



# WIPO International Conference on Exceptions and Limitations

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## IFLA Summary

On 18-19 October 2019, the World Intellectual Property Organization convened an international conference on exceptions and limitations for libraries, archives, museums, and education and research exceptions.

This event was the climax of a year of work in line with the [action plans](#) agreed in April 2018. With a mandate 'to consider the opportunities and challenges provided by various international solutions including soft law, contractual/licensing and normative approaches, as appropriate'.

Following an opening intervention from the WIPO Director General underlining the need to find balance that gives all of writers, publishers, distributors, heritage institutions and users a fair deal, a series of panel discussions looked back at the regional meetings, and forward to the future.

### Reporting Back on the Regional Workshops

The WIPO Secretariat shared the conclusions of the regional meetings held in Singapore, Nairobi and Santo Domingo, where Member States had explored the situation of libraries, archives, museums, education and research in relation to copyright exceptions and limitations.

Conclusions centred on the level of variation in approaches between countries, and the fact that developing countries tended to have fewer and less modern provisions. There was a strong understanding that modernisation should be a priority, not only to meet user expectations, but also to provide much needed clarity.

The reality of cross-border uses also featured highly, with the threat posed by climate-change related extreme weather events high in the minds of many. With many countries only one storm away from losing all of their heritage, it was vital to support cross-border preservation activities. The model of the Marrakesh Treaty provided a valuable precedent.

There was extensive discussion about the appropriateness of licencing as a solution for providing access. There was broad interest in how to improve licencing practices to allow for commercial or more extensive uses, but also a focus on the need for unremunerated exceptions for more basic uses.

As concerns the global dimension, the Secretariat noted calls for international action, both as a means of providing a clear impetus to Member States to reform, but also in order to provide a well-defined legal basis for the work of libraries, archives, museums, education and research.

### Thematic Panels

The first panel focused on **archives** and highlighted the specific character of archival materials, which are often unique, usually non-commercial, although come in very different formats. Archival collections can be split across a number of countries, especially in the case of materials relating to colonial pasts, or those associated with diaspora populations. There is therefore a need for archivists to be able to work together in order to fulfil their missions.

While there are some schemes aiming to provide licences for uses of archives, panellists noted that licencing may not be appropriate, or could skew decision-making by heritage institutions.

Many writers in fact were glad that their work was being preserved and used. One Member State made clear the interest in an international instrument to facilitate this work.

The second panel looked at museums. Despite the emphasis in previous discussions, and the needs of the museum sector, the focus was primarily on commercial uses by art galleries, such as the creation and sale of catalogues, rather than preservation or support for education and research. As such, the conference heard mostly about various solutions for the sorts of uses made by the commercial operations of major, primarily Western institutions.

There was, nonetheless, no opposition to progress on fundamental tasks such as preservation, as well as other non-commercial activities such as research, and a general recognition that the copyright situation for museums is the least clear of all cultural heritage institutions.

The **libraries** panel started with a strong reminder of the reason for having libraries, with preservation high on the agenda alongside access. As well as supporting authors, they also helped keep people in contact with their heritage, and build stronger communities. Just as in the case of archives, libraries also manage collections which can be split across borders, and copyright should not represent a barrier to this.

Licensing solutions for certain uses had been elaborated – although not always tested in reality – even across borders, although primarily focused on uses going beyond the minimum and in very specific circumstances. Member States underlined the value of an international solution which would facilitate cooperation in other situations, as well as promoting modernising reforms.

Finally, the **education and research** panel, of which less than a third of the members came from the education and research sector, heard first about the lack of provisions to support teachers in using copyrighted works in many countries, as well as the narrowing gap between national and international uses of works. Discussions at the international level, such as in Europe, were increasingly determining that it was not appropriate to seek licensing solutions, or only to use them when they met certain conditions.

The speakers on the panel from publishers and collecting societies underlined their ability to offer licences for educational uses, although focused little on how well these worked for educators. They warned of the impact of ill-judged legislation, although the only example provided was of Canada, where evidence that copyright reform has caused problems has been dismissed by Parliament. The moderator underlined the need for greater clarity between free exceptions, remunerated exceptions, and licensing.

### **The Way Forwards**

A final panel heard from WIPO appointed experts, as well as Member States who had been involved in the regional seminars. Suggestions for work included capacity building – both within governments around policy-making, and in the institutions implementing policy – guidance and best practice, model laws, and international laws all were raised by different actors.

Speakers shared the goal of improving legislation, with justifications including the desirability of offering clarity to all and ensuring that markets function and deliver social goods. There remained some discussion about whether to aim for a broad international instrument, or much softer tools, but also the need to deliver in the longer term.

Among the suggestions for future work suggested, the meeting received the following:

- Capacity building and training
- Best practices
- Alternative dispute recognition
- Clarification of what Berne allows or not
- Joint recommendations
- A safe harbour provision offering greater legal certainty
- Efforts to update national laws to accommodate for digital uses
- International action around preservation
- International law
- An effort to build consensus between parties
- Support to develop national reforms
- A means to facilitate cross-border working

### **Conclusions**

The international conference took a very wide perspective, looking at a large variety of activities and actors affected by copyright. While providing a rich set of insights, this came at the cost of focus and a degree of confusion.

In particular, the strong focus on creating effective licencing solutions for commercial and large-scale uses meant that there was not enough attention to the fundamental, non-commercial missions of libraries, archives, museums, educators and researchers. The composition of the panels also tended to mean that the experience of richer countries – most of which already have a well-developed set of exceptions and limitations already – was also prioritised.

Nonetheless, the following areas of consensus did appear to emerge, and could form the basis for work going forwards:

- 1) There was agreement on the importance of exceptions as part of the copyright system, and of the institutions and individuals who draw on them in order to deliver public goods.
- 2) There was agreement that a certain number of core activities, such as preservation, which have no impact on markets and which have an important public interest function, should benefit from non-remunerated exceptions.
- 3) There was agreement that cross-border uses are a reality, and that there is a need to find ways to facilitate this.
- 4) There was agreement that effective licencing infrastructure for uses going beyond exceptions can facilitate activities by libraries, archives, museums, and education and research institutions, and support author remuneration.
- 5) There was agreement that people working in libraries, archives, museums, and in education and research institutions should be able to do so without facing legal uncertainty or disproportionate risk.