

**Society of American Archivists
Council Meeting
February 5-6, 2024
Virtual Meeting/Chicago IL**

Intellectual Property Working Group: Representation at SCCR

The attached agenda item is a request from the Intellectual Property Working Group (IPWG) for continued representation at the World Intellectual Property Organization's 45th meeting of the Standing Committee on Copyright and Related Rights. The meeting will take place in Geneva, April 15–19, 2024.

The SCCR continues to consider proposals carrying significant potential to affect archival interests. Though libraries and educational organizations have been represented by numerous international advocacy organizations, few have the specialized knowledge of archives needed to advocate for our interests. Since Council began funding representation many years ago, SAA's presence at WIPO has been crucial in educating global policy makers in the needs of archives, and has been effective at seeing archives-friendly changes to proposed instruments.

The IPWG co-chairs—William Maher and myself—understand from our Council representative that funding for a second Geneva meeting was not included in the FY2023/24 budget, and that we understand that SAA may be facing financial constraints. However, as the agenda item proposal below puts into context, the progress at SCCR over the last several years as to archival concerns has been a direct result of our presence, and the issues at play at the upcoming meeting are pressing. SAA needs continual, and continuous presence at SCCR in order to continue the good work it has been doing, and to ensure that future international developments with impacts on US law are favorable to archival interests.

(attached separately: SAA Rep's November 2023 WIPO report)

IPWG Council Agenda Item
Fund Continued SAA Representation at WIPO in Geneva, April 15–19, 2024
January 8, 2024

Just last week, Steamboat Willie (b. 1928)—the original Mickey Mouse—was liberated from copyright after 95 long years, allowing him to finally enter the Public Domain. A quarter-century ago, SAA advocated against the entertainment industry’s call to add an extra 20 years to the already long term of copyright. We were told it was it needed to align the US with the European Union’s recent copyright extension, otherwise US rights holders would lose royalty income.

Unfortunately, we were unsuccessful in countering big media’s lobbying Congress on copyright. Worse, term extension coincided with the draconian 1998 Digital Millennium Copyright Act (DMCA), another result of an international treaty. Together, this taught us that if the cultural heritage sector was to have a say on mitigating the worst restrictions on the use of copyright material, archivists needed to be advocating in the international arena.

From 2004 through 2011, a number of African and Latin American nations told the World Intellectual Property Organization (WIPO) of the need for copyright exceptions to serve their public interest as post-colonial nations. WIPO then commissioned studies documenting inadequate and inconsistent national laws. By 2010-11, it was clear that archivists needed to make our case for cultural heritage materials at WIPO when exceptions were to be debated. Subsequently, SAA’s presence at WIPO’s Standing Committee on Copyright and Related Rights (SCCR) has made archival issues relevant to, and important for, the Committee to address.

Effecting change at the international level is a “long game,” as Council’s own records will show. However, at each session, our presence has made a difference. As early as 2014, SAA was the first to alert SCCR to the dangers that a proposed broadcast treaty posed to archival preservation and use of audio-visual records of modern events. That same year, SAA educated delegates on how the content of electronic personal archives required significant copyright exceptions to enable even the most basic archival steps of appraisal, ingest, and backup copying. In 2018, a new WIPO Deputy Director General made the development of “typologies” a precondition for her to support SCCR’s next steps on exceptions. It was SAA that provided a proof-of-concept typology showing the intersection of archival functions and materials with copyright. WIPO ultimately adopted typologies by a consultant, Prof. Kenneth Crews, but it was SAA’s original typology that made clear the nature of archival work and our particular needs. No library or other NGO could have done this. Crucially, having an actual archivist as SAA’s representative over several years also enabled SCCR’s sessions to benefit from presentation of multiple examples of specific collections and user needs. The result—the cross-border copyright challenges to the archival mission were made vivid and compelling to WIPO Member States.

For many years, NGOs and Member States knew SAA was the voice to listen to for the archival perspective. In late 2015, ICA appointed a new, more activist delegate to SCCR, leading to deeper collaboration between the SAA and ICA. This has provided an even stronger archival voice than possible if only one of us were present. Indeed, when WIPO’s “archives study” was nearly sidelined during the crucial 2018-19 years, it was the collaboration of the SAA and ICA delegates that not only rescued it, but kept it central to the current work on a preservation toolkit.

Specific archives issues expected to be in play at SCCR45

- 1 Serve as the American voice on the strengths and weaknesses of the United States delegation’s newly revised Objectives and Principles for Exceptions and Limitations for Libraries, Archives, and Museums. SAA is in the best position to push the US delegation to encompass exceptions to support making works accessible and to call for the document to address cross-border interoperability. Because of what we learned in a December Zoom conference call with the US delegation, it seems unlikely that the US will come to the next SCCR session with any revisions to the draft they issued in early November. Overall, the revisions they made to their 2013-14 document were very good, but more is needed if this is to become the basis for future “textual work.” SAA can play an important role here by making clear that what the US delegation has proposed is far from sufficient. If the document is to be revised as needed, it will take pressure from the exceptions-friendly Member States and Regional Groups of Africa, Asia, and Latin America and the Caribbean. SAA is uniquely positioned to make the case to the US delegation.
- 2 Monitor, and influence the implementation of the African Group Workplan with a special emphasis on making sure the WIPO Secretariat does not create hurdles and that the priority area for initial work remains on preservation
- 3 React to and shape what may emerge as text to be the basis of a call for a Diplomatic Conference (DIPCON) (i.e., a treaty-drafting and adoption conference) on the Broadcasters treaty. Our particular attention will be on excluding post-fixation rights and including mandatory exceptions and limitations. From the last two SCCR sessions it seems the broadcasting treaty teeters between being narrowed sufficiently for it to go to a DIPCON or to remain so overly expansive that its chances at a DIPCON would be problematic.
- 4 Support for (or voice reservations about) the not-yet-released final text of the *Preservation Toolkit*, that is slated for presentation to SCCR45..
- 5 Advocate for an expeditious timetable for creating an access “toolkit.”
- 6 Influence any emerging activity related to potential Committee on Development and IP projects that relate to archival interests.
- 7 React/respond to the changes that will come as new SCCR chair takes over as of January, 2024.
- 8 Provide mentoring to some of the newly appointed representatives of other civil society NGOs who are not yet accustomed to the SCCR environment.

Report of SAA's Representative to the World Intellectual Property Organization's
Standing Committee on Copyright and Related Rights 44th Session
Geneva Switzerland November 6-8, 2023
William J. Maher

INTRODUCTION AND CONTEXT FOR SAA ADVOCACY AT WIPO/SCCR

I am pleased to have been able to represent the SAA and American archivists at the 44th Session of the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organization (WIPO) that occurred November 6-8 in Geneva Switzerland. At SCCR, SAA advocates to obtain consistent international policy for exceptions and limitations to copyright to facilitate the preservation and accessibility of the important knowledge and heritage materials we curate. WIPO is an especially critical forum for this work because, without it taking action to resolve persistent inconsistencies among national laws, the cross border preservation and sharing of knowledge is legally impeded. In the 21st century's digital and globally networked environment, no archives, however small, is an island. Copyright exceptions are necessary for each archives to fulfill its responsibility to legally provide broad and equitable access across borders, whether through inter-institutional projects or reference service to users who may live beyond the walls where we have gathered unique collections.

