

July 6, 2011

**TO: OITP Advisory Committee
OITP Copyright Education Subcommittee
International Relations Committee
ACRL Copyright Committee
COL Copyright Committee**

**FR: Carrie Russell, Director, Program on Public Access to Information
(crussell@alawash.org)**

RE: 2011 Update on International Copyright Activities

Over the last four years, OITP has secured outside funding to send international copyright librarian experts to Geneva to represent U.S. libraries at the World Intellectual Property Organization (WIPO). Working in collaboration with the Library Copyright Alliance (ALA-WO, ARL, ACRL), OITP monitors WIPO developments, crafts messaging, reviews WIPO documents and member nation statements, and provides feedback to WIPO on issues concerning U.S. libraries.

Currently, most important issues to U.S. libraries at WIPO are a treaty for people with print disabilities that would allow the making of an accessible copy for someone who is blind or has low vision or dyslexia, a treaty for the protection of traditional cultural expressions (TCEs) or folklore, and a proposed treaty on library limitations and exceptions (already established in U.S. law but not in some foreign nations).

The U.S. delegation led by Justin Hughes, enior Advisor to the Undersecretary of Commerce for Intellectual Property and Professor of Law, Cardozo Law School, is open to supporting increased access to information and other public interest issues. At the same time, the U.S. delegation supports a protectionist agenda – developing policies on enforcing copyright to combat piracy and to further the interests of rights holders.

LCA Priorities at WIPO

The current issues of most importance to LCA at WIPO are a treaty for people with reading disabilities that would allow the making of an accessible copy for someone who is blind or has low vision or or dyslexia, a treaty for the protection of traditional cultural expressions (TCEs) or folklore, and a proposed treaty on library limitations and exceptions (already established in U.S. law but not in some foreign nations).

Exception to Copyright for People with Print Disabilities

The treaty for people with print disabilities is a high priority for the U.S. delegation and would greatly improve access to information for people with reading disabilities, especially in developing countries where less than 1 percent of published materials are available in accessible formats. If a treaty were passed, member nations of WIPO could share accessible content across borders. For example, English speaking nations of Africa could have access to U.S. published materials in accessible format. There has been great progress in moving this treaty or some other legal agreement forward at WIPO's Standing Committee on Copyright and Related Rights (SCCR). Since accessible copies are not available in the marketplace to purchase, there is clear "market failure," which should help in paving the way for an exception.

The U.S. delegation and the LCA support a "Consensus document on an international instrument on limitations and exceptions for persons with print disabilities" available here: http://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_15_rev.pdf. This is not a treaty, but a "non paper" that could become a joint resolution. At the next meeting (not yet scheduled) on this topic, WIPO will work with an official version of this document (elevating it from its "non paper" status") prepared by the committee chair with the intent of finalizing the text. If the text is accepted by WIPO, the document will be presented to the General Assembly for endorsement.

If this does come to pass, many nations, including the United States, have pledged to move the document to treaty status. If this occurs, there would be latitude given to countries on how they want to implement the treaty in their own legislation. As currently written, the document is *broader* than the existing U.S. copyright exception for people with disabilities, Section 121.

Intergovernmental Committee (IGC) on Traditional Knowledge, Genetic Resources, and Traditional Cultural Expressions

For several years, the IGC has met to determine if traditional knowledge should be protected by some form of intellectual property law. On the one hand, nations whose indigenous cultures have created art, new medicines, or patentable discoveries would like to benefit financially from these discoveries. On the other hand, some cultures do not want to provide access to creative works that are sacred or particularly significant to their cultural identity. Others argue that these discoveries and works are in the public domain and should be available for anyone to use. Still others argue that these works are so unique that a separate form of intellectual property should be developed specifically for them. Progress on this agenda item is highly controversial.

In 2010, IGC began "text-based" negotiations on three proposed treaties to protect traditional knowledge, genetic resources and traditional cultural expressions. LCA is primarily focused on the proposed treaty for TCEs which has gone through several

iterations. LCA opposes the treaty because protections of TCEs as currently proposed would have many negative implications including the removal of works from the public domain, restrictions on access and use of TCEs, required licensing prior to the use of a TCE (particularly for commercial purposes), and first amendment implications (an indigenous culture could suppress speech if they did not want their TCEs to be used or depicted in ways that are not favored by the group). The protection of TCEs is further compounded by the fact that people cannot agree on a definitive definition of TCE. LCA has been working closely with the US delegation to amend text in the current treaty version

(http://www.librarycopyrightalliance.org/bm~doc/lca_tcecomments21march11.pdf).

There are library, education and research exceptions in the treaty but LCA is still concerned about its potential wide ranging impact on access, use and preservation of information.

Library Exceptions and Limitations

Our last priority focus is a treaty for library exceptions and limitations, proposed by IFLA and the Electronic Information for Libraries (eIFL)

(<http://www.ifla.org/publications/draft-treaty-on-copyright-exceptions-and-limitations-for-libraries-and-archives>).

LCA has provided feedback and textual recommendations on the current draft but overall does not believe anything of substance would move forward at WIPO. Publishers and other rights holders do not want any international library exceptions to go forward, so it is hard to see any member nation introducing the proposal as an official WIPO document for discussion. Perhaps a modified, less ambitious version might have more traction. In the meantime, LCA, IFLA and eIFL all agree that discussions on library exceptions must continue and are very necessary for the free flow of information, particularly in developing nations. LCA has conducted training sessions in several South American countries urging their governments to adopt copyright exceptions like fair use in their own copyright laws, but even civil society groups in these nations have a hard time imagining how the latitude and ambiguity of fair use would work in their countries.

Working in the international copyright arena takes a tremendous amount of time and financial resources. Trying to track copyright developments in countries around the world that affect libraries is a daunting task but necessary in our global information environment. Attending week-long or longer WIPO meetings in Geneva is expensive, but thus far accomplished through grant funding and the volunteer activities of international copyright advocates working in U.S libraries.

LCA comments and proposals on these treaties and other proposals can be found here: <http://www.librarycopyrightalliance.org/submissions/international/wipo.shtml>.

For more about the OITP International Copyright Advocate program, see:
<http://www.ala.org/ala/aboutala/offices/oitp/people/copyrightadvo/copyrightadvo.cfm>

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