

## Comments on the Toolkit on Preservation (SCCR/43/4)

In response to the invitation by the Chair at SCCR/43 (document SCCR/43/Summary by the Chair) for delegations to submit further comments on the Toolkit on Preservation (document SCCR/43/4), the undersigned observers representing libraries, archives, and museums submit the following brief comments.

At the outset, we stress that these comments are brief because we, along with representatives of rightsholders — including authors and publishers — have had ample opportunity to comment on the Toolkit during its development. After the experts developed an initial draft of the Toolkit, the Secretariat convened a two day in-person review of the Toolkit by stakeholders, including groups representing authors, publishers, collective management organizations, libraries, archives, and museums. The entire draft was carefully reviewed, and all the stakeholders present had to chance to make both high-level comments about the scope and structure of the Toolkit and granular comments about the wording of individual sentences. At the conclusion of the review, the Secretariat invited written comments to supplement the oral comments made during the course of the two days. Stakeholders had another opportunity to make comments on the Toolkit during SCCR/43. Thus, we see no need to repeat our views on the Toolkit other than commending its usefulness.

Additionally, these comments are brief because the three experts responded appropriately to many of the points raised during the stakeholder consultation process. The current draft reflects several of our suggestions that render the Toolkit more useful to the policymakers in countries seeking to update their preservation exceptions. At the same time, the draft responds the rightsholders' concern that the Toolkit was insufficiently rooted in the Three-Step-Test and contained normative statements.

As a result of accepting the constructive criticism provided to them, the experts, with the support of the Secretariat, have produced a Toolkit that represents a major step forward for promoting modern exceptions for the preservation of cultural heritage. It provides countries with essential guidance on how to craft an exception that enables preservation using 21<sup>st</sup> century digital technology. In particular, it affirms that anticipatory preservation is critical to meet the many threats to the collections of cultural heritage institutions, including the fires and floods brought on by climate change and the illicit trafficking of cultural property.

While the Toolkit comprehensively addresses the issue of preservation copying, it does not deal with the issue of making those preservation copies available. As we have stated previously, we do not agree with the decision to separate copying from access. Nonetheless, we look forward to working with the experts and the Secretariat on a future toolkit that provides guidance on access to the preserved copies.

Accordingly, we believe that the Toolkit should be finalized as is. No further changes are needed. However, if the Secretariat decides to reopen the text, we continue to be concerned with the paragraph on dark archiving on page 15, and believe it should be reworded as follows:

The fact that this toolkit focuses on preservation copying and does not address access to the preserved copies should not be interpreted as an endorsement of “dark archiving.” ~~We recognize that the analysis and presentation of preservation issues in this toolkit stir questions about dark archiving.~~ Dark archiving is generally a circumstance where works may be reproduced for preservation, but the ability to access and use the copies is prohibited. Dark archiving is controversial from various perspectives, and it is not considered a ~~fundamental part of general or normal~~ preservation practice. After all, the ultimate purpose of preservation is to enable the preserved work to be perceived and used. As noted elsewhere in this toolkit, ~~Because dark archiving is intrinsically about the ability to access and use the preservation copies, it is outside the scope of this toolkit. A closer examination of the concept will appropriately be included in another a subsequent toolkit, which will encompass, among other issues, will address~~ the ability to access and use the copies of works that are made for preservation purposes in accordance with this current toolkit.

Finally, we wish to express our gratitude to the experts for their hard work on the Toolkit, and the Secretariat for the open, transparent, and inclusive manner in which the Toolkit has been developed.

Sincerely,

Electronic Information for Libraries (EIFL)  
Library Copyright Alliance (LCA)  
International Federation of Library Associations & Institutions (IFLA)  
Society of American Archivists (SAA)  
International Council on Archives (ICA)  
International Council of Museums (ICOM)