

United States of America
Intervention on Exceptions and Limitations for Educational Activities
SCCR/26, December 20, 2013

The United States recognizes that exceptions and limitations for educational purposes were considered as part of the international copyright regime as early as the Berne Convention of 1886 and that appropriate exceptions and limitations to copyright for certain educational uses are an integral part of any copyright system. The WIPO Copyright Treaty of 1996 also specifically refers to education in its preamble, noting the importance of maintaining a balance between the rights of author and the needs of the public with respect to “education, research and access to information.” The 1996 WIPO Performances and Phonograms Treaty includes the same language on maintaining this balance.

As we stated in our introductory remarks on limitations and exceptions Wednesday morning, the United States believes that further work on limitations and exceptions for educational purposes should be focused on finding common ground on high-level objectives and principles, while exploring the full range of different treatment of educational exceptions by nations around the world. In our view, this approach is most likely to lead to positive and constructive results in the Committee. It will permit progress by promoting steps forward on shared goals and principles, while enhancing international understanding and maintaining flexibility at the national level. We do not support work toward a treaty.

We would like to address one important point relating to the scope of this exercise. At the last session of the SCCR, the United States and a number of other delegations noted that the current working document on educational exceptions contains a number of general topics that go beyond those exceptions that are specific to education and research. These topics relate to education only insofar as educators may be somewhat affected by their application – which could be true of almost any IP-related topic. Examples include ISP liability and public health.

In the view of the United States, the inclusion of such broad topics is troublesome for two main reasons:

First, the issue of copyright exceptions for the purpose of education is itself a rich and complex area for discussion, which should be the subject of our sustained attention. Complicating the discussion with topics that bear only a tangential relationship to education will impede rather than advance those discussions.

Second, this problem is amplified when the proposed non-germane topics are themselves among the most complex and contentious copyright policy issues. The discussion of such topics will not just slow progress, but risks bringing the conversation to a standstill as other stakeholders not otherwise affected by education exceptions will find it necessary to become engaged.

To assist in moving our discussions forward, the United States is preparing an Objectives and Principles document on limitations and exceptions for educational activities, along the lines of our updated document on limitations and exceptions for libraries and archives. We plan to circulate an Objectives and Principles document prior to the next meeting of the SCCR.

These objectives and principles will include the following elements:

1. Member States should provide certain exceptions and limitations for educational and research purposes.
 - The premise that education and research should be given special treatment under copyright law has long been enshrined in international agreements, which provide a framework for exceptions and limitations in this area.
 - Both exceptions and limitations that promote access for educational purposes, including exceptions for distance learning; and strong protections for authors, are vital to achieving the copyright system's goals.
 - Such exceptions and limitations must be consistent with relevant international obligations, including the three-step test.
2. At the same time, Member States should foster a dynamic commercial market for educational and research materials.
 - A vibrant commercial market for educational materials is vital for educational and research purposes.
 - Cost-effective licensing models can allow for educational uses that are not covered by limitations and exceptions in national law.

The United States also believes that the four WIPO geographic studies from 2009 on this topic should be updated for the benefit of these discussions. We would urge adding a component on distance education in any updated studies, and may have further suggestions for sub-topics arising from our Objectives and Principles document as it is developed.