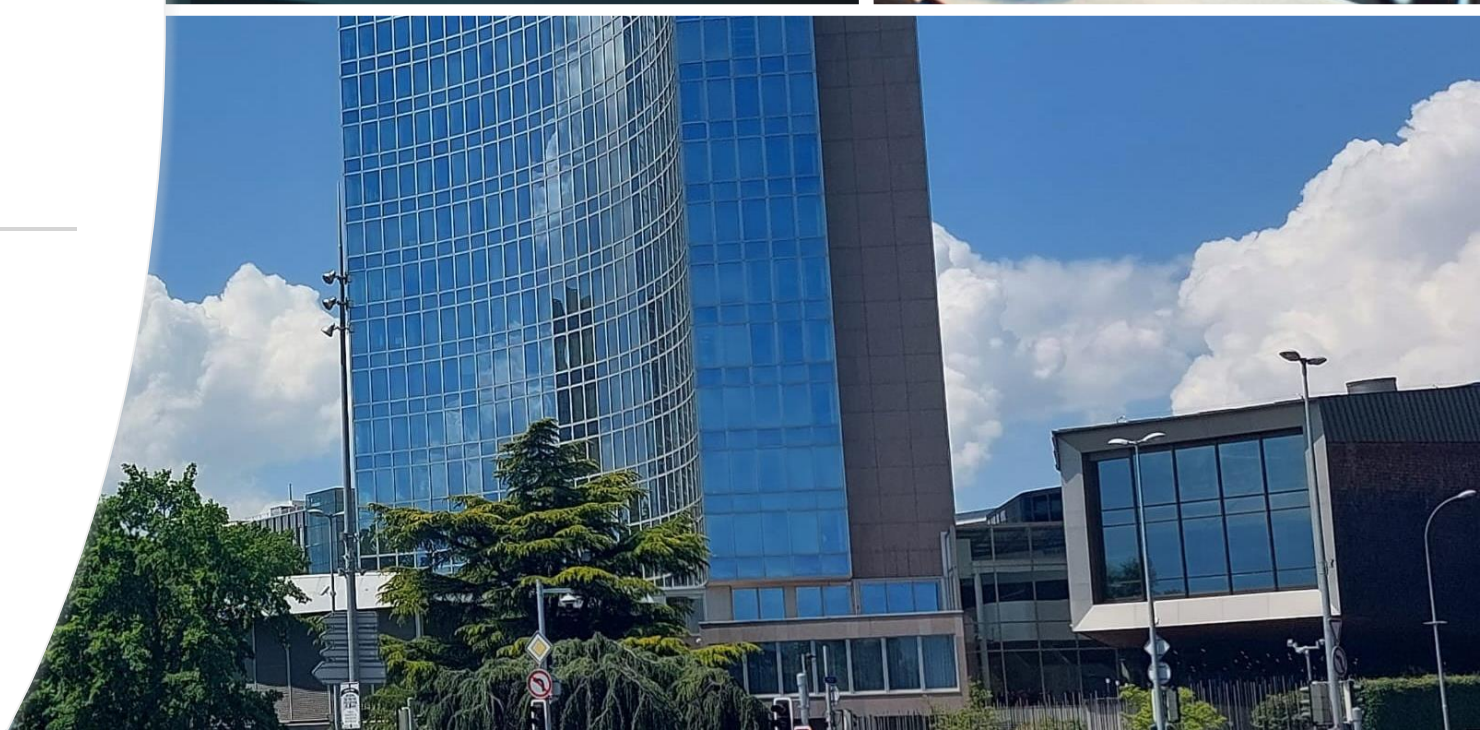


Excepciones y limitaciones para actividades de investigación en la agenda del SCCR/OMPI

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Introducción OMPI

- La Organización Mundial de la Propiedad Intelectual OMPI organización multilateral global, miembro de naciones unidas, pero con financiamiento del sector privado, por la venta de servicios.
- El Comité Permanente de Derecho de Autor y Derechos Conexos (SCCR, por sus siglas en inglés) es uno de los comités permanentes de la Organización Mundial de la Propiedad Intelectual (OMPI).
- Actualmente tiene una agenda principal para el tratado de radiodifusores y la agenda de excepciones.
- El Comité, que se reúne al menos una vez al año desde 1998 y participan los representantes de los estados miembros y de observadores acreditados, y otros organismos internacionales, como UNESCO.
- En el trabajo del comité el sector privado y la Sociedad civil resulta clave para fundamentar o mantener la agenda.
- Hay una asimetría para las negociaciones entre países desarrollados y los del Sur.



