

**Society of American Archivists
Council Meeting
May 18-20, 2022
Chicago, Illinois**

**Consent Agenda: Ratify Executive Committee Interim Actions
(Prepared by Governance Manager Felicia Owens)**

BACKGROUND

Current parliamentary policy agrees on validating board decisions made remotely, and ratifying the Council's online and conference-call decisions via the Consent Agenda does not conflict with any existing SAA policy.

DISCUSSION

Given the Executive Committee's use of an e-mail discussion list to function as a group and make decisions remotely, approving interim Executive Committee actions via the Consent Agenda contributes to streamlining the group's work and improves access to the interim decisions of SAA's elected decision makers.

RECOMMENDATION

THAT the following interim actions taken by the Executive Committee be ratified:

- Agreed to join as a coalition partner with [Learn from History](#), "a coalition of organizations that believe that fact-based, accurate history must be taught in American K-12 classrooms," as recommended by the Committee on Public Policy. (April 20, 2022)
- Agreed to sign on to a letter, as a member of the National Coalition for History, thanking David Ferriero for his many years of service as Archivist of the United States. The letter was presented to Ferriero on his last day in office before retiring. (Appendix A) (April 27, 2022)
- Agreed to sign on to a letter, at the recommendation of the SAA Intellectual Property Working Group, to be sent to the Regional Coordinators of member states of the World Intellectual Property Organization articulating the issues that matter most to those needing exceptions and limitations to copyright. (Appendix B) (May 2, 2022)
- Agreed to join [Unite Against Book Bans](#), a national advocacy campaign led by the American Library Association to highlight and mobilize widespread public opposition to removal of reading materials from libraries and schools. (May 6, 2022)

April 29, 2022

Dear Archivist Ferriero:

We write today as civil society organizations and individuals committed to accountable government, access to information, and the preservation of the records of our shared history to thank you for your service.

For over 12 years, across three administrations, you have advanced and defended a simple, enduring democratic principle: public records are the backbone of open government.

Recent years have reminded every American of how important records are to transparency and accountability, from ethics disclosures to data about COVID-19 to the rapidly expanding volumes of data generated by digital government initiatives and services.

You have not just been a dedicated steward of our records, but one of our union's most important champions of open government. You led not just by word but also by example through events, policies, personnel, and ongoing engagement with civil society.

You guided our nation's record keeper through the first generation of the social media age, reminding elected officials, appointees, and civil servants alike of their obligations to memorialize public business wherever it is conducted, whether instant message, tweet, or text, reminding them to preserve public records where they are created, online or off.

You have shown the wisdom of entrusting a critical institution to a university librarian, with returns for public knowledge for decades yet to come.

While a tremendous amount of modernization remains across agencies and their legacy systems, your service at the National Archives and Records Administration has helped bend the arc of United States history towards digital records and distributed participation with the American people online, from scanning initiatives to transcriptions to public meetings.

Your efforts have helped to connect "We the People" with public records wherever we are across our sprawling union – and the world. You have also helped connect other otherpublics with knowledge necessary for self-governance, including through declassification and transfer of some 47,000 pages of CIA, FBI, DOD, NSC and State Department records to Argentina's Minister of Justice and Human Rights, German Garavano, 97% % of which were unredacted.

Your leadership helped institutionalize a commitment within NARA to work directly with civil society on information security issues, including countering attempts by other agencies or former officials to limit public access to records not properly classified, marked improperly, or that the sitting President did not choose to keep secret.

Your good stewardship of new institutions within NARA has set them on pathways to continued relevance and sustainability, from the Office of Government Information Services to the U.S. Freedom of Information Act Advisory Council to the National Declassification Center, providing bedrock for the next Archivist to build a modernized institution upon.

We thank you especially for ensuring that open government endured in principle and practice within the National Archives under your leadership, enshrined within democratic norms that you quietly exemplified. You've expanded NARA's outreach beyond history and archives groups to everyone who cares about the preservation of and access to the records of government for history and for accountability, from librarians to Wikipedians.

While the list of concerns that US civil society has brought to your roundtables and conferences and inbox has evolved and grown over time, your openness has been a beacon of sunshine in a historic era of thunderstorms over the preservation and disclosure of public records.

The culture that you have fostered, as demonstrated by the commitment of NARA staff to meet with civil society and be responsive in emails will endure as part of your legacy. Your quarterly roundtables and kickoffs at public meetings are a model for transparency and stakeholder engagement across federal agencies.

