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**REPORT ON REGIONAL SEMINARS AND INTERNATIONAL CONFERENCE ON  
LIMITATIONS AND EXCEPTIONS**

*prepared by the Secretariat*

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1. This document is presented by the WIPO Secretariat following the request of Member States at the SCCR/39 session, held in October 2019, to prepare a factual report with the results of the three regional seminars and the international conference on copyright limitations and exceptions for libraries, archives, museums, education and research institutions organized in 2019. This report encompasses the four main areas covered in the meetings – libraries, archives, museums, and educational and research institutions – and reflects the analysis and proposals from Member States, practitioners and experts in these four fields, which were gathered throughout the process. The report also covers the points highlighted and inputs at the end of the conference on the way forward.

## BACKGROUND

2. In May 2018, at the SCCR/36 session, Members of the SCCR agreed on Action Plans (document SCCR/36/7) that would guide the work on limitations and exceptions for the rest of the 2018-19 Biennium. Among various activities, the Plans included the organization of up to three regional seminars and an international conference on copyright limitations and exceptions for libraries, archives, museums, and educational and research institutions. Accordingly, the meetings were organized in 2019 as follows:

- (i) Regional Seminar for the Asia Pacific Group on Libraries, Archives, Museums and Educational & Research Institutions in the Field of Copyright, held on April 29 and 30, in Singapore;
- (ii) Regional Seminar for the African Group on Libraries, Archives, Museums and Educational & Research Institutions in the Field of Copyright, held on June 12 and 13, in Nairobi;
- (iii) Regional Seminar for the Latin America and Caribbean Group on Libraries, Archives, Museums and Educational & Research Institutions in the Field of Copyright, held on July 4 and 5, in Santo Domingo; and
- (iv) International Conference on Copyright Limitations and Exceptions for Libraries, Archives, Museums and Educational & Research Institutions, held on October 18 and 19, in Geneva.

3. Dedicated webpages and related documents as well as detailed presentations of each of these meetings are available on the WIPO website<sup>1</sup>. A summary of the meetings is set forth below.

## REGIONAL SEMINARS

4. The regional seminars were organized in three different regions with the objective of analyzing the situation of libraries, archives and museums as well as educational and research institutions and to consider areas for action, with respect to the limitations and exceptions regime and the specificities of the Member States in the region.

5. These seminars followed an identical methodology, in particular regarding:

- (i) the structure of the programs (see Annex I, programs);

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<sup>1</sup> Singapore Seminar: [https://www.wipo.int/meetings/en/2019/regional\\_seminar\\_aspac.html](https://www.wipo.int/meetings/en/2019/regional_seminar_aspac.html)

Nairobi Seminar: [https://www.wipo.int/meetings/en/2019/regional\\_seminar\\_nairobi.html](https://www.wipo.int/meetings/en/2019/regional_seminar_nairobi.html)

Santo Domingo Seminar: [https://www.wipo.int/meetings/en/2019/regional\\_seminar\\_santo\\_domingo.html](https://www.wipo.int/meetings/en/2019/regional_seminar_santo_domingo.html)

International Conference: [https://www.wipo.int/meetings/en/2019/international\\_conference\\_copyright.html](https://www.wipo.int/meetings/en/2019/international_conference_copyright.html)

- (ii) the organization of discussions in working groups, divided by sub-regions and/or languages, led by Chairs and Rapporteurs confirmed by Member States (see Annex II, working groups);
- (iii) the regrouping in plenary sessions to collect findings, observations and proposals from the working groups;
- (iv) the participation of experts who had prepared studies and typologies for the SCCR in the areas of libraries, archives, museums, and education and research;
- (v) the use of two basic tools, shared with Member States prior to the meeting, to facilitate the work in the seminar, namely a matrix and questionnaire which focused on the four key areas: preservation, reproduction/private use, access, and cross-border uses (see Annex III, matrix and questionnaire);
- (vi) the participation of delegates from the respective regions, funded by WIPO, as well as three categories of self-funded observers (see Annex IV, lists of participants):
  - delegates from Member States from other regions;
  - intergovernmental and non-governmental representatives from international organizations accredited with WIPO that had a scope of activity related to the subject of the seminar; and
  - regional or national organizations or entities from the region where the seminar was held that had a scope of activity related to the subject of the seminar.

6. The participation of Chairs and Rapporteurs was key to develop mutual understanding of the state and challenges of limitations and exceptions in a very inclusive and open framework. Their background knowledge helped to improve the level of accuracy of the work in the seminars. Their roles were as follows:

- (i) to direct the discussions of the working group based on the four thematic areas of the seminar, namely libraries, archives, museums, and education and research, and the questionnaire distributed by the Secretariat prior to the seminar (Chair supported by Rapporteur);
- (ii) to make sure that there was full priority participation from Member States during the discussions, while permitting observers to intervene in the debate, and that all relevant matters were addressed by the working group (Chair supported by Rapporteur). Observers could move freely from one group to another but Member States from the region remained in the group to which they were previously assigned for the sake of consistency in the discussion and outcome;
- (iii) to capture the main points of the discussions and produce a draft report based on the proceedings of the working group in line with the objectives of the seminar (Rapporteur supported by Chair); and
- (iv) to present the findings, observations and proposals as the outcome of the respective group discussions in the plenary session (Chair and Rapporteur).

7. For the organization of the three seminars, WIPO counted on the invaluable cooperation of the local hosts, namely:

- (i) for the Singapore Seminar: the Singapore Cooperation Programme (SCP) under the Singapore Ministry of Foreign Affairs with the assistance of the Intellectual Property Office of Singapore (IPOS);

- (ii) for the Nairobi Seminar, the Kenya Copyright Board (KECOBO); and
- (iii) for the Santo Domingo Seminar, the Copyright Office of Dominican Republic (ONDA).

8. In terms of attendance:

- (i) the Singapore Seminar was attended by more than 100 people. Out of the 42 invited Member States, 32 countries were represented by at least one delegate. As to observers, 15 professional organizations were represented by 38 delegates and five Member States from other regions also took part;
- (ii) the Nairobi Seminar was attended by more than 100 people. From the African region, 47 Member States were represented by 50 delegates. As to observers, 37 professional organizations were represented by 70 delegates and three Member States from other regions also took part; and
- (iii) the Santo Domingo Seminar was attended by more than 180 people, including 43 delegates representing 28 Member States. As to observers, 29 professional organizations were represented by 45 people and one delegate from a Member State from another region participated in the Seminar.

## **SUMMARY OF THE DISCUSSIONS IN THE REGIONAL SEMINARS**

9. After the Seminars, some Chairs and Rapporteurs communicated to the WIPO Secretariat their findings, observations and proposals.

### **LIBRARIES**

10. The Regional Seminars focused on four thematic areas: preservation of works, reproduction of works, access to works, and cross-border exchange of works.

11. Following are the key observations based on detailed exchanges held at the Regional Seminars.

#### **Preservation of works**

12. Preservation of works in a library collection was identified as a priority and Member States generally agreed that reproductions and other uses of works for preservation should be permitted under exceptions in national copyright laws. Nevertheless, the most recent SCCR study (from 2017) finds that only 102 Member states, or about 53%, have a statutory provision explicitly addressing preservation. A good number of Member States have a statutory provision explicitly addressing preservation.

13. Some Member States underscored the need for clarifications related to the detailed scope of these provisions as well as their implementation. A few Member States wished to have a more practical and flexible language corresponding to the exceptions. Other Member States desired to have guidance to be sure their national laws included the most helpful and beneficial terms.

14. The following are among the main clarifications suggested by the Member States as important to include in a preservation statute:

- (i) That preservation measures may be carried out preventively or proactively when faced with the high risk of loss of materials from collections.
- (ii) That preservation copies of works may be allowed in modern formats when there is a risk of obsolescence or near obsolescence of the current formats.
- (iii) That works at risk may be reproduced for preservation if they are out-of-print or otherwise not available on the market.
- (iv) That multiple preservation copies are allowed as a consequence of technologies and to be sure that at least one copy is always safely stored.
- (v) That born digital works would be covered by the preservation terms.
- (vi) That modalities should apply to digitization of works that had previously existed in analogue formats.
- (vii) That preservation provision covers not only literary books, but also other kinds of works in library collection, such as audiovisual, photographic, and musical works.
- (viii) That the preservation provisions could be exercised by many different types of libraries, including academic, research, school, public, and special libraries, although perhaps with the condition that the library does not operate for profit or at least the preservation copying should be for a non-profit purpose.

15. Other considerations arose during the discussion including the following:

- (i) the usefulness of mandatory deposits for enhancing the works preserved in a library;
- (ii) the conditions under which the possibility could arise for a cross border exchange of a digitized copy for the purpose of preservation, including border control measures; and
- (iii) the purposes for which a preservation copy could be further re-used.

16. Certain Member States underscored that preservation might imply a limited reproduction right which would not include the right of either communication to the public or making available to the public. Other Member States felt that the preservation copies are of little value if they may not be accessed by users. Overall, some limited restrictions on certain classes of works, principally where markets may be affected, might be acceptable in order to achieve the greatest allowance of preservation activity. This aspect will also feature in the discussion on access to works in a library collection.

17. A few Member States stated issues other than copyright to be considered, such as lack of infrastructure, while for some other Member States it was the clearer definitions of the conditions under which libraries would deliver their mandate. These conditions included assessment of the political and cultural environment.

## **Reproduction of works**

18. Reproduction of works by a library to provide individual copies of short works or excerpts for the user's private study, was identified by Member States as a priority service to permit in national legislations. Nevertheless, the most recent SCCR study (from 2017) finds only 105 Member states (about 55%) have a statutory provision explicitly permitting these single copies even under limited circumstances.

(i) Some Member States have relied on a general provision allowing libraries to make copies of works for library services of all types, rather than relying on a specific statute. However, the WIPO studies through the last decade show that fewer countries are relying on such general statutory exceptions and have turned towards enacting specific statutes. In the most recent SCCR study (from 2017), only 21 Member States rely on a general exception.

(ii) Closely related to the statutes allowing libraries to make single copies for research and study are the statutes allowing libraries to digitize works and make them available to readers on dedicated terminals at the library. The concept originated in European Union law, but today at least 34 countries have enacted similar terms.

19. However, the discussions highlighted some variation in both general and specific provisions. The details in the provisions varied based on factors such as:

- (i) whether the making of copies for users is limited to specific types of libraries such as public library, prescribed library, non-profit library, etc.;
- (ii) whether the reproduction provision extends to all categories of protected works;
- (iii) whether reproduction is limited to photocopying or also extends to digitization;
- (iv) whether reproduction for users is limited to certain purposes; and
- (v) whether the amount of the work that may be reproduced is specified.

20. For some Member States, the exception provision for making a private copy was different from the general exception for reproduction of works by a library. A few Member States stated that it was for the countries to decide whether the private copying exception is free, compensated or licensed. A few Member States linked the purpose of making a private copy with research and teaching and some others expressed concerns over the quantity of the work copied without remuneration for such purposes.

21. The subject of inter-library loans was addressed. A few Member States had specific provisions to cover this activity while many others do not. For some Member States inter-library loans could be facilitated in the future through a network of libraries and regulated by agreements between the libraries with a system of remuneration.

22. Some Member States raised the issue of orphan works while stating that the criteria of making reasonable efforts to identify the author should be a pre-requisite for reproducing such works. Addressing the problem of orphan works was a recurring issue at all meetings and clearly demands further attention in many different contexts.

23. At times, as noted by some Member States, the national legal provisions specify that reproduction under an exception is subject to the unavailability of a collective license.

24. A few Member States suggested the inclusion of legal presumptions of authorship for commissioned works or works created under an employment relationship especially for public officials.

25. For some Member States, the principles for fair practice were the guiding principles in implementing exceptions for reproduction. A few other Member States, who were party to the Bangui Agreement, were encouraged to consider it.

## **Access to works**

26. Access to works, one of the core missions of a library, was discussed as a key evolving issue in the changing digital environment.

27. Some Member States identified lack of resources for libraries as an impediment to providing either analogue or digital access. Most of the discussions focused on the extent to which digital developments were already reflected in national legal provisions

28. For some countries, the law already provides for allowing access to online uses through onsite or offsite terminals. For many other Member States there were either no provisions or no specific details for digital access. Some Member States requested guidance for more specific rules of use in the case of digital access.

29. Finally, the Caribbean Group encouraged its member countries to accede/ratify the WIPO Copyright Treaty (WCT) as it would facilitate access to the digitally preserved works. Certain existing tools such as EBSCO, Explorer, OPAC were identified as facilitators to online access onsite through terminals or offsite.

30. A few Member States suggested that it would be useful to revisit the collaboration between the rightsholders and the libraries on various other issues, including the topic of remuneration and provisions related to technological protection measures. For some Member States technological protection measures was a necessary pre-requisite for making books available online. Some Member States expressed as desire that the statutory exceptions include provisions that call for respect of technological protection measures and rights management information. At the same time, Member States recognized the importance of authorizing libraries and other organizations to be able to exercise their rights under statutory exceptions with the benefit of corresponding exceptions to the legal restrictions of technological protection measures and rights management information. The SCCR studies on exceptions for libraries and archives reveal that in fact many Member States make such allowances with respect to technological protections or rights management.

31. For some Member States, the terms for access to the preserved copies of works in a library collection would be the same as the terms of access to the originals.

32. Some Member States noted that some networks of libraries were able to provide access to works to users through tools already available in the marketplace.

## **Cross-border exchange of works**

33. Cross-border exchange of works according to most Member States was a topic for which no general legal provisions existed whether for works in analogue or digital formats. However, it was recognized that in some countries cross-border exchanges take place for both digital and physical works.

34. At the same time, some Member States noted that cross-border exchange of works is specifically not permitted, or is sometimes specifically permitted, in their national legislation, even for works in physical formats. In some Member States, the national legislation is silent on the matter, while in others the issue is part of the law on import and export of goods.

35. A few Member States noted that exceptions in this regard, if at all, existed to facilitate inter-library loans, while some others stated that international lending would require international standards when there are disparate legal regimes.

36. A few Member States discussed the cross-border implication of a work in a library collection being declared as an orphan work in one country, based on its legislation and whether it should take effect in all countries.

37. When cross-border exchange of works happens, some Member States would use licensing mechanisms. Some Member States emphasized that regional licensing mechanisms would be useful for this purpose. One main example that arose in this regard was CAROSSA. A few Member States, however, noted that such licensing mechanisms would not be feasible for out-of-commerce works. Some Member States stated that a combination of exception provisions along with licensing practices administered through collective management organizations (CMOs) would further facilitate cross-border activities of libraries, especially for the digitized copies of the works.

38. During the discussions, a reference was made to the current regime of exchange of books in accessible format through the Marrakesh Treaty. However, there was no consensus among member states whether exceptions were necessary for general exchange of works in digital formats. Some Member States suggested further guidance could be useful on the scope and application of exceptions in this context for education purposes.

## **ARCHIVES**

39. The regional seminars focused on four thematic areas: the preservation of archival material, the reproduction of archival material, access to archival material, and cross-border dissemination of archival material.

40. Following are the key observations based on detailed exchanges held at the Regional Seminars.

### **Preservation of archival material**

41. Preservation of archival material emerged as an area of undisputed importance.

42. Member States noted that legal provisions exist in most national legislations to address the activity of preservation of archival material, which demonstrates this importance. An intervention by the Representative of the International Council on Archives suggested that Member States look at the relevance of national legislation on archives to complement the national copyright legislation.

43. When the discussion focused on the applicability of preservation provisions in the digital environment, a wide variation emerged with respect to existence, scope and specifications in national laws.

44. In general, some Member States suggested that preservation provisions should extend to all types of works. One question was whether the current provisions cover existing digital material. A second question was whether they cover digitization of material in analogue format for the purpose of preservation.

45. A few Member States wished to have more standard language corresponding to the exceptions, as also mentioned above for preservation of works in a library collection. When writing provisions to cover these questions, certain factors that would have to be taken into account are as follows:

- (i) whether the archival material is in the public domain or under copyright.
- (ii) whether the archival material qualifies as out-of-commerce works, unpublished works, or orphan works;
- (iii) whether the archival material is in a near obsolete format, an obsolete format, or a fragile physical format;
- (iv) whether the archival institution is private, or a national/state-run establishment;
- (v) if there is a need to send archival material across borders for preservation purposes; and
- (vi) the number of copies that can be made within the scope of preservation.

46. Certain Member States underlined that preservation would imply a limited reproduction right, which would not include the rights of either communication to the public or making available to the public. This aspect will also feature in the discussion on access to archival material.

### **Reproduction of archival material**

47. Reproduction of archival material is generally permitted in national legal provisions. However, as the provisions often do not define clearly the scope and modalities of reproduction, some legal uncertainties may arise.

48. Among the topics which may need to be clearly addressed in the provisions, some Member States identified the following:

- (i) Who should be the maker of the copy? Should it be the archivist, the archival institution or the user?
- (ii) Is it necessary to limit the making of copies to certain purposes?
- (iii) Should conditions be applied for a user to make copies, e.g., limited for research purposes, non-commercial?
- (iv) Should digitization be permitted to facilitate search and data mining?
- (v) Should the conditions vary depending on the public or private status of the archival institution? Some Member States in Africa suggested that academic and other institutions be allowed to own and run their own separate archives.
- (vi) Should the ability to make copies be affected by confidentiality and privacy laws?

49. Among other issues, a few identified by Member States related to the process of reproduction were:

- (i) differentiating archival material based on works in copyright and works for which the copyright term has expired;
- (ii) looking at the liability of the archivist or archival institution while identifying the specific acts that would limit liability; and
- (iii) possible remuneration mechanisms whether through individual licenses or CMOs including extended collective licensing (especially for orphan works).

50. Some Member States stated that when this exception provision extends to digital reproduction it should not cover within its ambit editing, communication to the public or making available.

51. The discussions concluded with most of the Member States asking for copyright awareness, knowledge building, and promotion of training.

### **Access to archival material**

52. Access to archival material was identified during the discussions as a key evolving issue in the changing digital environment.

53. Most of the discussions focused on the varied ways of granting access demonstrating the different extents to which the countries are currently taking into account the possibilities offered by the digital environment.

54. Some Member States highlighted that the provisions mostly exist for access to physical / analogue copies of the archival material and not for access to digital copies. Some Member States suggested that this could be addressed through a revision of copyright laws while a few others suggested to address it in laws other than intellectual property laws.

55. Regarding access to digitized material some Member States stated that they provide only onsite access while others authorized both onsite and offsite access.

56. The Member States stated that there could be conditions for granting access, such as nature and purpose of use without further elaborating on such conditions.

57. When Member States used contractual arrangements rather than exception provisions for access to copyrighted archival material, some of them expressed the need to consider creating standard contracts that include legal obligations for users when they access and copy such archival material.

58. The discussion on orphan works demonstrated a complexity to be taken into account because of the fact that frequently the donor of archival material may not be the copyright owner of all items in the collection.

59. Furthermore, some Member States identified political considerations unrelated to the copyright legal framework as another relevant factor when considering the granting of access to archival material.

### **Cross-border exchange of archival material**

60. While initially the cross-border exchange of archival material was not perceived by Member States as a topic of concern, other considerations emerged during the discussions.

61. Most countries do not have any specific provision for the purpose of cross-border exchange of archival material. Some Member States stated that they have cross-border provisions limited to the purpose of preservation and safekeeping and only for archival material in physical format.

62. However, some factors that could have an impact on the topic of cross-border exchange were raised during the discussions, for example climate change and political unrest. Special mention was made of 'split collections' and request for guidance on how to complete collections.

63. Finally, digitization of archival material was identified as potentially leading to new areas to consider, such as liability and applicable law as well as new possibilities to address the challenges of split collections.

64. Some Member States considered the option of revising the exception provisions in national copyright legislations or the provisions in other national legislations. A few Member States requested guidance to address those new issues while a few others proposed the establishment of regional mechanisms.

## **MUSEUMS**

65. The Regional Seminars focused on four thematic areas: preservation of works, reproduction of works, access to works, and cross border exchange of works.

66. Following are the key observations based on detailed exchanges held at the Regional Seminars.

### **Preservation of works**

67. Preservation of works in museums collections was widely accepted among Member States as a recognised part of the museum's mission.

68. Most Member States emphasized that the justification for preservation of museum collection was mainly to mitigate the risk of irretrievably losing works in a collection due to climate change hazards, robbery, fires and other catastrophes.

69. Most Member States noted that exception provisions for preservation do not exist in their national copyright legislation. Such activity would either fall within a general exception (e.g. for educational or scientific research), a specific exception for libraries, or within the ambit of laws other than copyright. Member States were worried about the scope and applicability of the general or specific exceptions.

70. A few Member States expressed that preservation was carried out through internal museum guidelines and direct contractual arrangements with artists. However, some Member States were worried about the case of orphan works as this case was not addressed by their copyright laws.

71. Some Member States recognized that they had not previously addressed this issue and were ready to consider the various options.

72. Some Member States noted that the preservation of existing digital works in museum collections was also important. For this purpose some Member States recognized that intangible reproduction or records of works in museum collections should be covered by preservation exceptions.

73. Some Member States identified factors other than the existence of copyright exceptions relevant to preservation activity like the lack of means and the need for adequate infrastructure, especially for digitization of artefacts.

74. Some Member States emphasized that preservation implies a limited reproduction right which would not include the right of either communication to the public or making available to the public.

75. The need for creating sufficient awareness, especially about the link between copyright laws and museums was expressed by many Member States.

76. A few Member States expressed the requirement for good practices, including development of models and contracts. The Representative of the International Council of Museums expressed the importance of having a definition for museums in national copyright legislations for the consideration of the Member States.

## **Reproduction of works**

77. Reproduction of works in a museum collection was not initially viewed by Member States as an issue related to copyright.

78. Most Member States noted that exception provisions for this purpose do not exist in their national copyright legislation. A few Member States suggested the option of including legal presumptions in national laws to facilitate use of works and services for museums for non-profit purposes, e.g., the legitimate possession of a work in any medium should include the right of exhibition and reproduction in catalogues.

79. However, when the discussion focused on specific uses such as private use, purpose of education and exhibition catalogues, different approaches emerged:

- (i) Concerning private copy made through mobile phones or other personal devices, there was a wide range of perceptions: whether it should be permitted through a copyright exception provision, be it specific in application to museums or a general exception for personal use in the copyright legislation; whether it should not be allowed at all; or whether it could be regulated by internal museum guidelines. Some Member States suggested that there would be differences between reproduction of works at places with free access to works such as museums and places with free circulation of people such as public squares and streets.
- (ii) With regard to the purpose of education some Member States thought that the existing exception relating to education would apply for works in a museum collection.
- (iii) With regard to exhibition catalogue some Member States noted that the scope of exception for museums would cover this activity.

80. In addition, some Member States noted that guidelines to determine conditions for re-uses of the copy of a work in the museum collection would be worthwhile, especially for exhibition catalogues. Other subsequent uses could also include uploading on social media or commercial uses.

81. Finally, some Member States mentioned that equitable remuneration through CMOs could be a useful mechanism.

## **Access to works**

82. Access to works in a museum collection, was generally viewed as one of the core mission of museums. Therefore, the discussion mainly focused on the evolving conditions of access in the changing digital environment.

83. Most Member States stated that the general provisions in their national copyright legislations would be applicable for granting access to works in a museum collection while some stated that there are no applicable provisions. For some Member States a review of the national legislation would bring more clarity and specificity.

84. To facilitate digital access to works in a museum collection, some Member States considered encouraging a combination comprising exception provisions and licensing mechanisms while other Member States highlighted that access might be given to the works in a museum collection that have already been digitally preserved.

85. As regards access to catalogues of works in a museum collection, a variety of views were expressed with respect to modalities for online access. Some Member States even suggested that a distinction would have to be made between temporary and permanent catalogues on the conditions of access, whether an exception would be allowed or not and whether a remuneration would apply.

86. Some Member States suggested that use and access of works in a museum collection by third parties could benefit from regulations or compilations of good practices. A few Member States also encouraged access for traditional knowledge purposes.

87. Finally, another issue mentioned during the discussion was the possible liability of museums granting access to their catalogues and/or collections in jurisdictions that have such rights.

## **Cross-border exchange of works**

88. Initially the cross-border exchange of works in a museum collection was generally not perceived as a topic of concern but as the discussion proceeded, different difficulties arose, in particular in relation to preservation activities.

89. Most countries do not have any specific exception provision in their national copyright legislation for the purpose of cross-border exchange of works in a museum collection.

90. A very few Member States stated that they have cross-border provisions limited to the purpose of preservation and safekeeping of artefacts.

91. Museums of some countries reported that they facilitate cross-border access to online exhibitions and/or digital catalogues through contractual arrangements. Some Member States emphasized that institutional partnerships would be useful to facilitate cross border access for loaning works for preservation purposes across borders.

92. Reciprocal contractual arrangements across territories, be it administered by the museums themselves or through CMOs, was suggested as an option by some Member States.

93. Some Member States raised the issue of liability when a museum located in one country wants to rely on another museum's technical means or infrastructure located in another country

and/or access to works. Other Member States raised the issue of applicable law, when works in a museum collection are made available in another country or a photograph is included in a catalogue in another country. According to them, the law of the country where the museum is domiciled would apply. A question was raised on the status of orphan works in one country based on its legislation, having effect in all countries.

94. Some Member States in fact identified political considerations unrelated to the copyright legal framework as another relevant factor when considering the granting of access to works in museums collections.

## **EDUCATION AND RESEARCH**

95. The Regional Seminars focused on four thematic areas: preservation of works, reproduction of works, access to works, and cross-border exchange of works.

96. Following are the key observations based on detailed exchanges held at the Regional Seminars.

### **Preservation of works**

97. Preservation of works for educational and research purposes was not seen as a topic of concern for most Member States.

98. A few Member States discussed the relevance of a specific exception provision for preservation of works for educational and research purposes while noting that the existing exceptions for preservation in the national copyright law for cultural heritage institutions could cover these purposes.

99. A few Member States had specific existing provisions in their national copyright legislation that covered education among other topics. When provisions exist, the differences are in the types of beneficiary institutions and conditions like works, formats, destination of the material obtained etc.

### **Reproduction of works**

100. Reproduction of works for educational and research purposes was generally facilitated by Member States through a general exception for the activity of private copying or permitted through a specific teaching exception in the national copyright laws.

101. Most Member States stated that the general exception provision for private copying is usually combined with a system of compensation/remuneration to the rightsholders, but at times it may not be. In a few countries, CMOs collect and distribute remuneration generated under the private copying compensation system.

102. Some Member States discussed whether there could be a qualitative or quantitative criterion for making private copies. However, most Member States expressed concerns over the widespread misuse of the general exception for private copying, in particular when such a provision is applied for a purpose unrelated to learning activities.

103. A few Member States requested for guidance on enforcement strategies.

104. Some Member States mentioned that there was a growing move from analogue to digital content for classroom teaching purposes. Some Member States also noted the use of new digital devices to transmit material beyond classrooms, e.g. through e-learning. They wondered whether and how the specific exception existing in the analogue world would apply to these new uses.

105. For instance, an exception that permits the making of copies for educational uses (be it as private copying or under a specific teaching exception) might not permit the transmission of these copies (i.e., by email to students) and their making available online (i.e., posting on an intranet), because the exception is only meant to cover acts of reproduction. In these cases, national exceptions might be amended to permit teaching uses also to happen online—perhaps subject to different conditions and remuneration than those set for offline teaching uses.

### **Access to works**

106. Access to works for educational and research purposes was identified during the discussions as a multifaceted issue, with a special focus on the evolving digital environment.

