

Kluwer Copyright Blog

The WIPO Files II: is international lawmaking on copyright still possible?

Teresa Nobre (COMMUNIA) · Wednesday, May 25th, 2022

The [42nd session](#) of the World Intellectual Property Organization's (WIPO) Standing Committee on Copyright and Related Rights (SCCR) took place from 9 to 13 May 2022 in Geneva. This was the first time since the COVID-19 pandemic started that most of the delegates were reunited in person. In 2020 and 2021, the Committee held hybrid format sessions of online and in-person participation, with most of the delegations attending remotely. The number of meetings were reduced from two regular sessions to one per year as a result and the Committee agreed not to engage in text-based negotiations during those sessions. The return to Geneva could have led one to believe that there might be a renewed interest in moving the Committee's agenda forward. But as the days passed by, without a consensus on any agenda item, this hope faded away. Only when the session was coming to an end did the delegates finally [agree on a few next steps](#) for the two main agenda items of the Committee, in both cases falling short of the initial expectations.



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The two main items in the SCCR's agenda are the protection of broadcasting organizations and limitations and exceptions to copyright (L&Es) for libraries, archives, educational institutions, research institutions, and persons with other disabilities. The [first of this series of blog posts](#) on copyright reform at WIPO analyzes the history of the discussions on L&Es. Today, we take a look into the latest developments on those discussions, as well as at the state of the discussions on the protection of broadcasting organizations.

Exceptions and limitations: next steps

At this session of the SCCR, the Committee's discussions under the L&E's agenda items revolved around a [work program proposal](#) submitted by the WIPO's African regional group. The draft program was intended to prompt the Committee – which has been analyzing copyright exceptions for public interest activities for nearly 15 years – to finally engage in more substantial discussions on these agenda items.

The Group of Latin America and Caribbean Countries (GRULAC), as well as a number of countries from the Asia-Pacific region strongly supported the African Group proposal. The U.S. also voiced some support, viewing it as “an opportunity to reemphasize the idea of working towards high-level objectives and principles.” While the U.S. had always opposed international lawmaking in the area of L&Es, it has held the position that there are general objectives and principles to which Member States can agree. The statements by Germany (speaking on behalf of Group B), the EU, as well as the Central Europe and Baltic States (CEBS) made it clear, however, that none of these countries were ready to greenlight the proposal, due to concerns that the work plan could provide a path to binding legal instruments.

As a concession, the African Group proposed a number of [revisions](#) to the proposal, namely to clarify that the activities to be conducted under the work plan would not prejudge its final outcomes. Still, the delegations were only able to agree on the following activities (leaving the discussions on the remaining parts of the proposal to the next SCCR, to be held in early 2023):

- presentations by experts “on the possible cross-border problems linked to specific uses of copyrighted works in the online cross-border environment” (e.g. online educational class with students in multiple countries, or where collaborating researchers are located in different countries), to take place at SCCR/43;
- the development of “tool kits [by the WIPO secretariat] to guide targeted technical assistance programs which help Members craft laws and policies that support education, research and preservation of cultural heritage (...) in consultation with experts, stakeholders from beneficiary communities, and rightsholders, through transparent consultation processes”;
- presentation by the Secretariat of a scoping study on limitations and exceptions on research and a toolkit on preservation, to take place at SCCR/43;

The SCCR 42 also featured an [expert report](#) commissioned by WIPO to assess the impact of COVID-19 on educational, research and cultural heritage institutions and the people they serve, as well as [panel discussions](#) on the topic. Neither the authors of the report (who lacked copyright expertise) nor the practitioners who were invited to the panel properly addressed the copyright obstacles faced by such institutions during the height of the pandemic (e.g. the lack of copyright exceptions fit for the digital environment). It should come as no surprise that the information session will have little or no impact on future SCCR discussions.

Broadcast Treaty: a never ending story

The discussions on the protection of broadcasting organizations against unauthorized retransmission and related uses were centered around the [Revised Draft Text for the WIPO Broadcasting Organizations Treaty](#), which was published on 4 March 2022.

This revised text was prepared by the SCCR Acting Chair in cooperation with the SCCR Vice-Chair and Facilitators, and it is the result of a series of informal meetings of the so-called “Friends

of the Chair”, which include Argentina, Colombia, the European Union, Finland, Germany, Japan, Kenya, Mexico, the Philippines, Republic of Korea, Russian Federation, and the United States of America. This informal work had been [criticized at the previous meeting of the Committee](#), due to the fact that it had been conducted without ensuring the participation of a diversity of delegations, disregarding the principles of transparency and inclusivity.

At SCCR 42, the Committee engaged in a discussion and question-and-answer session on the draft text, but did not advance further on the negotiations. The Chair even proposed to hold a special technical session before the end of 2022, to speed up the work on the treaty, but there was no consensus on that proposal. Delegations were invited to send any further comments on the draft text by July 13, 2022, and based on the feedback received a revised document will be published for further consideration at SCCR 43.

We recall that this agenda item has been under discussion since the late 90s ([see this timeline of the discussions by KEI](#)) and, while the SCCR seems committed to continue those discussions, it has so far been unable to reach an agreement on what an international instrument on this area should look like, namely what should be the scope or legal nature of the protection. The current text, less ambitious than earlier drafts (e.g. it leaves Contracting States discretion as to whether to protect broadcasting organizations by means of copyright law, unfair competition or misappropriation laws, or telecommunications law), does not seem to please the delegations and broadcasting organizations that have been pushing for the treaty for more than two decades. Neither does it satisfy the civil society, who has been asking for adequate protection of public interest activities that rely on broadcasted content, such as education and research, so far to no avail.

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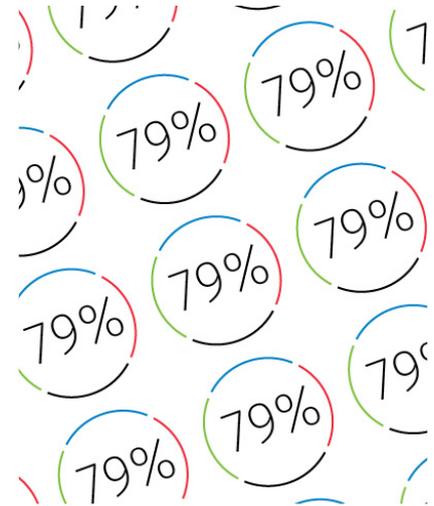
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