May your well-deserved retirement afford you more time to walk, practice photography, read great books, and hone your Nocino recipe. We hope that you will stay engaged — you will always have a seat at the table with the advocates for government transparency.

With gratitude,

The Digital Democracy Project
Demand Progress Education Fund
National Security Archive
Government Information Watch
Open The Government
American Library Association
National Coalition for History
Association of Research Libraries

Jason R. Baron
Anne Weismann
Tom Susman
Prue Adler
Mary Alice Baish
Jennifer Manning
Blake Robinson

May 2022

Next Steps for WIPO SCCR/42

Dear Group Coordinator,

We write on behalf of organizations that represent educators, researchers, guardians of cultural heritage, and the institutions in which they work, including schools, universities, libraries, archives, and museums. We wish to share with you our detailed comments on the agenda of the 42nd meeting of WIPO's Standing Committee on Copyright and Related Rights (SCCR/42). We request that you forward this letter on to your group members, and we would be pleased to meet with your group before or during the SCCR to discuss these comments.

SCCR has a unique role in responding to the need for clear guidance and robust exceptions and limitations to support education, research and access to culture in the physical and online environment, including all the situations experienced by users of the copyright system during the COVID pandemic. We hope our analysis will assist in your SCCR preparations.

Information Session on the Impact of the COVID-19 Pandemic on the Copyright Ecosystem

This information session takes place on Monday, 9 May. It aims to explore the "impact on the cultural, creative and educational ecosystem, including copyright, related rights, and limitations and exceptions." The information session is not part of the formal SCCR agenda.

The impact of the COVID-19 pandemic has shone a spotlight on the need for copyright exceptions that properly enable online education and learning, research and cultural participation, including during periods of public health restrictions. WIPO studies show that in many countries, exceptions are limited to "reproduction" (not digital distribution), "paper" copies, "face-to-face" teaching, and to the use of research materials "on the premises" of libraries and archives or only "I'm the classroom." The May 9 information session is an opportunity to examine these shortcomings in the light of the pandemic, and to explore how these problems might be addressed ahead of future pandemics or other emergency situations.

- In particular, it is critical that countries update their limitations and exceptions for the digital sphere -- as explicitly permitted by the agreed statement to Article 10 of the WCT.¹

¹ Concerning Article 10 ("It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment. It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.").

- It would be very helpful if WIPO could clarify international copyright rules permitting emergency uses of works, such as Article 17 of the Berne Convention.²
- WIPO could also examine the role of copyright exceptions in enabling
 - data mining and other forms of scientific research on COVID-19;
 - libraries, archives and museums to carry out their missions in remote or virtual conditions;
 - communication of works online, in the response to “the largest disruption of education systems in history.” (United Nations, Policy Brief August 2020).

WIPO’s webpage for the information session includes many examples of the impact of COVID on the work of libraries, education and research during lockdowns³. The examples show that in times of a global emergency, libraries, archives, and educators need clear rights expressed in law. Countries with good exceptions for online uses were in general better prepared for continuity of learning and innovation in the pandemic than countries with fewer or more restrictive provisions.

Item 6: Protection of broadcasting organizations

At SCCR/41, several delegations recommended that the limitations and exceptions (L&Es) in the proposed broadcast treaty text should be discussed at SCCR/42⁴. Exceptions to broadcast

² Article 17 of the Berne Convention provides: “The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.”

³ See Contributions from Observers and Non-governmental Organizations at <https://www.wipo.int/meetings/en/2022/info-session-impact-covid-19-copyright-ecosystems.html>

⁴ See Overview of SCCR 41 Progress On A2k Priorities: Broadcast, Copyright And Covid, Limitations And Exceptions, <https://infojustice.org/archives/43322> (quoting SOUTH AFRICA on behalf of Africa Group: “The text of the broadcasting treaty should therefore not negatively impact on the access to information, culture and education”; “Pakistan is of the view that more attention should be given to the issue of limitations and exceptions in the future of a broadcasting treaty”; INDONESIA: “With regard to the areas of interest for this delegation, we hope that one part of the next deliberations on the broadcasting treaty will also address the limitations and exceptions provisions”; CHILE: “We would like to point out the importance of a balanced approach and also looking at exceptions and limitations, which will hopefully be able to lead us towards consensus”; IRAN: “Safeguarding the balance of rights has been in the public interest and are essential elements that should be taken into account in further consideration of the broadcasting treaty”).

rights are essential to ensure access to broadcast content for education⁵, research⁶, digital preservation⁷, translation⁸, persons with disabilities and other public interest activities.

