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TO: SAA Council

FROM: William J. Maher

SUBJECT: Summary Report on WIPO SCCR33

DATE: January 2, 2017

I hereby submit this report on my service as SAA's representative at the thirty-third session of the World Intellectual Property Organization (WIPO)'s Standing Committee on Copyright and Related Rights (SCCR). Occurring in Geneva Switzerland from November 14-18, 2016, SCCR33 was a continuation of sessions on issues of particular interest to archival work both within the US and Canada as well as globally. The goal has been to advance a proposal for an international treaty to establish consistent, predictable, copyright exceptions for archives and libraries to secure the legal space for our work in preserving, sharing of collections across borders, and providing reference copies to archives users. Although SCCR33 did not provide dramatically positive movement on the archives agenda, there were modest advances, procedural progress, and the avoidance of any setbacks. This session marked the end of the term of Martin Moscoso who as Chair of SCCR has aided in advancing the agenda. Thus, perhaps its most important outcome is that multiple issues that had arisen over his four year term were brought to an orderly resting point that will serve as a foundation for future progress. Consequently, even if someone less receptive to archives and library exceptions becomes the next chair, the gradual progress reflected in the Chair's Summary of the work of SCCR33 constitutes an agenda that future sessions of SCCR would be hard-pressed to reverse

1. General Context for SCCR33. As with the eight prior SCCRs SAA has attended, the agenda for this session included a number of additional issues. Although these may not seem directly connected to archives work, they offer insights into the practical and political conditions that will affect the "end game" for the advocacy to obtain archives and library exceptions. In some cases, they can have future bearing on our work through either the expansion of exclusive rights or the creation of other exceptions. This report will cover those before turning to SCCR33's work on archives and library exceptions.

Given that it is unlikely that we will know who will be the next Chair until SCCR34, overshadowing much of SCCR33 was the fact that with this being Moscoso's last meeting there were several issues that needed to be brought to as much a conclusion as possible. For each of these, it seemed that Moscoso was driving the Committee so that the work done to date becomes the foundation on which SCCR34 starts its work (May 1-5, 2017). In most cases he was successful in providing clarity for the status of those issues as well as in identifying next steps for when SCCR34 convenes. These issues included:

1.1 Broadcasting Treaty. A proposal to create a new treaty to update the Rome convention and provide broadcasters/cablecasters an exclusive right over their broadcast signals has been on WIPO's agenda for approximately 16 years although the accelerating pace of technology has continued to complicate the issue. Member States have been divided over whether the treaty should be narrow, focusing on traditional broadcasting organizations, or whether it should extend to content delivered via the internet. To help work through these issues, Moscoso has used what are known as "informal sessions" (usually consisting of about 15 representatives rather than a full plenary of Member States) to subdivide the issue into components and then try to hammer out language to achieve some sort of agreement on the components. For SCCR33, he brought those separate parts into an chart with alternative phrasings of definitions, nature of proposed exclusive rights, etc. The discussions in the "informals" left the impression that the work was moving towards creation of a text that could become a draft for consideration by a WIPO Diplomatic Conference (DipCon) at which a treaty could be negotiated. Although there is a lot of pressure to hold a DipCon in 2018, this would be ambitious under most circumstances.

Tactically, having the broadcasting issue move to a treaty would free up SCCR agenda time for archives and libraries, but it could also reduce the urgency for keeping archives and libraries on the agenda. For the moment, however, the complexity of the broadcasting issues suggest that desires for an early DipCon are possibly overly hopeful. Beyond the effect that the broadcasting issue has on the overall agenda, it remains relevant to our concerns because the work done to-date provides a model of the process for future work on a text for the archives and library issues.

1.2 Artists Resale Right (*Droit de suite*). Many countries, especially in Europe and many of its former colonies with "moral rights" regimes provide a resale right so that artists and their heirs may receive a share of the profits that come from the resale of their works via future gallery, auction, and other sales as an artist's reputation increases. However, the countries with some of the largest art markets, including the US, do not recognize a resale right. Although generally articulated in terms of sales of works of visual art, some proposals would also cover manuscripts. Action on this item had been stalled since it was first introduced in spring 2012, creating a common cause in frustration by both many developing countries as well as the European Union, two interest groups otherwise on opposite sides of the archives and library exceptions issues. Consistent with the Chair's overall effort to tie up as many loose ends as possible he insisted that agenda time be provided for a WIPO supported report on behalf of the need for a treaty to make the resale right treaty mandatory. This was followed by MS delegates' discussion calling for WIPO to hold a conference to explore the underlying issues including matters of income distribution and potential effect on the market, presumably in spring 2017. The US delegation's opposition to any such treaty may mean the will issue will not progress. However, given the strong interest of a number of African countries in the artists resale right, as members of the archives and library coalition SAA will be well-advised to avoid coming out in opposition to such a proposal.

