

Statement of the CSC at SCCR 26, on copyright exceptions for Education in the Berne Convention and the Three-Step Test (20/12/13)

Specific exceptions, the three-step test and purpose of the Copyright system

In 1886, when the Berne Convention was first adopted, there was a permissive exception for "extracting portions" from works "for use in publications destined for educational or scientific purposes."

In several successive revisions of the Berne Convention, the exact wording of exceptions relevant to education have evolved. In 1948, "The right to include excerpts of literary or artistic works in educational or scientific publications" was "a matter for legislation in the countries of the Union, and for special arrangements existing or to be concluded between them." The standard for the exception was "so far as" the use of the excerpts were "justified by its purpose."

In 1967, there was a major revision of the Berne, which included for the first time, a new exception for teaching and education, and a mandatory exception to the right of quotation right.

The records of the 1967 revision Conference, (which was attended by many represented here mainly under the umbrella of Group B), show that exceptions for "certain special purposes," including Article 10 of the Berne, as well as other "particular" exceptions, would have their own standards, separate from the 3-step test, under article 9.2 (or later article 13 of TRIPS Agreement).

The 3-step test was designed to address other types of exceptions, that did not have a specific mention in the Berne.

Under article 10.2 of the Berne Convention, literary or artistic works may be used "by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice," and "to the extent justified by the purpose."

A determination of "fair practice" or uses that are justified by the purpose depends on the context, and is defined by the realities of each country. (In other words,) these concepts are evolutive, taking into account current developments and new needs.

These exceptions are not, should not and must not be restricted by the 3-step test. Doing so would amount to subjecting the whole copyright system to the whims and wishes of the right holders (not authors), such as publishing and other companies, whom the three-step test currently protects under the TRIPS Agreement. Doing this is losing sight of the principle objective of the copyright system, which is to promote education, science and useful arts for the public interest.

Mr Chair, the social and developmental cost of an uneducated citizenry, who are found in the majority of countries represented here, are higher than the economic loss for a few individuals or companies whose rights have been regulated so as to allow the majority of the population to "enjoy the fruits of scientific progress".

Thank you.