Posiciones dentro del SCCR 43 celebrada 13 de marzo a 17 de marzo de 2023

	País o grupo	Posición
1.	Grupo de Países de América Latina y el Caribe	A favor de un instrumento internacional, apoya la propuesta africana
2.	Grupo Africano	A favor de una visión internacional para tratar las excepciones y limitaciones
3.	Unión Europea	Señala que las regulaciones nacionales son suficientes. No hay necesidad de un instrumento internacional
4.	Grupo B	Señala que las regulaciones nacionales son suficientes
5.	Grupo CEBS (Central European and Baltic States group)	Considera suficiente el marco actual y se centra en el intercambio de buenas prácticas y directrices
6.	Estados Unidos	Señala que las regulaciones nacionales son suficientes. No hay necesidad de un instrumento internacional

Publicaciones INVESTIGACION

Año	Autor	Título	Referencia
2009	Juan Carlos Monroy Rodríguez	Estudio sobre las limitaciones o excepciones al derecho de autor y los derechos conexos en beneficio de las actividades educativas y de investigación en América latina y el caribe	SCCR/19/4
2017	Daniel Seng	Estudio actualizado y análisis adicional sobre excepciones y limitaciones al derecho de autor para fines educativos	SCCR/35/5 REV
2019	Daniel Seng	Limitaciones y Excepciones en Materia de Derecho de Autor en Favor de las Actividades Docentes y de Investigación : Análisis Tipológico	SCCR/38/8
2019	Mónica Torres, Raquel Xalabarder	Informe sobre prácticas y retos en relación con actividades de educación a distancia y de investigación en línea	SCCR/39/6

ESTUDIO SOBRE LAS LIMITACIONES O EXCEPCIONES AL DERECHO DE AUTOR Y LOS DERECHOS CONEXOS EN BENEFICIO DE LAS ACTIVIDADES EDUCATIVAS Y DE INVESTIGACION EN AMERICA LATINA Y EL CARIBE, Rodríguez, 2009

- Se observa que los países de América Latina y el Caribe tienen menos beneficios en sus leyes de derechos de autor para la educación e investigación en comparación con Estados Unidos y la Unión Europea.
- Link al estudio:
https://www.wipo.int/meetings/es/doc_det_ails.jsp?doc_id=130303

INFORME SOBRE PRÁCTICAS Y RETOS EN RELACIÓN CON ACTIVIDADES DE EDUCACIÓN A DISTANCIA Y DE INVESTIGACIÓN EN LÍNEA, RAQUEL XALABARDER, 2019

- La enseñanza e investigación en entornos digitales presentan desafíos que las leyes de derecho de autor actuales no abordan completamente.
- Se sugiere una combinación de excepciones y limitaciones flexibles en las leyes nacionales junto con planes de concesión de licencias para abordar las necesidades de la enseñanza e investigación en línea, adaptándose a las circunstancias culturales y económicas de cada país.
- Esta combinación permitiría un enfoque equilibrado que beneficie a universidades, profesores, investigadores y estudiantes en sus actividades en línea.
- Link al estudio:
https://www.wipo.int/meetings/es/doc_details.jsp?doc_id=432192

Diagnóstico

- Regulation of non-uniform, insufficient, E&L exceptions and limitations for online teaching and research (more limited than analogue uses)
- Licensing systems not available everywhere, for all works, variety of licenses (Collective Management Organizations, individuals...)
- Territorial solutions not suitable for online (cross-border) uses (Mónica Torres, Prof. Raquel Xalabarder, Presentation on Online Distance Education and Research Activities Study, 2009)



- Access to the material and its use by individuals. It comprises students, and researchers, for teaching and research purposes.
- Access to and use of the material by educational and research institutions, including educators, researchers and staff of such institutions, for instruction and research.
- Adaptation and translation of material for teaching and research purposes.