1.3 GRULAC Proposal for Analysis of Copyright Related to the Digital Environment. In December 2015, the Group of Latin American and Caribbean countries, led by Brazil, asked for greater attention to the effect of the digital market on individual artists and

performers.<sup>1</sup> In many ways, this was largely a critique on how the industries, especially music, are structured to preclude equitable compensation getting to the actual individual artists, or it could have been merely a tactical move in the larger Global South v. Global North struggle. Regardless, the proposal has yet to receive serious discussion at SCCR. Thus, as part of Chair Moscoso's effort to wrap up business, he allocated an hour on Friday afternoon to discuss the GRLUAC document. Reflecting both the divide among stakeholders and the document's lack of specificity, discussion was free-ranging and inconclusive. In the end, the US delegation suggested that WIPO conduct a short "scoping study" to outline the parameters of the issues involved and perhaps identify a methodology for future work. This, gained traction and seems to be the next step as suggested in the Chair's Summary.

1.4 "Education Exceptions". Dating back to at least 2010 when the Africa Group first touched on the topic of archives and library exceptions, there were companion proposals dealing with exceptions for the visually impaired and for educational purposes. The exceptions for the visually impaired were segmented off into the Marrakesh Treaty (June 2013), and the archives and library exceptions became a separate agenda item. However, the Africa Group has been insistent that the education topic be given time equal to that of broadcasting and library/archives. However, until this last spring, the topic has lacked specificity, and it has not been discussed at SCCR. Nevertheless, some members states and some rights holders organizations have called for all exceptions to be rolled together into a single SCCR topic, something that would certainly slow, if not kill, the archives and library exceptions. Thus, the tying up of loose ends at SCCR33 was divided into two broad themes—national comparisons and persons with disabilities.

1.4.1 Education Exceptions: Comparison of National Practice. At last May's SCCR32, some clarity began to appear when Professor Daniel Seng of the University of Singapore presented his first pass at a Ken Crews style survey of the kinds of exceptions that exist in national laws of WIPO member states in support of education. Despite its great length (663 pages) it was incomplete (covering only 136 of 189 member states). So Professor Seng returned to SCCR33 with a report that now covered all 189 WIPO member states, albeit running to 1,009 pages and conveniently summarized in 179 Power Point slides. His thorough study, while vulnerable to criticism that he has defined "education" so broadly as to make discussion of exceptions confusing, the most discouraging thing about Seng's presentation is that it led some MS delegates to ask for deeper examination of a few issues and to make future updates. Given that there is a strategic advantage for the library/archives/museum coalition to find some way to connect our interests with the education topic, SCCR33's getting past Seng's study is an important advance.

1.4.2 Exceptions for Persons with Other Disabilities. Another productive accomplishment of SCCR33, even if not directly on the topic of archives and library exceptions, was a Skype video conference with Professor Blake Reid and two student attorneys at the University of Colorado who, together with a project lead at the University of Capetown, have been commissioned by WIPO to do a

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<sup>1</sup>Available at: [http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_31/sccr\\_31\\_4.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_31/sccr_31_4.pdf)

scoping study of the matter of exceptions for the benefit of those with disabilities other than visual impairment. Between now and the next SCCR, the study will identify which disabilities have a copyright dimension that might require an exception and identify what categories of such exceptions exist in at least some countries' laws. The coverage at SCCR33 was preliminary but represented an advance because it moved the topic from generalized statements of sympathy to a more systematic analysis by specialists in the field. Further, it separated from the topic from general education as well as library, archives, and museum exceptions.

Collectively the treatment of the education related items offered a rationalization of the SCCR agenda and the prospect that work on the increasingly mature library and archives issues will not become side-tracked by other worthy but as yet unformulated needs.