107. Some Member States stated that there are general exception provisions in their national copyright legislation. However, some Member States stated that there were no applicable provisions to specifically cover access to works for educational and research purposes.

108. Most Member States highlighted that the provisions mostly exist for access to physical / analogue works or for access only to text-based works. Access to digital copies was not covered within the ambit of the exception provisions in most Member States or at least there was no mention about the exception covering digital copies.

109. Some African Member States noted that such a provision existed in the Bangui Agreement.

110. Some Member States specifically referred to a growing demand for digital and online material in the classroom while a few others referred to facilitating access to digital and online material outside the classroom premises in order to facilitate distance learning.

111. A few Member States noted that exception provisions may not be the only way to facilitate access. The laws of the countries may distinguish free uses permitted under an exception, remunerated uses permitted under an exception (e.g. compulsory licenses) or under other forms of compensation (such as for private copying), and uses subject to and remunerated under a license.

112. Some Member States mentioned the role of CMOs to facilitate legitimate access to copyrighted works as well as exploring licensing mechanisms for educational institutions, including compulsory licenses.

### **Cross-border exchange of works**

113. Most countries do not have any specific exception provision in their national copyright legislation to cover cross-border exchange of works for educational and research purposes, except those provisions related to the Marrakesh Treaty. Therefore, the discussion mostly focused on considerations for the future, especially in the digital environment.

114. In fact, some Member States explained that in practice requests for educational materials from foreign countries were rare, so far, due to language differences. However, when language is not a barrier, i.e. in regions where the same language is spoken, the Member States considered the establishment of regional mechanisms as a useful tool to facilitate cross-border exchanges for educational and research purposes.

115. Some Member States discussed the advantage of promoting a collective licensing mechanism to cover the issues, including through a network of CMOs or a regional platform.

116. Member States questioned the potential conflict of laws in case of cross-border exchange. Some thought that the conflict could be resolved through a conflict of law rule based on the law of the country where the institution is located (law of the country of origin). Some Member States even suggested the possibility of having a clarification by way of an international instrument. A few Member States suggested that there was a need to legislate in this field.

117. While some Member States recommended that it would be good to legislate in this field to cover these issues, a few Member States thought that it would be relevant to extend the provisions of the Marrakesh Treaty for cross-border teaching purposes: a copy made and made available (or sent) lawfully for teaching purposes in the country where the institution is located may be accessed from another country where students are located.

118. A question was raised on the status of orphan works along with the benefit of considering the law of the country of origin to address some issues related to orphan works.

119. In general, the diversity in solutions to cover these cross-border issues was considered as an ongoing topic for the future. The question was raised as to what would happen if countries had very different solutions for these issues.

## **INTERNATIONAL CONFERENCE**

120. The international conference was organized as the conclusion of the fact-finding and information gathering phase foreseen in the limitations and exceptions Action Plans. It provided an opportunity to address on a global scale some of the issues identified during the three regional seminars on limitations and exceptions held in Singapore, Nairobi and Santo Domingo.

121. This two-day meeting, organized on October 18 and 19, 2019 was opened by the WIPO Director General, Mr. Francis Gurry, and covered the four thematic areas of the regional seminars, namely, libraries, archives, museums and educational and research institutions (see Annex V, program).

122. As to attendance, more than 230 participants took part in the meeting. Eighteen Chairs and Rapporteurs of the regional seminars (out of 21) joined the discussions, together with 44 panellists and five experts (two through pre-recorded videos).

## **Summary of the discussions at the International Conference**

123. In his opening speech, the WIPO Director General stressed that the issue of limitations and exception was a major issue in WIPO's agenda. It was not an easy discussion and he mentioned three main reasons, namely the different approaches in national systems, different levels of adoption of limitations and exceptions, even if similarities existed among Member

States, and finally that the copyright field had been living through a huge digital transformation process. Each phase, namely production, distribution and consumption, had been subject to a dramatic change in the last 20 years. The Director General pointed out that business models, content offers and even the description of works had completely changed. There had been a significant disruption in the value chain, including the appearance of new actors and new roles. He highlighted the anxiety that stakeholders could feel when trying to act in the new environment. He described the action plans approved by Member States as two intensive and energetic programs that encompassed extensive studies as well as other comprehensive activities. He thanked the various experts, Representatives of copyright offices and the broad array of stakeholders who had been involved in the development of the action plans. The International Conference would provide an opportunity to digest all the work done in the action plans to trace a forward path. Finally, the Director General offered three thoughts for Member States to consider when moving forward on limitations and exceptions. One, given the extremely rich product of the action plans, it was up to Member States to take advantage of that in the context of their national copyright systems. Two, limitations and exceptions were part of the whole balance of IP in respect of the competing interests that surround innovation and creativity. It was simply not possible to consider one part of the equation without taking into account the others, including the consuming public. Three, a lesson could be drawn regarding mainstreaming, as had been done with the projects of the CDIP. The operational WIPO copyright system, including technical assistance, legislative advice, and infrastructure, could also use the output of the action plans. This was a means of continuity and the output should not be shelved and forgotten. The Director General wished all Conference participants a productive discussion and path forward.

124. The WIPO Secretariat presented a brief summary of the regional seminars based on the information presented above (see detailed report from paragraphs 4 to 119 above).

125. Further to the summary of the regional seminars, some Chairs and Rapporteurs offered their views on these meetings.

## **Overview of the Singapore Seminar**

126. Ms. Repeta Puna (Delegate from Cook Islands) referred to the methodology followed during the Singapore seminar to hold discussions. Every Member State had had the opportunity to speak. She also reminded the audience that silence in the South Pacific region could mean a lot of things. One limitation in the development of thorough discussions was the background experience of delegates. None mastered at the same level the four areas of discussion, namely libraries, archives, museums and education and research. She acknowledged the valuable role of observers, particularly on supporting the discussion on education and research. In terms of preservation for libraries, exceptions were included in the laws of countries of the South Pacific. In addition, countries that had Public Records Acts also protected this flexibility. She noted that only one country had flexibilities that allowed digital access. Most of the countries had exceptions that allowed short analogue copies of works, and those countries reported the existence of hesitation to allow copies in other formats as the laws were drafted in loosely defined terms. There were no provisions that allowed cross-border uses for libraries. She noted that the University of the South Pacific benefitted from cross-border access to works, although the law did not provide exceptions in that respect. A legislative review was desirable. She also pointed out the need to provide guidance on the interpretation of some exceptions. For instance, exceptions to make short copies could refer to one chapter, or 10 per cent of a work, among other possibilities. Exceptions that facilitated distance online learning were non-existent. There was a need for clear provisions that permitted archives to carry out preservation activities. In the South Pacific region, only one country had exceptions that permitted the digitization of analogue works for preservation purposes. She referred to the increasing risks brought by climate change, particularly regarding the deterioration of paper records in archives and documents on traditional knowledge. She noted that cross-border

activities among archives were guided by the Pacific Regional Branch of the International Council on Archives (PARBICA), a professional organization that comprised government archives, non-government archival institutions and associations, and individual members representing many nations, states and territories in the North and South Pacific. As to museums, she noted that only three countries permitted the preservation of artefacts by these institutions. She cited the case of one country the artefacts of which were located in museums of other countries in the Pacific or in Europe. She thought that if those artefacts could be digitized, access to the digitized copies could be permitted in that country. As to the way forward, she pointed out the need for a legislative review that embraced new technologies and digitization. She also stressed the need to develop capacity building and public awareness. She reiterated the need to address the implications of climate change, particularly regarding the preservation of traditional knowledge sitting in libraries and archives.

### **Overview of the Nairobi Seminar**

127. Ms. Dora Makwinja Salamba (Delegate from Malawi) said that, in the Nairobi Seminar, consensus was found on the need to address limitations and exceptions in national legislation, particularly for those laws that were not adequately adapted to new technology and emerging issues. She highlighted the interesting angle of discussions on environmental challenges, for instance. While limitations and exceptions were covered in national laws regarding private use, libraries, archives, education and research, there was very little or nothing addressing museums. She pointed out that limitations and exceptions should be more specific regarding preservation, digitization and access. Private copying should be allowed in the digital environment but measures and control should be in place, for instance, through the application of levies when widespread copying could not be fully controlled. Licensing should be a valid option when limitations and exceptions are not an option. CMOs can help to facilitate the access to copyrighted works. Those organizations should be created in countries where they do not exist, or strengthened where they have been set up. Cross-border exchange should be addressed through regional or international routes and international collaboration. Another topic to be addressed was the use of orphan or unpublished works. One had to have in mind that laws other than copyright, policies, and even political factors could influence the access to and use of copyright works. It seemed necessary to look at them. Countries needed to assess their environments in order to determine their own limitations and exceptions. One thing that was clear in the Nairobi Seminar was that there was no evidence that users had been barred from using limitations and exceptions in their national laws. Cross-border uses for archives should be taken into consideration particularly regarding pre-colonial archives. Effective exceptions for online uses for education and research should be provided in national laws. These could, include format-shifting or adaptation. Awareness raising activities on limitations and exceptions were needed in the Region. Ms. Salamba acknowledged the important input of the studies prepared by the various experts during the Seminar as well as the participation of NGOs.

### **Overview of the Santo Domingo Seminar**

128. Mr. Regan Asgarali (Delegate from Trinidad and Tobago) pointed out that a main highlight of the Santo Domingo Seminar was that certain on-line uses should be exempted under fair dealing, including the reproduction for teaching or for private or personal use. He also referred to the need for specialized provisions for preservation by libraries and archives. As to museums, he stressed that very few countries had provisions for these institutions in their national statutes. He observed that there was a lot of commitment to allow preservation activities in legislative frameworks, but there were narrow preservation strategies in practice for cultural heritage institutions. Preservation measures had to be taken before works got fragile,

not after. He pointed out that climate change was a major concern in the Caribbean. Hurricanes, for instance, posed a great danger for valuable works. He highlighted that preservation activities should be accompanied by the possibility of also disseminating the preserved works. As to education and research, he noted that online access to copyrighted materials was permitted by the laws of a couple of countries in the Caribbean. He noted that the University of the West Indies and its various campuses in the Caribbean had ample access to works online. He highlighted that while laws permitted private use, provisions did not give details on the amounts that could be copied. Access could be permitted through the combined application of provisions on private use and on educational uses. As to cross-border activities, he noted that those uses had been facilitated thanks to the Caribbean Reproduction Rights Organizations Agency (CARROSA), which provided licenses for users of copyright image and text-based publications. He noted that cross-border activities for archives seemed to be permitted through exceptions in only three Caribbean countries. As to capacity building, he stressed the need to raise awareness among the beneficiaries of exceptions, for instance, developing training for archivists on the use of orphan works. Finally, for the way forward, Mr. Asgarali highlighted that: (i) licensing could provide a flexible system of single authorization in the Caribbean region, an interesting example was licenses that permitted multi campus activities in the Caribbean; (ii) there was a need for legal reform particularly regarding digital preservation and cross-border uses; (iii) museums could benefit from open license systems applicable in case of commercial purposes; and (iv) there was a need for capacity building. This could include a range of activities from training archivists, supporting RROs, and fostering the development of the publishing industry to funding digitization projects.

### Highlights by experts

129. These views were complemented by the five participating experts, namely by Dr. Crews, Dr. Yaniv Benhamou and Dr. Raquel Xalabarder, who were present at the Conference; and also by Dr. Daniel Seng and Dr. David Sutton, through pre-recorded videos.

130. Dr. Benhamou introduced two typical examples with copyright considerations. The first example is the photo shooting by visitors within the premises of the museum, as there is legal uncertainty as to the liability of the museum, when the photo is posted by visitors on social media. The second example is the issue of preservation. Dr. Benhamou stated that preservation is key to cultural heritage institutions and the common good, and cited some dramatic events related to cultural heritage institutions, namely the fire in the National Museum of Brazil in 2018, which had destroyed 90 per cent of the collection, and a fire in Hollywood in 2008 which had destroyed 40,000 original films and 500 original musical works, including performances of Aretha Franklin and Chuck Berry. He emphasized that the issue of preservation will become more urgent due to climate change and natural disaster, as museums of some countries may lose their entire collection if they do not undertake preservation activities prior to such events. At the outset, Dr. Benhamou stated that works held by museums may have various copyright status, ranging from copyrighted works, those in the public domain and those that are non-copyrighted works and that copyright issues are only relevant, when a given work falls within the scope of copyright protection. He also stated that museums are not only users of copyrighted works (e.g. when make copies for preservation purposes), but also creator and owner of copyrights (e.g. when a museum produces exhibition catalogues which may be per se a copyrighted work or generates online databases). Assuming that a museum is a user of copyrighted work and wants to undertake several activities such as preservation, addition of other relevant protected works to an exhibition, grant of online access or generating information about its activities, it would need the authorization of the authors of the pre-existing works, unless those acts were permitted by exceptions. Those exceptions could be specific exceptions for museums or general exceptions, such as exceptions for educational purposes, private use, etc. His takeaways from the three seminars were as follows: (i) There were important concerns regarding preservation and communication. Museums did not engage in certain activities to

avoid legal issues but also because the lack of resources. Digital communication was 'the elephant in the room'. This included online exhibition and catalogues. He cited the hypothetical example of an EU country that made an exhibition of African artifacts. Maybe the African country of origin of those artifacts would like to have digital access to the said exhibition. (ii) Most countries have no specific exceptions for museums. Museums were not beneficiaries of the archives few legislations providing specific exceptions for cultural institutions, although they are driven by similar missions and activities (preservation of collections; cross-border lending; treatment of orphan works; and access to collections by curators and scholars). At least in relation to similar activities, such as preservation, use of orphan works, access to researchers or cross border lending; museums could benefit from the same exceptions in national laws. He noted that even when exceptions existed, there was a lack of awareness and guidance in museums. Indeed, exceptions vary widely from one jurisdiction to another, as of the beneficiaries, the scope and conditions of use. The same applied to licensing solutions. Consequently, he raised the following questions: How to raise awareness among museum professionals in each country? Are specific exceptions for museum desirable, and if so, what kind of specific exceptions? (iii) Among all topics, there were sensitive issues to be addressed globally or at least regionally, in addition to nationally, such as cross border, extension to digital, orphan works (particularly regarding split collections). Further issues may be worth exploring, such as the waivability of exceptions by contractual agreements and implications of extended collective licensing.

131. Dr. Sutton summarized the main points that were discussed at the Regional Seminars held in Nairobi and Santo Domingo. He started by emphasizing the special nature of archives as unique pieces of cultural heritage. He stated that each archival item is unique and each archival collection is also unique and, at times, archives are also vulnerable and fragile while being valuable. He said this special nature of archives has deep implications for how copyright matters are addressed for archival services. The second point, which is generally accepted and considered non-controversial, is that exceptions for preservation of items of cultural heritage is a key theme for archives. He emphasized that preservation copying in archives should not be solely reactive as archives are unique. There should be an element of prediction and anticipation in the selection of items for preservation by archives before an item is damaged or is nearly destroyed. He mentioned a few other areas that are of particular importance for archives. At the top of this list is the question of orphan works. Within a single archive collection, particularly in the case of collections of correspondence, there could be thousands of copyright holders, most of whom could be difficult to trace. Archivists and archive users would need help and guidance on how to deal with orphan works. Another area of significance is the cross-border uses for archives. While drawing attention to the idea of split collections, he explained that while archival items and collections are unique, a particular archival fond (a group of documents with common origin or characteristics) could be split between more than one institution and more than one country, and therefore more than one copyright regime could be applicable. This particular aspect, relevant for cross-border issues, came out strongly during the discussions on copyright and archives. Exhibition of archives was also another archival activity to consider, which could also fall under cross-border issues when this activity involved archives covered by different copyright regimes. Digitization of archives is considered in a number of different contexts. Dr. Sutton emphasized that this was important in the context of preservation. Additionally, he discussed the need for digitization in the context of making archival collections available online and the challenges faced. The question of archival collections being available on terminals also emerged as a relevant area to be considered. The question of liability for archivists and the need to mitigate that liability also emerged as a topic of concern during the discussions at the Regional Seminars, mainly because archivists take decisions on orphan works and other unclear areas of copyright responsibility. Therefore, the archivists or the institution they represent are at risk when the archivists interpret legislation. It is reasonable to recognize the fact that archivists work for the public good and try to serve the preservation of cultural heritage. Therefore, some measures which recognize and seek to reduce the exposure of archivists to liability would be extremely welcome. Finally, Dr. Sutton referred to the question of terminology. He emphasized that archival collections are not just

confined to institutions which are known as archives, but could be found in museums, libraries, and many other institutions as well. In the context of exceptions and limitations, it is therefore important not to use the terminology of archives as though they are the only institutions to which exceptions and limitations would apply.

132. Dr. Crews stated that libraries and archives were fundamental to the nature and structure of copyright. Those institutions shared a similar mission with copyright regarding the access and usability of works. Based on his participation in the three regional seminars, he presented his three main conclusions: (i) most countries had exceptions for libraries and archives (although many countries lack provision, and provisions are often inadequate); (ii) they built on some familiar themes and preservation and research copying were the most salient exception. Countries could do more on other topics, such as circumvention of technical measures of protection, orphan works and access to digital copies in dedicated terminals; (iii) lawmaking showed regional trends. He pointed out the prevalence of British Law in former colonies: some African countries, United States of America, some Caribbean countries, Singapore and Australia. Despite these trends, Member States were asking for additional guidance. Everything boiled down to how guidance on limitations and exceptions would be provided collectively from the Committee. He recalled that, among Member States, there were three different types of cases: (i) those with no library or archive exceptions; (ii) those with very general statutes without specifying exceptions for those institutions; and (iii) those with specific exceptions focused on the activity or service of the institution, including datamining, research, preservation. These exceptions included detailed parameters such as the who, what, how, analog or digital, etc. Dr. Crews reviewed some important findings from his study. For example, 28 Member States have no copyright exception for libraries, and 13 (or 46%) of them are in Africa. Similarly, 31 Member States have a general statute that does not apply to any particular library activity, and 14 (or 45%) of them are in Africa. Among the countries with specific exceptions for certain activities, many of them have laws rooted in the British legal system or in regional systems such as the European Union or the Bangui Agreement. Dr. Crews concluded his presentation with three observations: (i) much of the discussions centered on preservation (ii) facilitating access domestically and cross border was of key importance (iii) some questions had to be solved by the Committee, such as: what is the desired guidance? What is the most useful for each Member State? Is a specific instrument needed to restructure the law? Or perhaps something more general? What about some conceptual elements, such as contractual override and cross border? He emphasized that a library exception that does not apply to the diversity of works in the collections and does not permit digital technologies is likely going to be obsolete immediately upon passage.

133. Dr. Daniel Seng recalled that the importance of education and research was axiomatic. Education was about leaving a legacy for the next generation and for the greater good of humanity. This was considered in the Declaration of Human Rights and in the Berne Convention. The latter included open, flexible and technologically neutral provisions. Based on his participation in the Singapore Seminar, he observed that countries had varied legislation. Some countries used national flexibilities for analog and digital uses, but others limited national limitations and exceptions to the sole act of reproduction of copies, provided qualitative and quantitative limits, restricted multiple copies, limited reprographic copies so they did not extend to digital uses, did not include translations or adaptation, or failed to take into account new technologies or online classroom activities. He recalled that modern education had moved to self-learning, and digitization and technology permitted self-paced individual learning. Some countries had realigned their exceptions to the US fair use provision which relied on a four-factor test. This realignment addressed varied ways of using educational materials and had been adopted by some Member States, both in civil and common law jurisdictions. To work well, limitations and exceptions should be subject to additional considerations, including legislation to facilitate licensing by CMOs for educational and research purposes, overridability of limitations and exceptions by contracts, safe harbor protections for educational and research institutions (and their agents), and provisions regarding exceptions and technical measures of protection and rights management information. Dr. Seng noted that,

in the Singapore Seminar, there was a brief discussion of cross-border educational and research usage driven primarily by institutes of higher learning, use of easily accessible online resources with unclear authorship, ownership, licensing terms, applicable laws, supplements or substitutes for classroom instruction, CMOs and cross-border licenses. He noted that various initiatives had been proposed to address the uneven state of copyright laws regarding new technologies, teaching and research, included the reformulation of Article 10(2) of the Berne Convention or a proposed treaty on educational and research activities. Dr. Seng reminded the audience that it was up to Member States to review and revise their own copyright laws.

134. Dr. Xalabarder referred to her observations in the Nairobi and Santo Domingo Seminars. She noted that: (i) limitations and exceptions were fundamental and integral part of the balance of copyright laws; (ii) the fundamental public interest of education and research was embedded in the Berne Convention since its first Act; and (iii) National laws needed to integrate limitations and exceptions so that they could respond to the needs of online teaching. The scope of these exceptions and limitations (E&L) could be better addressed at national level based on a country's own language, publishing, musical and audiovisual markets, education, collective management infrastructure, etc. She stressed that limitations and exceptions did not equal always free uses. A combination of free exceptions with statutory remunerated schemes (e.g. compulsory licenses) could help the development of solutions. Voluntary licensing was fundamental. It could be done individually or through collective licensing. However, licensing systems are not equally developed in different countries. She highlighted that licensing bodies were trying to find solutions at cross border level. Solutions included the extension of licenses to branch campuses, calculation of fees based on the number of students rather than on territories, application of a territorial fiction regarding the place where uses took place. Direct individual licenses had some challenges particularly regarding timely responses, pricing and access. Collective licensing (i.e., blanket license of repertoire) may be more efficient. She also stressed the importance of not confusing limitations and exceptions with infringements. The public interest behind exceptions and limitations for teaching purposes was the same regardless of whether the teaching and research takes place offline or online. Soon there would be no way to distinguish them. Obviously, different conditions/restrictions and remuneration schemes may be applied to offline and online teaching uses, because the impact in the markets was different regarding offline or online uses. Access to culture and to education relied on limitations and exceptions as well. Dr. Xalabarder cited the ways WIPO could help, particularly in addressing the cross-border issue to overcome territoriality (online uses cannot be restricted to territorial boundaries), the issue of application of limitations and exceptions vis-a-vis technical measures of protection, the need to avoid contractual overridability of exceptions and limitations (when justified, E&L should mandatorily apply), the liability issues, and finally, the provision to national legislators of detailed guidance (and national examples) on limitations and exceptions for teaching and research.

### **Intersection of copyright and other legal regimes**

135. Finally, an overview of the intersection of copyright and other legal regimes was presented by Dr. Fometeu. He referred to the question of access to information protected or not by copyright and pointed out that other laws -other than IP laws- were likely to prevent, complicate or facilitate access or reuse of the said information. That was to say, that other legislations or other legal rules contribute, together with copyright, to the regulation of access to information. Hence, he highlighted the importance of taking a broad view when addressing the issue of access and, consequently, the reuse of information, particularly in the context of the activities of libraries, archives, museums and educational and research institutions. He referred to public security legislation or defence secrecy and cited the case of the European Court of Justice case regarding the photographer Eva-Maria Painer. In addition, he referred to the legislation on State symbols and, finally, to the legislation relating to cultural heritage issues,

which addressed issues of access and conservation. As to access, he pointed out that cultural goods are freely accessible if they are in the public domain, for instance for exploration and consultation for historical, scientific or technical purpose. However, cultural heritage laws might still limit the reproduction, sale or export of these goods, subject to a specific protection. As to conservation or preservation, he highlighted that some laws entrusted to libraries and museums the safeguarding, conservation and development of cultural heritage and other materials. Similar mandates were found in laws related to archives and only exceptions applied in case of private archives and for archives containing certain protected materials by reason of national defence, public security, personal data, etc. However, some laws prohibit commercial reproduction, dissemination and use of archival documents for commercial purposes. He referred to the interplay with legal deposit provisions. He cited the *Union Economique et Monétaire Ouest Africaine* (UEMOA) Directive of 2018 harmonizing the legal deposit of audiovisual documents which provided rules on the conservation and preservation of sound, audiovisual, cinematographic and multimedia documents. The same Directive permits the consultation of document for educational, teaching and research purposes. Some national laws state that the legal deposit has the purpose of allowing the consultation, constitution and dissemination of national bibliographies. When it came to public sector information, he stressed that the constitution of several countries recognizes a right of access to this information. Some other countries have specific legislation designed to guarantee the right to free and open access to information and to grant prerogatives similar to those of copyright or even create a genuine exception or limitation to copyright, such as the exception for the bodies responsible for managing the legal deposit to permit the consultation of the work by researchers, or the reproduction of a work, on any medium and by any process, when such reproduction is necessary for collection or conservation. He pointed out the complementarity that the legislation on orphan works could offer in this regard. Public sector information seemed to have a different treatment in some legislations. He stated that, in order to permit the use and re-use of public sector information, in cases for which the rights are vested in the State the law shall not provide property rights to employees and other individuals. In his concluding remarks, Dr. Fometeu highlighted that: (i) certain laws that interfered with copyright provisions on the issue of access and re-use of information could validly supplement the shortcomings of these provisions; (ii) laws that must guarantee the transparency of public institutions and give citizens a right of access to information were probably more important than those on copyright for the above issues; and (iii) the choices to be made with regard to copyright law should facilitate access to and re-use of public sector information.

136. The introductory part of the Conference was followed by four substantive panels corresponding to the four thematic areas. In chronological order, discussions were held as follows:

## ARCHIVES

### Panelists

137. The panel on archives was moderated by Dr. Kenneth Crews and consisted of the following panellists:

- (i) Ms. Sharon Alexander-Gooding, University Archivist/Senior Assistant Registrar, University of West Indies, Wanstead, Barbados
- (ii) Mr. Jamaa Baida, Director of Archives of Kingdom of Morocco, Rabat
- (iii) Mr. Arnaud Beaufort, Deputy Director General and Director of Services and Networks, National Library of France, Paris

- (iv) Ms. Valeria Falce, Jean Monnet Professor in European Innovation Policy, European University of Rome, Rome
- (v) Ms. Izaskun Herrojo, Director, Library-Newspaper, General Archive of the Nation, Santo Domingo
- (vi) Mr. Paul Keller, Policy Advisor, Europeana, Amsterdam
- (vii) Ms. Elisa García Prieto, Archives Documentary Information Centre, General Sub directorate of State Archives, Ministry of Culture and Sports, Madrid
- (viii) Mr. Sander van de Wiel, Head, Legal Department, Pictoright, Amsterdam

together with the following Contributors from the regional seminars:

- (ix) Mr. Meesaq Arif, Executive Director, Intellectual Property Office, Islamabad
- (x) Ms. Keitseng Monyatsi, Copyright Administrator, Gaborone
- (xi) Mr. Claudio Ossa Rojas, Head, Intellectual Rights Department, Santiago de Chile

## **Panel Discussions**

### **To start the discussion: The intersection between archival material and copyright**

138. An initial base line question when pursuing the issues of copyright exceptions for archives is whether the archival works are protectable by copyright law or not. As the moderator noted discussing exceptions and limitations to copyright was only relevant if the answer to the base line question was positive. This question which emerged already from the discussions at the regional meetings was however not easy to answer for various reasons. Indeed in some cases one may consider archival material to comprise either old material in which copyright had long expired or public sector material that never qualified as a subject matter of copyright in the first place, two “easy cases” for the subject of this conference. While for some others, depending on a number of factors, the answer would not be that straightforward, which may have an important impact on the current debate.

139. Through the panelists’ response to this base line question, the discussions shed light on various approaches taken in carrying core missions related to archival material as part of national heritage: legal framework, contractual practices or licensing along with collective management.