Some Activities Requiring Regulation (Pursuant to the Copyright Limitations and Exceptions for Teaching and Research Activities: Typological Analysis, SCCR/38/8, 2019)

Treaty proposals within the exceptions agenda

Año	Países	Propuesta
2004 2005	Chile	Analysis of the exceptions and limitations necessary for the promotion of creation and innovation and the dissemination of the developments that could be achieved from it.
2008	Chile, Uruguay, Brasil y Nicaragua	propose that the Committee implement a plan taking into consideration those three levels of activities outlined in Chile's 2005 submission, with the objective of achieving a consensus on minimum mandatory exceptions and limitations particularly with regard to educational activities, people with disabilities, libraries and archives, as well as exceptions that foster technological innovation.
2010	Grupo Africano	Geneva, June 21 to 24, 2010, WIPO Draft Treaty on Exceptions and Limitations for Persons with Disabilities, Educational and Research Institutions, Libraries and Archives. Proposal by the African Group. Article 7: Teaching and Research Institutions (a) For teaching and scientific research purposes, a limited number of reproductions of published and unpublished works, regardless of their format, may be made without the authorization of the rightholder.
2011	Grupo Africano	
2011	EE,UU.	Libraries (principles)
2011	Brazil, Ecuador, Uruguay	Libraries, archives. comprehensive.
2012	Brasil	Twenty-fourth Session, Geneva, July 16 to 25, 2012. DRAFT ARTICLES AND THEMATIC CLUSTERS ON LIMITATIONS AND EXCEPTIONS TO COPYRIGHT FOR THE BENEFIT OF EDUCATIONAL, TEACHING AND RESEARCH INSTITUTIONS proposal by the Delegation of Brazil Teaching, research 3 step test.
2012	Ecuador / Peru / Uruguay	