## 2. EXCEPTIONS FOR LIBRARIES AND ARCHIVES

2.1 Advocacy Effort. There was a strong presence of library, archives, museum, and civil society NGO advocates during latter half of the week when the exceptions were being discussed. In addition to SAA, the archival community was represented by the International Council on Archives, Scottish Council on Archives, and the Archives and Records Association (UK). Overall, the coalition's interventions provided a very systematic argument of the need for exceptions on each of the four topics that remained from the ongoing set of eleven.<sup>2</sup> Even though there was only a general level of advanced consultation within the group, the succession of interventions left the impression of a careful selection among the facets to provide a minimum of duplication and a maximum of systematic explanation of the breadth of each of the topics, thus presenting a very coherent argument. Meanwhile, there was a marked contrast between the breadth and depth of the library/archives/museum interventions and the rather sparse and under-powered remarks made by the publishers and reproducing rights organizations. The most worrisome interventions were those from RROs (reproducing rights organizations) and independent journalists—both approach the issues of concern to archivists and librarians as solvable via payment of licensing fees to collective management organizations.

2.2 Scope of the Archives and Library Discussion. Not long after the first proposal for archives and library exceptions in 2011, the elements desired in a treaty were brought together in report on SCCR23. However, WIPO could only do this via a 59-page document heavily larded with the recitations from Global North nations about how their own laws separately solved all the problems that archives and libraries could ever have with copyright.<sup>3</sup> In December 2014, Chair

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<sup>2</sup>For the text of my statements on behalf of SAA see the Appendix A. Note that drafts of all of these were reviewed by SAA's IPWG and benefitted from their edits.

<sup>3</sup>A December 2013 document (SCCR 26/3), summarized those themes/topics as: 1) Copying for preservation or replacement; 2) Reproduction and distribution of a copy of a work to a library user, or to another library or archives; 3) Legal deposit of one copy of every work published in the country, 4) Library lending to a user, or to another library; 5) Parallel importation to allow purchase or acquisition of works from other Member States; 6) Cross border provision of copies shall be possible for allowed uses; 7) Orphan works and works out of commerce may be reproduced and made available; 8) Limitations on liability when acting in good faith; 9) Circumvention technological protection measures for allowed exceptions; 10) Contractual provisions shall not overwrite the limitations and exceptions; and 11) Right to

Moscoso boiled down all of this verbiage into a chart showing the list of eleven topical clusters and the status of Committee deliberation on each. By leading the Committee in successively discussing each of the eleven topics and using the discussion to identify components that would be necessary for each to serve as an exception, Moscoso has projected momentum on the exceptions issues. Perhaps the most important accomplishment of SCCR33 was that the Committee worked through the remaining four of the eleven topics (i.e., limitations on legal liability, ability to circumvent technological protection measures, precluding contracts from overriding exceptions, and translations).

After completing the discussion of the eleven topics, the Chair prepared a new chart to identify which topics he believed should continue on the agenda, which could be consolidated, and which could be left for national resolution. Entitled “Limitations and Exceptions for Libraries” the revised chart provided a new grid listing each topic and the Chair’s summary assessment of its discussion by the Committee.<sup>4</sup> Of the 11 topics, the revised chart deleted from further consideration “legal deposit,” “parallel importation,” and “retracted/withdrawn works and works out of commerce.” Further, reflecting the late preparation of the revised chart, it said that further discussion would be required on two issues calling for exceptions—contracts and translations.

There will be much speculation as to the meaning of all of the components of the new chart, but overall, it appears to have retained more of the exceptions than we anticipated 6 or 12 months ago when it seemed as if two or three core exceptions would be retained while another three would be made cross-cutting considerations. Still, it was disappointing that more attention could not be given in the chart’s comment on the last three topics. Although there is nothing binding about the new chart, it provides a general roadmap forward. Overall, the recommendations in the new chart, while not without their limitations, address most of the fundamental needs for archives and library exceptions and keep much of the exceptions agenda alive.

3. Conclusion of SCCR33 and Chair’s Summary. As with all prior SCCRs that I have attended, the most angst laden phase is that on Friday from about 4:30 p.m. to whenever the session finally adjourns, sometimes well into Saturday. It is then that body can descend into a Kafka-esque debate over the “Conclusions” of what was agreed. Nevertheless, consistent with three or four of the most recent sessions, the Chair enabled an earlier adjournment by presenting his summary of discussion instead of trying to negotiate formal “Conclusions” for SCCR33.