140. Although much material in archival collections may not have copyright protection, a great deal of the collections are under copyright. Archives could include journals of famous authors and correspondence and memos from business files. They are the ingredients of history, and if they were created any time in the past 100 years, in some jurisdictions they have a strong chance of being under copyright protection.

### **The easy cases: archival material statutorily out of the scope of copyright**

141. Some panelists explained that for the category of archival material that had entered into public domain by law with the expiration of the term of copyright, there was no applicability of copyright rules, then no need of exceptions and limitations for such material.

142. In this case, an archivist would carry out without any copyright authorization, all activities regarding his mission, including analogue or digital copy for preservation, access for research and education purposes as well as commercial reuses.

143. Among the examples given by the panelists for ways of assessing archival material in public domain, a few are mentioned below.

- (i) Europeana had undertaken an extensive analysis to assess the copyright status of the archival material that was a part of its collections to identify the material that was in public domain. As stated by the Representative of Europeana, such material in the public domain was referred to as the “easy cases” for the purpose of digitization and granting online access.
- (ii) Based on a similar logic of assessing the copyright status of the archival material, the Representative of the National Library of France explained that works created before 1920 would safely be presumed to be in public domain and, as a result, for the Institution, “*there was complete freedom to digitize*” such works and grant worldwide access to them.
- (iii) An alternative approach to identify archival material out of copyright was shared by the Representative from the Archives, Kingdom of Morocco. According to him, broadly two kinds of archival institutions existed, public and private institutions. For public institutions there was “*no problem*” in the reproduction of such works to carry out the archival activities.
- (iv) The determination of whether a copyright has expired, or whether a work is from the public sector work, is often not an easy task. It can require investigation of the original creation of the work and its publication history. It can depend of research facts and employment circumstances that are no longer known. As a result, much uncertainty surrounds the question of the public domain.

#### **More complex cases: archival material potentially/presumably still under copyright protection**

144. Diverse experiences were outlined in fulfilling the archival mission when interacting with archival material potentially still under copyright protection.

145. According to the Representative of Europeana, assessing the copyright status of the archival material determined “*where copyright begins to play a role*”. As mentioned above, in the countries represented through Europeana, the archival material assessed to be in public domain has been digitized first. Yet, due to legal uncertainty with regard the possible need to get authorization from right owners, works from the 20th century are underrepresented when it comes to online access for example, which resulted in the phenomenon known as the 20th century black hole.

146. The approaches discussed among the panelists when archivists interact with this category of archival material show important divergences:

#### **The way of a dual system with copyright and cultural heritage laws**

147. An example of interplay between cultural heritage code and copyright legislation was given with the Code of Cultural and Landscape Heritage of Italy which regulated cultural heritage. The Representative of the Italian Ministry of Cultural Heritage stated that the Code of Cultural and Landscape Heritage “*enlarges the scope and ambit of reproduction, access and also digitization*” for public interest purposes. For the activity of preservation, the Code authorized reproduction and the verification and evaluation of the right time for preservation was specifically listed as an essential function of a cultural heritage institution. This was to mitigate the risk of obsolescence. Further, as the Representative explained, the Code had also

introduced other purposes for granting access including digital access, which was mainly for research interest purposes. However, *“in case of overlap and clash, copyright prevails”*.

148. The Cultural Heritage legislation of Morocco was a special legislation regulating access to all archival material but only for research purposes. As stated by the Representative of Archives, Kingdom of Morocco, it was enacted to *“meet the demands raised by the country’s universities”*.

149. The Code *du patrimoine* (Cultural Heritage Code) of France provided a different application of a cultural heritage legislation by stipulating a mandatory system of legal deposits which must be of perfect quality and identical to the copies in circulation. As stated by the Representative from the National Library of France this code covered the activity of preservation of cultural heritage. The format of the legal deposit determined how the material was preserved and the ways in which access was given to it. There were general exception provisions that authorized access to digitized material onsite for the purpose of education and research to the public accredited with the institution.

150. It was noted that few countries have adopted many such broad measures to support the public interest in access to archival collections.

### **The way of specific or general exception provisions in national copyright legislation for preservation of and access to archival material**

151. The Representative of the University of the West Indies expressed her view that exceptions to copyright are necessary for collections comprising public sector information and records of evidentiary value. This was mainly because *“very few items in such archives have any commercial value and very few have ever been published”* as a result for some for *“some 75 per cent of records held in the archive, owners could not be traced”*. The Representative stated that specific exceptions to copyright should further be required to address distinct copyright problems related to orphan works, out of commerce works and unpublished works.

152. The Representative of the University of West Indies further elaborated that archival institutions held collections that were *“unique works”* giving evidence and information as *“accumulated records of governments, business, charities, families, individuals”* and such collections would exist in a multitude of formats like *“letters, diaries, emails, financial statements, photos, videos, maps and websites”*. According to the Representative, such material would be accessible to the public in an equitable fashion only through the applicability of copyright exceptions and limitations.

153. The Representative from the General Archive of the Nation, Santo Domingo stated however that in her experience of dealing with complex archival material, it was a challenge to grant access to users despite the existence of exception provisions as those provisions were unclear and subject to interpretation.

### **The way of contractual mechanisms and/or licensing and collective management to facilitate the exploitation of archival material**

#### ***The case of donor agreements***

154. Among the means to clear the rights potentially existing with regard private archives donations, it appeared that the more secure way relied in donor agreements negotiated at the time of acquisition of the archival material between the archival institution and the donor of the archival material. The agreement would stipulate the conditions for digitization, access and other related activities.

155. According to the Representative of Morocco, the Archives of the Kingdom of Morocco requested the donor to sign an agreement stipulating the conditions of use of the private

archival material deposited in the archival institution, including reproduction in a digital format for preservation purposes. The terms of the agreement would determine as well whether access could be given for commercial purposes.

156. According to the Representative of Spain, it was vital to ensure that donor agreements contain a specific clause to address the transfer of copyright that would enable the archivist to carry out the archival activities of preservation and access for commercial purposes.

157. The Representative of the University of the West Indies stated that an absolute deed of gift was preferred over donor agreements, as it resulted in the complete control over the collections by the archival institution. That implied the transfer of copyright in favour of the archival institution as also clarified by the Representative of the International Council of Archives. Gift deeds in favor of archival institutions facilitated the activity of access for commercial purposes to the archival material.

158. However, the donor agreements and gift deeds could at times present some challenges as stated by the Representative of Morocco and the Representative of the International Council of Archives. It was in fact not always possible to ensure that the owner of copyright in the archival material was the one donating the archival material and transferring the copyright in it. There could be as well more than one owner of copyright in the archival material.

159. The Representative of Morocco illustrated these challenges with two cases:

- (i) A donation was made of a collection of 10,000 unpublished reports authored by the famous anthropologist David Hart. The question that arose was whether the donor of the collection could be presumed to be owner of copyright of the collection for the purpose of the donor agreement.
- (ii) A donation was made of a collection of archival recordings of a deceased person. The collection contained sound recordings for which the lyrics belonged to the deceased person but the recording company could also potentially exercise rights over those records. This again posed a question of presumption of the donor's ownership of copyright for the purpose of the donor agreement.

160. The discussion revealed other problems with relying on donor agreements. Donor agreements have the effect of creating different rules of use for different collections. If a single archive has 1000s of contributed or purchased collections, the archive and all researchers, students, and publishers would be subject to as many different terms of allowed use.

161. The WIPO studies of exceptions and limitations reveal that some countries have acted to prevent restrictive donor agreements by prohibiting contracts that purport to override any of the exceptions. Thus, if an exception permits an archive to make copies for preservation, an acquisition contract – or donor agreement – may not be able to prevent the archivists or agents of the archive from exercising its statutory rights. Only a modest number of Member States have such override provisions in the copyright laws.

### ***The way of licensing schemes through CMOs***

162. From the discussion it appeared that some CMOs could facilitate access of some copyrighted archival material held by archival institutions to the public by digitizing works through licensing agreements. This way was presented as an alternative to the exceptions and limitations approach.

163. The licensing approach adopted by Pictoright was intended to make works accessible through the internet online and not on onsite locations, while the law of Netherlands generally

provided for onsite access. Pictoright, the visual artists' author rights organization in the Netherlands, promoted collective management as a solution when despite substantial funding being given to archive institutions to digitize their collections in the Netherlands, the national legislation could not address the issue of making those collections available to the public. Pictoright entered into license agreements with archival institutions for works of artists they represented, while providing indemnification for those they did not represent. The indemnification served as a legal shield for the archival institutions, which could turn to Pictoright in case of ownership issues, while allowing the public to enjoy the archives' collections. This facilitated mass digitization of archival material. As Pictoright represents visual artists, this had resulted in an increase in the number of images available online. However, the challenges to the administration of archival material through collective management arose when some institutions made works of authors available to the public who did not want to participate in Pictoright's initiative as a result of which lawsuits were filed.

164. The Pictoright example is very different from most other collective licenses. Collective licensing is generally limited to the use of works licensed to the collective by the individual rightsholders. Pictoright offers indemnification to protect users; by contrast some other collective agencies require the user to give the licensor an indemnification.

165. Yet the Representative of the University of the West Indies expressed that collective licensing might not be appropriate for the same reason that made donor agreements and gift deeds also inappropriate as stated above. As well due to the quantity of unpublished records (in 75 per cent of the cases), it was impossible to trace authors. The same for orphan works in which case trying to find the right owners would represent a significant hurdle. There will always be many works that are outside the scope of any license, and there will always be archives and other organizations that cannot afford the cost of the license.

### ***A new perspective of hybrid mechanisms***

166. The archival mission for preservation and granting access including the activities related to digitization of certain archival material that were out of commerce had the potential of being realized through a hybrid mechanism of exception provisions and agreements.

167. In the experience of Europeana, authors of commercially unavailable works or of works with a short commercial life were "*mostly content to make them available*" while the copyright system in certain countries required those works to remain protected and not be available to the public. While addressing such a "*logical incoherence*" the Representative of Europeana reflected on the hybrid mechanism provided for in the European Union directive on Digital Single Market. According to him it was too early to draw conclusions or lessons as the European Directive was in the process of being implemented in the national legislations of the European Union Member States and it would take two to three years before drawing the first lessons or outcomes.

### **Other factors to consider in the intertwined layers of laws to regulate archival material**

#### ***The intersection between copyright legal regime, code for cultural heritage, and other legal regimes***

168. The Representative from the Archives, Kingdom of Morocco, stated that for archival material comprising "*works by society*", it was relevant to understand the differences in each country's national approach with regard to the activities of preservation and access to those works.

169. The Representative from Africa who also spoke earlier in the conference, added to this panel discussion by commenting from the audience. He stated that the national policy of each country would determine factors for access to certain material. He emphasized the relevance of the different national laws such as right to information, privacy rights, including human rights or even national security obligations over copyright considerations for access to such material.

### ***Copyright and data laws***

170. Metadata of archival collections: The issue of copyright ownership in the metadata of archival collections was addressed by the panelists in response to a question posed by the Indian Representative from the audience. The Representative from the Ministry of Cultural Heritage of the Permanent Committee for Copyright in Italy gave the example of the sui generis law on database protection in the European Union that would be applicable to metadata quite apart from the applicability of E&L provisions.

171. The Representative of Europeana stated that they were able to make an interoperable system across jurisdictions that facilitated online access to cultural heritage because of the relinquishment of the ownership of copyright in the metadata by agreements and *“ensuring that it is a common pool that can be used by everyone.”*

172. The issue of interoperability of archival material data over time was raised as well by the Chilean Representative.

### ***Making of safety copies***

173. The Representative from the General Archive of the Nation, Santo Domingo addressed the need to have safety copies for the purpose of ensuring the availability of information on the history and heritage of nationals. The Representative from the University of the West Indies shared her experience of dealing with an incomplete archival collection by referring to the archival collection that comprises the original records of the nationals of West Indies. She expressed how the relevant persons were interviewed and their statements recorded in order to fill the gaps in the collection. The University of the West Indies had a system in place for surveying archival material to assess the right time for preservation activity. There also was a preservation/conservation officer in charge of assessing the timelines for making different interventions.

### ***Ideas for consideration emerging from the conference***

174. The discussions brought to the forefront the different levels of complexities associated with each archival activity in the archival mission. Certain issues which would need more work at a national or international level emerged through the discussions as listed below.

### ***More specific exceptions and limitation in the law:***

175. More specific limitations and exceptions in the laws or codes that would merit clarification of some legal uncertainty for issues related to reproduction (both analogue and digital) for the activity of preservation as well as reproduction in digital format for the activity of providing access onsite, offsite and across borders.

### ***Tariff setting:***

176. With regard exploitation of archives another issue which appeared important was related to tariff setting for access and exploitation. As referred to by the Representative of Pictoright, there was an option of diversifying the tariffs based on the nature of the archival material. He illustrated this by stating that the license fee for newspaper archives would be considerably lower than that of other kinds of commercial archival material and that the tariff would increase

when the archival material was reused for commercial purposes. However, as pointed out by the Representative of Pakistan, tariff setting was complicated especially in developing countries, with protracted negotiations with the involved stakeholders.

***Hybrid mechanisms:***

177. The Representative from Europeana stated the interesting mixte of the current EU system: the EU legislator has come up with a combination of a licensed based approach and an E&L approach in areas where no CMOs are in place. Such mechanisms, as illustrated during the discussion would obviously need more work. To see whether it is viable solution fit for purpose to solve specific issues such as out of commerce works, unpublished and orphan works etc.

***Liability of an archivist:***

178. Another issue to develop further could be the potential liability of archivist in carrying on their mandate and possible means to mitigate their risks.

***Role of an instrument:***

179. The Representative from Pakistan was in favor of an Umbrella law at WIPO level with specific and explicit guidelines for countries to develop their own law with respect to limitations and exceptions related to archives.

***Providing working tools for archivists:***

180. As stated by the Representative of Spain, availability of working tools for archivists enabled their knowledge and awareness on issues related to copyright.

***Cross border issues:***

181. Archival material in split collections. The panelists discussed the issue of split collections which raised cross-border considerations that are difficult to reconcile. The Representative of Panama called for an international agreement for cross border uses. The Representative of the West Indies asked for guidelines, a sort of an instrument to help the necessary negotiations.

## **MUSEUMS**

### **Panelists**

182. The panel on museums was moderated by Dr. Yaniv Benhamou and consisted of the following panellists:

- (i) Mr. Fadi Boustani, Assistant Director, Research and Collections Department, Louvre Museum, Paris
- (ii) Mr. Jaime Castro, Legal Counsellor, Contracts Section of the Office for Cultural Affairs, Central Bank of Colombia, Bogota
- (iii) Ms. Anna Despotidou, Legal Adviser to MOMus, Museums of Contemporary and Modern Art, Thessaloniki, Greece
- (iv) Mr. Rainer Eisch, Artist, Dusseldorf, Germany

- (v) Ms. Fatma Naït Yghil, Director, Bardo National Museum, Tunis
- (vi) Mr. Christopher Hudson, Senior Publisher, Museum of Modern Art (MoMA), New York, United States of America
- (vii) Mr. Thierry Maillard, Legal Director, Society of Authors in Graphic and Plastic Arts (ADAGP), Paris
- (viii) Mr. Gustavo Martins de Almeida, Counselor of the Museum of Modern Art of Rio de Janeiro, Rio de Janeiro, Brazil
- (ix) Ms. Katia Pinzón, Head, Contracts Section of the Office for Cultural Affairs, Central Bank of Colombia, Bogota
- (x) Ms. Reema Selhi, Legal and Policy Manager, Design and Artists Copyright Society (DACS), London
- (xi) Mr. Asep Topan, Curator of Museum MACAN and Lecturer, Jakarta
- (xii) Ms. Leena Tokila, Secretary General, Finnish Museums Association, Helsinki
- (xiii) Ms. Marina Tsyguleva, Head, Legal Services, State Hermitage Museum, Saint Petersburg, Russian Federation

together with the following Contributors from the regional seminars:

- (xiv) Ms. Diyanah Baharudin, Senior Legal Counsel, Intellectual Property Office, Singapore
- (xv) Ms. Silvia Leticia García Hernández, Copyright Office, Guatemala City
- (xvi) Mr. Hezequiel Oira, IP Consultant, Kenya Copyright Board (KECOBO), Nairobi

## Panel Discussions

183. Recounting the several activities that are a part of the museum's mission to care for and transmit cultural heritage, the moderator reiterated certain specificities arising from the intersection of copyright law and those activities. One specificity was that a museum carries out its activities as either a user of copyright or a creator of copyrighted works. Another related to a possible functional overlap in some museums in addition to the museum's main activities, for instance, with an archival institution when a museum proceeds with implementation of documentation and archiving of works, and when there is a library on the museum premises.

184. The Representative of the Museum of Modern Art (MoMA) in United States of America stated that both a library and an archive co-existed within the museum, each being regulated by its own institutional practice. Therefore, the question worth contemplation was *"how much is left that requires to be a completely separate museum question?"*

185. The panelists shared their practical experiences in carrying out the activities of the museum they represented against the backdrop of the two specificities. This discussion shed light on the role of exception provisions, aspects for clarification and artist and rightsholder management by the museums through agreements/licenses including collective management of rights. The artists' perspective was also presented, being a key element in any discussion related to use of copyrighted works in a museum collection.

## **Preservation of analogue as well as born digital works in a museum collection**

186. The Representative of State Hermitage Museum in Russia associated the activity of preservation of cultural heritage as the main mission of both museums and archive. The Representative from the Museum of Modern Art of Rio de Janeiro in Brazil referred to digital preservation and stated that *"we are all immigrants from the analogue to the digital world."*

### ***Need for exception in the case of preservation***

187. The Representative from the Bardo National Museum stated that the museum also performed the function of an archival institution, with a valuable collection of photographs. As Tunisia did not have any specific exception provisions, the Representative expressed that it was *"very difficult"* to manage and fulfill the duty of preservation of such an extensive collection. She also referred to the requirement of funds for this purpose.

188. The Delegate from Guatemala referred to the summary presented by the sub-group after the discussions at the regional seminar in Santo Domingo and emphasized that preservation exceptions would imply *"above all, a limited reproduction right"*. She added that *"preservation also includes adaptation into other formats to prevent media obsolescence"*. She wondered how and under what conditions a museum can reproduce works for preservation purposes.

### ***Status of copy in the case of preservation***

189. On the difference between digital reproduction and digitization for preservation purposes: the German artist referred to the difference between digitization of analogue works for preservation purposes and digital preservation of born digital works. He stated that a digital copy is *"only documentation"* and *"when you have an analogue piece and you make a copy, it is still a copy"*.

190. On number of copies made for preservation purposes: while referring to multiple reproductions of original artworks for preservation purposes, the German artist contemplated *"does an artwork have an end of life?"* As he re-emphasized that there is a difference between a copy and an original work. According to him *"to make a copy of a copy of a copy of a copy"* is an attempt to make a copy of a work more relevant, specifically when it is the original work that is of cultural significance.

### ***Status of moral rights in the preservation process***

191. On restoration of work and moral rights: the Representative from the Museum of Modern Art of Rio de Janeiro in Brazil stated it was important to inform the visitors of a museum when works have been restored and the original is lost or destroyed. He gave the example of the work of an artist Lygia Clark called 'Dialogue of Hands' that he described as two hands rubbing together with a ribbon in between. When there was a tear in the original ribbon, the museum put it in a box next to a video reproduction of the work. He further stated that the artist needs to be respected and specifically consulted for any restoration work that may affect moral rights.

192. The Representative from MOMus, Museums of Contemporary and Modern Art in Greece stated that *"from a theoretical point of view the barrier, is always protection of moral right of integrity"* and the museums are extremely careful about not violating the right of integrity.

### ***Agreements for moral rights***

193. Representatives from Museum of Modern Art of Rio de Janeiro in Brazil and MOMus, Museums of Contemporary and Modern Art, in Greece, unequivocally stated that the museum needs to ask for the special permission for the moral right of integrity for making any restoration of the original work. The artist gave an example of how restoration of the work could also be viewed as creating new works. He emphasized that it would be *“best to ask the artist as long as they live, how it should be made”*.

### ***Immaterial works***

194. The Representative from the Museum of Modern Art of Rio de Janeiro in Brazil stated that museums deal with performances and *“it is a paradox also that immaterial works just require more agreements”*. He further posed questions on how a museum would lend the performances to another museum, and whether an authorization would comprise a right of exhibition, reproduction or performance? According to him, such questions were relevant also in the context of new forms of art, such as projections on the façade of a building, sand or ice sculptures.

195. For objects of immaterial works, the German artist stated that when a performer intends to make the performance only once, it should be respected.

### ***On subsistence of independent copyright in the restored work***

196. The Delegate from Nairobi posed a question on the possibility of the restored work having its own independent copyright when substantial effort and skill has been expended on its restoration. The Representative from MOMus Museums of Contemporary and Modern Art in Greece responded stating that in circumstance that make the preserved work original, it would be protected.

### ***Reproduction of works in a museum collection***

#### ***Reproduction for making exhibition catalogues: why are exhibition catalogues important?***

197. The Representative from the Museum of Modern Art of Rio de Janeiro in Brazil explained the importance of an exhibition catalogue by stating that *“if you don’t have a catalogue, the exhibition does not exist for the future”*.

198. The Representative from the Museum MACAN in Indonesia while giving a curator’s perspective also expressed his agreement with the Representative from Museum of Modern Art of Rio de Janeiro and stated that in modern and contemporary museums *“exhibitions are a temporary event/ movement of cultural activity.”* He thus emphasized the importance of an exhibition catalogue not only for a museum but also for the artist and the exhibition itself.

199. The German artist emphasized that exhibition of works in a museum collection was equally important for an artist as it was for a museum as it brought artists *“fodder”*.

#### ***Need for exceptions in making of an exhibition catalogue: is it one of the main specific exception necessary for a museum?***

200. The Representatives from the Museum of Modern Art of Rio de Janeiro in Brazil, the Museum MACAN in Indonesia, the State Hermitage Museum in Russia, MOMus, Museums of Contemporary and Modern Art in Greece expressed that for a museum one of the main exception provision was for the activity of reproduction specific to the purpose of making an

exhibition catalogue. In Brazil, as stated by the Representative, efforts were ongoing to seek a reform in the national copyright law to include an exception for exhibition catalogue.

***Interplay between exceptions in copyright legislations and provisions in other cultural heritage legislations.***

201. The Representative of State Hermitage Museum, in Russia stated that exception provisions were needed despite a specific legislation in Russia that regulates museums and provides museums an exclusive right to reproduce artifacts in their collection. According to her the exclusive right *“is hindered by the law on copyright at least partially.”* She stated that when exhibitions involve contemporary artists, the museum had to request the artists’ authorization to use the reproduction of their works in the catalogue.

202. Collaboration mechanisms with other cultural heritage institutions: In Finland, museums, libraries and archives have a strong collaboration and all three are mentioned in the country’s copyright law. The Representative from the Finnish Museums Association explained that Finland launched a project called the National Digital Library (2008-2017) which gathered museums, archives, and libraries materials and made the material accessible to the public.

203. The delegate from Singapore expressed the existence of specific preservation provisions for museums in cultural heritage laws of countries in the Asia-Pacific region. She expressed that such provisions, and even when analogous exception provisions are introduced in the national copyright legislation, would be balanced and *“would take into account the interests of all the parties involved, including the rightsholders as well as museums”*.

**Factors to consider**

***Three-step test and exception provisions***

204. The Representative from MOMus, Museums of Contemporary and Modern Art, in Greece remarked that *“we heard a lot about exhibition catalogues but not the three-step test”*, she emphasized on the applicability of the three-step test, provided for in the international copyright treaties, in copyright exceptions and limitations, underlining that the exception should not prejudice the interest of the author, which would happen in the case of sale of a large volume of catalogues using their works.

***What about the potential profitability of a catalogue?***

205. The Representative from Louvre Museum in France stated that the number of artworks reproduced in a catalogue could serve as an indicator of the possible profitability of a catalogue. However, he stated that in his experience this indicator would not always be accurate. For example the Louvre Museum has had catalogues with a large number of artworks, but because of the cost of paying the photographer such catalogues are not generally profitable.

***Quality of a copy to consider when making available online for users***

206. The Representative from MOMus, Museums of Contemporary and Modern Art in Greece emphasized that *“much care should be taken about high quality standards”* of the works digitized as it is important to make sure the way works are being digitized and represented in the digital environment.

207. The German artist stated that in Germany museums could use photographs with resolution up to 2000 pixels, which could still be used to print post cards etc. He stated that it was technical question that needed to be discussed over the years in light of the evolving digital environment

### ***Internal museum guidelines for making catalogues***

208. The Museum of Modern Art (MoMA) in United States of America has a strong policy to respect rightsholders through its internal guidelines on catalogues that tend to focus more on the quality of catalogues. Giving a general overview of the Museum's guidelines, the Representative stated that the guidelines sought to respect rightsholders while also giving them the option to exercise their right to waive fees. The Representative also cited a specific rule from the guideline which was to refrain from cropping or altering images, unless reproduced in a complete form somewhere else in the catalogue.

209. The Representative from the Bardo National Museum in Tunis, Tunisia stated that for reproduction of catalogues, guidelines were defined by editors/publishers of the Museum.

### ***Use of iconographs***

210. The Representative from the Louvre in France stated that one way of resolving issues that may emerge while making exhibition catalogues is to keep iconographs *"in the loop"*, in particular when the exhibition catalogue comprises works of contemporary artists. He added that from a purely operational point of view, iconographs were valuable provided museums had the budget for it. He, however, clarified that for big museums problems were different.

### ***Collaboration between iconographs and CMOs***

211. The Representative from ADAGP in France highlighted the importance of iconographs in France as they were aware of the legislation, the rates and the practices. In his experience, CMOs and iconographs worked well together for the museums and the rightsholders as it assured the iconographs that the CMO would cover all aspects including tariffs for catalogues. This would also enable rightsholders/authors to express their opinions and provide useful clarifications in case of factual inaccuracies as well as resolve conflicts with rightsholders. He referred to the benefits of such a collaboration even for online and cross-border activities.

### ***Acquisition agreements with artists/creators***

212. The Representative of the Museum of Modern Art (MoMA) in United States of America stated that the Museum as part of its general system, obtained a non-exclusive license to reproduce the work of art at the time of acquiring the work. This practice was in addition to the practice of entering into blanket rights agreements with artist association.

### ***Remuneration to/royalty for artists for use of exhibition catalogues by a museum for commercial purposes***

213. The German artist specifically stated that the artists' association in Germany had come up with a collective license mechanism for artists to be remunerated and the royalty was determined on the basis of the number of works reproduced in an exhibition catalogue and the amount of revenue it generates for the museum. He further stated that a similar license mechanism would be needed for an artist to create works for the digital space that would also become parts of the online exhibition of a museum.

214. The Representative from MOMus, Museums of Contemporary and Modern Art in Greece stated that *"a prior written consent should be asked from the author in case of digital exhibition."*

### ***On the way of hybrid mechanisms with exceptions, special legislation and agreements***

215. The Representative from ADAGP elaborated that in France there were some exceptions for museums, as well as a special legislation and ADAGP sought to strike a balance with

licenses and exceptions to ensure a space of freedom for the museums to carry out its core activities within their budgetary constraints. According to him in France this hybrid mechanism had worked well as all museums had their collections available online and reproduce catalogues. He stated that *"exceptions aren't necessarily the only way to achieve this"*.

#### **Access: nationally and across borders**

216. The moderator recalled the concern relating to cross border activities and expressed by some Member States from previous interactions and the regional meetings regarding preservation, access to exhibition catalogues and onsite display of works. With respect to access to exhibition catalogues, the Member States specifically felt the need for more guidance..