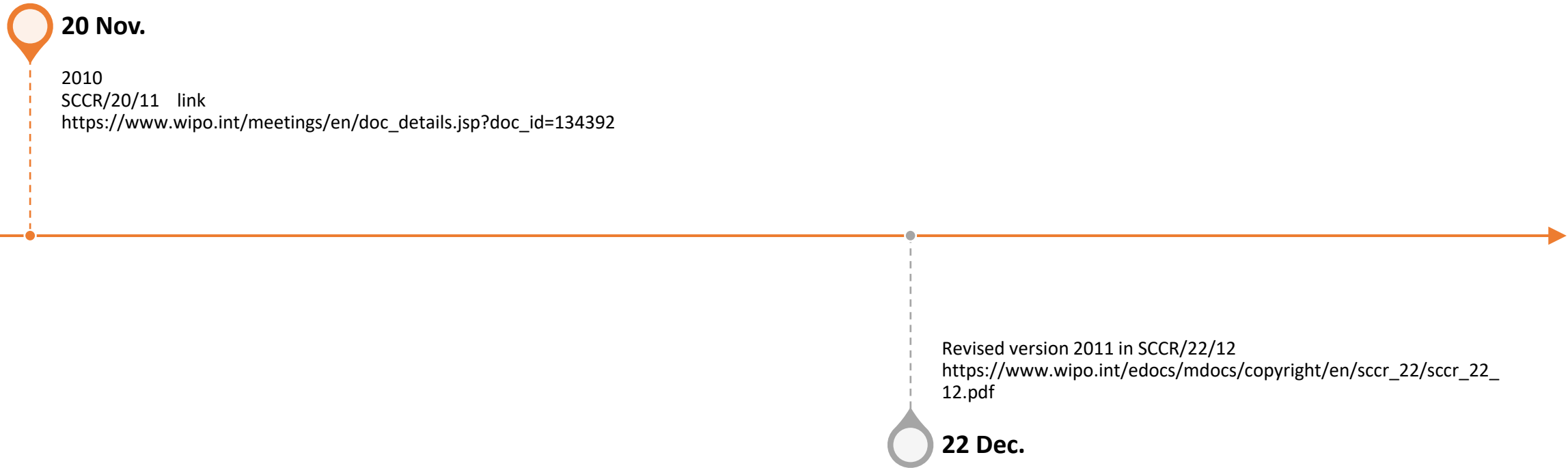
Proposals

2013	secretaria OMPI	PROVISIONAL WORKING PAPER ON AN APPROPRIATE INTERNATIONAL LEGAL INSTRUMENT (REGARDLESS OF ITS FORM) ON LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL, TEACHING AND RESEARCH INSTITUTIONS AND PERSONS WITH OTHER DISABILITIES, CONTAINING COMMENTARIES AND TEXTUAL PROPOSALS
2014	Estados Unidos de América	OBJECTIVES AND PRINCIPLES RELATING TO EXCEPTIONS AND LIMITATIONS FOR EDUCATIONAL, TEACHING AND RESEARCH INSTITUTIONS
2014	EE.UU.	Version 2 Objectives and Principles Libraries, archives, museums.
Año	Países	Propuesta
2016	Argentina	PROPOSAL ON LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES AND LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES
2018	Comité	ACTION PLANS ON LIMITATIONS AND EXCEPTIONS FORESEEN UNTIL THE 39TH SESSION OF THE SCCR (2ND SESSION TO BE HELD IN 2019)

Proposals for person with disabilities..

- Proposal by Brazil, Ecuador and Paraguay, Relating to Limitations and Exceptions: Treaty Proposed by the World Blind Union (WBU) (document SCCR/18/5); hereafter “Proposal of Brazil, Ecuador and Paraguay, also endorsed by Mexico”
- Draft Proposal of the United States of America for a Consensus Instrument (document SCCR/20/10); hereafter “Proposal of the United States of America”
- Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries and Archive Centers (Africa Group) (document SCCR/20/11); hereafter “Proposal of the African Group”
- Draft Joint Recommendation concerning the improved access to works protected by copyright for persons with a print disability (European Union) (document SCCR/20/12); hereafter “Proposal of the European Union.”

African Group proposal Teaching, research, libraries and disabilities.



Libraries

- SCCR/23/5 NOVEMBER 22, 2011 PROPOSAL ON LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES presented by Brazil, Ecuador and Uruguay
- https://www.wipo.int/edocs/mdocs/copyright/en/sccr_23/sccr_23_5.pdf
- Library Lending 1. It shall be permitted for a library to lend copyright works, or materials protected by related rights, to a user, or to another library. 2. Notwithstanding the provisions of paragraph (1), any Contracting Party/Member State which expressly provides for a public lending right, may keep such right. Reproduction and Distribution of Copies by Libraries and Archives 1. It shall be permitted for a library or archive to reproduce and to distribute a copy of a copyright work, or of material protected by related rights, to a library user, or to another library or archive, for purposes of: a. education; b. requests by users for research or private study; c. interlibrary document supply; provided that such reproduction and distribution is in accordance with existing international obligations, among them the Berne Convention. SCCR/23/5 page 3 2. Libraries and archives shall be permitted to reproduce and distribute a copy of a copyright work or material protected related rights, to a user, in any other case where a limitation or exception in national legislation would allow the user to make such copy.

Libraries exceptions proposals

- OBJECTIVES AND PRINCIPLES FOR EXCEPTIONS AND LIMITATIONS FOR LIBRARIES AND ARCHIVES by the United States of America To that end, exceptions and limitations can and should enable libraries and archives to make copies of published and unpublished works for purposes of preservation and replacement, under appropriate circumstances.
- “Reasonable exceptions and limitations can and should establish the framework enabling libraries and archives to supply copies of certain materials to researchers and other users directly or through intermediary libraries.”
- Document SCCR/23/4 DATE: NOVEMBER 22, 2011
- https://www.wipo.int/meetings/en/details.jsp?meeting_id=22210