The Chair’s Summary is available at:

[http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_33/sccr\\_33\\_summary\\_by\\_the\\_chair.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_summary_by_the_chair.pdf)

The core elements are:

a) for broadcasting, the committee will continue to work towards preparing for a diplomatic conference (but no reference to when) and the topic will stay on the agenda for SCCR34;

b) for library and archives exceptions, the Summary noted the completion of discussion

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translate works.

<sup>4</sup>See:

[http://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_33/sccr\\_33\\_chart\\_on\\_libraries\\_and\\_archives.pdf](http://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_chart_on_libraries_and_archives.pdf)

of the topics and the presentation of the Chair's revised chart, and the library and archives exceptions topic will stay on the agenda for SCCR34. It also recorded the fact that "the delegations wished to reserve the right" to discuss the chart at SCCR34;

c) for education exceptions, the Summary noted interest in having further updates and a few further topics to include in the Seng study at SCCR34, it also noted the scoping study on exceptions for persons with "other disabilities," and called for the education topic to be continued on the agenda for SCCR34;

d) the GRULAC call for an analysis of the effects of the digital environment on creators' rights will continue on the agenda and a scoping study on the impact of digital developments will be commissioned; and

e) the subject of artists' resale rights will be the subject of a conference prior to SCCR34.

While one could wish for more from the Chair's Summary, importantly it did not contain several of the possible negatives. The most important outcome is that the Summary called for the topic of library and archives exceptions to continue on the agenda. Until we see who is the new Chair and how s/he conducts SCCR34, it is hard to predict what will happen with Moscoso's legacy, but the most recent SCCRs have established a basic vocabulary and established not just the rationale for each of the exceptions but also some of the boundaries on exceptions. Further, even with the opponents, the terms are familiar enough that the road markers for the advocacy route are clear and manageable. Of course, until the next session, it is impossible to predict whether the needle will continue to move in the positive direction that Moscoso has managed to create.

4. CLOSING COMMENT: Typical of past SCCRs, there are a number of positives, especially in the fact of the persistence and robustness of the NGO presence on behalf of exceptions. Were it not for the coming transition of the Chair, it seems clear that a path has been laid for the kind of specific work on several of the exceptions that will be needed to develop a textual proposal, somewhat in the same way as the broadcasting topic has progressed to text-based discussions over the past three or four sessions.

Meanwhile, although there is a turnover in the Brazilian delegation, there were signs of continued interest from that country. Perhaps the notching back of Brazil's advocacy seems to have facilitated a more forthright presence by some other GRULAC countries such as Chile, Colombia, and Argentina.

It was helpful that the formal merging of the museums topic into our coalition's new TLAM proposal opened up the opportunity for the International Council on Museums representative to make strong interventions on the exceptions topic. However, it was disappointing that there was not more uptake on the work to merge museums into the library and archives topic.

It was also disappointing that the new TLAM formulation for a flexible framework treaty did not receive notice in the plenary session. The flexible framework was presented in our meetings with all the regional groupings, but it received a mixed response with some regions predictably having little interest in any exceptions treaty (i.e., Group B and the EU), others quite interested in a new approach (e.g., GRULAC) that might break the log jam, and others concerned that the flexibility itself could remove some of the "muscle" that Global South countries see as most important. Of course if the flexibility allowed in TLAM is sufficient to cause the EU to back off

its resistance while also getting the US delegation to sign on, then significant movement would be possible. Clearly, care will be needed in walking the path between the flexibility that makes a treaty possible and the teeth needed to make it meaningful.

Perhaps the brightest point in the proceedings was presentation on behalf of GRULAC by the Chilean delegate Marcela Paiva Véliz. To make the case for an international instrument for archives and library exceptions, she highlighted an example of the cross-border use of archives. Her intervention was the more rewarding because it combined the social justice with the cultural heritage mission of archives. (See Appendix B for KEI's publication of the statement.) Not only was the GRULAC statement evidence of how the NGOs' use of specific examples will resonate with policymakers, but it also offered an affirmation of the archival mission itself. In recognition of this contribution, ICA's delegate Jean Dryden and I presented Marcela with a SAA 2015 meeting "Archives Change Lives" lanyard which she wore for the balance of the SCCR (See photo in Appendix C). It is rare moments like these that remind me of the privilege it is to serve SAA and its members by representation at this international policy making body.