217. According to the Representative of State Hermitage Museum in Russia, the mission of a museum to *"present the cultural heritage to the public"* was second only to preservation and its implementation *"creates a large number of problems"*.

#### **Online exhibitions (both physical and digital)**

218. The German artist reiterated that the key point is that *"artists have to live from their works."* He stated that it makes *"no sense"* to have access to exhibitions for free, whether those exhibitions comprise of born-digital works or digitized works. According to him when analogue works are digitized for online exhibitions, it is *"only a documentation"* and even then *"there should be a license."*

219. The Representatives from Bardo National Museum in Tunisia and MOMus, Museum of Contemporary and Modern Art in Greece expressed complete agreement with the German artist on this aspect. The Representative from Bardo National Museum in Tunisia added that despite being a museum professional and defending the right of museums she fully agreed with the artist's right to be paid for his/her creation.

220. The Representative from ADAGP in France stated that exceptions are not the only way to make a museum's collection available online and a balanced approach should be envisaged with a reasonable remuneration for authors when the works in the museum collection are in copyright.

221. The Representative from MOMus, Museums of Contemporary and Modern Art in Greece stated that the difference between the access by a viewer to digitized works and born-digital work wouldn't be resolved through limitations and exceptions.

#### **Need for precision in/ clarification of certain elements**

##### ***On national legislation lacking specific provisions and non-existence of national CMO for visual artists***

222. The Representative from the Museum MACAN in Indonesia stated that as the country does not have a specific copyright regulation or a CMO for visual artists, the Museum faces problems with the management of national artists. However, this is not the case for management of international artists as CMOs from other countries help the museum deal with the online activities related to foreign artists. He cited examples of CMOs in UK and France while stating that the Museum worked with the estate of the artist as well in those countries.

***On the difference and link between commercial and non-commercial uses***

223. The Representative from the Louvre Museum in France stated that the issue of commercial and non-commercial use of works in a museum collection was relatively easy to understand theoretically, but in practice there were issues that need to be resolved. For instance, when a museum makes its collections available online free of charge, but earns revenue through advertisements etc.

***On facilitation of inter-museum access within a country***

224. The Representative from the Louvre shared an example of how the museum gave images on loan to other museums in France, at times free of charge, but those museums would use the images for online exhibitions for which there would be a fee charged. Similarly, images would be used for reproduction in other media and formats by other museums.

***On orphan works***

225. The Representative of DACS in United Kingdom referred to the orphan works' scheme in the country. According to her the scheme was "*great and it showed there is an uptake*" as through that scheme approximately one thousand licenses had been applied at the country's intellectual property office in the past five years. She specified that 600 of those licenses were for museums and digital works. However, on a comparison of the orphan works scheme with the licenses offered by DACS, she stated that the orphan works scheme "*was not quite on the scale of an actual licensing scheme for works of known artists and visual creators*". She added in the United Kingdom there are 1800 museums and DACS licenses 1000 museums."

***On the difference between digital and physical exhibitions***

226. The German artist explained the difference between the exhibition of an original artwork and its digital copy. He considered the exhibition of a digital copy as a mere documentation because it would not express the same connection with a viewer as the original of that art work would in a physical space. He highlighted that for online exhibitions, artists created born digital works that were different from the digitized copies of the analogue works. Both the Representatives of MOMus, Museums of Contemporary and Modern Art and the Bardo National Museum agreed with this difference drawn between the exhibition of digitized copies and born digital works. While the Representative of MOMus, Museums of Contemporary and Modern Art stated it is not just a matter of money but of perceiving art.

227. Similarly, the DACS in United Kingdom also expressed that there were a "*multitude of ways in which an artist can have their practice*." Online works and online catalogues for analogue works was one such way, but there were artists who made digital works, which were original works made in a digital field. When such born digital works were made available online, the artists were being deprived of their ability to use their works as they wish.

228. The Representative from the Louvre stated that a large portion of its collections was expected to appear online but discussions are ongoing as to the terms of use. He stated that it might be foreseen that uses for research and education would be free of charge. He stated that these issues were anticipated to be dealt with in the future.

**Artist management through licenses/agreements and/or internal museum guidelines**

**Collective management of rights while taking into account the specificities of a museum's mission**

***Mechanism through agreements for cross border***

229. The Representative from ADAGP in France stated that they did not consider museums to be like any other users and formulated mechanisms with the main purpose of a museum and its very specific mission in consideration. The Representative explained that ADAGP's

approach of collective management of the rights of artists/creators along with certain exceptions in the national copyright legislation of France enabled all museums, whether big or small, to make their collections available online and also reproduce catalogues.

***CMOs and cross-border activities through good relationships between CMOs world over***

230. The Representative of DACS in United Kingdom stated that the museums would benefit, especially for cross-border activities, from the network of CMOs that operate through reciprocal arrangements all over the world. She emphasized that CMOs share a very good relationship with one another. This was supported by the Representative from ADAGP.

231. The moderator recalled however the cross-border element and questioned the territorial nature and effectiveness of licensing solutions when it comes to cross border activities and/or in countries with no effective CMOs in place..The Representative from ADAGP in France expressed that in his experience there were “*no problems*” for cross-border activities of a museum when managed through a CMO, even for online activities. He clarified that the organization applied the law of the country where the catalogue is used and wherever the exhibition takes place. Therefore, he stated that in countries where there are no CMOs “*something to be done to try to develop it*”. The Representative expressed the importance of iconographs also for online and cross border activities along with for the activists.

232. The Delegate from Guatemala referred to the discussions at the regional seminar in Santo Domingo and stated that the Member States had decided that “*CMOs are also a component that helps in the processing of the rights*”, as per museum practices.

***“Bespoke licenses” created by leveraging the strong relationship between CMOs and museums***

233. The Representative of DACS in UK shared the experience of CMOs in UK with respect to online activities of a museum. She stated that the CMOs and the museum sector had a very strong relationship which made the CMOs very reactive to the need expressed by the museum sector to have a digital presence. The CMOs created a “*bespoke digital engagement license*” that provided an opportunity for the museums to put their works online with low rate and flexible fees so that rightsholders could also be remunerated. This further allowed the museums to put works on terminals and digital screens within the museum premises that could also be used for education and research purposes.

***Blanket rights agreements with artists’ societies***

234. The Representative of the Museum of Modern Art (MoMA) in United States of America gave the example of a blanket rights agreement that the Museum entered into with the biggest artist’s rights society in USA. He highlighted the clause in the agreement that stipulated payment of an annual flat fee by the Museum to acquire the right to reproduce in both print and digital form any work from the artist Society represented. This clause helped in reducing the Museum’s administrative time, which according to the Representative was the real “*irritant*” for a museum and not the principle of copyright fees.

***Internal museum guidelines for catalogue with works across borders***

235. The Representative of the Museum of Modern Art (MoMA) in United States of America gave an example of publication of an exhibition catalogue on the work from a recently deceased Congolese artist in the past year. In accordance with the museum’s prevailing guidelines and practice as well as the Congolese national law, the museum was obliged to track down the deceased artist’s relatives to pay royalties. In his opinion this was the “*right and proper*” approach and is likely to become more prevalent with the focus globally shifting on highlighting the otherwise under reported artists from different parts of the world. He stated that “*to undermine that ecosystem would be a great disservice to the cultural sector and to individual creators everywhere*”.

### ***Mechanism through ECL***

236. The Representative of the Finnish Museums Association elaborated on its mechanism through which it entered into an agreement with the artists' collective society. The agreement provided an extended collective license for non-represented artists and allowed the museum to display works from its collection online without the need for individual agreement with artists. The copyright fees were funded by the Ministry of Education and Culture, as well as by museums, in what was described as a win/win situation.

### ***Mechanisms when no active CMOs or no existing CMOs***

237. The Representatives from the Central Bank of Colombia stated that as they did not have a CMO in Colombia *"to enable them to really have a license"*, it was complicated for them to fulfil their constitutional mandate which is of a cultural nature to carry out the activities of the several museums the Central Bank represents. They endeavor to strike a balance between the cultural function of the museums and the mandate in their copyright legislation to recognize the artists through a mechanism of individual licenses. They seek out the rightsholders to sign licenses directly with them to carry out the activity of reproduction of exhibitions, communication to the public and publication of catalogues within the existing legal framework. However, the complications would arise when they would not be able to find the artists or when it would be difficult to negotiate with the artists. She shared an ongoing project which was to normalize the management of the copyright status of the works held by the bank.

### ***Copies for private use/ photographs***

238. The Representative from the Museum of Modern Art of Rio de Janeiro in Brazil identified the general activity of giving access to photographs as one of the two main activities of a museum that would need a specific exception provision.

### ***Granting permission to visitors for photographs through artist agreements***

239. The Representative from the Finnish Museums Association, Helsinki in Finland stated that Finnish museums were *"very positive"* in their approach and had no problems with visitors taking photographs for private purposes within the museum and also sharing those photographs on social media e.g. Flickr and Facebook. According to her this activity was regulated through agreements between museums and artists and it was rare for an artist to decline authorization for this activity.

240. The Representative from MOMus, Museums of Contemporary and Modern Art in Greece stated that visitors could photograph works although flash is not permitted. However, if an artist demands that his/her work is not photographed, special terms had to be included in the agreement with the artist, and the museum had to take all possible measures to deter visitors from taking pictures. If pictures were nonetheless taken and subsequently used or abused, the museum would then be held liable. For professional shootings, permission had to be obtained from the museum and special authorization has to be granted by artists.

### ***Internal museum guidelines***

241. The Representative from the Museum MACAN in Indonesia stated that the internal regulation of the museum allowed visitors to take photographs on their phone cameras but possibly not an ipad and definitely not for professional photography. He stated that they had *exceptions for media to record within exhibition spaces*.

### ***Access for research and education purposes including archival activities***

242. The Representative from the Bardo National Museum in Tunisia, stated that the Museum *"isn't just a museum where you exhibit the collection."* She explained that the Museum additionally functioned as an institute for scientific research with its own library and archives for researchers and students.

243. The Representative from MOMus, Museum of Contemporary and Modern Art in Greece stated that between libraries and archives on one hand and museums on the other there were *"legally critical similarities but differences as well."*

244. The Representative from the Bardo National Museum stated that Tunisia had no legislation for the use of photo archives within the museum, which made their function as a research institution difficult to manage.

### ***Is a specific exception provision required for a museum for research purposes?***

245. The Representative from the Museum of Modern Art of Rio de Janeiro and the Representative from the Bardo National Museum stated that as the museums they represented were also a research establishments and that they were happy to grant access to researchers and students upon requests. For the Representative of the Bardo National Museum it was difficult to manage this activity as there were no exception provisions.

246. The Representative from the Museum MACAN in Indonesia stated that they could give access for the purposes of education and research as it was specifically provided for in the country's national regulation on copyright.

247. The Representative of State Hermitage Museum stated the museum's educational programs and campaigns for students and young children encountered *"the hindrance of copyright law"* as rightsholders authorization was required for this purpose.

248. The Representative of the MoMA in United States of America expressed that additional exceptions for museums was not the *"most important thing"* to worry about. According to him, the main mission of a museum was *"to care for and provide and disseminate education and scholarship about modern and contemporary art"*.

249. His goal with the books and programming is to offer public materials and publish works of significant quality and distinction that don't cost a fortune.

### ***Activities of archival institutions***

250. The Representative from the Museum of Modern Art of Rio de Janeiro stated that the archives in the Museum contained contemporary documents that were open to researchers and exception provisions existed for quotations in their law for the purpose of making catalogues. He clarified that the Museum was more focused on the museum's core activities and that the *"archives played a secondary role"*.

251. The Representative of the MoMA in US stated that use of archives (and also libraries) in the Museum was *"pretty open and unrestricted."* As per the Museum's internal guidelines, the researchers had to sign a registration form for access to primary archival material in the Museum and to publish materials from the archives there was a separate form that provided information on legal compliance and appropriate citation. He emphasized that these activities were carried out under the existing copyright framework.

## **Ideas for consideration emerging from the conference**

### ***An international instrument to address legal uncertainties and existing disparities in legislations and/or regulations across countries, including the lack of collective management organizations in certain countries:***

252. The Representative from the International Council of Museums (ICOM) speaking from the audience, suggested that an international instrument would help in fulfilling the mandate of a museum that included cross-border activities for preservation and access for knowledge purposes on a non-commercial basis. She raised the suitability of an international instrument as a question for the panelists to address while asking them to bear in mind the definition of museums by ICOM, emphasizing that museums “*are not just art museums.*”

### ***High level guidance/instrument/declaration by WIPO for digital preservation of cultural heritage:***

253. The Representative from the Library Copyright Alliance stated that it was important for WIPO to formulate a “*high-level guidance/instrument/declaration*” to ensure that digital preservation was considered important at a global level. He referred to the laws in the United States of America and the recent European Union directive on Digital Single Market for digital preservation by cultural heritage institutions as a possible reference point for the developing countries. He emphasized the importance of such a “*global signal*” by WIPO for preservation of cultural heritage in developing countries. According to him, all countries respect cultural heritage and would ensure its preservation if it was not for the political problems that they face which would be overcome by a “*high level instrument by WIPO.*”

### ***Updating of national copyright legislations to specifically include museums as an institution covered under an exception provision:***

254. The Delegate from Kenya gave his experience from the discussions at the regional seminar in Africa and agreed that there was a need for specific exceptions for museums. He stated that most countries represented at the regional seminar in Africa did not have a specific exception provision for museums and had considered updating the national copyright legislations “*by taking into account each country’s unique needs and environment rather than looking at an entire instrument.*” He stated that the Member States at the regional seminar in Africa discussed that “*addressing exceptions and limitations in an abstract without corresponding it to exclusive rights would create some challenges.*”

### ***Addition of specific exceptions in national copyright legislations for the main museum activities:***

255. The Representative from MOMus, Museums of Contemporary and Modern Art in Greece stated that “*we are really in need of specific exceptions*” while clarifying that these exceptions should be limited to those activities that “*enable a museum to function better*”. She included the activities of reproducing works in exhibition catalogues and exhibitions as the main activities.

***Building capacity of national CMOs:***

256. The Representative from the Museum MACAN in Indonesia stated that for the works of foreign artists in Indonesia, foreign collective management organizations “*help a lot*” while nationally the country does not have a CMO for visual artists. The Representative from ADAGP in France suggested that good practices with respect to collective management would be developed and shared. He gave the example of his organization already working towards developing collective management in countries where CMOs for graphic and plastic arts did not exist as it “*works well for everyone’s interest.*”

***Inclusion of a definition of museums when specific exception provisions are added in national copyright legislations:***

257. Referring to the definition of museums by ICOM, the Delegate from Saint Kitts and Nevis from the audience suggested that it would be prudent to include a precise definition of museums in national copyright legislations, in particular when exceptions applicable to other cultural heritage institutions are adapted or simply made applicable to museums.

***Succession planning of works of artists with the help of technical bodies:***

258. The Representative from the Museum of Modern Art of Rio de Janeiro in Brazil emphasized the importance of succession planning by artists in the context of legal heirs of an artist not granting permission for reproduction of the work in an exhibition catalogue and collection of resale royalty. He stated that specialized technical bodies would help the smaller museums frame appropriate contracts to resolve potential issues with legal heirs.

## **LIBRARIES**

### **Panelists**

259. The panel on libraries was moderated by Dr. Kenneth Crews and consisted of the following panellists:

- (i) Mr. Guy Berthiaume, former Head, Library and Archives of Canada, Ottawa
- (ii) Ms. Liliane de Carvalho, Legal Advisor, Editions Madrigall, Paris
- (iii) Mr. Kai Ekholm, former Director, National Library of Finland, Helsinki
- (iv) Mr. Dick Kawooya, Assistant Director, School of Library and Information Science, University of South Carolina, Columbia, South Carolina, United States of America
- (v) Ms. Rebecca Giblin, ARC Future Fellow, CREATE Fellow, Melbourne, Australia
- (vi) Ms. Melissa Smith Levine, Director, Copyright Office, Library, University of Michigan, Ann Arbor, United States of America
- (vii) Ms. Carol Newman, General Manager, Jamaican Copyright Licensing Agency, Kingston
- (viii) Mr. Luka Novak, Writer, Ljubljana
- (ix) Mr. Jerker Ryden, Senior Legal Advisor, National Library of Sweden, Stockholm

- (x) Ms. Ran Tryggvadottir, Project Manager for Copyright, Ministry of Education and Culture, Reykjavík

together with the following Contributors from the regional seminars:

- (xi) Ms. Ena'am Mutawe, Director, Public Relations and Media, National Library, Amman
- (xii) Mr. John Asein, Director, Copyright Commission, Lagos
- (xiii) Ms. Jihan Williams, Registrar, Intellectual Property Office, Basseterre

## Panel Discussions

260. *Why do libraries have the place they have in the copyright system?* The panel discussion started with this question and the panelists' response shed conceptual light on the broader mission of a library. The discussion steered on to the relevance of types and definitions of libraries from the viewpoint of copyright laws, with the panelists sharing their own experiences in performing functions and providing services core to a library's mission. For some panelists it is not to be forgotten that a mission of a library is to also serve the communities' interest.

## Preservation

### Preservation of cultural heritage: a main function of a library

261. Some panelists considered the activity of preservation of cultural heritage collections to be an essential function of a library in its mission of "*national library*" to be distinguished from the functions and services performed by a library whose main focus is on public lending, as stated below:

- (i) According to the Slovenian writer the relevance of a library in the copyright system would be understood by classifying libraries on the basis of their functions and services, thereby distinguishing between "*two types of libraries*". The national libraries performed certain functions for "*preserving and archiving*" items. And public libraries perform functions of distribution and lending works and granting access to them.
- (ii) Agreeing with the Slovenian writer, the Representative of the National Library of Finland, stated that "*it makes a huge difference*" as national libraries are the "*only ones authorized to digitize the heritage*" in addition to the function of providing access to it.
- (iii) The Representative of the Library and Archives of Canada, added that education libraries were "*very important players*" while agreeing with the Slovenian writer and the Finnish Representative that from a copyright stand point there were very relevant differences in the functions and services of a national library in comparison to a public library.
- (iv) However, at the same time, for some countries, as stated by the Representative from the Ministry of Education and Culture in Iceland, it was difficult to distinguish between the various functions and services performed by a library as many libraries "*are also archives or education institutions*".
- (v) Dr. Crews and representatives from Member States noted that while some countries may center their preservation activities with the national library, that is simply not the situation in most countries. Preservation activities, with important copyright implications, are based at many libraries, including academic, public, and research libraries. Indeed, the preservation statutes routinely apply to many libraries far beyond just the national library,

including the statutes of Slovenia and Canada. The Representative from the Ministry of Education and Culture in Iceland made a similar point about preservation in her country.

## **Legal ground for preservation**

### **Common understanding of a need for an exception provision for preservation**

262. The Representative of the University of Michigan in United States of America, expressed the importance of exception provisions in the copyright system for the *“universe of cultural heritage institutions”*. She said there were *“some very high level preservation interests”* common for all cultural institutions. She reflected on the need for an international framework that would serve as a base to address the variations in specific provisions at a national level. According to her, this would be extremely helpful for the decisions made by cultural heritage institutions on a daily basis.

263. For the Representative from the Ministry of Education and Culture in Iceland thought it was obvious that one of the two roles of any library was to preserve cultural heritage. However, she asserted that it *“must not be forgotten that the main role of copyright is to find the right balance”* with the protection to rightsholders to ensure that cultural heritage *“carried on to be made.”*

### **Existence of specific preservation provisions in national legislations**

#### ***To ensure preservation including digital preservation***

264. The Representative from the Jamaican Copyright Licensing Agency gave the example of the Jamaican copyright legislation which contains a specific provision for preservation. Addressing the concerns raised by the Delegate from Saint Kitts and Nevis regarding the preservation provisions in most African countries allowing preservation only when the work was damaged or lost, she stated that in the Jamaican copyright legislation it doesn't say that the *“libraries and archives have to wait until the material are tattered or torn or missing pages”* to preserve works. She stressed the importance of having a *“very clearly spelt out”* provision in the national copyright legislation for a library or archive to make copies for preservation purposes. This, she elaborated with the example of another provision of the Jamaican copyright legislation that defined a 'copy' to include reproduction in any material form and thus covers digitization and making of analogue copies. According to her, if the provisions in the national legislations were *“clear and precise then you don't need to go and to wonder what you can do and how to do it.”* She stated the same would apply for provisions related to access as well.

#### ***To ensure timeliness of preservation***

265. The Representative of the Library and Archives of Canada, made a reference to the Canadian copyright act and stated that it allows for libraries and archives *“to digitize for preservation upstream at any moment, not only when there is clear and present danger but also when there may be obsolescence.”* He expressed that the law was not perfect but it ensures timeliness of preservation. In order to avoid a work from being destroyed, burnt or in a flood it is important to give librarians the decision on the right time for preservation could be a model to follow.

### **New opportunities and challenges in the digital era for preservation**

#### ***Technical challenges presented in the digital era***

266. The French Representative from the Editions Madrigall, expressed that there was a general consensus on the role of libraries to preserve heritage as well as give access to culture.

According to her the challenge, instead, was posed by technical aspects of digitization. She stated that for a library to fulfil its mission of preservation of cultural heritage, the technical know-how needed to be improved. While referring to preservation of heritage, she gave an example of technical problems she faced with legal deposits of digital files made to complete the works in the library's collection. The issues that arose were related to missing digital files, library server issues and security issues. According to her, these issues were technical but needed to be addressed through a national legal framework.

***Existence of preservation provisions to make copies also applicable to the digital era***

267. The Representative from the Ministry of Education and Culture in Iceland shared the experience of the Nordic countries where preservation provisions had been in force for a long time and applicable to public libraries, public archives, public museums and public educational institutions. According to the Representative, all the institutions were allowed to make copies both in digital as well as analogue formats for preservation purposes, including for security purposes. She further added that those provisions included making copies for missing works and works in "*delicate*" conditions on the basis of the assumption that what is missing could be borrowed from other libraries. However, she stated that the preservation copy could only be used for non-commercial internal institution uses.

***Library's functions for preservation in the digital era and other challenges***

268. The Delegate from Saint Kitts and Nevis shared her experience from the regional seminar in Santo Domingo and stated that preservation through digitization of the works in library collections was the main concern from the viewpoint of the adversities faced due to climate change. She said that the question to address was what minimum standards could be laid down for Member States to ensure that the works in library collections are preserved in digital formats.

269. The American Representative from the University of South Carolina, also expressed the consensus for "*minimum standards internationally*" for the functions performed by a library for preservation purposes.

**Access**

**Legal ground for access**

***Access to cultural heritage collections***

270. The Delegate from Nigeria stated that preservation of cultural heritage collections should not be considered as a "*separate box*" from access and cross-border issues. If the preservation of a work is conducted, it must include provisions for access, including access across borders. He stressed that it was necessary to look at "*libraries of the future*" as digital "*blows up*" the different boundaries of a library.

271. The Representative of the Library and Archives of Canada made a reference to the Canadian copyright act and stated that the national law provided the option of giving access to the digitized preservation copies in the reading rooms of the library.

272. The Representative from the Ministry of Education and Culture in Iceland stated that digital copies made for preservation purposes are in her country made accessible in special terminals on the premises unless there is an agreement to the contrary.

273. The Representative of the National Library of Sweden, emphasized that for preservation through the system of electronic deposits "*there will be only one library in the nation most likely.*"

Those works that have been deposited electronically, can be made available through that library only. He therefore emphasized the need to focus on the user and not the institution.

274. However, the Representative of the University of Michigan in United States of America who represented a large research library that dealt with material other than just books like films, data cassettes, recordings of interviews from the 1970s etc., stated that it would be more useful to have an international set of principles at the least. According to her, the international set of principles would help recognize the variety of different national approaches and would provide guidance to certain countries, to help them find the path that is right and appropriate for the country. This would provide guidance to the library faculty to incorporate copyright into their dealings with scholars including international partnerships.

### ***Access in the digital era/environment***

275. The Representative from Australia presented a research project in her country focusing on book e-lending. Although e-lending of books has great potential to reach disenfranchised regions, and people who have difficulties to come to libraries, such as dig workers, people in nursing homes, or rural readers, some issues on licensing conditions had been underlined by the research. According to her, publishers license e-books in different ways, some licenses have a two-year time limit, which is the case of four of the five larger publishers she had experienced. Some publishers would not license e-books unless some time lapses after the publication of the print format, and some publishers will not license e-books to Commonwealth countries. Nevertheless, the research showed that e- lending allowed books no longer available in physical form to still be accessible.

276. The Delegate from Jordan stated that in her country there was no legislation for e-lending and hence such practices did not exist, and she stated that in future if works were digitized in their library, they needed to ensure access to them by users. She questioned how she can provide fee to publishers when the library has no financial means.

277. The Delegate from Pakistan referred to the changing environment linked to digitization process and growing place of social media and called for an effort to restore the activities of libraries to avoid social disconnect.

278. Following this remark, the chair of the Library association in Jordon questioned the future of librarians as dinosaurs. For him digitization and technical infrastructure were the issues. He wondered how a library could provide fees to publishers when they had no means.

279. To those remarks the Canadian Representative said that libraries were no longer dinosaurs as thee more people go on the web, the more people come to libraries. Libraries have reinvented themselves.

### **Access and interplay between the interests of rightsholders and users**

#### ***Private copying exception and equipment levy***

280. The Slovenian writer emphasized the importance of national legislation by giving the example of the exception provision in Slovenia that permitted private copying. As elaborated by him, the exception covered libraries, and research and scientific institutions and permitted making of up to three copies of a work for the institution's own use, while also permitting the digitization of works. The Slovenian writer emphasized that this private copy exception is not prejudicing the legitimate interest of the right holder because he/she is remunerated through equipment levy applied to producers and importers of equipment such as photocopiers,

scanners, and now mobile phones that are also being used as scanners. This is a “*win-win combination of a balanced copyright solution*”.

### ***Licenses and remuneration schemes***

281. The Representative of the National Library of Sweden, mentioned the experience of a pilot project with publishers, authors and visual art organizations to replace inter-library loans with online access. The publishers, authors and visual art organizations agreed to authorize access to works published up to 1999 through licenses. He implied that the issue was more an issue of technical infrastructure in the library. He explained that a pilot project with Malawi shows that these kinds of initiatives can be developed across border and it is not limited by national jurisdiction.

282. The Representative of the National Library of Finland emphasized that the system of grants and compensation given to stakeholders by libraries was creating new value for everyone. The role of libraries in “*creating new value*” by compensating the stakeholders including writers through numerous grants. This created a healthy system that was well respected by everyone. The other benefits included a lower level of piracy as there was a very strict control by researchers on the works they created and how it was made accessible.

283. However, according to the Representative from Australia, issues linked to licenses were of different nature. Publishers usually license books to aggregators, which in turn license them to libraries. According to the research referred by her, there was a lack of transparency in licensing and pricing terms because of strict confidentiality clauses. She further added, that even though it is the general intent of publishers to offer the same terms to all aggregators, the reality shows they often fail to give effect to that intention. Subsequently, aggregators and librarians are not able to find out about those very different terms. Another issue is the low level of flexibility for libraries because of the lack of choice of licenses.

284. The American Representative from the University of South Carolina stated that “*we cannot license our way out of existing problems in terms of what is not there in the international copyright system.*” He referred to it as a “*piecemeal approach which does not address issues around out of commerce works, orphan works and a host of other classes of works.*” He added further that he thinks “*license have their place in general access to information libraries.*”

285. The risk of a piecemeal approach was also underlined by the Representative of Electronic Information for Libraries (EiFL) from the audience. She said that licenses can take a long time to be negotiated.

