

WIPO Asia-Pacific Regional Meeting on Exceptions and Limitations to Copyright

29-30 April 2019, Singapore

Opening the meeting, the Deputy Director General underlined a desire to allow for full discussion of the different copyright models in place in order to understand them better. She set out the schedule for the two days – a half-day plenary session, followed by two half days of group work, and a final half day of sharing conclusions.

Daren Tang (Chair of SCCR and CEO of the Intellectual Property Office of Singapore) noted recent proposed reforms in his country, including a broad exception allowing for use of legally accessed materials for education, for web-harvesting, and for the application of library exceptions to archives and museums also. He underlined his interest in a solution at the international level, given the commonness of cross-border education activities.

The four experts then gave their views. Professor Crews underlined the need to look at issues which have received inadequate attention so far, such as text and data mining or orphan works. There were also questions around the role of contracts and limitations on liability. He noted variation between laws, but underlined the value of rules that made preservation possible, and stressed that action could be taken both nationally and internationally. He gave the example of Marrakesh as a precedent for the possibility to make and share copies of works under certain circumstances.

Professor Daniel Seng used his presentation to underline the changing demands and needs of educators, and the requirement to ensure that the law keeps up. Increasingly, for example, students made use of works, rather than teachers. Professor Raquel Xalabarder underlined the weakness of the current licensing framework, with rightholders often unwilling to offer appropriate deals, and indeed difficulty in identifying rightholders in the first place. Dr Yaniv Benhamou focused on the challenges faced by museums in the countries where he had been able to carry out interviews.

Four groups were then created from the 32 countries present, divided up on regional lines (Western Asia, South Asia, South-East Asia, and the Pacific). Each group had a chair and a facilitator, selected a few days previously, and who received briefing about their role the evening before. Each was given a grid along the lines of the below to fill in with information about copyright laws currently in place, as well as an instruction to come back with recommendations:

	Libraries	Archives	Museums	Education
Preservation				
Private Copying				
Access				
Cross-Border Aspects				

Each group operated in different ways, some going through each theme or institution one by one, others having a freer discussion allowing for more exploration of cross-cutting proposals. On coming back together, the groups made the following recommendations:

Western Asia: while there are variations in laws between members of the group, there was agreement on the need to find a balance between rightholder monopolies and access. In the countries concerned, it was unrealistic to focus too much on licensing, given the lack of collective

management organisations. It was however clear that international treaties could have an important effect on national law. We should therefore lobby for an international instrument with precise and simple terminology that helps find this balance, and which reflects the reality of new technologies, in order to allow for fair and modern access to and use of works.

South-East Asia: again, laws varied between countries, but country contributions indicated that fair use allowed for a wider range of uses. There were challenges around understanding exceptions and limitations though, meaning that users were less willing to make use of them. This was compounded by a lack of legal certainty in some activities, such as on translation, digital uses, cross-border uses and preservation. In some cases, existing exceptions could also usefully be applied to new uses, but this needed to be clear. Some members of the group called for an international treaty as a useful guide for the domestic legislation process. The group decided not to include the argument that current flexibilities were enough – a treaty would still be necessary.

South Asia: it was clear that two half days only allowed time to scratch the surface of the discussion. However, the Marrakesh Treaty provided an important example – with some sort of convention or agreement at the regional level, we could make progress, alongside a cross-border convention to allow for international cooperation. We need changes to laws to respond to global changes, and which allow for international searches, use of data, and definition of legitimate possibilities for cross-border uses. Clearly other steps are necessary in order to allow for fair pricing of educational materials, and efforts to mitigate preservation risks.

Pacific: the Pacific focused on national legislation and the need to ensure that laws keep up. There was a need for more help with this from the international level, and also a unified set of rules for libraries, archives and museums.

Discussions around the grid are summarised in a document WIPO has committed to putting together, but recurring themes included:

- **The need to take account of digital uses:** Limiting numbers of (preservation) copies was unhelpful, as it potentially prevented digital uses. It also needed to be clear that preserving born-digital works was possible, with Kuwait's fair use provision cited as an example.
- **The need for reform and clarity:** Member states repeatedly underlined that laws currently were often outdated and confusing. There was a need for support in updating these to make them more relevant and workable.
- **Consistent rules for libraries, archives and museums:** Coverage of museums in preservation laws was inconsistent. Dr Benhamou stressed that with institutions often co-located, the same rules for libraries, archives and museums could help. Professor Crews added that rules should also be as consistent as possible across types of material, given that collections could often include items in different forms.
- **International instruments:** Professor Crews suggested that some sort of international instrument on preservation leaving enough room for interpretation to reflect national specificities and changing requirements could be helpful. Indeed, given the way the Cloud works, saving copies already implied cross-border uses. Dr Benhamou agreed that an international preservation instrument could be powerful. Professor Xalabarder noted that an international instrument should not be too prescriptive or provide a one-size-fits-all approach, but could at least give guidance to Member States, and would potentially solve the cross-border issue. Something similar to the Marrakesh Treaty, but for online education

and training could certainly offer teachers much greater peace of mind when it came to exempted uses (although of course this would be complicated. The ASEAN group underlined that this was an issue needing a response, and suggested that a country-of-origin principle could apply, mimicking the recently introduced EU Copyright Directive.

- **Licensing:** Professor Crews noted that this did not work in many circumstances, in particular in preservation. As such, licences – and the contractual obligations they include – were not relevant. What was important was to define and grant opportunities as a means of finding a balance, while ensuring that others continued to be paid for. While Professors Seng and Xalabarder underlined that licensing had a role, this was not the case in all situations. Unfortunately, licensing too often failed to keep up with need.
- **Orphan Works:** Mme Forbin recognised the specific problem of orphan works, as well as of unpublished works. She suggested that some sort of safe harbour mechanism allowing for their use could be helpful.
- **Educational uses:** as highlighted by Professor Seng, educational uses were evolving quickly with eLearning, flipped classrooms and other activities. There was a major demand from teachers for a legislative response, as existing rules were not applicable, and current licensing offers did not respond to demand or need.