

# PROPOSED FRAMEWORK TREATY ON LIBRARIES, ARCHIVES AND MUSEUMS

<p style="text-align: center;"><b>PROPOSAL FOR A FRAMEWORK TREATY ON COPYRIGHT EXCEPTIONS FOR LIBRARIES, ARCHIVES AND MUSEUMS (TLAM)</b></p>
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## **Preamble<sup>1</sup>**

The Contracting Parties,

- 1) Considering that libraries, archives, and museums are distinctive guardians of the public trust, specifically designated worldwide as institutions necessary for serving the global public interest with regard to preserving the diverse forms of expression used by societies over time, for facilitating access to and dissemination of knowledge goods, and to further facilitate intellectual interchange accomplished primarily by means of literary, educational, scientific and cultural materials, analogue, digital or any other format to be known;
- 2) Aware of the critical role of libraries, archives, and museums in achieving the United Nations' Sustainable Development Goals, particularly Goal 4 Quality Education, Goal 5 Gender Equality, Goal 9 Industry, Innovation, and Infrastructure and Goal 10 Reduced Inequalities;
- 3) Recognising that exceptions and limitations, which are an integral part of national copyright systems, play a critical role in enabling libraries, archives, and museums to meet the information the needs of the public, helping individuals to achieve their full potential and engage with others.
- 4) Recognising that exceptions and limitations for libraries, archives, and museums help these institutions to assist individuals in seeking, receiving and imparting information so that they may participate meaningfully in public life.
- 5) Recognising that exceptions and limitations also advance knowledge by preserving and providing access to the world's cultural, artistic, and scientific heritage.
- 6) Recognising that both affirmative protections for authors and exceptions and limitations, including those for library, archival and museum services, are vital to

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<sup>1</sup> Draws on SCCR/22/12 proposal by the African Group (Draft WIPO Treaty on Exceptions and Limitations for the Persons with Disabilities, Educational and Research Institutions, Libraries and Archives); SCCR/26/8 presented by the United States (Objectives and Principles for Exceptions and Limitations for libraries and Archives); SCCR/35/6 (Crews study).

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achieving the copyright system's goals of encouraging creativity, innovation, and learning.

7) Recognising that digital and mobile technologies enable libraries, archives, and museums to obtain, preserve, and provide access to online content and digital collections, limitations and exceptions should be appropriately extended so that libraries, archives, and museums can properly function in the digital environment as centres of creativity, research and collaboration.

8) Recognising that with the opportunities for worldwide acquisition, search and retrieval enabled by the Internet, there is a growing need to ensure that exceptions and limitations to copyright facilitate libraries', archives' and museums' engagement in cross-border activities, including acquisition, pursuant to their public interest missions.

9) Reaffirming obligations under the existing international treaties on the protection of copyright and the importance and flexibility of the three-step test for limitations and exceptions established in Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works and other international agreements.

Hereby agree as follows:

### **I. General Provisions**

#### **Article 1**

##### **Relationship with Other International Instruments**

1) Nothing in this Treaty is understood to derogate from the obligations of Contracting Parties under the following instruments:

a) the Berne Convention for the Protection of Literary and Artistic Works, 1886 as amended (Berne Convention);

b) the WIPO Copyright Treaty, 1996 (WCT);

c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 (Rome Convention);

d) the WIPO Performances and Phonograms Treaty, 1996 (WPPT);

e) the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 (TRIPS Agreement);

f) the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or otherwise Print Disabled, 2013 (Marrakesh Treaty).

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2) Contracting Parties agree that, to the extent that this Treaty applies in part to literary and artistic works as defined in the Berne Convention, this Treaty is a special agreement within the meaning of Article 20 of that Convention, (as regards Contracting Parties that are Member States of the Union established by that Convention).

3) Contracting Parties agree that, to the extent that this Treaty applies in part to performances, phonograms, and broadcasts as defined in the Rome Convention, this Treaty is a special agreement within the meaning of Article 22 of that Convention (as regards Contracting Parties that are signatories of that Convention).

### **Article 2 Definitions**

For the purposes of this Treaty:

“Accessible format” means a copy of a work in an alternative manner or form which gives a person with a disability access to the work, including to permit the person to have access as feasibly and comfortably as a person without disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the persons with disabilities;

“Disability” means physical, mental, sensory, or cognitive incapacity that requires an accessible format of a work or of materials protected by related rights.

“Library”, “archive,” or “museum” means an organisation that systematically collects, preserves, and facilitates access to information resources, records and objects without any purpose of direct or indirect commercial advantage. A library, archive, or museum may be formed as a standalone entity consistent with domestic law or common practice, or it may form part of a larger organisation, serving the general interests of the public and the needs of the organisation.