### **Public private partnerships as new tools to provide access**

#### ***Public private partnerships and collective management***

286. The Representative from Editions Madrigall in France gave an example of a project that facilitated access to the 20<sup>th</sup> century works that were out of commerce as well as digital preservation of those works. This project was based on a public-private partnership. The books were digitized in part with state funding and also by contributions from the publishers. She stated that it was not only important to preserve national cultural heritage but also to provide a legal supply that will be available on a commercial basis. According to her, there could be digitization projects with several dimensions to them to not only preserve the national heritage but also to cover more commercial aspects while bearing in mind that the “*goal of the commercial stream is to propose for readers a supply of material that meet their technical demands but also allows for remunerating creators, and this can be done through collective management systems, inter alia.*”

## **Cross-border**

### **Access to cultural heritage across borders through a library**

287. The Representative of the National Library of Sweden, Stockholm emphasized that *“cross border access is crucial for access to cultural heritage”*. According to him, *“without culture heritage, no libraries would exist”*.

### ***New opportunities for repatriation in the digital era***

288. The Representative of the Library and Archives of Canada elaborated on the digital unification project in Canada. As Canada had been a colony of UK and France, most of the foundational copies were not in the country, although there were copies in sufficiently good conditions. He stressed the importance of a common framework to address the instances of digital unification for both developing and developed countries citing examples of Poland and Sicily. He referred to a specific project, the ‘Digital French Speaking Network’ established with the National Library of France that facilitated access and provided *“a passage for a document”* that was in a different part of the world. This would enable a common basis and smoother flow of documents.

289. The Delegate from Nigeria voiced concerns about the lack of capacity of developing countries to conduct preservation activities, and whether if those preservation activities were to be conducted outside of their countries, they would need guarantee against the risk to be locked out of the knowledge space.

290. All cultural heritage institutions have collections from the past several hundred years, coming from different parts of the world. Digital repatriation should allow the digital unification of those collections. Digitalization also enables different repositories for this heritage, according to the Representative of the University of Michigan Library.

### ***Term of copyright and public domain***

291. Even in developed countries, as stated by the Representative of the University of Michigan, in United States of America, differences in national copyright regimes related to the public domain is a challenge, as a question that often arises is *“which public domain? Because that is set at the national level”*.

292. She gave the example of a project in which they had to identify books in the public domain. The concept of public domain is set at the national level and in the United States, there is no rule of shorter term. As the University collaborates with other countries, such as Canada in their digital library project, the question of public domain raised issues. As she elaborated, copyright duration in Canada is life plus 50 when it is life plus 70 in the United States. There is a 20 years gap between countries in that case and there is uncertainty on how to legally provide access to works in this situation.

### ***Need for infrastructure to create new services for cross border***

293. The Representative of the National Library of Sweden, gave an example of cross border project that was an *“up and running scheme to give access under license scheme.”* He emphasized that it was not a lending service but a streaming service which was going to be followed for other documents – books, audio visual works. Through this project, the national library digitized 25 of 175 million newspaper pages and made them available online to the public and to public libs and national archive and all universities. This was facilitated under license

schemes and they were in the process of giving access to the same content in Finland. He emphasized the need for infrastructure for such projects and that it was *“not copyright that is holding us back but the infrastructure.”*

## **Ideas for consideration emerging from the conference**

### ***Minimum international standards for preservation:***

294. The American Representative from the University of South Carolina while referring to the question posed by the Delegate from Saint Kitts and Nevis on how the World Intellectual Property Organization can actually support the strengthening of legal frameworks for each state to legally preserve cultural heritage in libraries, stated that preservation emerged as one of the areas on which there was a consensus to have minimum standards internationally as *“publishers, distributors, librarians and educators were all coalescing around the issue.”* According to him, international standards with minimum guidelines would *“motivate more countries to take steps to have provisions for preservation”*, as was experienced in Africa, with countries amending their national legislations to incorporate provisions of the Marrakesh Treaty. Further, according to him, preservation was an issue to be taken forward to the SCCR in order to look at mechanisms internationally to address it across institutions, museums libraries and archives, while also stating that the specifics could be worked out within the committee.

295. The Delegate from Jordan reflected on the consensus amongst the panelists on preservation and access for cross border purposes and expressed the need for *“an international legislation to cover all the practices.”* According to her, the national copyright legislation in Jordan did not have such provisions as they would refer to the international framework for guidance.

296. The Slovenian writer expressed the view that it would be difficult to have a Marrakesh Treaty type solution for Cultural Heritage Institutions because the scope of activities and interests involved is much broader, as is the range of stakeholders implicated including institutions, users and private entities.

### ***Benchmarking and healthy monitoring of models that can be adopted globally:***

297. The Representative of the National Library of Finland, while referring to the reasons elaborated by the American Representative from the University of South Carolina to have minimum international standards for preservation, stated that it was *“more healthy to have wider a wider approach of benchmarking globally on different areas.”* He referred to the Nordic countries setting *“a good example of the co-existence of exceptions and contracts”*, while stating that it may not be a model to be copied elsewhere and an *“international legal instrument could be helpful.”* He, however, emphasized the strong need of cooperation with the Nordic countries by citing examples of how such a cooperation had helped Baltic countries *“to take several steps to the digital world leaving dust behind”* as well as in Europe. He stated that there was no reason why this cooperation could not be extended at a global level.

### ***National legislation:***

298. The Delegate from Saint Kitts and Nevis stated that it would be good to have a proposal to amend national legislations. She mentioned, for example the approach of the Representative from the Jamaican Copyright Licensing Agency to have clear and precise provisions in the national copyright legislation would be a good example to follow. She emphasized that exception provisions should explicitly mention preservation and the *“real gap”* to fill would be to ensure preservation is allowed before the work is damaged or lost.

***Need for a legal framework which would allow evolving technical requisites:***

299. The Representative from Editions Madrigall in France called for clear legislation but she emphasized as well that in the digital universe there is also an increasing requirement for technical documents *“which need to evolve over time”* as formats and editing standards change substantially over the years. According to her at times national legislation need to be worked on, but when the national legislation was *“positive”*, there was a need for evolving practices, especially in the digital era. She mentioned an ongoing cooperation between the French publishing houses together with BNF in order to establish technical standards to documents and draft standards’ documents to preserve legal deposits of digital documents.

***Need for capacity building along with legislative framework:***

300. The Representative from the Jamaican Copyright Licensing Agency proposed that it would be useful to amend national laws based on the existing good examples of preservation provisions before looking at international guidelines. However, speaking from her experience in working closely with national libraries and archives, she emphasized that there were *“other things we need to look at before we get to that point.”* According to her, to perform the activity of preservation effectively, the pressing need was to build capacity and training of personnel for preservation purposes as well to provide adequate resources for them to acquire the necessary equipment.

301. The Delegate from Nigeria also added that despite the available flexibilities many countries in Africa, including other regions, had not taken advantage of the flexibilities. He proposed that there is a need for work to be done at an international level help such countries *“to at least take advantage of the existing provisions.”* He said that this was linked with capacity building. According to him, referring to existing provisions as a benchmark would also help address the gap between the developing countries and developed countries. *“The most crucial aspect is capacity as well as legislative framework.”*

***Infrastructure:***

302. The need for investing in infrastructure of libraries was emphasized by the Representative of the National Library of Sweden. He cited an example of an ambitious project for digital preservation that a library was unable to get on board, due to lack of infrastructure. While elaborating on how that project worked as a pilot for cross-border access in Malawi, he stated that with an investment on infrastructure, national legislations can create cross border access.

***Regional entities for cross-border access:***

303. The Representative from the Jamaican Copyright Licensing Agency referred to regional entity called CAROSSA whose objective is to deal with cross-border licensing and to provide access cross border. The first initiative was to provide a license to the largest university in the Caribbean to allow it to *“do all that was required of a university”*, including education, research and limited archiving. All was possible through a CMO licensing mechanism. In general, a CMO is confined to national territories, but this initiative shows that with creativity and innovation it is possible *“to find solutions for users.”*

## EDUCATION AND RESEARCH

### Panelists

304. The panel on education and research was moderated by Dr. Raquel Xalabarder and consisted of the following panelists:

- (i) Ms. Flavia Alves Bravin, Director for Higher Education Solutions and Publishing, Somos Educação, Sao Paulo, Brazil
- (ii) Ms. Ana Maria Cabanellas, Publisher, Heliasta Publishing Company, Buenos Aires
- (iii) Mr. Michael W. Carroll, Professor of Law and Director, Program on Information Justice and Intellectual Property, American University Washington College of Law, Washington, D.C.
- (iv) Mr. Richard Crabbe, International Textbook Publishing Consultant, Accra
- (v) Mr. Dante Cid, Vice President for Institutional Relations in Latin America, Elsevier, Sao Paulo, Brazil
- (vi) Ms. Marie Anne Ferry-Fall, Director General, Society of Authors in Graphic and Plastic Arts (ADAGP), Paris
- (vii) Ms. Stephanie Foster, Chief Intellectual Property Officer and Associate General Counsel, Pearson, London
- (viii) Mr. Michael Healy, Executive Director, International Relations, Copyright Clearance Center, New York, United States of America
- (ix) Mr. Robert Jeyakumar, Assistant Secretary General, Malaysian Academic Movement (MOVE), Melaka, Malaysia
- (x) Ms. Caroline Ncube, Professor of Law, University of Cape Town, Cape Town, South Africa
- (xi) Mr. Arnaud Robert, Vice-President, Legal and Public Affairs, Hachette Livre, Paris
- (xii) Ms. Monica Torres, Education and Research Licensing Consultant, Madrid
- (xiii) Mr. Ben White, Researcher, Centre for Intellectual Property Policy & Management, Bournemouth University, Dorset, United Kingdom

together with the following Contributors from the regional seminars:

- (xiv) Ms. Chantal Forgo, Burkinabe Copyright Office, Ouagadougou
- (xv) Ms. Rashidah Ridha Sheikh Khalid, Director of Copyright Office, Kuala Lumpur
- (xvi) Mr. Gustavo Juan Schötz, Director, Copyright Office, Buenos Aires

### Panel Discussions

305. The discussion in the panel on educational and research institutions focused mainly on activities related to access carried out in the digital environment, covering both national and international scope.

306. The discussions shed light on two approaches to facilitate online access: through adapting existing provisions or creating new provisions to meet the requirements of the digital environment or by facing the digital challenges through licensing and contractual schemes. Finally, a combination of both exceptions and limitations adapted to online and digital means, of access, as well as licensing solutions, was considered the best way forward.

## **Exceptions and limitations provisions for access to education and research**

### **Extending/adapting existing exception provisions within the current international framework**

307. The Representative from the University of Cape Town in South Africa stated that exceptions and limitations “*at a national level are grounded in the international framework.*” The international framework provides the “*normative direction and then nationally we pick up the pieces and we give the detail that we need.*” In her view, legal provisions at a national level are symbiotic with the international framework.

308. According to some panelists, existing exceptions and limitations in national law provisions could be extended/adapted (also to online and digital uses) within the current international framework.

### ***By ensuring precise wording to cover digital and online uses?***

309. While reflecting on the discussions from the regional seminar in Nairobi, the Delegate from Burkina Faso expressed that national copyright legislations needed to be strengthened to cover online teaching and research activities. Referring to the established framework with the Berne Convention, she further added that the integration of the three-step test into a national legislation was adequate and “*what remains then is to strengthen the national provisions to extend them to the digital environment.*” The Delegate from Burkina Faso referred to the countries in the African region and stated that exception provisions in national copyright legislations exist, but no distinction is made between digital and analogue purposes. According to her, access to material in the analogue format was possible through existing exception provisions in national copyright legislations. However, in reference to the digital era, she stated that “*laws do not include provisions concerning remote learning*”.

310. Similarly, according to the Delegate from Argentina, the healthy approach for online education was to ensure that digital materials are available to students for education purposes. Therefore, he stated that “*those digital materials should be accessible, not in an illegal fashion but in accordance with the national/ international legal system*”.

311. According to the Representative from the Centre for Intellectual Property Policy & Management, Bournemouth University in the United Kingdom, precise and extensive exception provisions and definitions in the UK’s copyright legislation facilitated several uses in the digital context. He gave the examples of use of a broadcast within the extranet for teaching purposes in schools and also the use of sound recordings for the purpose of teaching. He further added that there are many exceptions for education, teaching, libraries and archives and also to some extent for academics that are “*set out pretty precisely*”. Examples included preservation, research, copying for research librarians, copying at the request of a researcher or a student, text and data mining illustration, for teaching, etc.

312. The Representative from the Society of Authors in Graphic and Plastic Arts (ADAGP) in France also emphasized that any exception provision should refer to a “*precise use, very limited to digital or analogue*, while clarifying that it cannot be that “*works of authors are disseminated free of charge just for educational purposes*”. According to the Representative, “*we are in an ecosystem where those who contribute to the education of children have to be remunerated*”.

313. Though the problem for some Representatives was not the degree of precision in the wording in the national legislation but the disparity between countries. The Representative from Malaysian Academic Movement (MOVE) shared his experience of having interacted with teachers across Southeast Asia who expressed concerns over legal uncertainty that arose in their activities as teachers. The legal uncertainty arose due to the wide disparity in “*what copyright limitations and exceptions entail for different Member States*” across national legislations. For instance, showing a recording of a television program in a classroom was not legal in China, Japan, Vietnam, Nepal and Iran. The other example given by the Representative was of online videos being shown in a classroom to discuss current issues, which was not allowed in Thailand, Vietnam and Iran.

***By exploring the need for exception provisions to account for technological advances, broad or minimal?***

314. The Delegate from Malaysia stated that broad exceptions would help educational institutions embrace technology while also adapting to the fast-paced technological advances in the digital environment. In her experience from the Asian region, as she stated, most countries had broad exception provisions which were beneficial. According to her the “*beauty of broad exceptions*” was that they were interpretative in nature and hence capable of being technologically neutral and adaptable to the fast-paced technological developments.

315. The Representative from the Malaysian Academic Movement (MOVE) was on the same line, stating that exception provisions need to be broad enough to cover within their ambit the “*digital disruptions to education*”. He mentioned an example of digital disruption in classroom teaching when students would click photographs on their mobile phones of the content written by a teacher on the blackboard.

316. However, the Representative of Pearson in the United Kingdom stated that pragmatically, in her view, broad exceptions were rarely crafted in a way that provided clarity, contrary to what was expressed by the panelists before.

317. For the Representative from Elsevier in Brazil, due to technology the research community has become “*a truly globalized enterprise today without the need of any specific regulation or mandate*”. According to him while legal provisions exist, the role of technology in building collaborations between researchers across countries and the drive of the community itself results in the development of good practices. He stated that “*a researcher in Chile can collaborate online with a researcher in Malaysia, in Russia, in the United States by using a platform for sharing documents, activities and best practices without any need for intervention.*”

318. The Representative from the Society of Authors in Graphic and Plastic Arts (ADAGP) in France shared the view that technology for disseminating works develops at a very rapid pace, and exception provisions or “*an international treaty would be something very fixed, stable and rigid*” unlike agreements on collective management that get enriched every two or three years by discussions on copyright with teachers and representatives of various ministries, such as the Ministry of Higher Education and Research. She stated that with very “*minimal exception*” provisions, things worked very well in France.

***By extending existing exception provisions to online uses nationally and across borders?***

319. Referring to the specific challenge with online teaching, the Representative from the University of Cape Town in South Africa emphasized that “*at the micro level, the law speaks of exceptions and limitations for face to face teaching*” and “*it is not clear that you can take the materials online nationally*”. According to her, this creates legal uncertainties when it comes to

facilitating online distance education and research activities nationally and also when academics and researchers work across borders as they are unsure of the scope of the exception provisions in their own country.

320. Similarly, the Representative from the Centre for Intellectual Property Policy & Management, Bournemouth University in United Kingdom stated that as *“research is international”* and *“universities in the West are setting up campuses all around the world”*, exception provisions should address cross-border issues as seen in Europe through the Digital Single Market directive and other European initiatives.

321. According to the Representative from the Malaysian Academic Movement (MOVE) disparity in exception provisions in different national copyright legislations *“creates a problem for cross border education”*, hence the exception provisions *“really have to also be broad enough to capture cross border issues”*.

322. However, the Representative of Hachette Livre, in France referred to exception provision in his country for teaching activities in the digital era. According to him online use would not include the *“absolute obligation of cross border exceptions.”* For him the fact that an exception is provided for *“students to read the document, on their mobile phones, personal computers and other screens”* should not be confused with cross-border.

### **Extending/adapting existing provisions in national copyright legislations through a new international framework**

#### ***Building legislative capacity through an international framework to modernize the text of exception provisions***

323. The Representative of the American University Washington College of Law in United States of America referred to discussions where many Member States requested for updating their laws for the digital era. According to him, many Member States did not have a *“lot of legislative capacity, with many other urgent priorities, each one will have to write their own text because WIPO does not want to provide some international framework to at least bring the law as written into the modern era.”* He gave the example of unclear interpretation of whether reprographic use in existing legal provisions could be extended to cover digital use, while stating that *“we have these very technical limited terminology in the law as written that needs to be up to date.”*

324. The Delegate from Burkina Faso, on the other hand, extended her support to those who recommended an international text to be adopted in order to have a framework for limitations and exceptions in the analog or digital environment, while maintaining that *“everything except of adopting a new treaty which could be redundant.”* She further added that *“we could use the Berne Convention and other existing procedures which could help states to harmonize their legislation and to have the information on the technical training which is necessary to get the legislative provisions adapted.”*

325. The Representative from the Copyright Clearance Center in United States of America referred to the massive investment by creative industries *“in services to support education and research not just in the content itself, but in how it's enhanced, how it's distributed”*. While stating that it is a *“fragile and delicate ecosystem that relies to some degree on an apparatus of incentive”* he expressed concern that an *“ill-judged legislation or regulation can have absolutely devastating consequences for the ecosystem.”*

***Providing a flexible implementation approach of exception provisions at a national level to account for technological advances under a new international instrument***

326. The Representative of the American University Washington College of Law in United States of America responded to a question posed from the audience by a professor in the same college that there is a symbiosis between the international and the national level. The question posed was to identify the *“pros and cons of different kinds of action that WIPO could take either treaty based or different kinds of soft law or guidance.”* The Representative elaborated on the requirement of *“some guidelines on common themes or common ideas”* providing flexibility in the implementation of laws at the national level, in particular for *“small countries”* to have certain model provisions as otherwise it would be too difficult for such countries. He specified that any proposed international instrument was not meant to be *“highly specific and highly tied to today’s technology”*. He further emphasized on the flexible approach of an instrument to create *“some safe harbor principles”* considering the continuing relevance of the online environment.

327. However, the Representative from the University of Cape Town in South Africa responded to this question by stating that *“any engagement should be based on Article 10.2 of the Berne Convention”* with a specific consideration of the three-step test.

328. The Representative of the American University Washington College of Law in United States of America gave examples for which guidelines at an international level would be useful. One example was for making the use of an online video in a classroom lawful in a country other than the source country. Another example was in relation to addressing the diverse linguistic needs of students across borders to allow them to have access to material in their language.

**Licensing schemes for access to education nationally and across borders**

329. The Representative of Pearson in United Kingdom gave the perspective of publishers, who are also one of the main *“consumers of content as licensees.”* She stated that despite exception provisions in the countries that the organization operates in, including UK and USA, exceptions *“do not necessarily solve the problem of access.”* She further elaborated that the organization she represented also had guidelines to explain exception provisions in the US and UK, yet the organization’s instructors *“still struggle to understand what they could use and what they can’t.”* Therefore, she emphasized that licensing would be the most useful tool to provide clarity for activities related to access including access across borders *“whether it’s done through CMOs, publicly, privately, mandatory or voluntarily.”*

**Market led licensing collaborations**

330. The Representative of Pearson in United Kingdom shared market led licensing options through large-scale private licensing groups that enable publishers to be able to grant access to teachers and other creators alike to third party content. Such licensing options provide the publisher with *“very economically beneficial, upfront and predictable flat rates”* for a commercial/for-profit enterprise while enabling *“tiered rates”* for non-profit enterprises.

331. The Representative from the Copyright Clearance Center in United States of America elaborated on *“market-driven solutions that get built by collaboration between the stakeholders.”* He explained how such licenses kept pace with technological advancements in the field of education while elaborating on the licenses that his organization had built over forty years through *“collaboration between teachers, librarians, collective licensing societies, publishers and so on.”*

332. While referring specifically to cross-border access, he stated that research in private sector showed that market driven solutions despite being imperfect could solve this issue *“through tremendous degree of collaboration that is possible by all stakeholders.”*

333. The Representative of Pearson in United Kingdom responded to the question from the audience by the Canadian librarian in reference to the credible data on market loss when a specific exception provision is introduced for educational publications. According to the Representative, royalty collection in Canada *“fell almost immediately in half and up to 90 per cent”* upon the introduction of an exception provision in the copyright legislation for educational publications. She stated that the interest of the Canadian authors or students would not be served if publishers decide to not invest in such markets due to lack of incentives in creating localized content. The Representative from Heliasta Publishing Company in Argentina also pointed out the loss of access to *“foreign bibliodiversity”* for teachers in Canada due to specific exception provision introduced in 2012.

### ***Licensing through a consortium of publishers***

334. The Representative from Somos Educaçao in Brazil shared an example of how for the purposes of providing access to digital books for higher education and in private schools, some publishers in Brazil got together in a consortium. According to her, the consortium of publishers were providing *“more than 9000 digital books for more than 2 million students for less than 1 United States dollar a month.”* For her, it was another way to *“provide money for the publishers who can secure a lot of good content for students.”*

### ***Licensing through CMOs and ECL***

335. The Representative from the Copyright Clearance Center in United States of America explained that although collective management was imperfect in many respects it still worked effectively in many countries and there was a scope to ensure their effectiveness and to build capacity through organizations like IFRRO. He gave the examples of countries like Ghana, Argentina and Colombia where *“mentoring, training and resource sharing has created very effective collective licensing bodies and the creation of very different licensing solutions”*.

336. The Education and Research Licensing Consultant from Spain agreed that collective licensing existed in many countries and worked well although it was an imperfect system. She expressed the requirement of comprehensive solution within the legal framework. According to her, apart from voluntary licensing there were examples of some legislations that include legal (compulsory) licenses or extended collective licenses (ECL). She gave examples of the legal solution in Jamaica that was based on a collective license by a RRO to meet the needs of teaching in all the universities and schools in that country.

337. The Representative from the Society of Authors in Graphic and Plastic Arts (ADAGP) in France stated that the organization *“paid 90 per cent of the sums for educational uses to authors and publishers in France.”* According to her, this was essential for content creation for educational purposes.

338. The Representative from Heliasta Publishing Company in Argentina referred to the situation in Latin America with the creation of additional collective management organizations (CMOs). According to her, collective management organizations respond to the local needs while also contributing to the growth of the GDP of a country by ensuring a local repertoire of books.

### **Combination of mechanisms: exceptions, limitations and licensing**

339. The panel discussion shed light on certain combination mechanisms that have emerged as being suited to the requirements in the field of education and research. Some panelists also addressed the reasons for adopting such combination mechanisms.

#### ***Reasons to look for a combination of mechanisms***

340. According to the panelists, there was a need to acknowledge the delicate balance in the public interest requirement of creating good content for education purposes with providing wide/easy access to it.

341. The Representative from the Copyright Clearance Centre in United States of America stated that the “creative industries invest massively in services to support education and research not just in the content itself, but in how it's enhanced, how it's distributed.” He emphasized that any discussion on the educational and research environment in the world needs to consider the role played by publishers and authors. He stated that it is a “very fragile and delicate ecosystem that relies to some degree on an apparatus of incentive.”

342. The Representative from the Society of Authors in Graphic and Plastic Arts (ADAGP) in France stated that in order for the publishers of school manuals and authors to “*continue to provide content that will be used by teachers, we need to ensure that this content is remunerated, and we must continue to ensure that children obtain good materials.*” She referred to the French experience of having specific and remunerated exceptions for education in the copyright law for the past ten years, as a “*solution which is very satisfying.*” She further emphasized that “*when we talk about exceptions there should be a compensation, otherwise you could destabilize the whole cultural economic sector which enables us to produce content.*”

343. The Representative from Somos Educação in Brazil stated that it was essential to have “*good content for the future*”. In her experience, educational books are updated on a yearly basis with the intention of having better editions each year. She also stated that “*publishing is very local*” for educational purposes as the way of teaching any subject is different. She gave her own experience of working for a very big company in Brazil with more than 900 texts for use in digital learning that were not being used by other educational institutions as the way they construct the course differed.

#### ***Possible ways to achieve the balance in the education ecosystem through a combination of mechanisms***

344. The panelists discussed the ways to achieve such a balance that would enable a healthy education ecosystem that comprises of teachers, students, education Representatives as well as publishers of school manuals and authors.

345. The Delegate from Argentina referred to the discussions in the regional seminars and reflected on the approach through licenses and good practices as an option that was considered to resolve issues faced by educational and research institutions. However, he stated that for this approach the “*sine qua non condition was the proper function of collective management*”. According to him, at times the licensor was not clear or licenses were limited. This made licensing for distance learning, i.e. virtual classrooms, whether nationally or across borders an issue. He expressed that exceptions may be needed in order to make digital material available for students.

346. The Representative from Somos Educação in Brazil also emphasized *“the need to have good content for the future”* while stating that there was a *“different way to provide money for the publishers who can secure a lot of good content for students”*

347. The Representative of Hachette Livre, in France stated that *“copyright holders make available content to students which could be covered partially by an exception, like in the French case, which has to be supported also by voluntary contracts.”*

348. The Representative from the University of Cape Town in South Africa emphasized a combination mechanism of exception provisions, licensing and international guidelines to ensure that the markets are not frustrated while coming up with *“solutions that are actually going to make everybody succeed”*.

349. As illustrated by the Representative from the Centre for Intellectual Property Policy and Management, Bournemouth University in United Kingdom there were three broad areas in his country to facilitate access for education purposes. There were direct licenses by rightsholders, collective management of rights (collective licensing) as well as unremunerated limitations and exceptions to protect the public interest in terms of education, research and cultural heritage. The Representative referred to the solution in the Digital Single Market directive, which provides a hybrid solution as *“perhaps a good answer”* while recalling that this solution is based on the existence of CMOs: collective licensing with a fall-back solution offered by exception provisions when no agreement has been reached. According to him, such a hybrid solution addressed certain practical difficulties with global contracts, when there were difficulties in addressing the choice of law questions, or when negotiating a license globally was time consuming as there were no “off the shelf” contracts. He also added that at times, there were difficulties as CMOs did not represent what is needed for education and research purposes as usually CMOs represented the creative industry sectors and not *“oral histories, ethnographic field, recordings huge amounts of material data sets in archives.”* Therefore, according to him the discussion would be to understand *“where do exceptions end and where does direct or collective management start”*.