Libraries

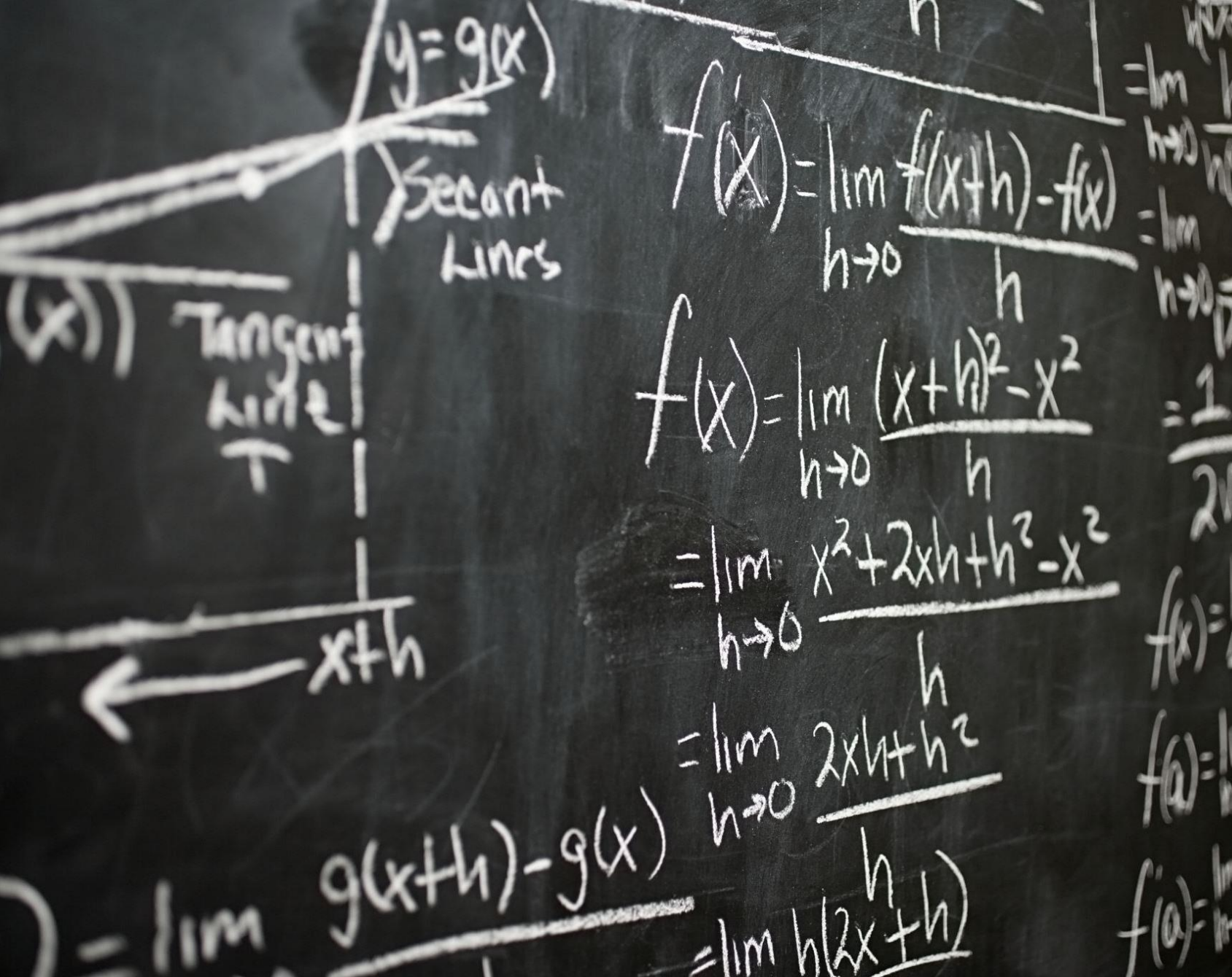
- SCCR/26/8 : JANUARY 10, 2014 OBJECTIVES AND PRINCIPLES FOR EXCEPTIONS AND LIMITATIONS FOR LIBRARIES AND ARCHIVES by the United States of America V.2
- https://www.wipo.int/edocs/mdocs/copyright/en/sccr_26/sccr_26_8.pdf
- Added
- Limitations and exceptions should appropriately ensure that libraries and archives can preserve and provide access to information developed and/or disseminated in digital form and through networked technologies.
- Museums share many of the same public service roles as libraries and archives, and Member States may consider extending the same or similar exceptions and limitations for museums.

Libraries

- SCCR/23/8 AUGUST 8, 2012 WORKING DOCUMENT CONTAINING COMMENTS ON AND TEXTUAL SUGGESTIONS TOWARDS AN APPROPRIATE INTERNATIONAL LEGAL INSTRUMENT (IN WHATEVER FORM) ON EXCEPTIONS AND LIMITATIONS FOR LIBRARIES AND ARCHIVES adopted by the Committee
- Includes African Group proposals
- Brazil, Ecuador, Uruguay proposal
- India
- EE.UU.
- Preservation, reproductions for patrons, lending, orphan works.
- Plus comments member countries.