We are concerned that the provisions in the draft text on L&Es are highly deficient because they are more restrictive than either the Rome Convention or international copyright law. Unlike the Rome Convention, the broadcast treaty requires that exceptions to broadcast rights be confined by the 3-step test. Furthermore, it is not even obligatory that exceptions extend to “the same kinds ... they provide ... in connection with the protection of copyright,” creating the possibility of more exclusive protections of broadcasting rights as of other rights. The broadcast treaty proposal also fails to include the Rome Convention’s explicit authorization of exceptions for education, scientific research, “ephemeral fixation by a broadcasting organization,” and for uses of “compulsory licenses ... to the extent to which they are compatible with this Convention.”⁹ Therefore, we believe that the proposed treaty should:

- Adopt modern exceptions (such as those identified and discussed extensively in SCCR under agenda items 7 and 8 on L&Es, and adopted by the Marrakesh Treaty for persons with print disabilities).¹⁰
- Require that all exceptions for copyright extend to broadcast rights; require exceptions for education, research and other purposes that are permissive under the Rome Convention; and put in place new mandatory exceptions for preservation, online uses, and cross border uses for libraries, archives, museums, education, research, and to provide access to people with disabilities.
- Provide for transparency in negotiations and that participation in the ‘Friends of the Chair’ group be open to any member state that so wishes to join¹¹.

⁵ UNESCO, Survey on National Education Responses to COVID-19 School Closures (2021) (reporting that during COVID TV-based education has been used in 87% of countries).

⁶ Ying Li, Yongbin Wang, Jian Yan, Ying-Jian Qi , The Application of Data Mining in Satellite TV Broadcasting Monitoring, Conference Proceedings of the Second International Joint Conference on Computational Sciences and Optimization, (2009) (discussing use of data mining in media monitoring of broadcasted materials).

⁷ Wendell Roelf, S.Africa’s UCT campus salvaging books from burned library, Reuters, (April 20, 2021) (reporting statement of the director of the UCT library that “because of copyright we could not replicate” a historical movie and broadcast collection lost in the fire).

⁸ Amelia Brust, Artificial intelligence helps Voice of America translate broadcasts worldwide, Federal News Network (Feb 18, 2020); Ram Sagar, Netflix Is Using AI For Its Subtitles, Analytics India Magazine (May 6, 2020).

⁹ For a fuller analysis, see Memorandum to Delegates to the World Intellectual Property Organization Standing Committee on Copyright and Related Rights re: Broadcasting Limitations and Exceptions, <http://infojustice.org/wp-content/uploads/2019/10/WIPO-SCCR-Broadcast-Memo.pdf>

¹⁰ Id.

¹¹ Development Agenda Recommendation #44, “formal and informal meetings or consultations relating to norm-setting activities in WIPO ... should be held primarily in Geneva, in a manner open and transparent to all Members.”

Limitations and exceptions

The proposal by the African Group for a Draft Work Program on Exceptions and Limitations (L&Es) (SCCR/42/4) spans agenda items 7 and 8. Section by section comments on the Plan are available at <http://infojustice.org/archives/44007>.

The Africa Group proposal builds on previous substantive work of the committee on L&Es. It provides, in our view, a helpful framework to advance this work to the benefit of Member States, and to examine areas not previously covered e.g. exceptions for research. In particular, the proposal:

- Re-affirms the General Assembly mandate of the committee concerning L&Es;
- Reflects two key priorities identified in the Report on Regional Seminars And International Conference On Limitations And Exceptions (SCCR/40/2) - preservation by libraries, archives and museums, and online education and research.

We note and support the focus of the work plan on education and research -- not just institutions. This framing is consistent with the studies and work of the SCCR. Daniel Seng's study and the Africa Group's 2011 proposal, for example, addressed exceptions for private study -- not only study through institutions.

Item 7: Limitations and exceptions for libraries and archives

Point 2a. of the African Group proposal (SCCR/42/4) directly addresses agenda item 7 through the priority "to ensure that all laws enable the preservation activities of libraries, archives, and museums, including the use of preserved materials across borders".

Long-term preservation ensures that the creators of tomorrow can build on the ideas and expressions of today. The report (SCCR/40/2) concludes that "technical and legal solutions must be put in place to safeguard cultural heritage, an invaluable and vulnerable common good".

WIPO experts Drs. Crews, Sutton, and Benhamou noted that preservation of national heritage is important for all countries. The deterioration of physical media (such as paper and film), climate change, natural and manmade disasters can cause the loss of entire collections unless preservation is undertaken prior to such events. In 2021, for example, a unique African Studies collection was lost in a fire at the University of Cape Town Library. Due to copyright barriers, some items had no digital backup copies.