350. The Representative of the American University Washington College of Law in United States of America also expressed the view that exceptions and limitations are not for all uses in all cases. He stated that *“there are definitely opportunities for more harmonization of exceptions”* while also referring to *“licensing for other uses”*. He specifically referred to Article 10.2 of the Berne Convention and stated that there is scope to look at *“spaces for some free uses within the copyright system to bring the system back into balance in an era with increasing cross border trade and digital opportunities.”*

## **Some illustrations of combination mechanisms**

### ***Remunerated exception provisions, licenses and collective management***

351. The Representative from the Society of Authors in Graphic and Plastic Arts (ADAGP) in France *elaborated* on a solution in relation to images in text, books and press for educational purposes. She stated that for over 10 years in France, there is an exception provision for education *“which is very specific because it's related to extract from works and is remunerated.”* She stated that it was *“indisputable that education involves an environment that also cover publishers of school manuals and authors as well.”* Therefore, to ensure that good content is provided for the use of teachers, it is essential to ensure that content is remunerated. Therefore, in France, as the Representative clarified, *“the national law is quite limited on exceptions and it's complemented by licensing systems and collective management which have very positive effects.”*

### ***E&L (exceptions and limitations) and direct licenses by publishers***

352. The Representative from Heliasta Publishing Company in Argentina stated that exception provisions and licenses issued by publishers need to be balanced. According to her, this was because publishing is a *“high-risk profession and we must deal with those risks so we must ensure a balance for all stakeholders”* and an author earns only through licenses.

### **Government subvention**

353. The role of the government to provide the necessary budget for making content available for education purposes was considered by some panelists. As stated by the Delegate from Argentina *“this is not a copyright problem”*, and the considerations for making content available vary at the different levels of education. He added that for access of content at the University level, it would be possible to have other ways to facilitate access as professors often created content themselves.

354. The government scheme and the budget allocated for having access to content for education purposes would usually depend on the level of education as per the International Textbook Publishing Consultant from Ghana. According to him, *“if there is a limitation in Latin America or Africa, it is one of access, which does not deal with exceptions and limitations but with budget”*. He emphasized that access to books in schools would not be an issue covered by a treaty, but an issue for the government to allocate *“budget for books that can be produced and made available for the schools”*.

### **Ideas for consideration emerging from the conference**

#### ***Review of national copyright legislations***

355. The Delegate from Burkina Faso referred to the discussion at the regional meeting and stated that the gaps in national legislations in the digital environment can be met by a review of national legislations by member States to ensure that the provisions *“adapt the exceptions to the digital domain”*, specifically to cover teaching in the digital sector. She stated that certain parameters could be considered by Member States that would help them *“pinpoint quite exactly the exceptions and limitations which have to be envisaged”* including the classification of sector i.e. public and private sector and purposes i.e., profit making and not for profit.

356. The Representative from the University of Cape Town in South Africa summarized the several proposals discussed by stating that there was a hard law option of having proposed wording of the specific legislation, a soft law option of international guidelines as well as a licensing option. According to her, any approach would ensure compliance with the three-step test while making sure access is granted.

#### ***Creation of international principles/framework by WIPO***

357. The Representative of the American University Washington College of Law in United States of America expressed that WIPO could create guidelines/framework at an international level for *“more harmonization of exceptions”* and to have certain safe harbors for specific uses, as there is *“one internet for all of the students, all of the teachers, all of the researchers.”* He emphasized the relevance of Article 10.2 of the Berne Convention and the balance in the

existing international copyright framework while stating that it could be extended to the present era *“with an increasing cross border trade and digital opportunities.”*

### ***Liability of a teacher***

358. According to the Education and Research Licensing Consultant from Spain it was important to determine liability of a teacher while using content for education purposes. In light of her observation, a teacher was not always aware if the content is accessible under an exception, a license or through any other valuable tools.

### ***Contractual override of exception provisions***

359. The Representative from the Centre for Intellectual Property Policy & Management, Bournemouth University in United Kingdom, referred to a study by the British Library that revealed *“98 per cent of exceptions were undermined.”* He referred to the existence of contractual override provisions at the European level as *“limitations and exceptions are systematically undermined if there is no public intervention in this space.”*

## **THE WAY FORWARD**

360. The panel on the Way Forward was moderated by Deputy Director General, Ms. Sylvie Forbin and consisted of the following panelists:

- (i) Mr. Walid Abou Farhat, Advisor, Ministry of Culture, Beirut
- (ii) Mr. Carden Conliffe Clarke, Deputy Registrar, IP and Commerce, Antigua and Barbuda
- (iii) Mr. Aziz Dieng, First Technical Advisor, Ministry of Culture and Communication, Dakar
- (iv) Mr. Jukka Liedes, Special Advisor to the Government of Finland, Helsinki
- (v) Ms. Ros Lynch, Copyright and IP Enforcement Director, United Kingdom Intellectual Property Office, South Wales, United Kingdom
- (vi) Ms. Hu Ping, Director, Copyright Department, National Copyright Administration of China (NCAC), Beijing
- (vii) Ms. Carolina Romero, Director General, Copyright Office, Bogota
- (viii) Mr. Trajano Santana, Director General, National Copyright Office, Santo Domingo
- (ix) Mr. Michael Shapiro, Senior Counsel, U.S. Patent and Trademark Office, Alexandria, Virginia, United States of America
- (x) Mr. Edward Sigei, Executive Director, Kenya Copyright Board (KECOBO), Nairobi

together with the experts: Dr. Yaniv Benhamou, Dr. Kenneth Crews, Dr. Raquel Xalabarder and Dr. Fometeu.

361. Deputy Director General, Ms. Forbin, invited the panelists to give their views. After, the floor would be given to the audience in order to have a huge panorama of ideas. Certainly, they

would not be conclusive ideas but rather concluding ideas for the Conference. The SCCR session that would begin on the next Monday had the results of the meeting as an item in its agenda. She said the Secretariat would try to summarize what had been said and to underscore some of the main ideas to enrich the way forward and the discussion of appropriate decisions.

362. Mr. Abou Farhat (Delegate from Lebanon) said that the Conference had made him realize that, at the end of the day, there were problems specific to every country. He said there was a very embryonic digital market in his region, and it was very hard to digest all the information shared in the two days of the Conference to understand how the different interests of stakeholders could be balanced by non-ambiguous exceptions and limitations. There was a need to avoid misinterpretations of the exceptions and limitations and Governments had a major role to play in that respect. He pointed out to the need to build capacities, update the national laws, identify the real problems and address the existing flaws. Governments had to back up individual incentive initiatives and focus first in the creativity aspect. For that purpose, quality education played an important role.

363. Mr. Clarke (Delegate from Antigua and Barbuda) stressed that the Caribbean had specific problems and challenges that were similar to other nations but not identical. He recalled that *“one shoe size did not fit all, but all needed shoes.”* There was a need to have a sort of foundation or baseline similar in each of the Member States so that they could build their own framework with the help of local or international partners to learn more about the best practices. Knowing what really worked was key to the development of that framework. There was a need to develop certain definitions as the pinnacle of legislative advancements. For instance, the definition of museums, libraries and other terms that were used in legislations, was a critical matter. He stressed that exceptions and limitations together with licensing were not mutually exclusive, and countries must work along with each other in order to find solutions. He stressed that preservation was a key issue and the answer to preservation within the modern context was digitalization. Not all countries permitted that act in whatever form, including his own country. He reiterated the need for the aforesaid basic foundation.

364. Ms. Romero (Delegate from Colombia) said that the fact that limitations and exceptions had been discussed for more than 12 years was not a necessarily negative point. It had a rather positive effect because it had enabled countries to realize and identify what the problems were or who the beneficiaries of limitations and exceptions were. For instance, in some cases, the difficulties to access works were related to matters other than copyright, such as the financial constraints that cultural institutions could face. Consideration had to be given first to establishing limitations and exceptions on a national scale. The use of manuals, guidelines or even practices could help countries to move forward in that respect. As Mr. Clarke, had previously pointed out: *“to get the shoe that perfectly fitted.”* Establishing limitations and exceptions on a national scale needed to be in line with the international principles and conventions administered by WIPO, which set out the three-step test rule. She cited in particular the need of libraries, online uses and the establishment of rules related to orphan works. There were obstacles that indeed existed for cross border uses as well. Sometimes it was possible to work on those obstacles through collective management which was an area that was not exempted of challenges either. In Colombia, for example, there was no collective association for visual artists enabling them to license the use of their works in museums. In contrast, there were collective associations that managed other rights that could properly negotiate the visual artists' license on their behalf. That was some food for thought she wished to give regarding some partnerships or alliances to facilitate the necessary licenses. Governments could play an important role in strengthening capacities when it came to collective management in various regions and countries in which no consolidated institutions existed.

365. Mr. Sigei (Delegate from Kenya) referred to the outcome of the regional seminar in Nairobi and the twoday Conference. He could draw a number of lessons: the first was that probably the journey towards having a balance should start at the national level. Countries

should be able to craft their own legislative framework. Secondly, it appeared that the legislative framework of countries in Africa and elsewhere had been determined by where those countries came from. Being influenced by the French or UK colonial past was not necessarily bad, but sometimes it put countries in a straitjacket when they wished to create their own post-colonialization framework. Thirdly, there was a good opportunity for countries to receive technical assistance to adapt their laws according to the international framework regarding sectors that were very dynamic. What we thought it was only fit for archives was then fit for libraries, and what we thought was fit for the library probably was also fit for the museums. By learning about all experiences, Member States could make their own decisions. There were a number of opportunities before coming to the international framework. It was about looking at the practical side of things as well as the technical gaps and skills.

366. Mr. Santana (Delegate from Dominican Republic) referred to the outcome of the regional seminar in Santo Domingo and the two-day Conference. The positive results of the Seminar and the Conference were due to the fact that all parties had a full grasp of the agenda and all had been involved in the debate. He encouraged countries to bring about that sort of inclusive participation that brought in not only academics and Government Representatives but also other experts or professionals that could talk about their own experiences. Governments had to show a responsible attitude towards the development of their own national legislation. Digital trends were transforming the world and were opening up huge cross boundary horizons. In a similar fashion, copyright laws could meet current needs in a peaceful coexistence of all interests so that students in schools or universities, visitors of museums, patrons in libraries or archives, all of them had a possibility of drawing upon a huge number of sources. Also, the authors and other rightholders could, at the same time, have the right to live off their creative content. To sum up, it was up to Governments to generate State policies which were likely to guarantee the peaceful harmony that the creative community and users needed.

367. Mr. Dieng (Delegate from Senegal) stated that the creation of works preexisted everything. Without creative content, a professor or an expert so passionate about knowledge and its dissemination could not simply exist. That was his message: to show respect for the creators and their works. He hoped that the Conference had helped participants to bridge the divide between just thinking about exceptions and limitations and thinking about both rights and flexibilities, on the one side, and to remember that there were huge gaps that needed to be bridged in Africa, on the other side. Those gaps made difficult to talk about exceptions and to turn a blind eye to what needed to be protected first. The copyright culture was not widely understood and a great deal remained to be done to make rights effective in the African region, not only for authors but for artists. He recalled that copyright was a human right and many of the issues that some institutions faced were due to defective infrastructures or to lack of policies, not necessarily to copyright. WIPO had a huge amount of work to do in terms of technical assistance, legislative advice and best practices. Governments could come up with some sort of toolbox which would help meet the urgent needs discussed during the Conference. The paradox in Africa was that it was the region that got some countries with most of the exceptions and other with the fewest exceptions.

368. Mr. Shapiro (Delegate from United States of America) noted that his country was pleased to have participated in all three regional seminars as an observer. He thought that the seminars had fulfilled their principle objective which was advancing the understanding of copyright limitations and exceptions. By drawing on local expertise at the three seminars, as repeated by a number of participants at the Conference, he observed there was strong support for future work at the national and regional levels of improving and updating exceptions and limitations but only limited support for international norm-setting activities. In the view of the United States, the most productive approach would be for the SCCR to develop high-level principles and objectives for national policy makers to improve or update national copyright exceptions and limitations for libraries and archives, museums and educational institutions. This could also help to develop a framework of common understanding regarding best practices, conducting workshops and providing technical and/or legislative assistance for the

benefit of all WIPO Member States. He recalled the documents that the United States had submitted to the SCCR in previous sessions (documents SCCR/26/8 and SCCR/27/8) which could be a helpful point of departure for developing objectives and principles, best practices or toolkits. The United States were very open for different formats and approaches to the work at the international level and very much looked forward to working with other delegations to advance the shared interests.

369. Ms. Lynch (Delegate from United Kingdom) agreed with what Mr. Shapiro had previously pointed out. There was a need for some countries in particular to take on board the scope of flexibilities already allowed in the current treaties, including the Berne Convention. As Mr. Sigei had stressed, she did not think there was a need at that point in time for any kind of international treaty since the framework was already there. It was really about getting at the national level to have domestic laws updated. It would be useful if WIPO, for example, pulled together some kind of toolbox or toolkit so that those Member States that had not already made use of what was available could see the various options that were on the table. Amending the legislation could be the last resort since it was always very contentious and usually took a very long time to achieve. It was better to work on voluntary agreements, if possible, which could achieve solutions in a much quicker time. Moreover, when exceptions were devised, they tended to be narrow and very targeted. That was why in her country exceptions were not be activated if there was a license already available. She called for a multi-pronged approach by which all options on the table could be considered. Governments should look at what would actually work rather than trying to get that *“shoe to fit every size of foot”*. She recalled being cautious about what actually pertained to copyright issues. There had been reference to other obstacles or issues such as the lack of resources and skills, among others. She also reminded the audience that all stakeholders were very interdependent, and all were within the ecosystem. Rightholders, users and Governments could all work together to find the right balance and find what worked best for all countries. It was not about one stakeholder getting into the top and leaving everyone behind but using the resources that we had been collectively developed. Finally, she pointed out that WIPO had a role in helping to facilitate that dialogue.

370. Ms. Hu (Delegate from China) noted that libraries, museums and archives had important functions as cultural heritage institutions, together with educational institutions. When carrying out their functions, there could be a conflict of interests with the interests of rightholders. She noted that Member States faced common challenges, for instance, regarding the digitalization of works. But she also noted that there were other situations in which countries had different approaches, for instance, regarding the range of exceptions to address the digital challenge. In China, there were some regulations on exceptions and limitations but they could not be stretched to address the challenges of digitalization. That was why she appreciated the opportunity to listen to others' experiences and lessons learned during the Conference. More conferences like that one should be organized in the future to give the opportunity to other Member States to improve their domestic laws.

371. Mr. Lieder (Delegate from Finland) stressed that limitations and exceptions were a fundamental part of a balanced copyright system. They were deeply rooted in the culture and legal tradition of the different Member States. The possibility to introduce limitations and exceptions was, of course, governed by the international treaties and Member States had the right to interpret the treaties and define their flexibilities. After the completion of the action plans, Member States and the Secretariat were sitting on a mountain of knowledge. He recalled that, during the last 25 years, WIPO had engaged in discussions on difficult and complex matters and showed it could deliver solutions. All prerequisites for success were there for sure. But, he noted, preparing a possible legal instrument in whatever form on the items that were discussed could take a long time. That was not *per se* a problem because time allowed the full consideration of the business matters. However, it was an obligation of Governments to take care of the welfare, education, research and basic institutions that were instrumental in the goals at stake. Baselines were country by country and there was place for all kind of flexibilities. There was place for full uncompensated limitations, because there were uses that did not have

economic significance for rightsholders and did not present a risk of negative market interference. Also, there was a place for limitations that were compensated depending on their market effects and economic relevance for rightsholders. And finally, of course, there was a place for licensing. It was necessary to enhance the legislative capacity of Member States so as to make the appropriate interpretation of the three-step test. Different kinds of tools, like collections of models or practices from other Member States, and the analysis of the relevant provisions by the Committee could also be helpful in that regard. Peer-to-peer assistance from other Member States who had already good solutions could be another means to move forward. Gathering information on contractual licensing-based solutions in a handbook to resolve situations was another alternative. Finally, in his view, cross border uses should become the new normal. He stressed that there was a time aspect and the volume of the work to be done and, through a plural process, one could make things happen quicker in WIPO and see some positive results. He wondered if, after all the work of the regional seminars undertaken by the different working groups, countries could agree on a similar working structure so that some work could be done partially in groups that shared common interests and/or languages, of course, without forgetting the worldwide goals. That formula would be more manageable in many senses and different working groups could be organized in parallel. Some would be more interested to act quickly, others would be somehow slower but nobody should be left behind. The Secretariat tasks would be to take care of that process and to establish an incremental methodology to start from the first things to be solved first, and so on. Such a plural process would bring about results in a speedy time.

372. Dr. Benhamou noted that there were some areas on which Member States seemed to agree. For instance, the action needed for the preservation of cultural heritage regardless whether the act was performed by archives or libraries, or other institutions. There was a baseline or a common foundation on which Governments could focus to start concrete action. As others had pointed out, there seems to be no one size fits all solution as the solutions have to be specific to the needs of the countries and to the issues at stake. With respect to the need of the countries, some countries had legislations with exceptions in place, and other countries had no exceptions, or no CMO solutions addressing the issues, or no adequate capacity to address the needs of cultural heritage institutions. With respect to issues at stake, preservation activities undertaken by cultural institutions could involve cross border issues, particularly in the case of split collections, or when a museum from a country A had to rely on the technical capacity of another museum in country B. There was a need to have a global solution in these areas. He also observed there was a need for a legislative review to address the digital shift and liability issues for cultural heritage institutions. When there was uncertainty on what users could do and what rightsholders must authorize, museums might find themselves refraining from carrying out certain activities at the expense of the public good. As a conclusion, he suggested seven solutions:

- (i) first, to follow a multi-layered approach with a range of actions at domestic, regional and international levels to address the specific needs. All various options should be on the table, from hard law to soft law;
- (ii) second, to bring best practices and capacity building training well on board. They could relate to loan agreements for libraries or clearance regarding diligent search for museums toolkit for extended collective licenses, or code of conducts;
- (iii) third, to consider alternative dispute resolution. There was a well-functioning system developed by WIPO in that respect;
- (iv) fourth, to develop guidelines of interpretation of norms, such as the Berne Convention, in light of the cultural institutions activities, particularly on how to integrate the three-step test when it comes to preservation activities;

- (v) fifth, to consider joint recommendations or other instruments, in particular in areas where there is a common foundation on which Governments could start concrete action, such as how to address the digital shift;
- (vi) sixth, to consider the safe harbor for certain stakeholders in exceptions at the domestic, regional or global level; and
- (vii) seventh, to develop a toolkit of exceptions.

373. Dr. Crews highlighted three practical points: One, digital should be normal. Delegates should take the steps that are necessary to review and change their laws. One should not wait for anything regarding further technological developments. Two, preservation was important for all countries and there was a need to move forward on that topic as a priority. It crossed all of the subject areas under consideration, namely libraries, archives, museums and indeed even education. He said countries had to act before it was too late. Discussions referred to oceans rising, fires raging, paper deteriorating, and all those things were happening right then and he urged the audience to do something. Three, every step that each one took should be taken to understand each other and to better respect and demonstrate how it was possible to integrate the different interests and perspectives. Some were focused to talk about exceptions and some others were focused on licensing or something else. There was a need to shift the rhetoric and try to integrate all solutions to find the right formula for each country.

374. Dr. Xalabarder seconded what the previous speakers had said. There was certainly room for further exceptions and limitations in national laws, as the Berne Convention set out. It was very much a matter for national legislators and governments to explore the scope of those exceptions and limitations, and to adapt their laws as necessary. She very much agreed with Dr. Crews when he said that digital should be normal. Countries would go backwards if they did not expand exceptions and limitations into the digital uses, particularly regarding education and research. In 1996, the Internet Treaties had already permitted to expand those flexibilities into a manner that was compatible with the three-step test, provided that the legitimate interests of authors and other rights owners were protected. So, countries should foster that teaching and research uses may be conducted offline as well as online through a combination of mandatory free and remunerated exceptions and limitations subject to different conditions and, when so, remunerated under collective management, as well as of or voluntary licensing agreements (directly by publishers and/or through CMOs). She reminded that the same solution may not work everywhere: something that worked beautifully in France might not work in Spain, even if those countries were neighbors and belonged to the same Union, because of the specific market and social conditions and CMOs structure in each country. She advised all stakeholders to act responsibly when trying to push their own agendas. That was not a zero-sum game. Despite believing that solutions would be better found at national level, she agreed that a few issues would be better addressed at an international level: such as the cross-border issue and the national legislators' guidance and assistance.

375. Dr. Fometeu cited Article 27 paragraph 2 of the Universal Declaration of Human Rights and stressed there should not be a competition among the various rights, namely between copyright and other human rights such as those regarding information or education. He urged others to have a responsible attitude and not to confuse freedom with for free. Not everything had to be solved through exceptions at international level. Countries had to take an optimal approach towards the already existing exceptions of limitations and make the maximum of them to achieve the desired goal.

## Questions and comments from the audience following “The Way Forward” panel

376. Mr. Gustavo Schotz (Delegate from Argentina) referred to the discussions in the past two days of the Conference and observed that the national framework and best practices provide the necessary tools to engage with most of the issues being discussed at the Conference. He thanked the experts for identifying the tools and highlighted a further need to build upon specific tools for cross-border matters with the support of WIPO. As approaches to copyright vary among countries, he suggested the need for a *“minimum level of harmonization, not perhaps in a substantive sense, but in terms of rules of coordination”*. He added that the *“principle of territoriality was perhaps not the best for the digital era”* while acknowledging that it was the fundamental principle in the international systems of intellectual property and trade. He highlighted the principle of territoriality in the TRIPS agreement. Based on these observations, he suggested an approach to look at private international law on contracts and other procedural aspects. For him there was an essential interrelationship between substantive issues and procedural aspects. He gave the example of the applicability of limitations and exceptions on multi-territorial licensing, with limitations and exceptions being based on public law systems of the countries and licensing being linked to private law. He emphasized that there are systems of enforcement and monitoring that should be borne in mind when moving forward with substantive approaches. According to him, collective management approaches would need to take into account private law aspects not just limited to local systems but also requiring international coordination for effective implementation and enforcement of contracts. He cautioned against repeating the bad experience related to safe harbor provisions and emphasized the need for coordination and monitoring. Therefore, contractual mechanisms in addition to a certain level of uniformity would imply the need to draw upon international private law as otherwise the local law approach was insufficient. He agreed with the proposal for using arbitration and online mediation, which would make dispute prevention and resolution simple and swift, and encourage the Member States to move forward on a more substantive level. He asked the panelists for their opinion on how to move forward on aspects related to international private law to find more harmonious procedural solutions when it came to monitoring.

377. Mr. Jukka Liedes (Delegate from Finland) responded by stating that the private international law issues were most pertinent and decisive in the world of digital networks, where actions on the internet may have effect and be relevant in 195 countries. In principle and as per certain doctrines, one could find the laws of 195 countries becoming applicable. According to him, this would be intolerable and there was a need to find easier rules for certain applications. WIPO could play a role on developing solutions in these areas in addition to the work done at the Hague Conference on Private International Law (HCCH). He agreed that there were many kinds of cross border uses which resulted in several different issues. However, these issues were capable of being readily resolved through legal measures including the ones applied in Europe such as legal fictions, mutual recognition, reciprocity rules, etc.

378. Mr. Ben White (Representative from the Centre for Intellectual Property Policy & Management, Bournemouth University in the United Kingdom) noted that the British Library held the world's second largest sound recording archive with sound recordings from all over the world, including unique and unpublished sound recordings. He also noted that it was widely believed that only 15 years were left to save the sound recordings. This was not only because the sound recordings themselves were turning into dust and degrading but also due to the fact that technologies and carriers used to play music were not being produced anymore. He urged that in terms of norm setting this was an area of real urgency. He stated that this would open up a number of other issues such as the existence of legal provisions for digital preservation. He added that digital preservation takes place in cross-border networks and therefore there is a provision in the EU Digital Single Market Directive to allow cross-border preservation. According to him, for digital preservation across borders other related issues include contractual

obligations and technical protection measures. He further expressed his agreement with the panelist Jukka Liedes, who suggested the approach of addressing one issue at a time. However, he added that the issues would get linked and that there was no point in preserving material without giving access to it. He gave the example of a massive fund raising operation launched by the British Library and stated that fundraisers were not interested in only preservation activities without access. He finally stated that such preservation considerations related to deteriorating material and the resulting legal and financial issues are not specific to the British Library but would be common to most archives.

379. Mr. Pedi Anawi (Representative from Education International) referred to the worldwide adoption of the Sustainable Development Goals in September 2015 while emphasizing SDG 4 which aims to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all by 2030. According to him, the discussions at the Conference suggested region and nation based solutions and proposals for what he perceived to be a global problem. He stressed the need for a discussion among the academics and researchers on free uses rather than minimum rights for fair use and a flexible framework.

380. Dr. Xalabarder responded by stressing the idea of having national solutions, while agreeing that there was a lack of good exceptions and limitations for education and research in many national laws. She emphasized that even if a treaty was adopted one would have to go back to the domestic legislation to implement it through national law. She agreed with the other panelists on how focus could be shifted to solving the more common issues as opposed to looking at a big treaty solution. The common issues included ensuring that the national exceptions and limitations apply to online and digital uses, also across borders.

381. Ms. Dora Salamba (Delegate from Malawi) stated that the key take-away from the conference was the consensus on the need for a balanced copyright system. A holistic analysis of the national copyright systems was necessary in order to achieve this. She referred to Dr. Fometeu's presentation on how other laws could come into play and may also impede the use of limitations and exceptions. According to her, some of the problems experienced by the countries could be addressed by looking at the solutions existing at the national level and as such would not require international solutions. She addressed the need to reform national copyright laws by taking into account the digital elements and online uses. She stressed the need to develop regional and international collaborations that would facilitate cross border exchanges. International collaborations would also facilitate building capacity for developing CMOs, mentoring the so called less developed CMOs which would also facilitate international exchange of material, e.g., for education, through licensing activities and other means. She also emphasised the need for enhanced collaboration among the key stakeholders at the national level to develop a balanced copyright system. She further added that before looking at developing international solutions, it was essential to make good use of the limitations and exceptions that already existed in the national legislation.

382. Ms. Keitseng Monyatsi (Delegate from Botswana) stated that the Regional Seminars provided an opportunity for the Member States to reflect on the issues, not just in an abstract manner but by relating the issues to the national situation by looking at the legislation and also at the actual needs of the country. The studies presented have been an eye opener for policymakers on the wealth of information available and within reach that can enable them to make informed decisions to assess what can be done to improve the limitations and exception systems at a national level. At the same time, the reality was that not all Member States of WIPO were intimately involved in the discussions of limitations and exceptions, particularly the developing countries. Referring to the discussions at the Regional Seminar in Nairobi, she stated that there was a need for those countries to review their national laws and hence it was an opportune moment for them to move ahead with some of the key issues and include them in their laws without waiting for an international instrument that may come several years down the line. She emphasized that a national approach is likely to give more results that may even be faster than an international approach, even though both approaches may be needed. She

proposed that WIPO could prioritize capacity building for the policy makers, in particular from the developing countries, so that those countries would be able to engage with their stakeholders at a national level, gain from the wealth of information available/compiled at WIPO and thereby guide the country and national legislations in such a manner that would ensure that the limitations and exceptions system facilitates the mandate of libraries, archives, museums and educational institutions. She reiterated that her proposal was to prioritize capacity building so that countries reviewing their laws could move forward with effective limitations and exceptions that possibly were more future-oriented.

383. Mr. Meesaq Arif (Delegate from Pakistan) stressed that in order to address limitations and exceptions for libraries, archives, museums and education and research institutions it is first necessary to assess if there is an infringement of rights of copyright owners and then to look also at the other statutes available which may support limitations and exceptions. One approach could be to consider revising those statutes while the other approach could be to resolve the inconsistencies in the statutes, if any. While acknowledging the differences in the level of awareness on intellectual property issues, he stressed that an instrument or a guideline could be useful for providing an umbrella law to form the basis for national copyright laws related to exceptions and limitations. Therefore, he strongly proposed a well thought out international instrument with sufficient guidelines for Member States to develop limitations and exceptions to address all issues at the national level.