Statement of SAA Representative to WIPO  
Standing Committee on Copyright and Related Rights  
William J. Maher (w-maher@illinois.edu)

**TOPIC EIGHT: Limitations on Liability**  
17 November 2016

The Society of American Archivists, North America's largest professional archival organization, congratulates you on your leadership and thanks the Secretariat for its work in preparing these meetings. SAA's members manage billions of primary source works from across the globe. Current technology enables us to have global impact, but the risk of litigation holds us back from the digital age.

"Archives" are a mystery to most people. Once people recover from the shock that we are not gnomes trolling around in the dark, they usually ask: "What is your most important document?" We dread this question because everything we have is valuable to someone, somewhere. Although most archives have a few valuable treasures, they are not central to our responsibilities. Rather, archives exist to preserve everyday letters, reports, photos, computer files, etc. They are not locked away as treasures. Instead, they are openly available for research and study.

It is these everyday items, such as soldiers' letters home in wartime, that collide with copyright's monopoly. As professionals, archivists are committed to protecting other people's rights, but we know that strict adherence to copyright undermines the reason we have such collections, i.e., research access. As stated in UNESCO's Declaration on Archives: "Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life." That's why we need an international legal regime to limit liability for doing what we must to fulfill the mission that society has assigned to us.

Archivists do not seek a free rein, but simply assurance that doing our basic work will not expose us to costly legal fees or penalties, thus exhausting our meager budgets and preventing us from curating today's records for use by tomorrow's citizens. Without exceptions, we have only two unacceptable options: abandon concern for copyright or excessive caution. Both undermine our mission.

We need a safe harbor so that we can perform our work in good faith. The core tool would provide a limit on litigation, freedom from criminal liability, and limiting civil remedies to injunctions. Accounting for rights holders' and archivists' interests, such a tool should: 1) provide a baseline definition of eligible archives; 2) limit the exception to non-commercial activities; and 3) require a basic assessment for the presence of works subject to normal commercial exploitation.

Archivists are at a crossroads. We all worry about copyright, but many archivists are ready to just ignore it, figuring the chance of a lawsuit is slim. It's as if you awoke to find a bat in your bedroom. The chance that you had been bitten while sleeping would be incredibly small, but the consequences of being wrong would be immense—namely rabies and death. A rabies injection would protect against that scenario. Similarly, limitations on liability for archival work would free us from facing risks that block our mission.



Statement of SAA Representative to WIPO  
Standing Committee on Copyright and Related Rights  
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**TOPIC NINE: Technological Protection Measures**  
17 November 2016

Thank you, Mr. Chair and Member States' delegates for the opportunity to explore another example of how the convergence of technology and copyright law confronts archivists with dramatic challenges that prevent us from doing our job unless we are willing to ignore the law. To ensure a complete and authentic record, archives must hold all information formats whether analog or digital. When we work with the electronic records that dominate today's archives, the problem of technological protection measures arises on an almost daily basis.

As a university archivist, among the most important materials for me to collect are the personal archives of scientific research faculty. In the past, these so-called "faculty papers" collections included more than paper, such as photographs, audio-visuals, research data, etc. Today, however, when we receive these donations, it is not just a matter of emptying filing cabinets and gathering laboratory research notebooks. Instead, we need to copy all of their electronic files from their laptops and remote disk drives. To obtain the historical record of their scientific and public work, the first level is just a simple bit-by-bit copy, which by itself is not readable or intelligible. Then, once we can locate the software to read the file, some of the content may be behind passwords or other technical protection measures, or stored in a computer program that we have to reverse-engineer to merely read the data. All of this is necessary before we can begin to assess which files are worth keeping and which lack long-term value. In one recent example of the personal archives of an important biophysicist, in addition to 10 linear meters of "paper" files, we located 18 gigabytes of files on his separate workstations, laptops, and file servers, containing nearly 18,000 separate files in more than 1,400 different file formats dating back to the early 1980s. In the case of a chemist, in addition to 5 linear meters of paper files, there were 30 GB of data, 161,419 separate files, 8,844 folders, and 204 file types.

Although not all of this content was controlled by technological protection measures, our data preservation specialists needed to work around the access controls merely to allow us to see the files for acquisitions purposes. If we determine that it may be of enduring value, further copying and de-coding will be necessary before we can preserve and make it available to researchers. Thus we have another example of where the archival mission requires us to do something which, strictly speaking, copyright does not allow.

Distinguished delegates and colleagues, archivists do not set out to violate the law. We just need to do what is technologically necessary for us to do our work. We believe that appropriate exceptions and limitations should exist for such purposes.

