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DRAFT COMPILATION ON LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS

Compilation prepared by the Secretariat on the basis of comments made by Member State delegations

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GENERAL

Proposal from the African Group

1. Preamble:

The Contracting Parties,

Recalling the principles of non-discrimination, equal opportunity and access, proclaimed in the United Nations Convention on the Rights of Persons with Disabilities;

Acknowledging the right of all persons to education, as recognized in the International Covenant on Economic, Social and Cultural Rights;

Noting that the International Covenant on Civil and Political Rights guarantees the right to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice;

Considering that equal access to education, culture, information and communication is a fundamental right that comes under public policy;

Recognizing the important role played by the authorities in guaranteeing equal opportunity for all in terms of access to education, culture and information;

Mindful of the role played by educational and research institutions, libraries and public archives in popularizing, disseminating, promoting and preserving the cultural and scientific heritage;

Determined to contribute to the implementation of the relevant recommendations of the Development Agenda of the World Intellectual Property Organization;

Mindful of the challenges to human development and the fulfillment of persons with disabilities with regard to education, research, access to information and communication;

Mindful of the challenges to human development and the fulfillment of persons with disabilities with regard to education;

Aware that national copyright legislation is territorial in nature, and where activity is undertaken across jurisdictions, uncertainty regarding the legality of that activity undermines the development and use of new technologies and services that can potentially improve the lives of persons with disabilities and all those who do not have the means to access education, culture and information;

Recognizing the urgent need to broaden the scope of copyright exceptions and limitations for persons with disabilities, libraries, archives, education, teaching and research;

Recognizing the need to introduce new international rules in order to provide adequate solutions to the needs of vulnerable persons and the challenges and opportunities presented by economic, social, cultural and technological developments;

Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly in education, research, teaching and access to information;

Aware that the territorial nature of copyright and related laws can be an obstacle to cross-border exploitation of works, performances, or production and therefore inhibit the normal access, particularly through new technologies, by persons with disabilities, to education, culture, information and knowledge

Recognizing that copyright laws must strike a balance between the interests of the public and the interests of authors and other right-holders to fulfill the fundamental purpose of encouraging learning and the dissemination of knowledge;

Recognizing the need for a global approach to copyright exceptions and limitations and a minimum level of international harmonization of limitations and exceptions in order to reduce the legal uncertainty to which stakeholders in education and researchers expose themselves in the event of mobility, and the need to ensure the lawfulness of cross-border activities and the global flow of information that posits the use of modern means of communications;

Noting that access to knowledge in copyright works is integral to the goals of copyright system;

Recalling that the Berne Convention provides for the conclusion of special agreements governing such access that do not contravene its provisions;

Noting that consistent with the Berne Convention, States have in their national legislation provided for limitations of or exceptions to the rights of authors of literary and artistic works in special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the work;

Recognizing that inadequate use of, or lack of harmonization of the exceptions and limitations adopted under domestic laws have created undesired obstacles to access knowledge and compromises intellectual resources;

Desiring to harmonize and enhance national laws on such limitations and exceptions through an international framework consistent with the Berne Convention in order to facilitate access to knowledge in copyrighted works by persons with disabilities, educational and research institutions, libraries, and archives centers.

Mindful of the increased economic impact of exceptions and limitations in distance learning using digital technology;

Noting that access to knowledge protected by copyright works is integral to the goals of copyright system;

2. Article 1: Definitions

For the purposes of this Treaty:

"Accessible format" means an alternative manner or form which gives a person with a disability listed in Article 18 of this Treaty access to the work, as flexibly and comfortably as a person without a disability.

"Archives" means non-profit establishments with a public vocation, which serve as depositories for works dealing with all types of knowledge of nations and peoples,

including cultural heritage, with a view to the furtherance of knowledge useful for education, teaching, research and the public interest.

"Database" means a collection of independent works, data or other materials, arranged in a systematic or methodical way and individually accessible by electronic or other means, which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation, without prejudice to any rights subsisting in those contents themselves.

"Disability" means visual impairment, or other physical, mental, sensory, or cognitive incapacity, that requires an accessible format of a work.

"Exclusive rights" mean the exclusive rights of authorization granted to the author in terms of the Berne Convention and the WCT.

"Libraries" mean non-profit establishments with a public vocation, which make available free of charge works dealing with all types of knowledge of nations and peoples, including cultural heritage, with a view to the furtherance of knowledge useful for education, teaching, research and the public interest.