November's three-day session was 40 percent shorter than the standard SCCR session, so it should be no surprise that there were fewer positive outcomes than last March's exceptionally positive meeting. Although momentum stalled on the African Group (AG)'s Work Program on Exceptions and Limitations, which the Committee adopted last March, discussion at November's SCCR led to a call for the WIPO Secretariat to initiate one of the Work Program's implementation activities, and do so before the next SCCR in April. Meanwhile, the US delegation made a significant step forward by issuing an updated version of its "Objectives and Principles for Exceptions and Limitations for Libraries and Archives," first presented in 2013. With its updates and significantly expanded scope, the US document sets out key principles that the Committee could use to frame discussion of what should/could be in an international treaty. With the short three-day schedule for SCCR44, Member States and NGOs were encouraged to provide only written statements/interventions. In SAA's case, that meant that I was able to provide a longer and more substantive statement of archival copyright issues and our particulars need for copyright exceptions (**see Appendix 1**). In addition at the last minute, we allowed to provide a very short oral intervention in which I emphasized the climate crisis driven need for WIPO action on exceptions (**see Appendix 2**). Although the 40-% shorter November SCCR and its overly crowded agenda slowed the momentum we had hoped for, the call for movement to start on the African Group Work Program and for attention to the new US Objectives and Principles demonstrate that key elements of last March's positive outcomes remain in place.

Because of the nature of deliberations at an international body such as WIPO, a full account of the context for SAA's fundamentally simple agenda would be tedious reading. Therefore, at the risk of missing some background detail of SCCR's operation, this report will rely on summary paragraphs organized on positive and negative outcomes of SCCR44 as well as offer recommendations on potential next steps. If there is interest in the ebb and flow of the week's

discussion, **Appendix 3** provides a compilation of the Bulletins that I prepared on Day Zero, Days One/2, and Day Three. They also provide an idea of how WIPO makes time disappear. Readers new to SCCR narratives wish to refer to the report from SAA's presence at last March's SCCR43, which can be found at: <https://uofi.box.com/s/05ht2ptgaveglls92yexpc7w79b44cbs>

1 POSITIVE TO NEUTRAL OUTCOMES

- 1.1 Early in the week, SAA participated, with other Library, Archives, and Museum (LAMs) representatives in a **substantial meeting with WIPO Deputy Director General (DDG) Sylvie Forbin** and her senior staff. This was a frank and informative discussion of LAMs interest in advancing the exceptions and limitations agenda. Although there were some areas where the DDG and LAMs were in disagreement, there were others where there seemed to be the possibility of working together on shared interests.
 - 1.1.1 DDG Forbin was receptive to our encouragement for prompt action on release of the final text of the **Toolkit on Preservation** (https://www.wipo.int/edocs/mdocs/copyright/en/sccr_43/sccr_43_4.pdf). She was not able, however, to communicate details about what revisions were to be made to the document since its presentation at March's SCCR43. She also shared our desire to see work move forward on a companion toolkit on access, but emphasized work on it needed to wait for the release of the preservation toolkit.
 - 1.1.2 DDG Forbin was frank in noting her surprise at the **late appearance (November 2) of the United States'** "Updated Version of the Document "Objectives and Principles for Exceptions and Limitations for Libraries and Archives" (https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_5.pdf). She did, however, understand its potential usefulness for SCCR discussions on exceptions and limitations.
 - 1.1.3 By contrast, DDG Forbin had **deeper concerns with** the also late arriving (November 3) **African Group Implementation Plan** for the Work Program on Exceptions and Limitations (https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_6.pdf). Particular concerns were that it had been prepared without consultation with the WIPO Secretariat and included a significant number of tasks for the Secretariat that would be challenging to complete during what is already a heavily scheduled and already budgeted 2024.
- 1.2 **Chair's Leadership of the SCCR Session.** Regarding the SCCR session itself, as with the March 2023 SCCR43, Chair Owen Ripley led a meeting following a strict schedule that had been negotiated with the Regional Coordinators of Member States to enable all agenda topics to be covered. While meaning less time for discussion his approach ensured that no

items had to be deferred, even if they could not be brought to resolution given the limited time.¹

- 1.3 **Election of New Leadership**. Consensus was achieved for the election of the Chair and Vice-Chairs to serve for the 2024-25 biennium with two individuals (Adriana Moscoso del Prado of Spain and Vanessa Cohen of Costa Rica) swapping the positions of Chair/ViceChair at the end of 2024. During each year, Peter Lábody (Poland) will serve as Co-ViceChair. It remains to be seen whether either Moscoso or Cohen will follow Ripley's management of the clock or his helpful ability to state a summary "read of the room" that contributes to progress.
- 1.4 **Status of Toolkit on Preservation**. Although a revised text of the *Toolkit on Preservation* was not released to this SCCR, a report from the Secretariat to the Member States SCCR during the Tuesday Plenary Session announced that it was "quite advanced" and would be finalized "very soon." Once that is done, work will start on the second toolkit, related to access. The Secretariat hopes to "conclude this second toolkit on access" next year.
- 1.5 **Brazil's delegation**, as at SCCR43, remains a persistent and assertive voice for exceptions and limitations as well as on other matters. They wanted to ensure that civil society and Global South issues are given agenda time to counter WIPO's usual zeal for ideas to create new exclusive rights.
- 1.6 **African Group Implementation Plan**. SCCR's March 2023 adoption of the African Group's Work Program on Exceptions and Limitations had incorporated a broad outline of steps to set it in motion. The Secretariat should have understood these provisions as a clear direction to begin implementation, but nothing appeared by late October. In the absence of any action, the African Group stepped forward, and three days before the start of SCCR44, they put forth a proposed Implementation Plan (see: https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_5.pdf). Their ambitious proposal included a call for convening a total of six "intersessional" meetings distributed in three different functional areas, all to be held before next April's SCCR. Although the African Group's November 3 proposal was not fully embraced by SCCR member states, received positive comments from a number of the Regional Groups, especially, Latin America and the Caribbean (GRULAC) and Asia-Pacific. Even the normally hard-line Central European and Baltic States (CEBS) Group while, wanting more time to review the Implementation Plan, did express support for one-half of the practical steps that had been listed in last March's African Group Work Program.
- 1.7 **Discussion of AG Implementation Plan Deferred to SCCR44**. Unfortunately, the Implementation Plan's late arrival gave skeptical and chronically resistant Member States

¹ (To get a sense for the tightness of the agenda, see the Annotated agenda at:

https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_inf_1.pdf).

grounding to request it be deferred until the next SCCR. The Chair's Summary made clear that AG's proposed Implementation Plan had not been adopted by the Committee but it will be discussed at the next SCCR.