Libraries

- SCCR/29/4 : DECEMBER 8, 2014 S2014 CONSOLIDATION OF PROPOSED TEXTS CONTAINED IN DOCUMENT SCCR/26/3 related to libraries exceptions prepared by African Group, Brazil, Ecuador, India and Uruguay
- Link to the document
- https://www.wipo.int/edocs/mdocs/copyright/en/sccr_29/sccr_29_4.pdf



Education

- SCCR/24/7 : JULY 16, 2012 DRAFT ARTICLES AND THEMATIC CLUSTERS ON LIMITATIONS AND EXCEPTIONS TO COPYRIGHT FOR THE BENEFIT OF EDUCATIONAL, TEACHING AND RESEARCH INSTITUTIONS by Brazil
- Performances, reproductions, quotes
- https://www.wipo.int/edocs/mdocs/copyright/en/sccr_24/sccr_24_7.pdf

EDUCATION

- SCCR/24/6 : JULY 16, 2012 LIMITATIONS AND EXCEPTIONS REGARDING EDUCATION/ including research and interpretation 3 step test.by Ecuador, Peru and Uruguay
- https://www.wipo.int/edocs/mdocs/copyright/en/sccr_24/scr_24_6.pdf
- OBLIGATION TO UPDATE AND EXPAND EXCEPTIONS FOR EDUCATIONAL PURPOSES, IN PARTICULAR IN THE DIGITAL ENVIRONMENT ARTICLE 1 Contracting Parties shall update, carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention, specially under article 10.1 and 10.2, and devise new exceptions and limitations that are appropriate in the digital network environment to protect educational and research activities.
- INTERPRETATION OF THE THREE-STEP TEXT ARTICLE 2 When applying either Article 9.2 Berne, 13 TRIPS, 10 WCT, or similar provision in any other multilateral treaty, nothing prevent contracting parties to interpret the three-step test in a manner that respects the legitimate interests, including of third parties, deriving from educational and research needs, and other human rights and fundamental freedoms; and other public interests, such as the need to achieve scientific progress and cultural, educational, social, or economic development, protection of competition and secondary markets.

Education

- SCCR/24/8 : JULY 31, 2012 PROVISIONAL WORKING DOCUMENT TOWARDS AN APPROPRIATE INTERNATIONAL LEGAL INSTRUMENT (IN WHATEVER FORM) ON LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL, TEACHING AND RESEARCH INSTITUTIONS AND PERSONS WITH OTHER DISABILITIES CONTAINING COMMENTS AND TEXTUAL SUGGESTIONS Secretariat.
- https://www.wipo.int/edocs/mdocs/copyright/en/sccr_24/sccr_24_8_prov.pdf
Includes proposal of African Group, Ecuador, Peru, Uruguay, Brazil, India, Pakistan

Science

African Group. SCCR/24/8 Prov. page 34 (3)

https://www.wipo.int/edocs/mdocs/copyright/en/sccr_24/sccr_24_8_prov.pdf

- “42. Specific exceptions for science. (1) Use for the sole purpose of scientific research is not an infringement of the exclusive rights conferred by copyright and related rights. In interpreting this provision the following shall be recognized as within the scope of this provision: (i) Reproduction of any scientific or educational material produced by government entities or government workers in the course of their employment; (ii) The reproduction and reuse by search engines, automated knowledge discovery tools, or other digital means now known or later discovered of any lawfully obtained copyrighted work for purposes of not-for-profit scientific research, including storage, archiving, linking, data mining procedures, data manipulation, and virtual scientific experiments subject to attribution of the sources used to the extent reasonably feasible; (iii) The use or reuse of any ideas, facts, data, findings, or conclusions found in any scientific work, whether or not copyrightable, including compilations of factual information and data, subject to the attribution of sources used to the extent reasonably feasible. (iv) Technical protection measures that seek to override these provisions or otherwise limit access to scientific works shall be considered a misuse of copyright. (2) Proprietors of works protected by technical protection measures shall be obligated to make them available for research purposes as specified in this Article. Researchers unlawfully denied access and use of such works for purposes solely of scientific research may employ available anti-circumvention measures to obtain access and use of such works for not-for-profit scientific research purposes. SCCR/24/8 Prov. page 34 (3) In the case of for profit scientific purposes, researchers unlawfully denied access and use of scientific works shall be obligated to pay reasonable compensation to proprietors when employing anti-circumvention measures to obtain access to and use of such works. (4) Contracts attempting to override these provisions shall be null and void as against public policy. “