457 words November 17, 2016 (10:09am)

**TOPIC ELEVEN: Translation**

17 November 2016

When I heard the suggestion that “translation” should be a topic for archives and library copyright exceptions, my initial reaction was, archivists do not translate—We are just neutral curators who hold materials that others use and interpret. But on opening my morning email, I was reminded that, of course, archivists cannot avoid doing translations whenever we manage records with unfamiliar languages. How else could we accomplish core archival functions such as appraisal, description, or user service?

In fact, there are at least three reasons that translation is a necessary part of the archivist's toolkit. First, there is a long tradition of archives being centers for the creation of authoritative editions of historical documents, often involving translation into the local language. Second, translation, at least in part, is often essential for administrative purposes such as the preparation of collection inventories, review of documents to determine if they merit archival retention, assessing and attesting to the authenticity of a document, and providing guidance to research users. Third, translation may be necessary for us to respond to today's technologically-driven researchers seeking material for protection of human rights, cultural preservation, and digital humanities scholarship.

That wake-up email was from a staff member who alerted me to the need for a translation of the slogans on some French and Soviet propaganda posters so we could prepare a presentation to a graphics communication class studying political messaging. Sometimes, translation is needed just for inventory control.

But that is just the tip of the iceberg. Most modern archives will include materials in many major modern languages as well as as indigenous and disappeared languages so some translation is an unavoidable activity as we care for society's record. Exceptions for translations also will need to incorporate support for the use of new technology that enables our work with digital humanities scholars and students. In an era when high-quality, automated translation is on the horizon, establishing exceptions that do not support library, archives and museum use of such automated translation technology would merely guarantee immediate obsolescence.

338 words November 18, 2016 (11:14am)



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## SCCR33 - Statement by the Latin American and Caribbean Group (GRULAC) - Limitations on liability for libraries and archives

On Thursday afternoon, 17 November 2016, WIPO's Standing Committee on Copyright and Related Rights (SCCR) addressed the topic of limitations on liability for libraries and archives. Chile, on behalf of the Latin Americas and Caribbean Group (GRULAC) provided a poignant example of how limitations on liability for libraries and archives enabled the provision of an accurate account and attribution of the role played by the Brazilian diplomat, Bertha Lutz, and other Latin American delegates in ensuring gender equity in the UN Charter of 1945.

GRULAC noted (the original intervention was delivered in Spanish):

The UN Charter of 1945 was one of the first international treaties to mention in its text the need for equal rights for men and women. This fact, was attributed for a long time to the diplomats of the developed countries. In fact, after an investigation at the University of London, it was discovered that it was in fact the result of the insistence of Latin American women in the conference, led by Brazilian scientist and diplomat Bertha Lutz.

After consulting the documents of the time and the memoirs written by the few women at the conference, researchers Elise Dietrichson and Fatima Sator concluded that Latin American diplomats were responsible for including references to gender equality in the Charter of the United Nations. According to the researchers, the explicit inclusion of gender in the United Nations Charter, advocated by the Latin American delegates, faced strong initial opposition from US and UK diplomats.

According to the researchers, Bertha Lutz - with the help of delegates from Uruguay, Mexico, Dominican Republic and Australia - demanded the inclusion of women's rights in the Charter and the creation of an intergovernmental body for the promotion of gender equality, while the plenipotentiary delegate of the United States and the British delegate opposed.

One of its main contributions is included in the preamble of the Charter, which cites the equal rights of men and women. Lutz made sure to include the word "woman" in the text, even against the position of colleagues who argued that "human rights of men" would be sufficiently inclusive.

This knowledge was only possible because of the digital work of archivists and museologists in Brazil and the United Kingdom. While Bertha Lutz's documents are not in the public domain, the museum scientists at the Bertha Lutz Virtual Museum took the risk of putting information on the internet. Bertha, who died in the 1970s, did not have the opportunity to grant licenses to preserve her memory on the internet. However, museologists and archivists faced legal uncertainty for the benefit of all United Nations.

The original statement in Spanish can be found below followed by the English translation.