- 1.8 **Secretariat Mandated to Prepare Implementation Plan**. On a more positive note, the Summary by the Chair did call for the Secretariat to present a detailed implementation plan to the April 2024 Session and to do so in consultation with Member States (see: https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_summary_by_the_chair.pdf). The African Group's late submission of a specific and demanding Implementation Plan attempted to fill a gap created by the Secretariat's inaction, and by doing so succeeded in obtaining movement towards implementation. Thus, although they may have ruffled a few feathers, the African Group once again contributed to advancing issues key to SAA's agenda.
- 1.9 **AG's Work Program Never Questioned**. It is important to note that despite any resistance or hesitation given to the African Group's Implementation Plan, the legitimacy the Group's March Work Program on Exceptions and Limitations was never questioned by committee members. At SCCR, there is always the possibility that one or more entrenched Member States may come forward and claim that there had not been "consensus," something hinted at by at one or more Regional Group during the relatively short discussion that had occurred in March. If that point had been raised now, it could have derailed even minor steps forward. The fact it did not happen this November is clearly a positive note.
- 1.10 **Positive Contribution from the US**. After nearly 10 years of sitting on the sidelines and ignoring its own "Objectives and Principles for Exceptions and Limitations for Libraries and Archives" (SCCR/26/8), the United States delegation submitted an update to the document (see: https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_5.pdf). It added museums to the group of beneficiaries, added the idea of controlled digital lending; emphasized the need for exceptions to support access to content in archives, libraries, and museums; and generally encouraged Member States to take action to implement exceptions and limitations. Unfortunately, it did not move beyond merely encouraging individual Member States to adopt exceptions or to actually call for an international instrument to provide consistency. Nevertheless, even with its late arrival, it was positively received and identified in the Chair's Summary as a basis for discussion at the next SCCR.
- 1.11 **Broadcasting Treaty**. The the treaty to give broadcasters new exclusive rights remains very much in limbo as evidenced in SCCR44's discussions in "informals."² These

² "Informals" are a common practice at WIPO whereby only the regional coordinators and a select number (generally two from each region) of Member States participate in a discussion process that allows them to actually formulate, debate, and amend text. The "informals" have been held in a smaller room, separate from the main assembly hall, with the audio or audio and video transmitted to the assembly hall, and with the condition that

deliberations seemed to only underscore the divide between those countries wanting, or willing to accept, a narrow signal-based treaty and those insisting a treaty should authorize exclusive rights for transmissions over computer networks as well as for stored programs. Those more expansive exclusive rights would negatively affect archivists' work to capture and preserve broadcast programs, whether of news, education, or culture. At this SCCR, the Member States and NGOs showed greater understanding of the meaning of technical elements in the 17 articles in the draft broadcasting text, but that clarity seems to only have underscored the policy divide. Meanwhile, it remains a concern for archivist that despite a minor improvement the draft's text on exceptions and limitations, those remain optional and not mandatory. Thus, continued stalemate on the scope of new exclusive rights for broadcasters remains a positive for archives.

2 NEGATIVE OUTCOMES OF SCCR44

- 2.1 **Constraints on Statements/Interventions.** The tight schedule for SCCR44 prevented us from making meaningful oral statements to the Member States. Given the routine turnover of Member State delegates, the oral statements have always been a way to capture their attention about what is, to them, the quite foreign territory of archives materials, users, and professional practices. Written statements (see Appendix 1) may allow longer submissions but can lack the immediacy of oral presentations that can lead to follow-up conversations and coffee break conversations.
- 2.2 **Archives and Libraries Left out of Intersessional.** The all-important Summary by the Chair does call for action on an action item from the African Group Work Program. However, that item, a panel discussion on cross-border uses is only one of what would have been six "intersessional" meetings that were requested. It will also be only a "virtual" (entirely online) rather than a hybrid discussion that were hoped for because that format would have provided more weight because of the opportunity for greater personal interaction among the on-site Member State and NGO representatives. From SAA's perspective, the most disappointing aspect is that this intersessional's focus on cross-border uses of copyright works is described in the Chair's Summary solely in relation to the education and research sectors, with no reference to archives, libraries, or museums. The challenge for archivists will be to convince the event planners to adjust the program or list of speakers to address the cross-border roles archives play in research and education, and then to find suitable archival researchers to participate.
- 2.3 **Broadcasting Discussions Will Continue to Distract.** The fact that the current chair still thinks it worthwhile for the SCCR to try to resolve differences on the broadcasting issue will mean continued loss of time and attention when its proponents should either accept the reality that an agreement on control of conventional broadcast signals is the best they can do to address signal piracy or they should pack their bags and head home.

no recording or reporting of the informal discussions is to be done by Member States or Observers.

- 2.4 **Misguided Commissioned Study on Research.** Fully one-half of the exceptions and limitations agenda topic was devoted to a detailed presentation and discussion of a study WIPO commissioned on Challenges of Research Institutions and Research Purposes in Relation to Copyright. Its author, a Secretariat “copyright über alles” favorite, Raquel Xalabarder, was more focused on the use of purchased print or electronic resources or material accessed through collective licensing. She discussed exceptions as a last resort to be avoided unless they incorporated fees for remuneration. Her understanding of research itself and who counts as a researcher were incredibly narrow. ICA and SAA, in a joint oral statement (see Appendix #) called out these shortcomings. We hope to see these concerns addressed in her final revisions, but fear they may be lost in her inherently industry-friendly conceptual framework.
- 2.5 **Reduced Time for SCCR in 2024.** There will only be one SCCR session in 2024. Although it will be a total of five days, because time is to be divided into three equal parts, the exceptions and limitations will only be given one and one-half days rather than the usual two that has been the practice in SCCR for many years. Meanwhile, the calls for “information sessions” on artificial intelligence and on rights of audio-visual producers, as well as a possible presentation on one or more of the Other Matters agenda topics (artist resale, theatre directors, or public lending rights), will make it challenging to ensure that sufficient time and Member State attention goes to archives concerns.
- 2.6 **Further Constraints in 2024 SCCR.** Beyond there being only one SCCR in 2024, two new topics for discussion, audio-visual producers and artificial intelligence, will be added. Even if these will only be as part of the non-action “Other Matters” agenda, they will take time away from exceptions and limitations and opportunities to call Member States’ attention to the long-standing copyright barriers that coordinated international action would resolve. Furthermore, when WIPO in the 1990s turned its attention to the new technology of the internet, the result was treaties to ensure that technology would be used to monetize and lock down content. Thus, there is reason to be concerned about the current rash of interest in artificial intelligence. Regardless, both the AI and the audio-visual topic will take time and resources of the Secretariat that really are needed to support the implementation of the African Group’s Work Program.
- 2.7 **Disappointment with the LAMs.** Overall, the LAMs coalition was less effective than in prior SCCRs. A transition to a new IFLA Head of Delegation is inherently challenging. Meanwhile, the LAMs group collectively dropped the ball of having regularly scheduled coordination calls to follow up on last March’s SCCR43 outcomes. We were also less prepared for the structural constraints of a shorter SCCR44. Admittedly, those shortcomings may have been less of a factor in the diminished outcomes of the November session than was the fact that the Secretariat was unable or unwilling to pursue the implementation steps that were quite obvious in the African Group’s March Work Program. Perhaps greater engagement by the coalition with the Secretariat during the late spring and summer months could have aided in maintaining the momentum from the March SCCR.