At SCCR/41, the delegation of Brazil noted their view that work on this agenda item should continue with a focus on preservation and cross-border issues, where there seems to be consensus for action.

We note that in Point 2b the issue of cultural heritage uses of works is not explicitly mentioned. Although such work can be considered part of "research and education," we recommend an

express reference. E.g.:

- a. to promote the adaptation of exceptions for the online and cross border environment, such as by permitting teaching, learning and research[, and cultural heritage activities] through digital and online tools.
- We support the proposal in the African Group proposal to include the issue of preservation and access to preserved works as a priority for SCCR.

Item 8: Limitations and exceptions for educational and research institutions and for persons with other disabilities

Point 2b. of the African Group proposal (SCCR/42/4) directly addresses agenda item 8 through the priority “to promote the adaptation of exceptions to the online and cross border environment, such as by permitting teaching, learning, and research through digital and online tools”. As noted above, this item should include cultural heritage activities as well.

The report (SCCR/40/2) concludes that digital uses, including remote access to content, should become normal. It highlighted the increasing demand for digital and online classroom materials, and the need for effective exceptions for online uses for education and research. It also stated that WIPO should continue its work on L&Es in a “holistic and forward looking way”.

- We support the African Group proposal that takes up consensus to move forward on copyright exceptions and limitations that are technologically neutral and encompass teaching, learning, research, and cultural heritage in physical as well as digital environments. The proposal also gives space to address new and emerging issues, such as text and data mining, in studies and the preparation of guidance.

Item 9: Other matters

- The agenda includes a busy program of other matters, including work on copyright in the digital environment, the rights of theatre directors, and a proposal on Artist’s Resale Right (*droit de suite*).
- It also includes a proposal on public lending right (PLR), a duty for libraries to pay rights owners for public lending. Since PLR does not involve questions of international copyright law, we do not think that WIPO is the appropriate forum for its consideration. We also believe that the proposal is likely to be divisive and divert the discussion from other pressing matters.

We are available to discuss our views further and to share analysis and background information on any of these issues. Please contact Stephen Wyber Stephen.Wyber@ifla.org to arrange a briefing with your delegation or group.

Sincerely,

[ADD ORGANIZATIONAL ENDORSEMENTS]

Biblioteca y Ruralidad
Creative Commons
Creative Commons Slovenia
COMMUNIA
Centrum Cyfrowe
Corporacion Innovarte
EIFL (Electronic Information for Libraries)
Electronic Frontier Foundation
Intellectual Property Institute, IPI
Instituto Brasileiro de Direitos Autorais (IBDAutoral) - Brazilian Copyright Institute
Global Expert Network on Copyright User Rights
Knowledge Rights 21
Library Copyright Alliance
Library Futures Institute
Open Access India
Society of American Archivists
Software Preservation Network

Artículo 19 México y Centroamérica
Association of Research Libraries (ARL)
Association of Recorded Sound Collections
Australian Library and Information Association (ALIA)
Authors Alliance
Biblioteca y Ruralidad, Redsisdencia
Canadian Association of Research Libraries
Center for Democracy & Technology
Centre for Internet and Society India
Centrum Cyfrowe Projekt: Polska
Colegio Colombiano de Bibliotecología - Ascolbi
Collaborative Knowledge Foundation
ContentMine
Creative Commons Italy
DataMeet
DATYSOC
Derechos Digitales
Education International
Fight for the Future
Fundación Conector / REDLACDA

Fundación Via Libre
Freemuse
GDC Tangmarg, Higher Education Department, J&K
Instituto de Arte Contemporáneo
Instituto Nacional de Ciência e Tecnologia / National Institute for Science and Technology (INCT)
Proprietas
International Federation of Library Associations and Institutions
InternetLab
IP Justice
IP Unit, Faculty of Law, University of Cape Town
ISUR
Karisma
Knowledge Ecology International
O Foundation
Observatorio del Tratado de Marrakech en América Latina
Pontificia Universidad Javeriana
Public Knowledge
Public Citiizen
R3D: Red en defensa de los derechos digitales
RENIEC
Sistema Universitario de Bibliotecas - Universidad de Guadalajara
slgt
SPARC
Stichting eIFL.net
tedic
The Commons Network
Tutores de Resiliencia
Udelar
UK Libraries and Archives Copyright Alliance
Universidad del Norte
Universidad Externado de Colombia
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