384. Mr. Jonathan Band (Representative from Library Copyright Alliance) noted the discussions on capacity building, while reflecting on the fact that there are two different kinds, one related to legal capacity building and the other related to cost of digitization. For the first kind, he stated that the NGOs had a good amount of legal expertise in the area of libraries, archives and museums and education that could be of use to the Member States.

385. Mr. Erry Wahyu Prasetyo (Delegate from Indonesia) emphasized that the key was in building awareness about the existing international copyright regime and how there are inherent flexibilities in the system. According to him, the proposal of an international instrument was also one of the ways of building awareness. He gave the example of the Marrakesh Treaty to suggest that there could have been a difference in its implementation at the national level if it was a declaration and not a treaty. However, he further added that it is not the form of the instrument be it a treaty or guidelines or high-level principles, that would make a difference. He stressed the need for a widespread acceptance of the solutions that may be agreed upon for limitations and exceptions worldwide for it to have a real effect. If there were to be high-level principles on limitations and exceptions, he suggested that all Member States should be made aware of them, while also mainstreaming it with the work of WIPO. He gave the example of the traction that the agreement on SDGs has gained because it was an agreement made at a high level even though it was not in the form of a treaty or a commitment.

386. Mr. Luis Villaroel (Representative from Innovarte) stated that for many years since the Berne Convention there had been no flexibility for countries to adopt exceptions. WIPO had provided technical assistance and there had been bilateral assistance as well. However, for more than 17 years, the exceptions and limitations agenda was being discussed and there was still no framework of exceptions in national law, which libraries and educational institutions need. According to him, the only thing that had not been tried was to have an international instrument to provide some guidance to Member States. He stated that while it was important to have technical assistance, toolkits and model laws, it was also necessary for the international community to have a commitment to solve the public interest issues of preservation of cultural heritage.

387. Ms. Awa Cisse (Representative from the University Library Consortium of Senegal, COBESS) stated that it was necessary to look at the importance and take stock of what libraries did. Libraries did not acquire the works of creators, literary and musical works in their collections for free but as purchases within their budgets. She added that the only thing to wish for was to

have copyright laws well adapted within the framework of permissions required to fulfil the library mission while not causing any harm to the creators.

388. Ms. Kathy Matsika (Representative from the Library of the National University of Science and Technology of Zimbabwe) stated that Zimbabwe looked at implementing the Marrakesh Treaty, despite the prevailing social conditions in the country, only because it came from an external environment. The Government adopted the Marrakesh Treaty while the country's priorities were focused on addressing its social problems, economy, and governance-related aspects. She stressed that an instrument from a high-level organization would give a better result that would also be faster. She expressed hope to have an instrument or an assisting legal framework to resolve the issue of libraries, archives, museums and educational institutions in Zimbabwe.

389. The Deputy Director General, Ms. Forbin, thanked everyone for the comments which demonstrated the extent to which this topic was so important. This was shown by the fact that people remained and were still concentrating after 6:00 PM on a Saturday night. The Secretariat had taken note of everything that had just been expressed and would try to find together with Member States the best answers. Ms. Forbin thanked all the Member States who helped the Secretariat to make headway in this discussion. She thanked the three hosts of the regional seminars and also the experts who had accompanied WIPO throughout the action plans and who had spared no effort and no time to be able to reach the best results. She thanked the Member States of the other regions and specifically those who were there at that moment for their interest and for their proposals to find the best solutions to all the topics under discussion. She thanked WIPO Conference Services and the interpretation services. She finally thanked her Copyright and Creative Industries Sector team for the excellent work.

### **Take-Away Considerations**

390. At the conclusion of the Conference, the following elements for the next steps were identified by the WIPO Secretariat:

### ***General Principles and Ideas***

391. It is important to recall the essential role of copyright to support and reward creativity. Creators have an indispensable role in providing what will become cultural heritage as well as what is at the core of education and research.

392. Cultural heritage is an invaluable and vulnerable common good. A multi-layered approach including technical and legal solutions for its preservation must be put in place. Libraries, archives, and museums have a major role to play in the development and implementation of solutions to achieve this objective.

393. Facilitating access to knowledge is fundamental to achieve the goals of quality education and research. Educational and research institutions have a major role to play in the development and implementation of solutions to achieve these objectives.

394. The topic of limitations and exceptions to copyright is an issue shared by all countries, as limitations and exceptions are a natural part of any balanced copyright system. Copyright should not be seen as an obstacle but as a facilitator. One should not mix freedom of access with access for free. There is room for unremunerated permitted uses, uses permitted subject to remuneration, and uses subject to voluntary licensing schemes.

395. In addition to the ongoing work on limitations and exceptions, other solutions including contractual agreements and licensing based solutions could be considered as part of a holistic approach. CMOs have a major role to play in the copyright system, including in facilitating cross-border activities.

396. Digital, including remote access to content and cross-border uses, should become normal.

397. Capacity building should be available to support countries that do not have appropriate limitations and exceptions in amending their national legal framework. A range of tools and guidance, including experiences / professional practices could be developed for this purpose. A “buffet” of options could be available for Member States.

398. The Berne Convention offers significant leeway to Member States for interpretation and implementation of its provisions. Limitations and exceptions are guided by the three-step test.

399. Concerns about the liability of different stakeholders among the cultural and educational institutions, as well as the creation of safe harbors, should be considered. In this perspective, alternative dispute resolution mechanisms could also be explored.

400. The search for solutions could be at national, sub-regional, regional and international levels, and consideration could be given to developing instruments appropriate at these levels. Mirroring the three regional seminars, expert groups might be set up to address different issues, taking into account the dynamic of the regional meetings, especially the linguistic dimensions, to address specific challenges and issues. An incremental methodology could be put in place, with a precise time line and a result-oriented approach.

### ***Member States' Role***

401. Member States have a major part to play in developing a national balanced copyright system.

402. Member States are encouraged to take full advantage of the scope of limitations and exceptions under the Berne Convention to fulfil their policy objectives.

403. Member States should also address the need to strengthen technical and institutional infrastructure, when necessary.

### ***WIPO's Role***

404. The work on this topic must continue in a holistic and forward looking way.

405. WIPO should ensure the provision of legislative and technical assistance and enhance the legislative capacity of Member States, in particular for cross-border uses and the establishment of balanced copyright laws.

406. WIPO should develop a range of tools such as models, recommendations, guidance, handbooks, and toolkits, among others, containing information on licensing options and limitations and exceptions.

[End of document, Annex I follows]



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## REGIONAL SEMINAR

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WIPO/REG/CR/SIN/19/INF/1

ORIGINAL: ENGLISH

DATE: APRIL 29, 2019

## **Regional Seminar for the Asia and the Pacific Group on Libraries, Archives, Museums, and Educational and Research Institutions in the Field of Copyright**

organized by  
the World Intellectual Property Organization (WIPO)

in cooperation with  
the Singapore Cooperation Programme (SCP) under the Singapore Ministry of Foreign Affairs

and with the assistance of  
the Intellectual Property Office of Singapore (IPOS)

**Singapore, April 29 and 30, 2019**

### PROGRAM

*prepared by the International Bureau of WIPO*

Monday, April 29, 2019

8.00 – 08.30      Registration

8.30 – 09.30      **OPENING CEREMONY**

Welcome addresses by:

Ms. Sylvie Forbin, Deputy Director General, WIPO Copyright and Creative Industries Sector

Mr. Daren Tang, Chief Executive, Intellectual Property Office of Singapore (IPOS)

09.30 – 10.00      Coffee Break

## **PLENARY**

10.00 – 12.00      **Setting the Scene**

*In this part of the program, facilitators/speakers that have prepared the various WIPO studies and typologies on limitations and exceptions will introduce the background of the Seminar based on their findings and focused on the specificities of the Member States of the Asia Pacific Group.*

Moderator:      Ms. Sylvie Forbin

Facilitators/  
Speakers:      Professor Kenneth Crews  
                         Professor Daniel Seng  
                         Professor Yaniv Benhamou  
                         Professor Raquel Xalabarder

12.00 – 12.30      Group photo

12.30 – 14.00      Lunch Break

## **FOUR PARALLEL WORKING GROUPS**

13.30 – 15.30      **Challenges and Opportunities**

*In this part of the program, participants will be divided in four groups so as to hold discussions and identify the challenges and opportunities in their region regarding the various limitations and exceptions at stake.*

*Each group will have its own Chair and Rapporteur.*

*Facilitators/speakers will assist participants in their group discussions.*

*Observers (Member States from other regions as well as IGOs and NGOs, through their representatives with relevant experience on libraries, archives, museums, or educational and research institutions) will be able to take part in the discussions.*

15.30 – 16.00

Coffee Break

16.00 – 18.00

**Challenges and Opportunities (cont'd)**

*Participants will continue their discussions.*

18.00 – 18.30

Tour of the National Library

Tuesday, April 30, 2019

**FOUR PARALLEL WORKING GROUPS (cont'd)**

09.00 – 10.00

**Challenges and Opportunities (cont'd)**

*Participants will continue their discussions.*

10.00 – 10.30

Coffee Break

10.30 – 12.00

**Wrap-up and Preparation of Reports**

*In this final exercise of the working groups, participants will prepare their findings, observations and proposals through their Chairs and Rapporteurs.*

12.00 – 14.00

Lunch Break

**PLENARY**

14.00 – 16.00

**Presentation of Report and Proposals by Groups**

- *Participants will be invited to present in a thematic order their findings, observations and proposals as the outcome of their respective group discussions.*

Moderator: Ms. Sylvie Forbin

Spokespersons: Chairs and Rapporteurs, together with Member States from the Asia-Pacific Group

- *General discussions with all Member States and observers. Facilitators/speakers will provide their views and advice.*

Moderator: Ms. Sylvie Forbin

Facilitators/

Speakers: Professor Kenneth Crews  
Professor Daniel Seng  
Professor Yaniv Benhamou  
Professor Raquel Xalabarder

16.00 – 17.30 Coffee Break

17.30 – 18.00 **WAY FORWARD: Final Remarks**

Ms. Sylvie Forbin, Deputy Director General, WIPO Copyright and Creative Industries Sector

Mr. Simon Seow, Director, Intellectual Property and Policy Division, Ministry of Law, Singapore.



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## REGIONAL MEETING

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WIPO/CR/NBO/19/PROV. 1  
ORIGINAL: ENGLISH  
DATE: MAY 28, 2019

# **REGIONAL SEMINAR FOR THE AFRICAN GROUP ON LIBRARIES, ARCHIVES, MUSEUMS, AND EDUCATIONAL AND RESEARCH INSTITUTIONS IN THE FIELD OF COPYRIGHT**

organized by  
the World Intellectual Property Organization (WIPO)

with the collaboration of  
the Kenya Copyright Board (KECOBO)

**Nairobi, June 12 and 13, 2019**

## PROVISIONAL PROGRAM

*prepared by the International Bureau of WIPO*

Wednesday, June 12, 2019

## **OPENING CEREMONY**

08.30 – 09.00     **Registration**

09.00 – 09.30     **Welcome addresses by:**

Ms. Sylvie Forbin, Deputy Director General, Copyright and Creative Industries Sector, WIPO, Geneva

H.E. Ms. Amina Mohamed, Cabinet Secretary, Ministry of Sports, Culture and Heritage, Nairobi (to be confirmed)

09.30 – 10.00     Coffee Break

## **PLENARY**

10.00 – 12.00                     **Setting the Scene**

*In this part of the program, facilitators/speakers that have prepared the various WIPO studies and typologies on limitations and exceptions will introduce the background of the Seminar based on their findings and focused on the specificities of the Member States of the African Group.*

Moderator:     Ms. Sylvie Forbin

Facilitators/  
Speakers:     Professor Yaniv Benhamou  
                     Professor Kenneth Crews  
                     Professor David Sutton  
                     Professor Raquel Xalabarder

12.00 – 12.30     Group photo

12.30 – 13.30     Lunch Break

## FOUR PARALLEL WORKING GROUPS

13.30 – 15.30

### Challenges and Opportunities

*In this part of the program, participants will be divided in four groups, to hold discussions and identify the challenges and opportunities in their region regarding the various limitations and exceptions at stake.*

*Each group will have its own Chair and Rapporteur.*

*Facilitators/speakers will assist participants in their group discussions.*

*Observers (Member States from other regions as well as IGOs and NGOs, through their representatives with relevant experience on libraries, archives, museums, or educational and research institutions) will be able to take part in the discussions.*

15.30 – 16.00

Coffee Break

16.00 – 18.00

### Challenges and Opportunities (cont'd)

*Participants will continue their discussions.*

Thursday, June 13, 2019

## FOUR PARALLEL WORKING GROUPS (cont'd)

09.00 – 10.00

### Challenges and Opportunities (cont'd)

*Participants will continue their discussions.*

10.00 – 10.30

Coffee Break

10.30 – 12.00

### Wrap-up and Preparation of Reports

*In this final exercise of the working group participants will prepare their findings, observations and proposals for presentation through their Chairs and Rapporteurs.*

12.00 – 14.00

Lunch Break

## PLENARY

14.00 – 16.00

### **Presentation of Reports and Proposals by Groups**

*Participants will be invited to present in thematic order their findings, observations and proposals as the outcome of their respective group discussions.*

Moderator: Ms. Sylvie Forbin

Spokespersons: Chairs and Rapporteurs, together with Member States from the African Group

*General discussion with all Member States and observers. Facilitators/speakers will provide their views and advice.*

Facilitators/  
Speakers:

Professor Yaniv Benhamou  
Professor Kenneth Crews  
Professor David Sutton  
Professor Raquel Xalabarder

16.00 – 17.30 Coffee Break

17.30 – 18.00 **WAY FORWARD: Final Remarks**

Ms. Sylvie Forbin

Mr. Edward Sigei, Executive Director, Kenya Copyright Board (KECOBO),  
Nairobi

18.30 – 20.30 **Reception hosted by WIPO**



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## REGIONAL SEMINAR

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OMPI/DA/SDO/19/INF 1 PROV.  
ORIGINAL: SPANISH  
DATE: JULY 3, 2019

## REGIONAL SEMINAR FOR THE LATIN AMERICAN AND CARIBBEAN GROUP ON LIBRARIES, ARCHIVES, MUSEUMS, AND EDUCATIONAL AND RESEARCH INSTITUTIONS IN THE FIELD OF COPYRIGHT

organized by  
the World Intellectual Property Organization (WIPO)

and  
the *Oficina Nacional de Derecho de Autor* (ONDA)

**Santo Domingo, July 4 and 5, 2019**

### PROVISIONAL PROGRAM

*prepared by the International Bureau of WIPO*

Thursday, July 4, 2019

## OPENING CEREMONY

08.30 – 09.00     Registration

09.00 – 09.30     Welcome addresses by:

Ms. Sylvie Forbin, Deputy Director General, WIPO Copyright and Creative Industries Sector

Mr. Trajano Santana, Director, National Copyright Office (ONDA)

09.30 – 10.00     Coffee Break

## PLENARY

10.00 – 12.00                      **Setting the Scene**

*In this part of the program, facilitators/speakers that have prepared the various WIPO studies and typologies on limitations and exceptions will introduce the background of the Seminar based on their findings and focused on the specificities of the Member States of the Latin America and Caribbean Group.*

Moderator:     Ms. Sylvie Forbin

Facilitators/  
Speakers:     Mr. Kenneth Crews  
                      Mr. David Sutton  
                      Mr. Yaniv Benhamou  
                      Ms. Raquel Xalabarder

12.00 – 12.30     Group photo

12.30 – 14.00     Lunch Break

## FOUR PARALLEL WORKING GROUPS

13.30 – 15.30                      **Challenges and Opportunities**

*In this part of the program, participants will be divided in four groups so as to hold discussions and identify the challenges and opportunities in their region regarding the various limitations and exceptions at stake.*

*Each group will have its own Chair and Rapporteur.*

*Facilitators/speakers will assist participants in their group discussions.*

*Observers (Member States from other regions as well as IGOs and NGOs, through their representatives with relevant experience on libraries, archives, museums, or educational and research institutions) will be able to take part in the discussions.*

15.30 – 16.00

Coffee Break

16.00 – 18.00

**Challenges and Opportunities (cont'd)**

*Participants will continue their discussions.*

20.00

Reception offered by WIPO

Friday, July 5, 2019

**FOUR PARALLEL WORKING GROUPS (cont'd)**

09.00 – 10.00

**Challenges and Opportunities (cont'd)**

*Participants will continue their discussions.*

10.00 – 10.30

Coffee Break

10.30 – 12.00

**Wrap-up and Preparation of Reports**

*In this final exercise of the working groups, participants will prepare their findings, observations and proposals through their Chairs and Rapporteurs.*

12.00 – 14.00

Lunch Break

## PLENARY

14.00 – 16.00

### Presentation of Reports and Proposals by Groups

- *Participants will be invited to present in thematic order their findings, observations and proposals as the outcome of their respective group discussions.*

Moderator: Ms. Sylvie Forbin

Spokespersons: Chairs and Rapporteurs, together with Member States from the Latin America and Caribbean Group

- *General discussions with all Member States and observers. Facilitators/speakers will provide their views and advice.*

Moderator: Ms. Sylvie Forbin

Facilitators/  
Speakers: Mr. Kenneth Crews  
Mr. David Sutton  
Mr. Yaniv Benhamou  
Ms. Raquel Xalabarder

16.00 – 17.30 Coffee Break

17.30 – 18.00 **WAY FORWARD: Final Remarks**

Ms. Sylvie Forbin

Mr. Trajano Santana

18.30 Social event organized by ONDA

[End of Annex I, Annex II follows]

## WORKING GROUPS – SINGAPORE SEMINAR

### Western Asia

- Jordan
- Kuwait
- Lebanon
- Oman
- Syria
- United Arab Emirates
- Iran

### ASEAN + others

- Cambodia
- **China**
- Indonesia
- Lao PDR
- Malaysia
- **Mongolia**
- Philippines
- Singapore
- Thailand
- Vietnam

### South Asia

- Afghanistan
- Bangladesh
- Bhutan
- India
- Nepal
- Pakistan
- Sri Lanka

### Pacific

- Cook Islands
- Fiji
- Papa New Guinea
- Samoa
- Tonga
- Tuvalu
- Vanuatu

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Chair: Jordan  
**Ms. Ena'am MUTAWE**

Rapporteur: Lebanon  
**Mr. Abou Farhat WALID**

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Chair: Singapore  
**Ms. Diyanah BAHARUDIN**

Rapporteur: Malaysia  
**Ms. Rashida Ridha SHEIKH**

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Chair: Sri Lanka  
**Mr. Amali MUNASINGHE**

Rapporteur: Pakistan  
**Mr. Meesaq ARIF**

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Chair: Cook Islands  
**Ms. Repeta PUNA**

Rapporteur : Tuvalu  
**Mr. Noa PETUELI**

## WORKING GROUPS – NAIROBI SEMINAR

### FRENCH

- Benin
- Burkina Faso
- Burundi
- Cameroon
- Central Africa Republic
- Cabo Verde
- Chad
- Comoros
- Congo
- Côte d'Ivoire
- Democratic Republic of Congo
- Djibouti
- Equatorial Guinea
- Gabon
- Mali
- Morocco
- Niger
- Sao Tome
- Senegal
- Togo
- Tunisia

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Chair: Senegal  
**M Aziz DIENG**

Rapporteurs: Burkina Faso  
and Côte d'Ivoire  
**Mme Chantal FORGO**  
**Mme Irène VIEIRA**

### ENGLISH 1

- Angola
- Botswana
- Ethiopia
- Egypt
- Lesotho
- Malawi
- Mozambique
- Seychelles
- South Africa
- Sudan
- Tanzania
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Chair: Malawi  
**Ms. Dora MAKWINJA**

Rapporteur: Botswana  
**Ms. Keitseng MONYATSI**

### ENGLISH 2

- Gambia
- Ghana
- Guinea Bissau
- Kenya
- Liberia
- Namibia
- Nigeria
- Sierra Leone
- Uganda
- Zambia
- Zimbabwe
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Chair: Nigeria  
**Mr. John ASEIN**

Rapporteur: Kenya  
**Mr. Hezequiel OIRA**

## WORKING GROUPS – SANTO DOMINGO SEMINAR

### SPANISH 1

- Argentina
- Costa Rica
- Cuba
- Dominican Republic
- El Salvador
- Guatemala
- Honduras
- Mexico
- Nicaragua

### ENGLISH

- Antigua and Barbuda
- Bahamas
- Barbados
- Dominica
- Grenada
- Haiti
- Jamaica
- Saint Kitts and Nevis
- Saint Lucia
- Suriname
- Trinidad and Tobago

### SPANISH 2

- Brazil
- Colombia
- Chile
- Ecuador
- Paraguay
- Peru
- Uruguay
- Venezuela

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Chair: Guatemala  
**Sra. Silvia GARCÍA**

Rapporteur: Argentina  
**Sr. Gustavo SCHÖTZ**

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Chairs: Antigua and Barbuda  
and Trinidad and Tobago  
**Mr. Regan ASGARALI**  
**Mr. Conliffe CLARKE**

Rapporteur: St. Kitts and Nevis  
**Ms. Jihan WILLIAMS**

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Chair: Colombia  
**Sra. Carolina ROMERO**

Rapporteur: Chile  
**Sr. Claudio OSSA**

[End of Annex II, Annex III follows]

|                                      | <b>Libraries</b> | <b>Museums</b> | <b>Archives</b> | <b>Education &amp; Research</b> |
|--------------------------------------|------------------|----------------|-----------------|---------------------------------|
| <b>Preservation</b>                  |                  |                |                 |                                 |
| <b>Reproduction/<br/>Private use</b> |                  |                |                 |                                 |
| <b>Access</b>                        |                  |                |                 |                                 |
| <b>Cross border</b>                  |                  |                |                 |                                 |

### **GENERAL QUESTIONS**

- Are there provisions in the country's copyright legislation or regulations that *specifically* deal with the country's educational or cultural institutions (including museums, libraries or archives)?
- Do the country's copyright legislation or regulations define the type of works that can be copied by educational and cultural institutions?
- Do the country's copyright legislation or regulations allow making of copies of works or collections for specific purposes, for educational and cultural institutions? Is there a specific number of copies that can be made or amount of the work that can be copied?
- Do the country's copyright legislation or regulations specify any kind of remuneration for allowing the making of copies of specific works or complete or partial collections for educational and cultural institutions?
- Are there any provisions in the country's copyright legislation or regulations that *specifically* deal with the collective management of the author/owner's rights in the works or collections in the country's educational or cultural institutions?
- Is there a practice of entering into terms or conditions with an author/owner at the time when the country's educational or cultural institutions receive or acquire works or collections?

**Libraries**

| <b>Category</b>              | <b>Typology topic</b>                                                                          | <b>Questions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Preservation                 | Preservation                                                                                   | <ul style="list-style-type: none"> <li>• Under which conditions do libraries reproduce works to make copies for preservation purposes (conditions could include work at risk, fragile, rare works, works in obsolete formats, etc...)? Are the copies mostly in analogue format or digital format?</li> <li>• Do libraries have any best practices governing copying of works for preservation purposes (e.g. contracts with clear conditions for digitizing)?</li> </ul> |
| Access                       | Making available on terminals                                                                  | <ul style="list-style-type: none"> <li>• Do libraries allow users to have online access to works on terminals onsite or outside the premises of the libraries?</li> </ul>                                                                                                                                                                                                                                                                                                 |
| Copies-Private use           | Copies for study and research                                                                  | <ul style="list-style-type: none"> <li>• How many copies are users free to make for private use? And what's the extent of the work that users can copy?</li> <li>• Do libraries allow users to make copies of works in a format different from the original (e.g. copy a work from an analogue to a digital format)? If yes, under which conditions?</li> </ul>                                                                                                           |
| Cross-border                 | Lending of physical works<br><br>Lending of digital works<br><br>Copies for study and research | <ul style="list-style-type: none"> <li>• Do libraries loan works across borders? If yes, under which conditions?</li> <li>• Do libraries allow access to their works to users who are outside the country's jurisdiction? If yes, under which conditions?</li> </ul>                                                                                                                                                                                                      |
| Additional particular topics | Lending of physical works<br><br>Lending of digital works                                      | <ul style="list-style-type: none"> <li>• Do libraries provide remuneration to copyright holders when they loan for free their copyrighted material? And if yes, under which conditions?</li> </ul>                                                                                                                                                                                                                                                                        |

**Educational Institutions**

| <b>Category</b>    | <b>Typology topic</b>                                                                                                                              | <b><u>Questions</u></b>                                                                                                                                                                                                                                                                                                           |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Access             | Access to/use of materials by individuals                                                                                                          | <ul style="list-style-type: none"> <li>What kind of material is used for educational purposes? National or imported international material? Analogue or digital? Do educational institutions use text-based material or material in other formats (e.g. audiovisual, performances, etc.)?</li> </ul>                              |
| Copies-Private use | <p>Access to/use of materials by individuals</p> <p>Access to/use of materials by Educational/Research Institutions, Educators and Researchers</p> | <ul style="list-style-type: none"> <li>Can teachers and researchers make copies of works for teaching and research? If yes, is this activity subject to remuneration?</li> <li>Does the legal framework in your jurisdiction distinguish between private copies for teaching and private copies for research purposes?</li> </ul> |
| Cross-border       | <p>Distance Learning Activities</p> <p>Online courses</p>                                                                                          | <ul style="list-style-type: none"> <li>Does the legal framework in your country allow for the cross-border access to works on online learning platforms? If yes, under which conditions?</li> <li>Do educational institutions in your country receive requests for access to works across borders?</li> </ul>                     |

**Archives**

| Category                            | Typology Topic                                             | Questions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Preservation                        | Preservation and Replacement                               | <ul style="list-style-type: none"> <li>Under what conditions can archives reproduce archival material to make copies for preservation or replacement purposes [conditions could include works at risk, fragile works, rare works, works in obsolete formats, etc.]? Are the copies mostly in analogue format or digital format?</li> <li>Can archives disseminate the original or the copy for preservation or replacement purposes in different locations, whether it is within or outside the jurisdiction?</li> </ul>                                                        |
|                                     | Making Copies                                              | <ul style="list-style-type: none"> <li>Is it possible to give an approximate estimate in broad terms of the material in the archival collections [in whichever category of works] that exists <i>only</i> in its original form i.e. no copies have been made?</li> </ul>                                                                                                                                                                                                                                                                                                        |
| Access                              | Exhibitions [on-site and off-site]                         | <ul style="list-style-type: none"> <li>Do archives make digitized archival material accessible to visitors on terminals onsite, as well as offsite?<br/><i>[Please note that this question is also relevant for cross-border category below]</i></li> </ul>                                                                                                                                                                                                                                                                                                                     |
|                                     | Inter-institutional loan for exhibition and other purposes | <ul style="list-style-type: none"> <li>Do archives use contracts to give access to materials in the collections to individuals or other institutions? If yes, are the terms standard or customized?</li> </ul>                                                                                                                                                                                                                                                                                                                                                                  |
| Copies – Private Use                |                                                            | <ul style="list-style-type: none"> <li>Do archives make the archival collections accessible to the general public or is material available only on user request?</li> <li>What are the general conditions under which copies may be made for users?</li> </ul>                                                                                                                                                                                                                                                                                                                  |
| Cross-Border                        | Preservation                                               | <ul style="list-style-type: none"> <li>Do archives send archival material outside the country's jurisdiction for preservation, storage, digitization purposes, safekeeping or other purposes?</li> </ul>                                                                                                                                                                                                                                                                                                                                                                        |
|                                     | Access<br>Special access                                   | <ul style="list-style-type: none"> <li>How do archives treat requirements/requests of other institutions outside the country's jurisdiction?</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Other Uses including commercial use |                                                            | <ul style="list-style-type: none"> <li>Do archives get requests from other archival institutions or relevant cultural institutions e.g., museums or libraries from inside or outside the country, for access to original or copied archival material for purposes such as creating an exhibition or completing collections in their archival collections? Are requests ever made for commercial purposes?</li> <li>Do archives make the kinds of requests described above? Do they view these activities as commercial? Do they undertake other commercial activity?</li> </ul> |