2.8 **Needed to be More Proactive.** The coalition also should have been more proactive in keeping LAMs issues from being overshadowed by the concerns of other advocates for exceptions in the comparatively more amorphous area of education and research. Although LAMs share significant objectives with these other interests, going forward, we need to work to ensure that library, archives, and museum exceptions are promoted as particularly well-suited for exceptions and limitations because they would vest exempted copyright activities in trusted institutions with more readily defined beneficiaries.

3 NEXT STEPS

3.1 **More Active Role Needed.** SAA should seek an active role in calling for regular (monthly) LAMs coordination calls focused on specific tasks with clear to-do lists and assignments to specific individuals. In collaboration with our LAMs partners, we need to seek opportunities for appropriate members to be in contact with the WIPO Secretariat and the incoming Chair. In particular, the archives organizations should reach out to the Secretariat at respectful but periodic intervals about concluding work on the *Toolkit on Preservation*. Further, we should work with LAMs coalition members to ensure we improve our internal electronic communication and file-sharing channels to maintain distinct LAMs forums and limit dependence on the better-funded access-to-knowledge groups.

3.2 **SAA Work with ICA.** should continue to work closely with the ICA representative. While SAA has its distinct needs, perspective, and resources to bring to bear on the WIPO advocacy, there is no substitute for the stature that an international organization has in a forum such as WIPO. The ICA delegate, Jean Dryden, has developed a good working relationship with the WIPO Secretariat, and SAA should work to support her wherever possible as well as support her persistence in advocating for the archives component within the LAMs advocacy.

3.3 **Initiative in Promotion *Toolkit on Preservation*.** Together SAA and ICA should work to help the Secretariat in planning the promotion and distribution of the *Toolkit for Preservation*.

3.4 **Action to Engage in Intersessional.** To ensure that education and research do not swallow up all the attention in the planned intersessional virtual discussion on cross-border uses of copyrighted works, ICA and SAA will need to identify prospective participants for the event so that the need for archival exceptions is not overlooked.

Society of American Archivists (SAA)
General Statement to WIPO SCCR44 on Exceptions and Limitations
November 6-8, 2023
William J. Maher (w-maher@illinois.edu)

What is so special about archives that SCCR needs to take action right now? By definition archives provide one-of-a-kind records of humanity. That uniqueness makes archives invaluable to every citizen, student, scholar, and writer of creative works, no matter where they live. Archives however are uniquely vulnerable because of their very one-of-a-kind nature. These irreplaceable collections can be instantly lost forever in fires, floods, or wars and conflicts.

The enormity of these threats can be seen in the devastating fires at the National Museum of Brazil in 2018, at the University of Capetown Library in 2021, and among the multiple collections that the Lahaina Restoration Foundation lost in the Maui fires in 2023. Each catastrophe caused permanent, irreversible loss of knowledge, heritage, and memory.

Amidst the growing climate crisis, no organization concerned with innovation and intellectual and creative works can afford to ignore the lessons of these disasters. The future of knowledge, culture, and social memory clearly requires aggressive preservation copying of archival collections. Unfortunately, unbalanced and internationally inconsistent copyright laws no longer fit the modern world, and they create a legal barrier that impedes the preservation and access needed to protect and preserve the essential works found in archives around the world.

It should be obvious that the ability to copy archival collections is clearly essential to our mission to preserve the world's heritage. UNESCO's Universal Declaration on Archives states that archives must safeguard societal memory and be accessible to everyone. We can fulfill that mandate only by copying archives to protect from fires, floods, and wars and to make them available for purposes of education, research, heritage, and the securing of personal rights.

The need for an instrument for exceptions to support public interests, including those of archives and libraries, was put forward as a Committee document (SCCR/13/5) in 2004-05. Over the nearly 18 years since, several studies and considerable SCCR discussion have brought maturity to Chile's concerns. Those same years have demonstrated the urgency of the public interest in exceptions because the survival of cultural-heritage works found in the world's archives faces twin existential threats that come from increasing climate extremes and rapid technological changes that can lock archival content in outdated hardware and software. Most Global South and many Global North nations lack resources to retrofit their facilities to withstand extreme climate events or to deal with technological obsolescence, but addressing either requires the legal space to do proactive copying. Without prompt action, how many portions of the world's knowledge and cultural heritage held in global archives will literally disappear forever?

No archives can respond to these twin threats while working within the current maze of copyright laws. The national disparities in resources and technical capacity needed for digital copying mean that survival of documentary heritage requires that countries engage in cooperative projects across borders. This is exactly the kind of international work that is

currently hindered by lack of consistent copyright laws. It is why we need WIPO to acknowledge the enormity of the twin threats of climate crises and technological obsolescence. Otherwise, the lack of specific exceptions to copyright will continue to doom the very preservation projects that so many countries need to launch.

What recourse do archivists have if there are no balanced exceptions to enable work across borders? Must archivists just ignore the law? Because SAA's members would like to be ambassadors for the copyright system rather than opponents, we seek exceptions that will enable us to meet society's needs and build the public's faith in a balanced copyright system. As the UNESCO Declaration requires, we want to respect "the pertinent laws and the rights of individuals, creators, owners and users." For SAA, this also includes respecting the special circumstances of indigenous knowledge and rights. We seek to, in UNESCO's words "contribute to the promotion of responsible citizenship." Without the help of WIPO's distinctive mission, however, we cannot meet the Universal Declaration on Archives' mandate unless we are prepared to violate the world's ill-fitting copyright laws.

Because archival collections inherently are works that exist as the only copy in the world, these materials need to cross borders so that people everywhere can access their own heritage, documents, no matter where in the world those heritage documents are located. Further, whether they are correspondence, technical reports, architectural drawings, photographs, or all types of audio, video, or computer records, the majority of these documents were not meant for commerce. Thus, copying them for preservation or cross-border use does not conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interest of the author. Furthermore, current licensing systems cannot provide a viable resolution of the copyright barriers for such non-commercial materials, especially when there is no known or discoverable creator. Nor can licensing systems address issues of cultural appropriation that arise with indigenous cultural works that do not have an identifiable individual creator.