"Work" means any literary and artistic protected by copyright, and includes any literary and artistic work in which copyright protection has expired.

3. Article 4: Beneficiaries

1. Contracting Parties shall provide the exceptions and limitations guaranteed in this Treaty for the benefit of persons with disabilities, educational and research institutions as well as libraries and archives, in this Article referred to as Beneficiaries.

2. Contracting Parties shall extend the provisions of this Treaty to persons with any other disability who, due to that disability, need an accessible format of a type that could be made under Article 4 in order to access a copyright work to substantially the same degree as a person without a disability.

SPECIFIC EDUCATION AND RESEARCH LIMITATIONS AND EXCEPTIONS

Proposal from the African Group

3. Article 15: Educational and Research Institutions

1. Educational and research institutions shall be permitted, without the authorization of the right holder and without financial compensation, to make copies of published and unpublished works made legally accessible to the public, regardless of their format, for purposes of education and research.

2. Copies of the work referred to in paragraph (a) shall be for non-profit use or justified by purpose, and shall not unreasonably prejudice the legitimate interests of the right holder.

3. This authorization permitted in paragraph (a) shall include teaching, research and distance learning.

4. Authorized actions

– Article A: Actions related to reproduction

The use of works for the purpose of teaching and research authorizes individuals or institutions referred to in this Treaty to:

Reproduce by any means, including on a computer disk, by a researcher, teacher, pupil or student; reproduction remains permissible if it allows researchers, students or pupils to learn about the work at any time and any place individually chosen;

Make teaching or educational purposes compilations of works extracts limited to the goal to be attained when these are freely available to pupils or students.

– Article B: Actions related to representation

The use of works for the purpose of teaching authorizes individuals or institutions referred to in this Treaty to:

Represent by any means, including diffusion of fixed works by means of broadcasts or television; representation remains permissible if it allows students or pupils to learn about the work at any time and any place individually chosen.

Insert the work or extracts from the work in educational broadcasts and to fix such broadcasts;

The use of works for research authorizes researchers to represent them by any means, provided that such representation is intended for the scientific community to which belongs the researcher who has initiated the presentation, excluding any other public.

– Article C: Transformation and Translation

To the extent required for educational purposes or research, the use of works authorizes individuals or institutions referred to in this Treaty to translate, adapt or transform the work, when these translations, adaptations and transformations are carried out for teaching or research and are not made available to the public.

– Article D: Distribution

The use of works for educational purposes shall authorize individuals or institutions referred to in this Treaty to distribute a copy or copies of all or part of the work, including making available to pupils or students, the original or copies thereof the work, or copies when these are necessary to illustrate the teaching.

The use of works for the purpose of scientific research authorizes any researcher to distribute, a copy or copies of all or part of the work, when such a copy or copies are justified by the aim pursued by the research.

Proposal from Brazil

The following shall not constitute violation of copyright:

- The performance, recitation and exhibition of a work, as applicable, for teaching purposes in educational institutions in the context of educational or research activities, to the extent justified by the non-commercial purpose to be achieved, provided that the source, including the author's name is indicated, unless this turns out to be impossible.
- The reproduction, translation and distribution of excerpts of existing works of any kind, or of entire works in the case of works of visual arts or short compositions, as a pedagogical resource for the use by teachers with the purpose of illustration in the context of educational or research activities, to the extent necessary justified by the non-commercial purpose to be achieved, provided that the source, including the author's name is indicated, unless this turns out to be impossible.
- The note taking of lectures, conferences and classes by those to whom they are addressed. The publication of the notes of said lectures, conferences and classes in whole or in part is prohibited without prior written permission of the person who addressed them.
- The quotation in books, newspapers, magazines or in any other medium of excerpts of a work for the purposes of study, criticism or debate, to the extent justified by the purpose and in accordance with fair practice, provided that the source, including the author's name, is indicated, unless this turns out to be impossible.

5. Cluster 3: Use for pedagogical and teaching purposes.

6. Cluster 4: Reproduction of lectures and conferences.

7. Cluster 5: Quotations.

Proposal from Chile

8. Cluster 3: Distribution of protected works or fragments of protected works in classrooms.

Proposal from Ecuador

9. Cluster 1: Obligations or proposals to update exceptions of a general nature.

10. Cluster 5: Performances for educational purposes.

11. Cluster 6: Availability on an interactive basis and communication to the general public for educational purposes.

12. Cluster 7: Translations, transformations and adaptations.

13. Cluster 8: Reproductions for educational purposes.

14. Cluster 9: Distance learning.
15. Cluster 10: Special education for persons with disabilities.

Proposal from Ecuador, Peru and Uruguay

16. Article 1: Obligation to update and expand exceptions for educational purposes, in particular in the digital environment

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, especially 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.