Education/ Research SCCR/24/8 Prov. page 11

- Alternatives to the definition of “Beneficiaries”. 13.1. from the **African Group** This Treaty applies to persons with disabilities, educational institutions and research organizations, students, libraries and archives. 13.2. **from India** Contracting Parties shall provide the exceptions and limitations guaranteed in this Treaty for the benefit of persons with disabilities, public and private educational and non- profit research institutions and teaching institutions, in this Article referred to as beneficiaries. 13.3. **from Pakistan** Contracting parties shall provide the exceptions and limitations guaranteed in this treaty for the benefit of persons with disabilities, public and private educational, teaching and non profit research institutions, in this article referred to as beneficiaries.

Education



SCCR/27/8 : MAY 26, 2014, 2014



OBJECTIVES AND PRINCIPLES FOR EXCEPTIONS AND LIMITATIONS FOR EDUCATIONAL, TEACHING, AND RESEARCH INSTITUTIONS by the United States of America



https://www.wipo.int/edocs/mdocs/copyright/en/sccr_27/sccr_27_8.pdf



ADOPTION OF NATIONAL EXCEPTIONS AND LIMITATIONS
Objective: Encourage Member States to adopt exceptions and limitations in their national laws, consistent with their international obligations, that allow certain uses of copyrighted works for nonprofit educational purposes, maintaining the balance between the rights of authors and the larger public interest, particularly education, research, and access to information



SUPPORT EXCEPTIONS AND LIMITATIONS FOR USE IN TECHNOLOGICALLY EVOLVING LEARNING ENVIRONMENTS

- PROPOSAL CONCERNING LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES AND LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES document presented by Argentina
- Document SCCR/33/4 NOVEMBER 1, 2016 t
- This proposal instead of declaring what should be the exempted acts, establishes a rule that makes legal the use based on the law of the country of export the work
- Link https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_4.pdf
- “Where performed in accordance with the exceptions and limitations set forth in this agreement, the reproduction or making available of a work shall be governed by the law of the country in which the reproduction or making available occur, without precluding the reproduced work from being delivered to or used by a person or institution benefitting from exceptions and limitations located in another Member State, provided that such delivery or use is consistent with the terms and conditions set forth in this agreement”

Propuesta del grupo africano relativa a un proyecto de programa de trabajo sobre excepciones y limitaciones adoptada por el SCCR 43 el 17 de marzo del 2023, documento SCCR/43/8

El SCCR adoptó el siguiente programa de trabajo en consonancia a la propuesta del grupo africano. Dentro de las acciones que se ocuparán se encuentran:

- Promover la adaptación de las excepciones y limitaciones al entorno en línea. y

Otras materias a discutir conforme a la propuesta africana adoptada por el SCCR, documento SCCR 43/8 del 2023

Una vez discutidas los asuntos anteriores, el SCCR podrá discutir las siguientes materias:

Limitaciones y excepciones relativas a la investigación en materia de minería de textos y datos

Efectos transfronterizos en relación con las limitaciones y excepciones sobre la conservación, la enseñanza y la investigación.

Como resultado la Secretaría debería elaborar herramientas que sirvan de guía para los programas específicos de asistencia técnica que ayuden a los Estados miembros a intercambiar mejores prácticas y redactar leyes y políticas

Conclusion

- Excepciones de Investigación y tecnologías estan en la agenda desde el año 2004
- Si bien la Unión Europea se opuso a avanzar hacia nuevos instrumentos, AFRICA y tb LATINOAMERICA han mantenido el proceso
- La información y acompañamiento de la Sociedad Civil es fundamental.
- Los esperamos en la OMPI .



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