WIPO showed concerns about these problems when it commissioned three distinguished experts to create a *Toolkit for Preservation*. It was completed and presented to Member States at SCCR43, but for some reason, the final text has not been released. That should be done promptly. Member States need to have these principles to incorporate into their national laws. More is needed-- WIPO needs to take the next step of adopting an international treaty to support preservation exceptions and limitations. Otherwise, archivists across the globe will continue to be hamstrung by the ambiguity of competing national laws. Lacking legal clarity, critically needed preservation copying will be stalled or deferred entirely .

The only organization that can provide a global policy dealing with copyright's current barriers to knowledge is WIPO. Only WIPO can enable archivists to fulfill their crucial mission to society within the bounds of a balanced copyright system. The opponents of exceptions often say that no WIPO action is needed because existing international systems provide sufficient flexibility for countries to create exceptions for national needs. This is wrong. WIPO's purpose is to provide international policy guidance, is it not? National flexibility as a guiding principle rings hollow in an organization devoted to creating global solutions. If WIPO does not provide an international framework for communication and the preservation of knowledge, who else can?

The Africa Group has charted a way forward. Its Work Program on Limitations and Exceptions (SCCR/43/8,) adopted by SCCR in March 2023, outlined steps that would position WIPO to fulfill its international mandate for a global policy that supports development, dissemination, and use of knowledge. SCCR44 should move quickly to begin implementation of the Work Program. Fortunately, the general outline of next steps outlined in the March Work Program has now been supplemented by an actionable and substantive implementation plan proposed by the Africa Group. The plan, found in document SCCR/44/6 is substantive, inclusive, and practical. It sets forth a transparent and inclusive process consistent with existing practices in WIPO committees. Coincidentally the updated version of the United States of America’s “Objectives and Principles for Exceptions and Limitations” (SCCR/44/5) provides one option for approaching the discussions need to fulfill the promise of the Africa Group’s proposed implementation plan.

No more time should be lost before there are more disastrous fires, floods, or wars. In addition to the final release of the *Toolkit on Preservation* (SCCR/43/4). SCCR should give priority to the Africa’s implementation plan for a Work Program and discussion of the USA’s Objectives and Principles. The severity of the threats to the preservation and accessibility of the world’s archives is real. It is therefore essential that SCCR44 follows through now on the progress made in March 2023. Neither the *Toolkit* nor the implementation plan should be delayed any longer—the disasters threatening the future of knowledge and heritage will not wait.

ABOUT THE SAA

The Society of American Archivists (SAA) is the oldest and largest association of professional archivists in North America. Representing more than 5,000 individual and institutional members, SAA is the authoritative voice in the United States on issues that affect the identification, preservation, and use of historical records. SAA serves the education and information needs of its members and provides leadership in stewardship of the nation's historical record.

Since the 1960s, SAA has spoken in regard to archives and intellectual property and has issued more than 20 policy statements on copyright since the mid-1990s. SAA believes that archivists must take an active role in promoting the importance of archives and archivists in order to increase public support, shape public policy, and obtain the resources necessary to protect the accessibility of archival records that serve cultural functions as well as ensure the protection of citizens' rights, the accountability of organizations and governments, and the accessibility of historical records. Further, archivists promote and provide the widest possible accessibility of materials, consistent with any mandatory access restrictions, and indigenous cultural property concerns. Although access may be limited in some instances, archivists seek to promote open access and use when possible.

Archivists are the custodians of writings and other materials that have been created by their own organizations, by third-party authors, and a wide variety of external communities. Archivists try to provide access to these materials within the bounds of law, public policy, donor concerns, , and traditional cultural rights. Yet copyright law is perhaps the most important challenge that archivists face in providing wider access to our collections, especially digitally. It is also a challenge for the students and scholars wishing to use our collections in their research and study.

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Appendix 2: Oral Statement to SCCR

Society of American Archivists (SAA)
Oral Statement to WIPO SCCR44 on Exceptions and Limitations
November 7, 2023
William J. Maher (w-maher@illinois.edu)

Delivered on behalf of the Society of American Archivists as well as all the LAMs NGOs at this SCCR.

By definition archives provide one-of-a-kind records of humanity. That uniqueness makes archives invaluable to citizens, students, and scholars across the globe. But archives are uniquely vulnerable. These irreplaceable collections can be instantly lost forever in fires, floods, and conflicts, as seen in the devastating fires at the National Museum of Brazil in 2018, at the University of Capetown Library in 2021, and just last August in the multiple collections that the Lahaina Restoration Foundation lost in fires on Maui.

Amidst the growing climate crisis, an organization like WIPO concerned with innovation and intellectual and creative works can afford to ignore the lessons of these disasters. They only underscore the urgency of the problem.

Fortunately, the US has provided a very timely update to its Objectives and Principles document. The maturity it reflects shows the benefit of the rich discussions in SCCR since the initial version was tabled in 2014. The updated document can provide a platform for discussions as SCCR works to chart a path forward. We are, however, concerned that it does not provide a way to think about the cross-border issues. In a global environment that is an oversight that we trust the US will attend to with the same care as the rest of the revisions in the Objectives and Principles.

No more time should be lost before there are more disastrous fires, floods, or wars. The disasters threatening the future of knowledge and heritage will not wait.

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IPWG BULLETIN: Day Zero Bulletin (e-mail sent Monday 6 November 09:02 Central European Time)

IPWG Colleagues, Jackie, and Helen:

In a few minutes I must head off to the WIPO complex to get my credentials and locate my “desk” in the WIPO assembly hall.

Normally, there’s not much to report until the end of the first day. However, this session is a little out of the ordinary since it is scheduled for only 3 days but has just about as much on its agenda as a standard 5 day session.

The important “news” at this moment is that two documents that arrived at nearly the last minute offer positive prospects for the agenda item on Exceptions and Limitations for Libraries and Archives (scheduled for Tuesday).

Shortly before I leave home to begin my travels on late Thursday afternoon (November 2), we received notice that a new document had been posted to the WIPO site for SCCR/44. This was Updated Version of the Document “Objectives and Principles for Exceptions and Limitations for Libraries and Archives” It updates a document the USA first tabled in 2013. The update is:

https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_5.pdf

This is an important development since it is the first time the US has put forward any kind of document as a statement on exceptions for Libraries and Archives. Much more important is that the updates are generally favorable to SAA’s interests in an international instrument on exceptions. It adds museums to the group of institutions to be included; it contains a number of references to the role of exceptions in supporting access by users; notes a right of display; and notes what could be called “controlled digital lending.” Please note, that these are only “objectives and principles” that the US delegation is proposing to frame the discussion. The document still is focused on whatever exceptions might evolve from the objectives and principles. The US is targeting these at modifications in national laws rather than calling for an international instrument that would set a threshold level of exceptions via a binding treaty. Nevertheless, it is a very promising turn for the US to be putting forward something that looks like a policy statement and expanding on where they were in 2013. It will be important to see how it is voiced by the US delegates at this SCCR and what reaction it receives.

