how we can access the support and capacity building (...) This study will answer the question of how are countries to identify which PLR approach is most appropriate to their needs?" The EWC also endorses the points I-VII mentioned for examination in the proposal SCCR/40/3/Rev.2. As authors we are aware of the benefits of PLR for society, for the book sector, for securing innovation, knowledge, and also for cross-border cultural exchange; we would like to see this information available to interested countries as well. We encourage WIPO and its member states to proceed with the proposal swiftly and positively, and to initiate a WIPO conducted study to present a solid and wide-ranging report as a "handout" to support those nations that want to secure the state's educational mandate with an equitable and sustainable method in the interest of authors, society, innovation, and the preservation of future knowledge. The study should not lead to a legal instrument of any form. It should focus on PLR for printed works in public libraries. As next steps, we submit the following proposals for your reflection and consideration: 1) Launching in-depth consultations with participation of all sector representatives including all parties involved in the book sector (authors, translators, visual artists, publishers, trade), the public library sector, collective management organisations and relevant governmental entities, with the specific look on PLR. Not only written and interview-based surveys are useful, but also OMCs and expert groups that meet regularly over a certain period. This will reflect the diversity of experiences and take into account the different regional conditions. 2) A comparative facts and figures collection will be a particular challenge; if necessary, a preliminary consultation with international PLR experts may be considered. 3) The results can be presented in the framework of an information session; regional seminars can of course also be considered at the request of interested countries. We are convinced that important decisions can only be made on the basis of balanced information and unbiased communication. We are equally convinced that PLR actively contributes to a dynamic book culture, which is the basis for the promotion of reading, for the dissemination of knowledge, and the essence against disinformation.

The Authors Guild. The Authors Guild would like to thank the delegation from Sierra Leone for its proposal for a study on the public lending right. We support the proposed study. It would be extremely helpful for countries that do not have PLR – including the United States – to see the many different ways PLR is implemented in other countries, as well as for those countries that already have PLR systems, to help evaluate whether any changes might be made to their systems. PLR provides crucial compensation to authors when their books are used. But it is misunderstood by many, especially in the United States, in part because it is called a public lending "right." U.S. copyright law expressly excludes the lending right for literary material, and some incorrectly assume that PLR requires adopting a new right in copyright law or limiting the exhaustion exception, although neither are the case. Many also assume that libraries will have to pay these fees from their budgets – which is rarely the case. Rather, in most countries with PLR, it is the federal government that pays authors a small fee when libraries lend their books

out. The Authors Guild has been speaking to US government and elected officials for several years now about PLR as a type of small, but essential subsidy to help authors remain in the writing profession. The study proposed by Sierra Leone would greatly assist us and all member countries to understand and analyze the different ways that PLR works, including its costs, and the compensation it provides authors and publishers (where applicable) for the use of their works.

The International Federation of Library Associations and Institutions (IFLA). We have heard a lot over the last few days about the crucial question of how to ensure the fair remuneration of authors, in particular in ways that support diversity in creativity. The question is one that matters for libraries, which are focused on providing locally relevant content, and which are so often crying out for a greater range of works from local and new voices, not just a few international players. In short, the question is important enough to ensure that we do the job well. Key to this will be to ensure we don't fall into the assumptions that still appear to be present in this proposal. Firstly, we should not automatically assume that public lending right in itself is a good thing. Of course authors will be happy to receive money, but there are many other ways of doing this, which may not carry the same risk of harm to libraries. Secondly, we should also not approach the question in a way that fails to evaluate other topics. For governments with scarce resources, it doesn't matter so much if PLR is good, but rather if there are not better ways of achieving the same goals through looking at a complete buffet of options, including the terms of writers' own contracts with publishers. Finally, we would suggest that any such study should then cover the possibility for libraries to benefit from the possibility to acquire and lend eBooks freely. Thank you.

The International Authors Forum (IAF). IAF strongly supports the 'Proposal for a Study Focused on Public Lending Right in the Agenda and Future Work of the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization (WIPO)' put forward by Sierra Leone, Panama and Malawi. IAF wholeheartedly supports any effort to increase understanding of measures such as Public Lending Right (PLR), which fairly rewards authors and ensures they can keep creating, while helping to maintain indigenous arts, literature, language and culture. PLR is a positive mechanism that provides recognition for authors for the loans of their books from libraries. The scheme is greatly valuable to authors both as a connection to ongoing readers and enhancing literacy, as well as providing the seed of the authors' next creation. It can be a valuable way for governments to support authors writing in local languages and is a means to reward authors for the contribution they make to a vital public good; the availability of culture in public libraries. PLR can also be a valuable way for governments to protect authors' writing in local languages. It's a recognition of creators' contributions to culture and also supports the role of education, helps maintain psychological health and protects a country's cultural heritage by preserving literature and language. PLR makes it possible to ensure that public libraries ensure access to culture for all while ensuring the principle of payment for use to creators, to ensure the sustainability of culture. IAF hosted an event "Creating a living; how PLR helps". At this event a range of speakers, being authors, authors' representatives and PLR experts discussed the positive impact it had on the ability of authors to make a living from their work. PLR experts at this event also detailed some of the technical challenges that PLR systems had faced and how these had been successfully overcome to the benefit of authors and users. This discussion can be watched online and is important for considering the view of authors and experts on this subject. IAF supports the development of centrally funded PLR schemes that are to the benefit of authors – writers and visual artists alike – readers and libraries, and hopes the committee can look to support international cooperation to this end. Government support for libraries remains as vital as ever, and goes hand in hand with PLR, and PLR encourages the surge of industry support for cultural goods from local creators in indigenous languages. IAF believes that there is a unique opportunity for information sharing here. As this is a measure that is not common to all of the countries represented at the WIPO SCCR it would be good to have opportunities for information

finding and sharing to help inform and equip national governments. IAF strongly supports the proposal for a study, outlined in SCCR/40/3. IAF particularly supports the intent to study the benefits of PLR for authors. It is particularly positive that the proposal considers opportunities for setting up PLR in developing countries, while considering the benefits for a nation's cultural and linguistic support. This proposal is a significant step to achieve support for authors and diverse cultures around the world.