

WIPO Regional Seminar for the African Group on Libraries, Archives, Museums and Educational & Research Institutions in the Field of Copyright
June 12 and 13, 2019, Nairobi

The opening address by Dr Amina Mohamed, Cabinet Secretary at the Ministry of Sports, Culture and Heritage in Kenya captured the context for the seminar in three key points: statutory limitations and exceptions (L&Es) are critical for a balanced copyright system, the interface between copyright and access to knowledge in the digital age poses challenges, and the current system of L&Es requires urgent attention¹. Thus normative work at WIPO is important.

Dr Mohamed underlined how L&Es are especially important for the African continent because the lack of a balanced system has an impact on access to knowledge, education and research. She highlighted the role of libraries, archives and museums (LAMs) in providing critical access for society. If libraries are denied the ability to copy material due to legal restrictions, she said, it will affect the development of a reading culture, and deny institutions that document and preserve culture. A new regime is needed for L&Es that strikes the right balance between promoting the public interest in disseminating creative works, while providing just reward for creators, said Dr Mohamed.

The four authors of the WIPO studies then presented their work, focussing on the situation in Africa. Professor Crews reported that African countries disproportionately have no library exception or only a general exception, and that specialized exceptions are almost entirely limited to preservation and study. He noted the consequent implications for opportunities using innovative digital applications and international sharing. Professor Benhamou also said that very few African countries have specific exceptions for museums.

Dr Sutton discussed ways in which archives need to work across borders, for example, international co-operation to preserve unique collections; copies for research; sharing copies to strengthen “split collections”. Examples of split collections include the papers of Léopold Sédar Senghor (Senegalese poet) that are in Paris as well as Dakar, the papers of J. M. Coetzee (South African author) that are split between Grahamstown and Texas; the papers of Chinua Achebe (Nigerian author) in Harvard University Library, and the papers of Mohammed Dib (Algerian author) in the Bibliothèque Nationale, Paris.

Prof. Raquel Xalabarder’s presentation highlighted digital technologies and the practices and challenges for online teaching and research. In most countries in Africa, online uses are not allowed. Of the 50 countries surveyed in Africa, just three explicitly allow for online uses (Liberia, Mauritius, Seychelles).

Three working groups were created from the 42 countries present, one French language and two English language groups. Each group had a chair and a facilitator, selected in advance, and who received briefing on their role prior to the start of the seminar. Groups were asked to address four specific topics: preservation, private copies, access, and cross-border. The four WIPO experts participated in each of the working groups to assist the discussions.

¹ Based on notes taken by observers at the seminar.

Unlike the first Regional Seminar in April in Singapore, however, discussion of international solutions was not encouraged (and in one working group, it was expressly not allowed by the chair). The Secretariat explained that work at the Regional Seminars was the beginning of an exercise to be continued at another level at the International Conference in Geneva.

Representatives from civil society groups including libraries, archives and education participated in the working groups as observers, with brief opportunities to share local experience and to assist with practical questions such as the use of technology by libraries in Africa, the cost of online resources from the global north, and experiences with licensing.

On coming back to plenary, the groups reported on each of the topics and also presented their general conclusions. Here is a summary of the conclusions by group.

French language group

The French language group reported that all Member States and observers in the group were in favour of exceptions. They discussed the Bangui Agreement that is helpful in this regard. Countries in this group noted that legislation on exceptions is missing, and that there is a high degree of ignorance on this issue. Therefore guidance is needed on drafting well-framed exceptions, including the conditions. Preservation is an issue common to libraries, archives and museums, while the issue of orphan works is acute, especially difficulties identifying rightsholders. Cross-border was noted as very important for education and library activities. Supranational measures to facilitate cross border exchanges were needed, including in Africa, while safeguarding the interests of rightsholders. The Marrakesh Treaty was suggested as a possible model. In addition, the role of licensing and CMOs was discussed.

English language group 1

The first English language group reported that Member States in the group acknowledged that L&Es need to be revised to achieve a proper balance within the copyright system, and they should be strengthened especially for the digital age. Member States in this group mentioned challenges relating to gaps in current laws, issues with interpreting those laws, and the need to go back to their countries to take care of it. These challenges are particularly visible with regards to online uses. Young people access information through new technologies, but many copyright laws don't regulate digital access and cross-border uses. There are no provisions covering cross-border exchange of physical and digital works, and for distance learning. Digitization from print to digital formats, especially important for preservation, is problematic. It was also reported that licences are not always in conformity with free uses under the law. The group agreed that it was important to establish working relations with CMOs to enable access when there are gaps in the laws.

English language group 2

The second English language group reported that Member States in the group are aware of the need for general, as well as specific L&Es, that can address sector-specific needs in their countries. Countries in this group mentioned that either they do not have L&Es or that they are poorly formulated. Member States need to go back to their countries to improve their copyright systems, by addressing the gaps and/or adequately using the flexibilities that exist in the system. There was sentiment in the group of the need to preserve and promote African culture, and consensus on the need to allow preservation. Such provisions should be specific with careful conditions on the distribution of the preserved material. They cautioned that

unless the law has good provisions for LAMs, these institutions will be restrained in their ability to carry out their work. Countries also need to address how the new digital platforms can be treated within national laws. Member States in this group recommended that effective L&Es should be introduced for the making of copies for online uses, format shifting, and adaptation. CMOs should also be encouraged in most jurisdictions. New legal frameworks are needed for the transfer and sharing of knowledge, and regional and international unity, and national laws need to reflect international agreements, global best practices and local realities.

In final conclusions presented by the groups to plenary, three key points emerged:

- Access to education is key, so laws need to be revised, taking into account the digital environment.
- It is important to have well-crafted specific exceptions, that clearly address sector specific needs, as well as general exceptions.
- Member States are aware of the need for L&Es, as well as the need for balance and the needs of countries concerned, without harming authors.