Secondly, on Saturday when I was at the airport in Paris between flights, I received a notice from the LAMs coalition’s What’sApp. The posting noted that the Africa Group has put forward an “proposed Implementation Plan” to move forward work on its Work Program on exceptions from last spring’s SCCR. It contains a reasonable set of implementation steps and advocates for them to be conducted “interssionally” between SCCRs. Also, it outlines a proposal for inclusive membership in the groups that would be working on subsets of the overall 3 main goals of the Work Program. It is thoughtful and thorough. The document can be found at:

https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_6.pdf . Of course this is only
SAA @ SCCR: Day Zero Bulletin

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a proposal and one arriving at a moment late enough that naysayers will say did not give them enough time to take consideration or action at this SCCR session. But it represents a very positive step.

As a result of these two changes, I had to do some significant edits to my written statement on the LAMs exceptions agenda, especially since the original final version had ended with a mini-jeremiad that effectively said “get off your duffs and do something.” Given the steady rain, I had time yesterday morning to make the modifications, and except for the length, I am pleased that the new final version makes the case SAA should be presenting. I have attached it here for your reference.

IPWG BULLETIN: Days One and Two Bulletin (e-mail sent Tuesday 7 November ~23:02 Central European Time)

Dear SAA IPWG and Governance Colleagues:

This being rather late on Tuesday evening, I thought I should give a telegraphic report of the first two days of this exceptionally short three-day meeting. With it never being possible to have a reliable sense of how well a SCCR week is going until after the last gavel at the end of the closing session, my perspective on what I report below may change after however late we adjourn tomorrow (ostensibly at 6:00 or 7:00 pm). At the moment, it's fair to say that I am more optimistic than pessimistic, and I hope I will be able to report that we made progress on the positive results of last March's SCCR meeting.

OVERALL OBSERVATIONS:

As in the last session, Chair Owen Ripley has been excellent at managing the clock by setting specific times for agenda segments to start and stop, as well as keeping the coffee breaks, lunch, and adjournments on time (within minutes of the target). His discipline has translated into shorter interventions by Member States and NGOs and less repetition of stated positions.

The Chair has also continued his practice of wrapping up discussion on all segments, whether or not controversial, by providing his "Reading of the Room." He thereby avoids trying to get consensus on issues where there are clearly entrenched positions while also highlighting areas of agreement. This is about as close as SCCR has ever gotten to becoming of "one mind" on a topic. Of course it also defers major sticking points for later attention.

DAY ONE MONDAY:

Since Ripley's term will end at the end of December, there has to be an election process for the next Chair and Vice-Chair. Ripley reported that a consensus "package" had been concluded for the 2024/2025 biennium. For calendar 2024, the Chair will be Adriana Moscoso Del Prado Hernández (Spain) and the Vice-Chair will be Vanessa Cohen (Costa Rica). For calendar 2025, Cohen will be Chair, and Moscoso will be Vice-Chair.

After that and some other routine business, the Chair moved to the broadcasters treaty, and he provided his overview of work since the last SCCR. He noted the changes (frankly not that many or that terribly substantive) in the draft text highlighting points where there were still disagreements. Following statements by Regional Coordinators and Member States and a coffee break, at noon the meeting went into informals (discussions in another, smaller, room with participants limited to Regional coordinators and two additional MS from each Region). Although the audio and full stream-to-text was made available to all of us in the main assembly hall we were required to not report out, by any means, the nature of the discussion of the informals. What I can say is that the discussion proceeded by going article by article through all 17 articles covering both items that had been revised since the last SCCR as well as opening

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discussion to other concerns delegates had, and of course, debates over points of difference on Page 2

treaty elements where there may be disagreement. These broadcasting informals continued to the end of the day Monday.

DAY TWO-TUESDAY:

The second day (7 November) began in plenary session with the Chair providing his Reading of the Room of the Broadcasting informals. Without getting into the details he noted that there were a number of changes where the discussion led him to plan to make some textual revisions before the next SCCR. More importantly, he acknowledged there were what I would call “irreconcilable differences” that seem to me to destine future work on the broadcasting to more years of stalemate. These largely come from the difference on whether the treaty should cover only broadcast signals transmitted on a one to many basis vs. broadcasting done on wireless or wired transmission as well as by computer networks. The latter would supposedly “futureproof” the treaty and the former avoid the possibility of post-fixation rights and broadcasters ending up with exclusive rights over content. My sense is that this is such a major impasse that either there will be a compromise on a treaty of more limited scope; the topic will be abandoned entirely; or the discussions will continue another 25+ years. Theoretically, the sooner broadcasting is settled or removed from the agenda the better so that more time and attention can be focused on limitations and exceptions.

The second half of Tuesday morning was taken up by a presentation and discussion of a Scoping Study of Challenges of Research Institutions and Research Purposes in Relation to Copyright (https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_4.pdf) by Raquel Xalabader. This was dense 73-page report that tried to describe how research work is done; what kinds of © materials are used for research; what kinds of access are available; and what are the © implications of the research use of the materials as well as distribution of results of research. SAA signed on as co-sponsor, with ICA, to a statement on the study noting especially its shortcomings regarding to lack of consideration of historical and humanities research as well as its blinders in thinking about researchers only in terms of “professionals” (something we know not to be the case for archives materials). The other most obvious problem with the study was Xalabader’s emphasis on research work being conducted only if a license or licensed copy could be had, or if there were compensated (i.e., fee-based) exceptions and limitations. She did note that weaknesses in the licensing systems mean that limitations and exceptions sometimes would be a necessary fallback. Further any action on limitations and exceptions should be done only at the national level and only within the confines of the Three-Step-Test, which can be very restrictive, or at least catching point that detracts from efforts to enact exceptions and limitations.

Tuesday afternoon when the committee reconvened at 3:00 pm there was a plenary discussion of limitations and exceptions for archives, libraries, and museums. It focused on two new developments: the United States’ *Updated Version of the Document “Objectives and Principles for Exceptions and Limitations for Libraries and Archives” (SCCR/26/8)*

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https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_5.pdf and *Draft Proposal by the African Group for the Implementation of the Work Program on Exceptions and Limitations, Adopted at the 43rd Session of the WIPO SCCR*

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https://www.wipo.int/edocs/mdocs/copyright/en/sccr_44/sccr_44_6.pdf

As noted in my recent e-mails, both of these items are very positive developments because they would contribute not just to the continuation of the E&L topic but also create the potential for development of language that could ultimately be the basis for a treaty discussion (obviously some distance away).

On Tuesday afternoon, the first two hours were given to plenary discussion of the two new documents. Fortunately, in addition to Regional Coordinators and Member States being able to make oral statements, NGOs were also allowed to take the floor, although with instructions to keep our statements very brief. At the last minute I was able to rework segments of my 1,285 word written statement and come up with about 274 words that were on-point and could also be put forward as a statement from, the LAMs coalition as a whole. The result will be incorporated as an appendix in my final report on SCCR44.