Proposal from Nigeria

17. Cluster v: Specific Exceptions for science.
18. Cluster vii: Personal use rights for study and research.
19. Cluster xiii: Rights to facilitate Teaching, Scholarship or Research.
20. Cluster ix: Protection for incidental inclusion of a work or a subject of related rights in educational materials.
21. Cluster xi: Reproduction of works, including broadcasts.

SOFTWARE AND DATABASES

Proposal from the African Group

22. Article 16: Computer programs

Contracting Parties shall provide for exceptions and limitations relating to computer programs to allow interoperability and backup.

Proposal from Chile

23. Cluster 1: Reverse engineering.

Proposal from Nigeria

24. Cluster xiv: Limits to database protection laws

RELATED RIGHTS

Proposal from the African Group

25. Article 17 (now listed as Article E): Limitations and exceptions to related rights

The acts authorized in this Treaty shall be extended by the national law of each Member State to related rights, mutatis mutandis.

TECHNOLOGICAL PROTECTION MEASURES

Proposal from the African Group

26. Article 18: Circumvention of technical measures

Contracting parties shall ensure that beneficiaries of the exceptions and limitations listed in Article 2 have the means to enjoy the exception where technical protection measures have been applied to a work, including when necessary the right to circumvent the technical protection measure so as to make the work accessible.

Proposal from Brazil

27. Cluster 3: Technological protection measures.

Proposal from Ecuador

28. Cluster 3: Technological measures.

CONTRACTS

Proposal from the African Group

29. Article 19 (now listed as Article F): Relationship with contracts

Any contractual provisions which provide exemptions from an exception provided for in this Treaty shall be null and void.

Proposal from Ecuador

30. Cluster 4: Relationship with contracts.

IMPORTATION AND EXPORTATION

Proposal from the African Group

31. Article 20: Imports and exports of works

Contracting Parties shall ensure that imports and exports of works meet the conditions listed in the provisions of this Treaty, and shall take the necessary steps for this to be permitted without the authorization of the owner of copyright;

(a) the export to another country of any version of a work or copies of the work that any person or organization in one country is entitled to possess or make under the provisions of this Treaty and

(b) the import of that version of a work or copies of the work by a person or organization able to act under the provisions of this Treaty into another country.

Proposal from Nigeria

32. Cluster ii: Exhaustion of Rights.

33. Cluster iii: Provisions for educational and scientific Institutions for parallel import of educational materials.

ORPHAN WORKS

Proposal from the African Group

34. Article 21: Orphaned works
1. It shall be permitted for the beneficiaries provided for in Article 2 of this Treaty to reproduce and use a work, and materials protected by related rights, for which the author or rights holder cannot be identified or located after reasonable inquiry.
 2. It shall be a matter for national law to determine whether certain commercial use of a work, and materials protected by related rights, for which the author or rights holder cannot be identified or located after reasonable inquiry would require payment of remuneration.

Proposal from Chile

35. Cluster 2: Orphan works.

WITHDRAWN OR OUT OF PRINT WORKS

Proposal from Brazil

36. Cluster 1: Access to works which have been withdrawn, or which are out of print.

OPEN EDUCATIONAL RESOURCES

Proposal from Nigeria

37. Cluster vi: Exceptions that support development of open educational resources.

PUBLICLY FUNDED RESEARCH

Proposal from Nigeria

38. Cluster x: Access to publicly funded research.

OTHERS

Proposal from Ecuador

39. Cluster 2: Interpretative provisions on the scope of the flexibilities allowed by international law, including the three-step test, Articles 40 and 44 of the TRIPs Agreement and others.
40. Cluster 11: Limitations and exceptions allowed only in the case of developing countries.

Proposal from Ecuador, Peru and Uruguay

41. Article 2: Interpretation of the three-step text

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.

Proposal from Nigeria

42. Cluster i: Subject-matter ineligible for copyright protection (public domain).
43. Cluster iv: Provision dealing with limited liability for Internet Service Providers (ISPs).
44. Cluster viii: Use of protected work for public health or public security.
45. Cluster xii: Uses by Archives, Libraries, Museums and Galleries.

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