Workshop on Copyright Limitations and Exceptions for Libraries and Archives
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WIPO INITIATIVES

Nehaa Chaudhari
The Centre for Internet and Society
CIS : Website - cis-india.org | Twitter - @cis-india
PERSONAL : Email - nehaa[at]cis-india[dot]org | Twitter-@nehaachaudhari

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OUTLINE

(PART A) : Introducing WIPO/SCCR

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

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

- Current international framework for libraries
- Why do the libraries and archives want such an instrument?
- Discussing (one) proposal
- Next steps
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

- Specialized agency of the United Nations
- Article 3 of the Convention – WIPO Objectives - “to promote the protection of intellectual property throughout the world....”
- Stakeholders
  - Member States – 188 States are members of WIPO
  - Observers – need to be accredited by the WIPO
WIPO COMMITTEES

Decision making and negotiating bodies

- **Governing Bodies**: highest decision making bodies. Established by the WIPO Convention. Include WIPO General Assembly + WIPO Coordination Committee + WIPO Conference.

- **Permanent Committees**: Constituted by any of the Governing Bodies, as required. Include Program and Budget Committee + Committee on Development of Intellectual Property + Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore + Committee on Enforcement + Committee of Experts.

- **Standing Committees**: Ad-hoc Committees, established by the General Assembly for a specific purpose – for instance, determining the need for a treaty/executing a new treaty ++. Include Standing Committee on Copyright and Related Rights + Committee on WIPO Standards + Standing Committee on the Law of Patents + Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications.
CONTD.

- **Diplomatic Conferences**: Convened on the decision of one of the Standing/Permanent Committees. Convened to finalize negotiations on a new treaty. Most recent according to WIPO:
  - [Diplomatic Conference for the Adoption of a new Act of the Lisbon Agreement - The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications](#)
  - [Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities](#)
  - [Diplomatic Conference on the Protection of Audiovisual Performances](#)

- **Working Groups**: May be established by any committee/any other body. Usually to examine a particular issue in some detail.
Stakeholders [Member States]

- Member States are those countries that are ‘members’ of the WIPO (Hence, ‘member’ States [State = Nation])
- Grouped into 7 informal groups
  - (i) the Asian group (India is member)
  - (ii) the African group
  - (iii) the Group of Latin American and Caribbean Countries (GRULAC)
  - (iv) Central Europe and Baltic States (CEBS) group
  - (v) Central Asian and East European States (CAEES) group
  - (vi) Group B (comprising developed countries)
  - (vii) China.
  - “Although these groups are not ‘formal’ and are not recorded in any WIPO document, these groups form the basis for representation in Selection Panels and Working Groups; election of Chairs; and provision of funding assistance in WIPO.”
  - (viii) European Union
Stakeholders [Observers]

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

- Constituted for determining the need for, and bringing into effect:
  - A treaty for limitations and exceptions for persons with disabilities (Concluded (limited) – the Marrakesh Treaty for Persons with PRINT Disabilities)
  - A treaty for the protection of audio-visual performances (Concluded – Beijing Treaty on Audio- Visual Performances)
  - A treaty for the protection of broadcasting organizations (Current agenda item)
  - A treaty for limitations and exceptions for libraries and archives (Current agenda item)
  - A treaty for limitations and exceptions for teaching, education, research and persons with disabilities (Current agenda item)
- What does an SCCR meeting look like? (Discussion)
PART
B
CURRENT INTERNATIONAL FRAMEWORK FOR LIBRARIES

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

- What does it to?
  - It understands “the right of reproduction” (Article 2) to be different from the “the right of making available to the public” (Article 3)
  - Member States “SHALL” provide…. is the language used to discuss copyright provisions, but, Member States “MAY” provide…is the language used to discuss limitations and exceptions. Therefore, provisions protecting copyright + interests of rights holders are mandatory, and those on limitations and exceptions are not.

- Exceptions and limitations are listed in Article 5
  - Confirms the three-step test (Article 5(5))
  - Members MAY apply these
  - Directive has the potential to restrict limitations and exceptions - Members, in principle, may only enact those limitations and exceptions that are in the list, but, if they had more in their national laws, they were allowed to retain those.
  - Library exception is in Article 5(2) – allows reproduction made by libraries, educational establishments, museums or archives, which are non-commercial
  - Recognition of Technological Protection Measures in Article 6
WHY ARE LIBRARIES AND ARCHIVES ASKING FOR A NEW TREATY FOR LIMITATIONS AND EXCEPTIONS?

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


Discussing - Consolidation of Proposed Texts Contained in Document SCCR/26/3 - Prepared by the African Group, Brazil, Ecuador, India and Uruguay

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

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

The following sources have been used as references in this presentation. They are also presented as suggested reading:

- CIS Work at the SCCR, available at [http://cis-india.org/a2k](http://cis-india.org/a2k)
Thank you!

Nehaa Chaudhari
The Centre for Internet and Society
CIS : Website - cis-india.org | Twitter - @cis-india
PERSONAL: Email - nehaa[at]cis-india[dot]org | Twitter-@nehaachaudhari