From the Member States' comments made in plenary, it appeared there was wider support than I had imagined for the African Group Work Program presented last March. More controversial was the newly presented AG Implementation Plan. Some of this was administrative and some was just entrenched positions of those wanting not do anything that could possibly lead to talk of a binding instrument. The administrative concerns (which could have been just stalking horses for outright opposition) have some merit. There will be only one SCCR in 2024; WIPO meanwhile has to organize two diplomatic conferences next year, thus creating a drag on their staffing resources; the budgetary cost of the intersessional meetings that the African Group has called for; and the challenges of having hybrid or in-person meetings when dealing with 190+ countries across the world.

The US Objectives and Principles were more warmly received although there was some hesitance to thinking about how they could actually be used as a base to lead to textual discussions. For my part, the deepest flaws in the US O&P is that they envisage only nationallevel solutions and nothing that would enable the creation of global consistency for library, archives and museum exceptions. Overall, Member States were receptive but wanting to have more time to consider the document, with some commenting that it should be looked at in depth at the next SCCR.

At 5:00 pm, the committee moved to "informals" to discuss the AG proposed implementation plan, and this ran until the 6:00 pm adjournment. Overall, my "read of the room" for the afternoon is that it was to be treated as a matter of fact that the Committee had adopted the AG Work Program last March (I feared there would be pathetic cries that there "was not consensus" on there being an approved Work Program); the Work Program itself contained a broad brush

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description of the kinds of activities now being called for in the AG Implementation Plan; the multiple proposed intersessional working groups and their presumed activities created administrative challenges, especially if they were to be getting underway before the next SCCR (in April); and some of the topical areas for the implementation working groups are more

palatable than others. These matters were left unresolved at the end of the day, but I expect the Chair may come back tomorrow morning with his read-of-the-room to identify his sense of where there seems to be consensus (or substantial consensus) and areas that may need to be deferred until later. My hope is that at least one of the intersessional working groups can be instituted, although more than one would be good, or alternatively a timetable for sequencing the working groups.

Tomorrow, Wednesday, is the final day where “other matters” (topics less than formal agenda items) will be the center of attention until late in the day when there will be scurrying about in the hallways as Regional Coordinators and Member States huddle over successive iterations of the draft Chair’s Summary that becomes the report on what SCCR44 has done and what are the all important next steps, if any. At a reception this evening I heard some of my colleagues suggest there was not too much that would be so controversial as to drag out the deliberations late into the evening. I’ve been going here too long to share that optimism.

IPWG BULLETIN: Day Three Bulletin (e-mail sent Wednesday 15 November 12:58 US CST)

Wednesday 8 November, SCCR44's closing session was much like the final day of any other SCCR session— a time when the Global North/Global South policy and power divide becomes most apparent in both of the meeting's parts—the morning to mid-afternoon “Other Matters” agenda and the late afternoon/evening/night writing by the Chair of his “Summary” of the meeting. Closing days are a peculiar mix ranging from substantive requests for new topics for addition for SCCR's agenda to the tedium of late hours when time seems to stop. It's then that all the action is taking place outside the assembly hall as the Regional Groups of Member States contend over wording the Chair has drafted to summarize the session in an attempt to bridge rather large policy chasms about next steps. Work on the Chair's Summary can begin even before the morning session and continue right through the often late night final reconvening for what feels like a ritual reading of a text of little more than three pages. This November's SCCR fit right into this mold.

“OTHER MATTERS” AGENDA. The closing day begins with the “Other Matters” agenda, where the Committee discusses proposals from Member States or Regional Groups on topics that have not yet been sanctioned to be part of the formal action or main agenda. These topics generally are items for which new exclusive rights are being requested, often on matters more of interest to developing or lesser developed countries or concerns focused more on individual authors, creators, and performers than on the copyright industry establishment. These are often phrased first as requests for WIPO to commission a study, and often followed by appeals to have the topic elevated to become an item on the SCCR's “Standing Agenda”—those matters which by WIPO protocols can lead to drafting of a text to become the basis of a binding treaty.

Often the “Other Matters” topics are requests from Global South Member States, for an international standard. Recent examples include artists resale and royalty rights; exclusive rights for theatre directors in their productions; and payments to be made to authors each time one of their books is loaned by a library. At SCCR44, these topics only saw brief reports from the WIPO Secretariat on the status of relevant studies it had commissioned.

The item occupying the large majority of time in Other Matters was a follow-up discussion to a request that GRULAC made last March for action on a revised version of a proposal it first made in 2015 for “Analysis of Copyright in the Digital Environment” (SCCR/31/4). Since 2015, issue has been discussed at several sessions and especially in the context of reports from experts hired by the Secretariat. However, calls for action to address the concerns about inequitable remuneration received by Latin American artists and performers have faced continued resistance by developed nations and side-tracking by the WIPO Secretariat. That coincided with a 2016 through 2022 period when unrelated political reversals in Brazil resulted in the absence from SCCR of the most articulate advocates who had called for WIPO action. With the 2023 return to

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power of Lula da Silva, the Brazilian delegation returned with renewed insistence for attention to GRULAC's call for examining the effect of the digital environment on the economic well-being of individual creators and performers.

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This November's SCCR discussion of Copyright in the Digital Environment began with the Secretariat providing a status report largely focused on last March's "Information Session on the Music Streaming Market" but did not report any substantive follow-up steps or actions by the Secretariat. Brazil repeated its call that the topic of copyright in the digital environment be made a standing agenda item. Its concern was that new networked technologies were being used by large media companies to distribute music content without providing equitable remuneration to individual artists and performers. GRULAC's request for a study and work to resolve inequities in the digital marketplace has met opposition, especially from the highly developed countries in Group B, partially on the legitimate concern that the two existing substantive items on the regular agenda (a broadcaster treaty and exceptions and limitations) needed to have the greater share of the Committee's time. Opposition to the GRULAC request for a place on the regular agenda was also based on arguments from developed countries, including the United States, that the basic concerns of GRULAC and Brazil are not copyright issues but matters of market functions and that concerns about remuneration instead were matters for contract law. Brazil and Chile and others from Latin America answered those statements by reminding Group B that copyright is about providing authors, artists, and performers with economic incentives for creation, and thus market conditions are copyright related. In the end, time ran out before a presentation from the capital of Uruguay on remuneration related updates in its legislation. Discussion of the GRULAC proposal stalemated—Brazil insisting that serious work needed to be done on an analysis and Group B refusing to make it a standing agenda item. Without clear next steps, the Chair's closing Summary of SCCR merely indicated that opposing viewpoints had been voiced and that the GRULAC request would be deferred once more to the next SCCR, when GRULAC is to present a proposed workplan.