## Museums

| Category           | Typology topic                | Questions                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Preservation       | Preservation                  | <ul style="list-style-type: none"> <li>Under what conditions can museums reproduce works to make copies for preservation purposes (conditions could include works at risk, fragile works, rare works, works in obsolete formats, etc.)? Are the copies mostly in analogue format or digital format?</li> <li>Do museums have any best practices for copying of works for preservation purposes (e.g. contracts with clear conditions for digitizing)?</li> </ul> |
|                    | Replacement                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                    | Archiving & Documentation     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Access             | Exhibition catalogue          | <ul style="list-style-type: none"> <li>Do museums have any <i>specific</i> internal guidelines or best practices allowing reproduction of works for distribution of exhibition catalogues?</li> <li>Do museums in practice produce or distribute exhibition catalogues without any copyright obligation or do they have to request authorization and/or pay remuneration to right holders, if any?</li> </ul>                                                    |
|                    | Onsite display of media works | <ul style="list-style-type: none"> <li>Are there any <i>specific</i> internal guidelines or best practices allowing a museum to publicly display media works in its collection?</li> </ul>                                                                                                                                                                                                                                                                       |
|                    | Making available on terminals | <ul style="list-style-type: none"> <li>Do museums make their digitized collections accessible to visitors on terminals onsite or allow online access outside the premises of the museums?</li> </ul>                                                                                                                                                                                                                                                             |
| Copies-Private use | Visitors taking photographs   | <ul style="list-style-type: none"> <li>Do museums have any guidelines, terms of use, or rules for visitors taking photographs?</li> <li>Do museums have any guidelines, terms of use, or rules for visitors uploading photos on social media? If yes, is there any rule limiting the museum's liability for subsequent uses by the visitors (e.g. clearly describing the scope of private use; expressly excluding use on social media, etc.)?</li> </ul>        |
|                    | Education & research          | <ul style="list-style-type: none"> <li>Do museums have any <i>specific</i> rules for the use of their collections by teachers, researchers and/or students for education or research purposes?</li> <li>Do museums allow researchers/curators to conduct text and data-mining for research purposes (e.g. using an internally developed database)?</li> </ul>                                                                                                    |
| Cross-border       | Exhibition                    | <ul style="list-style-type: none"> <li>Have museums identified any cross-border issues that affect their daily activities (e.g. cross-border lending for temporary exhibitions)?</li> </ul>                                                                                                                                                                                                                                                                      |
|                    | Online exhibition             | <ul style="list-style-type: none"> <li>Do museums allow users outside the country's jurisdiction to have online access to their collections, by allowing cross-border access to the museums' collections on dedicated terminals or through any other online service? Have any issues been identified?</li> </ul>                                                                                                                                                 |
| Commercial use     |                               | <ul style="list-style-type: none"> <li>Do museums conduct any commercial activities? Do museums have rights regarding those activities? For example in catalogues?</li> </ul>                                                                                                                                                                                                                                                                                    |

[End of Annex III, Annex IV follows]



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## REGIONAL SEMINAR

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WIPO/REG/CR/SIN/19/INF/3

ORIGINAL: ENGLISH

DATE: APRIL 26, 2019

## **Regional Seminar for the Asia and the Pacific Group on Libraries, Archives, Museums, and Educational and Research Institutions in the Field of Copyright**

organized by  
the World Intellectual Property Organization (WIPO)

in cooperation with  
the Singapore Cooperation Programme (SCP) under the Singapore Ministry of Foreign Affairs

and with the assistance of  
the Intellectual Property Office of Singapore (IPOS)

**Singapore, April 29 and 30, 2019**

### LIST OF PARTICIPANTS

*prepared by the International Bureau of WIPO*

## **MEMBER STATES DELEGATIONS**

### **Afghanistan**

Amanullah RUSTAQUI (Mr.), Desk Officer, Ministry of Foreign Affairs, Kabul

### **Bangladesh**

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KENYA COPYRIGHT BOARD



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WIPO/CR/NBO/19/PROV. 2  
ORIGINAL: ENGLISH  
DATE: JUNE 7, 2019

# **REGIONAL SEMINAR FOR THE AFRICAN GROUP ON LIBRARIES, ARCHIVES, MUSEUMS, AND EDUCATIONAL AND RESEARCH INSTITUTIONS IN THE FIELD OF COPYRIGHT**

organized by  
the World Intellectual Property Organization (WIPO)

with the collaboration of  
the Kenya Copyright Board (KECOBO)

**Nairobi, June 12 and 13, 2019**

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OMPI/DA/SDO/19/INF 2 PROV.  
ORIGINAL: ENGLISH/SPANISH  
DATE: JULY 3, 2019

## REGIONAL SEMINAR FOR THE LATIN AMERICAN AND CARIBBEAN GROUP ON LIBRARIES, ARCHIVES, MUSEUMS, AND EDUCATIONAL AND RESEARCH INSTITUTIONS IN THE FIELD OF COPYRIGHT

organized by  
the World Intellectual Property Organization (WIPO)

and  
the *Oficina Nacional de Derecho de Autor* (ONDA)

**Santo Domingo, July 4 and 5, 2019**

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Roseau

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Sr Silvestre Ventura, Director del CMA, ONDA, Santo Domingo

Sr. Julio Méndez, Director de SGC, ONDA, Santo Domingo

Sr. Alejandro Peralta, Subdirector Jurídico, ONDA, Santo Domingo

Sra. Virginia Sánchez , Directora de Registro, ONDA, Santo Domingo

Sr. Mirtilio Santana, Director de Inspectoría, ONDA, Santo Domingo

Sra. Luz García, Directora de Santiago, ONDA, Santo Domingo

Sr. Daniel Parra, Subdirector de Santiago, ONDA, Santiago

Sr. Ramón Garrido, Director de SPM, ONDA, Santo Domingo

Sr. Luis Vargas Dominici, Director de Barahona, ONDA, Barahona

Sr. Leónidas Rodríguez, Director de la Romana, ONDA, La Romana

Sra. Arelis Guerrero, CCDA, ONDA, Santo Domingo

Sr. Víctor Rodríguez, Inspector, ONDA, Santo Domingo

Sr. Geraldino Kelly, Abogado, ONDA, Santo Domingo

Sra. Cindy Giugni, CCDA, ONDA, Santo Domingo

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Ms. Emmelie PROPHETE, General Director, Copyright Office, Port-au-Prince

#### HONDURAS

Sra. Alma Violeta HERRERA FLORES, Encargada de la Oficina de Derecho de Autor, Dirección General de Propiedad Intelectual de Honduras (DIGEPIH), Tegucigalpa

#### JAMAICA

Mr. Marcus GOFFE, Senior Secretary, Jamaica Intellectual Property Office, (JIPO), Kingston

#### MEXICO

Sra. María del Pilar ESCOBAR BAUTISTA, Consejera, Encargada de Propiedad Intelectual, Secretaría de Relaciones Exteriores, Ginebra, Suiza

#### NICARAGUA

Mr. Erwin Vicente RAMÍREZ COLINDRES, Director de Asesoría Legal, Ministerio de Fomento, Industria y Comercio, Managua

#### PARAGUAY

Sr. Oscar ELIZECHE LANDÓ, Director, Dirección de Derecho de Autor y Derechos Conexos, Dirección Nacional de Propiedad Intelectual (DINAPI), Asunción

PERU

Sr. Fausto VIENRICH ENRIQUEZ, Director, Dirección de Derecho de Autor, Instituto Nacional de Defensa de la Competencia y de Protección de la Propiedad Intelectual (INDECOP), Lima

SAINT KITTS AND NEVIS

Ms. Jihan WILLIAMS, Registrar, Intellectual Property Office, Ministry of Justice and Legal Affairs, Basseterre

SAINT LUCIA

Ms. Kozel CREESE, Acting Registrar, Registry of Companies and Intellectual Property, Ministry of Home Affairs, Justice and National Security, Castries

SURINAME

Mr. Darrel PINAS, Senior Legal Officer, Intellectual Property Office, Ministry of Trade, Industry and Tourism, Paramaribo

URUGUAY

Sra. Silvia PÉREZ DIAZ, Presidenta, Consejo de Derecho de Autor, Ministerio de Educación y Cultura, Montevideo

VENEZUELA

Sra. Isabel PIÑA SIERRALTA, Directora Nacional de Derecho de Autor, Servicio Autónomo de la Propiedad Intelectual (SAPI), Caracas

TRINIDAD AND TOBAGO

Mr. Regan ASGARALI, Controller, Intellectual Property Office, Port of Spain

**II. SPEAKERS/FACILITATORS**

Mr. Yaniv BENHAMOU, Lecturer/Attorney at Law, Lenz and Staehelin, Geneva, Switzerland

Mr. Kenneth CREWS, Professor/Attorney, Gipson Hoffman and Pancione, Los Angeles, California, United States of America

Ms. Raquel XALABARDER, Professor/Dean, Chair of Intellectual Property, Open University of Catalonia, Barcelona, Spain

Mr. David SUTTON, Lead Researcher, University of Reading, Reading, United Kingdom

### III. OBSERVERS

#### **OTHER MEMBER STATES OR SPECIAL MEMBER DELEGATIONS**

##### **UNITED STATES OF AMERICA**

Mr. Michael SHAPIRO, Senior Counsel, U.S. Patent and Trademark Office, Alexandria, Virginia, United States of America

#### **ORGANIZATIONS**

##### **ACCREDITED INTERGOVERNMENTAL ORGANIZATIONS**

##### **CARICOM**

Mr. Malcolm SPENCE, Senior Coordinator, Intellectual Property, Science and Technology Issues, Office of Trade Negotiations, CARICOM Secretariat, St. Michael, Barbados

##### **REGIONAL CENTER FOR BOOK DEVELOPMENT IN LATIN AMERICA AND THE CARIBBEAN (CERLALC)**

Sra. Marianne PONSFORD, Director, Bogotá  
Sr. Fredy Adolfo FORERO VILLA, Coordinador Jurídico y de Derecho de Autor, Bogotá

##### **ACCREDITED NON-GOVERNMENTAL ORGANIZATIONS**

##### **Canadian Federation of Library Associations (CFLA)**

Ms. Victoria OWEN, Information Policy Scholar-Practitioner, University of Toronto, Toronto, Canada

##### **Corporación Latinoamericana de Investigación de la Propiedad Intelectual para el Desarrollo (Corporación Innovarte)**

Mr. Luis VILLARROEL, Director, Santiago, Chile

##### **International Council on Archives (ICA)**

Ms. Sharon ALEXANDER-GOODING, Copyright Policy Expert, St Michael, Barbados  
Mr. William MAHER, Copyright Policy Expert, Urbana, Illinois, United States of America  
Mr. Samuel SALGADO, Copyright advisor, Santiago, Chile

##### **International Council of Museums (ICOM)**

Ms. Paula CASAJUS, Jefa De Documentación y Registro del Museo Nacional de Bellas Artes, Buenos Aires

##### **International Federation of Journalists (IFJ)**

Mr. Fabian CARDOZO, President of the Asociación de la Prensa Uruguaya (APU), Montevideo  
Mr. José Altigracia BEATO GUZMAN, Secretario General del Sindicato Nacional de Trabajadores de la Prensa (SNTP), Santo Domingo

##### **Ibero-Latin-American Federation of Performers (FILAIE)**

Sr. Alvaro HERNANDEZ-PINZON GARCIA, Miembro Comité Jurídico, Madrid

International Confederation of Societies of Authors and Composers (CISAC)

Carlos BAHAMÓNDEZ, Manager for Central America and the Caribbean, Santiago de Chile

International Federation of Library Associations and Institutions (IFLA)

Mr. Winston. TABB, Sheridan Dean of University Libraries, Archives & Museums, Johns Hopkins University, USA, Baltimore, MD, United States of America

Ms. Ariadna MATAS CASADEVALL, Policy & Research Officer, The Hague

Ms. Alicia OCASO, Representative, Montevideo

International Federation of Reproduction Rights Organizations (IFRRO)

Ms. Caroline MORGAN, Chief Executive and Secretary General, Brussels

Ms. Ana María CABANELLAS, Board Member, Buenos Aires

Mr. Victoriano COLODRÓN, Senior Director, International Relations, Copyright Clearance Center, Madrid

Mr. Javier DIAZ DE OLARTE, Chief of Legal Department of Centro Español de Derechos Reprográficos (CEDRO), Madrid

Fundación para la Difusión del Conocimiento y el Desarrollo Sustentable Vía Libre (Fundación Vía Libre)

Sra. María Beatriz BUSANICHE, presidente, Buenos Aires

Sra. Matías BUTELMAN, Creative Commons Argentina Chapter Lead, Buenos Aires

Education International (EI)

Ms. Maria Yamile SOCOLOVSKY, Secretaria de Relaciones Internacionales CONADU, Buenos Aires

Ms. Sueli VEIGA MELO, Vice-presidenta da Federação dos Trabalhadores em Educação do Mato Grosso do Sul - FETEMS, Campo Grande, Mato Grosso do Sul, Brazil

Mr. Gabriel CASTRO LOPEZ, Coordinador Regional Internacional de la Educación, San José

Mr. Santiago Antonio BONILLA MELENDEZ, Professor, Universidad Autónoma de Santo Domingo (UASD), Santo Domingo

Karisma Foundation

Ms. Amalia TOLEDO, Project Coordinator, Bogotá

Knowledge Ecology International, Inc. (KEI)

Mr. Luis GIL ABINADER, Research Associate, Washington

International Publishers Association (IPA)

Mr. Hugo SETZER, President, Mexico City

Mr. Jose BORGHINO, Secretary General, Geneva

Program on Information Justice and Intellectual Property, American University Washington College of Law

Mr. Allan ROCHA DE SOUZA, Professor, Rio de Janeiro

## OTHER ORGANIZATIONS

### Associação Brasileira de Direitos Reprográficos (ABDR)

Mr. Dalton Spencer MORATO FILHO, Legal manager, São Paulo, Brazil

### Book Industry Association of Jamaica

Ms. Latoya WEST-BLACKWOOD, Chairman, Kingston

Ms. Jodie MCBEAN DOUGLAS, Publishing Director, Kingston

### Cámara Argentina del Libro

Mr. Gerardo FILIPELLI, Abogado, Buenos Aires

### Cámara Colombiana del Libro

Sr. Manuel José SARMIENTO RAMÍREZ, Secretario General, Bogotá

### Cámara Nacional de La Industria Editorial Mexicana (Caniem)

Mr. Eduardo Valentín DE LA PARRA TRUJILLO, Doctor en Derecho, Ciudad de México

### Cámara Peruana del Libro

Ms. Patricia AREVALO, Vicepresidenta, Lima

### Camera Brasileira do Livro

Ms. Fernanda Gomes Garcia Franco, Executive Director, Sao Paulo

### Centro Colombiano De Derechos Reprográficos (CDR)

Sra. Nathalia GOMEZ VARGAS, Manager, Bogotá

### Centro de Administración de Derechos Reprográficos (CADRA)

Mr. Federico GABRIEL POLAK, Presidente, Buenos Aires

Ms. Magdalena IRAIZOZ, Directora Ejecutiva, Buenos Aires

### Centro Mexicano de Protección y Fomento de los Derechos de Autor (CEMPRO)

Ms. Quetzalli del Carmen DE LA CONCHA PICHARDO, Presidenta del Consejo Directivo, Ciudad de México

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Sr. Fernando ZAPATA LÓPEZ, Abogado, Bogotá

### Jamaican Copyright Licensing Agency (Jamcopy)

Ms. Carol NEWMAN, General Manager, Kingston

Ms. Tanya BATSON-SAVAGE, Author, Kingston

### Sindicato Nacional dos Editores de Livros (SNEL)

Mr. Dante CID, Regional Observer, Rio de Janeiro, Brazil

### Sociedad de Editores y Autores de Panamá

Sr. Carlos WYNTER MELO, Autor, Ciudad de Panamá

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Clave Siete, SRL

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Fundación Dominicana de Ciegos

Sr. Félix Rafael UREÑA

Fundación Global Dominicana

Sra. Ana Carolina BLANCO, Investigadora de temas internacionales y jurídicos

Gestión de Derechos de los Productores Audiovisuales

Sr. Nelson JIMÉNEZ, Director Ejecutivo

Instituto Duarte

Sra. Arelis PEÑA, Bibliotecaria

Instituto Nacional de Formación Técnico Profesional

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Sr. Joel ARIAS MARTE, Asistente de Archivo y Correspondencia

Sr. Juan Confesor CORCINO DE LOS SANTOS, Técnico de Documentación del Centro Tecnológico Central

Instituto Nacional de Formación y Capacitación del Magisterio (INAFOCAM)

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Sr. Cesar David SANTANA, Centro de Capacitación en Política y Gestión Fiscal

Ministerio de Relaciones Exteriores

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Museo de Arte Moderno

Sra. María Elena DITRÉN, Directora Museo de Arte Moderno, Santo Domingo

Museo de la Familia Dominicana

Sra. Gladys MARTÍNEZ, Directora

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Sociedad Dominicana de Productores Fonográficos

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Sr. Amador FÉLIX, Área de Diseño, Santo Domingo

##### World Intellectual Property Organization (WIPO)

Ms. Sylvie FORBIN, Deputy Director General, Copyright and Creative Industries Sector, WIPO, Geneva

Ms. Geidy LUNG, Senior Counsellor, Copyright Law Division, Copyright and Creative Industries Sector, Geneva

Ms. Lorena BOLAÑOS, Senior Program Officer, Copyright Development Division, Copyright and Creative Industries Sector, Geneva

[End of Annex IV, Annex V follows]



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## INTERNATIONAL CONFERENCE

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WIPO/CR/GE/19/INF 1 PROV.  
ORIGINAL: ENGLISH  
DATE: OCTOBER 15, 2019

### **International Conference on Copyright Limitations and Exceptions for Libraries, Archives, Museums and Educational & Research Institutions**

**Geneva, October 18 and 19, 2019**

PROVISIONAL PROGRAM

*prepared by the Secretariat*

Friday, October 18, 2019

8.30 – 9.00      Registration

9.00 – 9.15      **Welcome address by:**

Mr. Francis Gurry, Director General, World Intellectual Property Organization (WIPO)

9.15 – 9.45      **Overview of the Regional Seminars held in Singapore, Nairobi and Santo Domingo**

Report from WIPO Secretariat

9.45 – 10.00      Coffee break

10.00 – 12.30      **Overview of the Regional Seminars (cont'd)**

*Highlights from Chairs and Rapporteurs of the Regional Seminar Working Groups*

Mr. Regan Asgarali, Controller, Intellectual Property Office, Port of Spain

Ms. Repeta Puna, Director of Governance, Ministry of Cultural Development, Rarotonga

Ms. Dora Makwinja Salamba, Executive Director of Copyright Society, Lilongwe

*Highlights from Experts*

Professor Yaniv Benhamou, Lecturer, University of Geneva, Geneva, Switzerland

Professor Kenneth Crews, Attorney, Gipson Hoffman and Pancione, Los Angeles, California, United States of America

Professor Daniel Seng (pre-recorded video), Director, LLM Programme in IP and Technology Law, Faculty of Law, National University of Singapore, Singapore

Professor David Sutton (pre-recorded video), Lead Researcher, University of Reading, Reading, United Kingdom

Professor Raquel Xalabarder, Dean, Chair of Intellectual Property, Open University of Catalonia, Barcelona, Spain

12.30 – 13.00                      **Intersection of Copyright and Other Legal Regimes**

Professor Joseph Fometeu, Head, Department Theory of Law and Epistemology, Faculty of Legal and Political Sciences, N'Gaoundéré, Cameroon

13.00 – 14.30      Lunch break

14.30 – 16.30      **Panel on Archives**

**Panelists:**      Ms. Sharon Alexander-Gooding, University Archivist/Senior Assistant Registrar, University of West Indies, Wanstead, Barbados

Mr. Jamaa Baida, Director of Archives of Kingdom of Morocco, Rabat

Mr. Arnaud Beaufort, Deputy Director General and Director of Services and Networks, National Library of France, Paris

Ms. Valeria Falce, Jean Monnet Professor in European Innovation Policy, European University of Rome, Rome

Ms. Izaskun Herrojo, Director, Library-Newspaper, General Archive of the Nation, Santo Domingo

Mr. Paul Keller, Policy Advisor, Europeana, Amsterdam

Ms. Elisa García Prieto, Archives Documentary Information Centre, General Sub directorate of State Archives, Ministry of Culture and Sports, Madrid

Mr. Sander van de Wiel, Head, Legal Department, PICTORIGHT, Amsterdam

**Contributions from the regional seminars:**

Mr. Meesaq Arif, Executive Director, Intellectual Property Office, Islamabad

Ms. Keitseng Monyatsi, Copyright Administrator, Gaborone

Mr. Claudio Ossa Rojas, Head, Intellectual Rights Department, Santiago de Chile

16.30 – 16.45      Coffee break

16.45 – 18.45    **Panel on Museums**

**Panelists:**    Mr. Fadi Boustani, Assistant Director, Research and Collections Department, Louvre Museum, Paris

Mr. Jaime Castro, Legal Counsellor, Contracts Section of the Office for Cultural Affairs, Central Bank of Colombia, Bogota

Ms. Anna Despotidou, Legal Adviser to MOMus, Museums of Contemporary and Modern Art, Thessaloniki, Greece

Mr. Rainer Eisch, Artist, Dusseldorf, Germany

Ms. Fatma Naït Yghil, Director, Bardo National Museum, Tunis

Mr. Christopher Hudson, Senior Publisher, Museum of Modern Art (MoMA), New York, United States of America

Mr. Thierry Maillard, Legal Director, Society of Authors in Graphic and Plastic Arts (ADAGP), Paris

Mr. Gustavo Martins de Almeida, Counselor of the Museum of Modern Art of Rio de Janeiro, Rio de Janeiro, Brazil

Ms. Katia Pinzón, Head, Contracts Section of the Office for Cultural Affairs, Central Bank of Colombia, Bogota

Ms. Reema Selhi, Legal and Policy Manager, Design and Artists Copyright Society (DACS), London

Mr. Asep Topan, Curator of Museum MACAN and Lecturer, Jakarta

Ms. Leena Tokila, Secretary General, Finnish Museums Association, Helsinki

Ms. Marina Tsyguleva, Head, Legal Services, State Hermitage Museum, Saint Petersburg, Russian Federation

**Contributions from the regional seminars:**

Ms. Diyanah Baharudin, Senior Legal Counsel, Intellectual Property Office, Singapore

Ms. Silvia Leticia García Hernández, Copyright Office, Guatemala City

Mr. Hezequiel Oira, IP Consultant, Kenya Copyright Board (KECOBO), Nairobi

Saturday, October 19, 2019

09.15 – 11.15    **Panel on Libraries**

- Panelists:**    Mr. Guy Berthiaume, former Head, Library and Archives of Canada, Ottawa
- Ms. Liliane de Carvalho, Legal Advisor, Editions Madrigall, Paris
- Mr. Kai Ekholm, former Director, National Library of Finland, Helsinki
- Mr. Dick Kawooya, Assistant Director, School of Library and Information Science, University of South Carolina, Columbia, South Carolina, United States of America
- Ms. Rebecca Giblin, ARC Future Fellow, CREATE Fellow, Melbourne, Australia
- Ms. Melissa Smith Levine, Director, Copyright Office, Library, University of Michigan, Ann Arbor, United States of America
- Ms. Carol Newman, General Manager, Jamaican Copyright Licensing Agency, Kingston
- Mr. Luka Novak, Writer, Ljubljana
- Mr. Jerker Ryden, Senior Legal Advisor, National Library of Sweden, Stockholm
- Ms. Ran Tryggvadottir, Project Manager for Copyright, Ministry of Education and Culture, Reykjavík

**Contributions from the regional seminars:**

- Ms. Ena'am Mutawe, Director, Public Relations and Media, National Library, Amman
- Mr. John Asein, Director, Copyright Commission, Lagos
- Ms. Jihan Williams, Registrar, Intellectual Property Office, Basseterre

11.15 – 11.30    Coffee break

11.30 – 13.30     **Panel on Educational and Research Institutions**

- Panelists:
- Ms. Flavia Alves Bravin, Director for Higher Education Solutions and Publishing, Somos Educação, Sao Paolo, Brazil
- Ms. Ana Maria Cabanellas, Publisher, Heliasta Publishing Company, Buenos Aires
- Mr. Michael W. Carroll, Professor of Law and Director, Program on Information Justice and Intellectual Property, American University Washington College of Law, Washington, D.C.
- Mr. Richard Crabbe, International Textbook Publishing Consultant, Accra
- Mr. Dante Cid, Vice President for Institutional Relations in Latin America, Elsevier, Sao Paolo, Brazil
- Ms. Marie Anne Ferry-Fall, Director General, Society of Authors in Graphic and Plastic Arts (ADAGP), Paris
- Ms. Stephanie Foster, Chief Intellectual Property Officer and Associate General Counsel, Pearson, London
- Mr. Michael Healy, Executive Director, International Relations, Copyright Clearance Center, New York, United States of America
- Mr. Robert Jeyakumar, Assistant Secretary General, Malaysian Academic Movement (MOVE), Melaka, Malaysia
- Ms. Caroline Ncube, Professor of Law, University of Cape Town, Cape Town, South Africa
- Mr. Arnaud Robert, Vice-President, Legal and Public Affairs, Hachette Livre, Paris
- Ms. Monica Torres, Education and Research Licensing Consultant, Madrid
- Mr. Ben White, Researcher, Centre for Intellectual Property Policy & Management, Bournemouth University, Dorset, United Kingdom

**Contributions from the regional seminars:**

- Ms. Chantal Forgo, Burkinabe Copyright Office, Ouagadougou
- Ms. Rashidah Ridha Sheikh Khalid, Director of Copyright Office, Kuala Lumpur
- Mr. Gustavo Juan Schötz, Director Copyright Office, Buenos Aires

13.30 – 15.00 Lunch break

15.00 – 17.00 **The Way Forward and SCCR Considerations**

Speakers: Mr. Walid Abou Farhat, Advisor, Ministry of Culture, Beirut

Mr. Carden Conliffe Clarke, Deputy Registrar, IP and  
Commerce, Antigua and Barbuda

Mr. Aziz Dieng, First Technical Advisor, Ministry of Culture and  
Communication, Dakar

Mr. Jukka Liedes, Special Advisor to the Government of Finland,  
Helsinki

Ms. Ros Lynch, Copyright and IP Enforcement Director, United  
Kingdom Intellectual Property Office, South Wales,  
United Kingdom

Ms. Hu Ping, Director, Copyright Department, National  
Copyright Administration of China (NCAC), Beijing

Ms. Carolina Romero, Director General, Copyright Office,  
Bogota

Mr. Trajano Santana, Director General, National Copyright  
Office, Santo Domingo

Mr. Michael Shapiro, Senior Counsel, U.S. Patent and  
Trademark Office, Alexandria, Virginia, United States of America

Mr. Edward Sigei, Executive Director, Kenya Copyright Board  
(KECOBO), Nairobi

[End of Annex V and of document]