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Standing Committee on Copyright and Related Rights

Twenty-fourth Session
Geneva, July 16 to 25, 2012

LIMITATIONS AND EXCEPTIONS REGARDING EDUCATION

Proposal by the Delegations by Ecuador, Peru and Uruguay

CONSIDERING:

- (a) The conclusions of the Twenty-first Session of the Standing Committee on Copyright and Related Rights (SCCR), at which a program of work was agreed on limitations and exceptions for the period 2011-2012: to work towards an appropriate international legal instrument or instruments, taking into account the proposals already tabled or any additional submissions, including those referring to education.
- (b) That said program stipulates that "the Committee will undertake text-based work on appropriate exceptions and limitations for libraries, archives, educational, teaching and research institutions, and persons with other disabilities".
- (c) The complex nature of this task in the educational sphere owing to the shortcomings affecting national legislations, as highlighted by the studies carried out on exceptions and limitations for education commissioned by the WIPO Secretariat, documents SCCR/19/8 and SCCR/19/4, among others, which demonstrate the need to update legislations in this regard, in particular, in order to address appropriately the challenges presented by the digital environment in the field of education, with specific focus on the importance of ensuring effective distance learning.
- (d) The willingness of the proponents to add to and improve the proposals on exceptions and limitations in the field of education put forward to this Committee by the Member States of the African Group, as well as any further proposals that might be put forward by other States.
- (e) Taking into account the renewed capacity of the World Intellectual Property Organization (WIPO) to conclude agreements, as demonstrated by the success of the Beijing Diplomatic Conference on the Protection of Audiovisual Performances.

The Delegations of Ecuador, Peru and Uruguay have the honor of proposing that a general and flexible obligation be established, under which the Member States of this Organization would update their exceptions and limitations in order to provide adequate protection for the development of educational activities, both at the national and international levels. This proposal could be discussed at the Twenty-fourth Session of the Standing Committee on Copyright and Related Rights under the agenda item "Limitations and exceptions: educational and research institutes".

The proposal (contained in the annex to this document) should not in any case be considered to be a comprehensive solution to the issue of exceptions and limitations concerning education. Said solution could be complemented with the definition of those activities deemed to form a vital part of a harmonized minimum within the international standards framework that would, in particular, allow for the cross-border exchange of content for educational purposes, certain clarifications concerning the scope of the flexibilities available within the multilateral framework and provisions applying specifically to developing nations.

However, in order to ensure that the discussion concerning the nature of the instrument does not hinder efforts to reach a possible consensus regarding the substantive content of the provisions during this Twenty-fourth Session of the Standing Committee, it is proposed that, with regard to this point, the program of work should first of all envisage an analysis of the texts put forward by the members of the Committee grouped together in "clusters". Such an approach, would, in due course, make possible agreement on the type of instrument or instruments reflecting the content of said proposals.

Likewise, considering the importance of ensuring that the international system of copyright and related rights is developed in balance with fundamental human rights such as access to education, it should be pointed out that the international framework does not prevent that relationship from being considered when interpreting the rights and flexibilities contained in the system, in particular, with regard to the so-called "three-step test".

Finally, and taking into account the maturity of the consensuses reached on exceptions for persons with disabilities, with regard to which, in the view of Ecuador, Peru and Uruguay, a Diplomatic Conference should be convened at the next WIPO General Assembly, without prejudice to the prior adoption of treaties or other agreements on issues with regard to which further progress has been made in terms of exceptions and limitations, as is the case with the previously mentioned exceptions and limitations in favor of the visually impaired and other reading disabled persons, or with the issue of libraries and archives.

Annex 1:

PROPOSED TEXTS

OBLIGATION TO UPDATE AND EXPAND EXCEPTIONS FOR EDUCATIONAL PURPOSES, IN PARTICULAR IN THE DIGITAL ENVIRONMENT ARTICLE 1

Contracting Parties shall update, carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention, specially under article 10.1 and 10.2, and devise new exceptions and limitations that are appropriate in the digital network environment to protect educational and research activities.

INTERPRETATION OF THE THREE-STEP TEXT ARTICLE 2

When applying either Article 9.2 Berne, 13 TRIPS, 10 WCT, or similar provision in any other multilateral treaty, nothing prevent contracting parties to interpret the three-step test in a manner that respects the legitimate interests, including of third parties, deriving from educational and research needs, and other human rights and fundamental freedoms; and other public interests, such as the need to achieve scientific progress and cultural, educational, social, or economic development, protection of competition and secondary markets.

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