There was a particularly telling moment in the middle of the deliberations on the GRULAC proposal when the Chair announced "a little bit of latebreaking news." He reported having just received a proposal from Group B calling for an Information Session on artificial intelligence at the next SCCR. He then stopped the ongoing discussion to give Germany the floor to read out a short proposal that noted the need to learn about issues ranging from the AI ingesting and reusing of copyrighted works without author's permission to whether AI outputs were copyrightable. Anyone who has thought even briefly about the many ways AI may affect, override, or be constrained by copyright law would realize that such a discussion at SCCR will certainly draw significant time away from anything else scheduled for the coming session in April, 2024. Brazil made the quite valid point that since AI is clearly not an analog technology, it absolutely fits within its long-standing call for an analysis of copyright in the digital environment. Unsurprisingly, Group B insisted that the AI matter be handled separately. (A point it ultimately lost on in the long battle over the Chair's Summary's outline of next steps.) Not to

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be overlooked is the Chair's disrespect of GRULAC by interrupting its agenda time with a late-arriving proposal from the region that dominates the copyright industry.

Meanwhile, at the beginning of the week, Ivory Coast had just tabled a call for yet another issue to be considered under the Other Matters portion of the meeting. It proposed a study on the "Rights of Audiovisual Authors and their Remuneration for the Exploitation of their Works." Regardless of which side of the global divide would benefit from such a study, it's

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unquestionable that, like the AI information session, this topic would take further Committee time at the next SCCR, thus impeding work on already established issues, such as exceptions.

The Wednesday morning session also provided a very revealing, if frustrating, glimpse into the reality of the power imbalance at WIPO. It seems that whenever a new proposal is presented to the committee, whether it be the Africa Group Implementation Plan, Group B's call for a AI information session, or Ivory Coast's call for consideration of audio-visual authors, there is inevitably a regional group or Member State who will claim that SCCR cannot take up the issue because it has arrived too late for them to have considered what their position is on the matter or to have "consulted with our capital." In some cases, that's not an unreasonable request, but what was striking was the hypocrisy of Group B and EU members eagerly embracing the call for the AI information session, which only appeared in the last couple hours of the week, but arguing that the revised US Objectives and Principles and the African Group Implementation Plan, both of which had arrived before the SCCR had started, and both of which had roots going back months or years, somehow had appeared too late for them to discuss and consider. Although it is true that there are similar tactics in how some Global South Member States reacted to the Group B call for an AI session, the whole incident leaves the impression of SCCR as a cartoonish Rococo Minuet in which elephants are paired with forest floor creatures.

CHAIR'S SUMMARY AND CLOSE OF SESSION. In the normal world, the task of a simple three and one-half page factual summary of what had been discussed over a week's committee meetings would seem quite routine. In the alternate reality of WIPO, it becomes a high-stakes drama where all the policy differences that had been hidden behind diplomatic niceties suddenly emerge and threaten to vaporize any sense of consensus on what had happened. Ironically, the "Chair's Summary" is a device created several years ago when debates over the "Committee Conclusions" resulted in sessions that stretched to midnight or beyond, when the authorization of some Member State delegates had expired. While the largest portion of a Chair's Summary merely recites the agenda topics and the general subject matter of discussions, the current Chair has used it to provide his general sense of where Committee discussion was headed, noting areas of apparent consensus and areas where differences remained.

It was not until nearly 9:00 PM (two hours past the scheduled close) that the Chair was able to present a summary on which he presumably had obtained consensus from Regional Groups.

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Overall, it contained unsurprising statements of continuation of the existing topics on the agenda. In regard to policy matters, his “read of the room” on broadcasters’ rights stressed areas of shared objectives (e.g., that a treaty needed to be signal-based and not cover post-fixation activities) and listed three areas of division of opinion that needed further work. Although there seems greater clarity about the nature of the points of disagreement, the division they reflect is not new and unlikely to be resolved in the near term.

In regard to exceptions and limitations, it is disappointing that the African Group’s proposed implementation plan was not adopted and marked for no more than just further discussion at the next SCCR Session. The major step forward is that one element of that plan will receive attention through work of the Secretariat. Before the next SCCR, the Secretariat is to organize a

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virtual (i.e., via Zoom) panel discussion on cross-border uses of copyrighted works in the educational and research sectors. Unfortunately, this call for intersessional work did not include any reference to archives, libraries, or museums. On the other hand, the Chair's Summary also called for the Secretariat to present, at the next SCCR, a detailed implementation plan for the work program on exceptions and limitations. Presumably that would include areas of concern to LAMs. Furthermore, the plan for the next SCCR to discuss the US Objectives and Principles document will also offer a way to ensure the LAMs topic is not overlooked at next April's SCCR45.

Meanwhile, it appears that Brazil obtained an important concession in that the Chair's summary indicates the information session on generative AI at the next SCCR will be scheduled as part of GRULAC's long-standing call for attention to copyright in the digital environment. The Chair's Summary had specifically included assignments for intersessional work to the Secretariat that should avoid the ambiguity that followed the March's session adoption of the African Group Work Program. At the same time, leaving matters in the hands of the Secretariat will mean that the LAMs NGOs will need to engage with and monitor the Secretariat's activities over the coming months.

Overall, while the results of SCCR44 were disappointing compared to those of last March's SCCR43, some progress has been made by directing attention of the Committee and Secretariat to the need for implementation plans. Moreover, SCCR44 made clear that even if the African Group's Implementation Plan was not adopted, there was no question that its March 2023 Work Program was established as a committee document, making it impossible for it to be ignored.

Appendix 4: ICA-SAA Joint Statement

International Council on Archives and Society of American Archivists
Joint Statement to
WIPO Standing Committee on Copyright and Related Rights
SCCR/44 on SCCR/44/4

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*Scoping Study on the Practices and Challenges of Research
Institutions and Research Purposes in Relation to
Copyright*

November 7, 2023

I speak on behalf of the International Council on Archives and the Society of American Archivists. While we were pleased that Professor Xalabarder's study raised issues that we've been talking about for some time, we were disappointed at the narrow focus of the study. It misses the mark in terms of who does research, where research takes place, and the materials researchers look at.

The definition of researcher is too narrow ("Researchers are professionals engaged in the conception or creation of new knowledge....." p. 1). Many non-professionals (e.g., family historians, students, ordinary citizens) conduct research to create knowledge that is important to them and their communities.

Secondly, research takes place not only in academic institutions and in universities (p. 8), but in a range of archival institutions, public libraries, museums, and other cultural heritage institutions.

Third, research is not limited to published works in specific library collections (p. 8). Archival materials (largely unpublished) preserved by a range of cultural heritage institutions provide a rich trove of raw material for researchers in the social sciences and humanities, as well as science.

If this scoping study is to be the basis for any further work, proponents must be mindful that it excludes many individual and institutional stakeholders as well as a wide range of research resources. Our question is: Is there a reason why the focus of the study was so narrow?