## 6. Limitaciones y excepciones para bibliotecas y archivos

Señor Presidente,

El GRULAC apoya una discusión abierta y franca de las limitaciones y excepciones para las bibliotecas y los archivos sin prejuzgar la naturaleza del resultado de las discusiones, a fin de llegar a soluciones efectivas con respecto a los problemas que afectan a las bibliotecas y archivos de todo el mundo. El GRULAC está muy interesado en el debate sobre las propuestas presentadas por Brasil, Ecuador, Uruguay, India y el Grupo Africano. A fin de promover el trabajo sobre este tema, nuestro grupo apoya continuar los debates en base a la propuesta del Presidente. Adicionalmente, el GRULAC aguarda con interés el debate del documento SCCR/33/4 presentado por la Argentina.

Señor Presidente,

Para contribuir con las discusiones en limitaciones y excepciones, al GRULAC le gustaría presentar un caso concreto que demuestra la importancia de nuestro debate hoy. En nuestra agenda, discutiremos cuatro temas acerca de la relación del trabajo de bibliotecarios y archivistas y de la propiedad intelectual. Uno de ellos es la limitación a la responsabilidad de bibliotecarios y archivistas. Este ejemplo nos demuestra la importancia de limitaciones y excepciones para la divulgación del conocimiento, no solamente de nuestros países, sino también de las Naciones Unidas. Nuestro caso concreto está relacionado con el origen de la carta de las Naciones Unidas.

La Carta de las Naciones Unidas de ONU de 1945 fue uno de los primeros tratados internacionales a mencionar en su texto la necesidad de la igualdad de derechos para hombres y mujeres. Este hecho, fue atribuido por mucho tiempo a las diplomáticas de los países desarrollados. Tras una investigación en la Universidad de Londres, se descubrió que fue en realidad el resultado de la insistencia de las mujeres de América Latina en la conferencia, impulsada por la científica y diplomática brasileña Bertha Lutz.

Después de consultar los documentos de la época y las memorias escritas por las pocas mujeres en la conferencia, las investigadoras Elise Dietrichson y Fatima Sator llegaron a la conclusión de que las diplomáticas de Latinoamérica fueron las responsables por la inclusión de referencias a la igualdad de género en la Carta de las Naciones Unidas. Según las investigadoras, la inclusión expresa del género en la Carta de las Naciones Unidas, defendida por las delegadas latinoamericanas, enfrentó fuerte oposición inicial de las diplomáticas de Estados Unidos y Reino Unido.

Según las investigadoras, Bertha Lutz - con la ayuda de las delegadas de Uruguay, México, República Dominicana y Australia - demandó la inclusión de los derechos de la mujer en la Carta y la creación de un organismo intergubernamental para la promoción de la igualdad de género, mientras la delegada plenipotenciaria de Estados Unidos y la delegada británica, se opusieron.

Una de sus principales contribuciones está incluida en el preámbulo de la Carta, que cita la igualdad de derechos de hombres y mujeres. Lutz se aseguró de incluir la palabra "mujer" en el texto, incluso en contra de la posición de colegas que argumentaban que los "derechos humanos de hombres" serían lo suficientemente inclusivos.

Este conocimiento solamente fue posible a causa del trabajo en el medio digital de archivistas y museólogos en Brasil y Reino Unido. Mientras los documentos de Bertha Lutz no estén en dominio público, los museólogos del Museo Virtual Bertha Lutz se arriesgaron al publicar la información en la Internet. Bertha, fallecida en los años 70, no

tuvo oportunidad de otorgar licencias para preservación de su memoria. En este caso, los museólogos y archivistas enfrentaron la inseguridad jurídica para el beneficio de todas las Naciones Unidas.

En el caso presentado, estaban en juego los sistemas jurídicos de más de un país, ya que las obras, los sujetos, las reproducciones, los usos y los usuarios estaban sometidos a distintos sistemas jurídicos. Por una parte, no existen excepciones en algunos territorios que permitan llevar adelante la tarea de los bibliotecarios y archivistas. Y si bien esto podría solucionarse mediante la actualización de las legislaciones internas de los Estados, queda siempre latente el riesgo de que los efectos de las reproducciones necesarias para desarrollar la investigación, válidas en un país, sean inválidas en otro. Estos resultados claudicantes son disvaliosos, desde el punto de vista de la universalidad del conocimiento. De aquí que un instrumento internacional deba lograr un catálogo común de excepciones y limitaciones de acuerdo a las finalidades de acceso al conocimiento y la cultura, junto con algunas reglas de coordinación que permitan que los actos llevados a cabo por un bibliotecario o archivista en su propio país, no sean luego cuestionados en otra jurisdicción.

Expresamos nuestro agradecimiento a los archivistas y museólogos que enfrentaron en este caso que compartimos, la inseguridad jurídica para proveer los insumos para la investigación científica. Esperamos que con los trabajos del SCCR podamos disminuir sus problemas con el sistema de propiedad intelectual.

Queda aquí también nuestro agradecimiento a Bertha Lutz, que con su ejemplo nos recordó que mientras cada país es responsable de sus legislaciones nacionales, el derecho internacional es responsabilidad de todos, hombres y mujeres de todas las regiones del mundo.

Muchas gracias

## 6. Exceptions and limitations for libraries and archives

Mr. Chair,

GRULAC supports an open and frank discussion of limitations and exceptions for libraries and archives that does not prejudice the nature of the outcome of the discussions in order to reach effective solutions with regard to problems affecting libraries and archives around the world. GRULAC is very interested in the debate on proposals submitted by Brazil, Ecuador, Uruguay, India and the African Group. In order to promote work on this topic, our group supports further discussions based on the Chair's proposal. In addition, GRULAC looks forward to the discussion of document SCCR / 33/4 submitted by Argentina.

Mr. Chair,

To contribute to the discussions on limitations and exceptions, GRULAC would like to present a concrete case demonstrating the importance of our debate today. On our agenda, we discussed four themes about the relationship between librarians and archivists and intellectual property. One of them is the limitation on the responsibility of librarians and archivists. This example demonstrates the importance of limitations and exceptions for the dissemination of knowledge, not only of our countries, but also of the United Nations. Our specific case is related to the origin of the United Nations Charter.

The UN Charter of 1945 was one of the first international treaties to mention in its text the need for equal rights for men and women. This fact, was attributed for a long time to the diplomats of the developed countries. In fact, after an investigation at the University

of London, it was discovered that it was in fact the result of the insistence of Latin American women in the conference, led by Brazilian scientist and diplomat Bertha Lutz.

After consulting the documents of the time and the memoirs written by the few women at the conference, researchers Elise Dietrichson and Fatima Sator concluded that Latin American diplomats were responsible for including references to gender equality in the Charter of the United Nations. According to the researchers, the explicit inclusion of gender in the United Nations Charter, advocated by the Latin American delegates, faced strong initial opposition from US and UK diplomats.

According to the researchers, Bertha Lutz - with the help of delegates from Uruguay, Mexico, Dominican Republic and Australia - demanded the inclusion of women's rights in the Charter and the creation of an intergovernmental body for the promotion of gender equality, while the plenipotentiary delegate of the United States and the British delegate opposed.

One of its main contributions is included in the preamble of the Charter, which cites the equal rights of men and women. Lutz made sure to include the word "woman" in the text, even against the position of colleagues who argued that "human rights of men" would be sufficiently inclusive.

This knowledge was only possible because of the digital work of archivists and museologists in Brazil and the United Kingdom. While Bertha Lutz's documents are not in the public domain, the museum scientists at the Bertha Lutz Virtual Museum took the risk of putting information on the internet. Bertha, who died in the 1970s, did not have the opportunity to grant licenses to preserve her memory on the internet. However, museologists and archivists faced legal uncertainty for the benefit of all United Nations.

In the case presented, the legal systems of more than one country were at stake, since works, subjects, reproductions, uses and users were subject to different legal systems. On the one hand, there are no exceptions in some territories that allow carrying out the task of librarians and archivists. And while this could be solved by updating the domestic laws of the States, there is always a risk that the effects of reproductions necessary for the development of research, valid in one country, will be invalid in another. These results are weak, from the point of view of the universality of knowledge. Hence an international instrument must achieve a common catalog of exceptions and limitations according to the purposes of access to knowledge and culture, along with some coordination rules that allow the acts carried out by a librarian or archivist in his own Country, are not later challenged in another jurisdiction.

We are grateful to archivists and museologists who faced legal uncertainty to provide the inputs for scientific research. We hope that with the work of the SCCR we can reduce its problems with the intellectual property system.

We are also grateful to Bertha Lutz, who, by her example, reminded us that while each country is responsible for its national laws, international law is the responsibility of all men and women in all regions of the world.

Thank you very much

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Photo of video monitor showing Chilean delegate Marcela Paiva Véliz making an intervention at the Thirty-Third Session of the World Intellectual Property Organization's Standing Committee on Copyright and Related Rights. November 18, 2016.