“Work” means a work protected under the Berne Convention, the TRIPS Agreement or the WIPO Copyright Treaty and any performance, phonogram, broadcasting signal protected under the Rome Convention, the TRIPS Agreement or the WIPO Performances and Phonograms Treaty or any other material or activity protected under a WIPO treaty or national law as related rights.

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## Article 3 Beneficiaries and Scope of Protection

Under this Treaty:

- 1) Contracting Parties shall accord the protection provided under this Treaty to libraries, archives, and museums, and their employees and agents acting within the scope of their employment, which are located in the territory of any Contracting Party.
- 2) The provisions in this Treaty shall apply to uses of published and unpublished copyright works, in any format, without any purpose of direct or indirect commercial advantage or private gain

## Article 4 Free Uses and Options for Remuneration

1. Limitations or exceptions to copyright or related rights provided under this Treaty should not require remuneration to authors or to any other rightholder.
2. Contracting Parties that at the time of signature of this Treaty expressly grant in their national legislation remuneration for any limitation or exception may, in a notification deposited with the Director General of WIPO, declare that such remuneration will be maintained when ratifying or acceding to the Treaty.

## II. National Law Limitations and Exceptions regarding Libraries, Archives and Museums

### Article 5 Adoption Of National Exceptions

1. Contracting Parties shall adopt exceptions and limitations in their national laws, consistent with their international obligations, that facilitate the public service role of libraries, archives, and museums, maintaining the balance between the rights of authors and the larger public interest, particularly education, research, and access to information at a national level<sup>2</sup>. In doing so, they should enable cross-border acquisition and uses, as specified in Article 6.<sup>3</sup>
2. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of libraries, archives, and museums, and their employees; other limitations or exceptions; or a combination thereof, within their national legal systems and practice. These may include judicial, administrative, or

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<sup>2</sup> *Based on* SCCR/26/8 from the United States.

<sup>3</sup> *See* SCCR/34/5 Informal Chart on Limitations and Exceptions for Libraries and Archives, prepared by the Chair (topics 5 and 6); SCCR/33/4 from Argentina.

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regulatory determinations as to fair practices, uses, or dealings to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, and other international treaties.

### Article 6 Activities To Be Protected

1. A Contracting Party shall fulfill its obligations under Article 5(1) by adopting exceptions and limitations that enable duly authorized persons from libraries, archives, and museums to carry out their public service role of:
  - a. preserving works that comprise the cumulative knowledge and heritage of the world's nations and peoples<sup>4</sup>;
  - b. advancing research and knowledge by providing copies of materials to individual researchers and other users directly or through intermediary libraries, archives, and museum, in any format<sup>5</sup>;
  - c. lending works to a user, or to another library, archive, or museum, in a variety of media and formats<sup>6</sup>;
  - d. reproducing and making available to the public any work for which the author or other rightholder cannot be identified or located after reasonable inquiry in accordance with national law<sup>7</sup>; and
  - e. translate works in their collections when those works are not available in a language required by users for the purpose of teaching, scholarship or research<sup>8</sup>; and
  - f. making and providing accessible format copies to persons with disabilities, including by import and export<sup>9</sup>;

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<sup>4</sup> See SCCR/22/12 from the African Group (Article 14); SCCR/34/5 Chart on Libraries and Archives (topic 1).

<sup>5</sup> See SCCR/22/12 from the African Group (Article 11); SCCR/34/5 Chart on Libraries and Archives (topic 2).

<sup>6</sup> See SCCR/23/5 from Brazil, Ecuador and Uruguay; SCCR/34/5 Chart on Libraries and Archives (topic 4).

<sup>7</sup> See SCCR/22/12 from the African Group (Article 21); SCCR/34/5 Chart on Libraries and Archives (topic 7).

<sup>8</sup> See SCCR/26/3 from India and Egypt (Working Document Containing Comments on and Textual Suggestions Towards an Appropriate International Legal Instrument (in whatever form) on Exceptions and Limitations for Libraries and Archives) adopted by the Committee; SCCR/29/4 from the African Group, Brazil, Ecuador, India and Uruguay (Consolidation of Proposed Texts Contained in Document SCCR/26/3); SCCR/34/5 Chart on Libraries and Archives (topic 11).

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g. facilitating text and data mining to analyse text and data to generate information such as patterns, trends and correlations to the extent permitted by national law<sup>10</sup>;

### **III. General Obligations on Limitations and Exceptions**

#### **Article 7 Respecting Exceptions to Copyright<sup>11</sup>**

When fulfilling its obligations under Article 5(1), any contractual provisions that prohibit or restrict the exercise or enjoyment of the limitations and exceptions provided by the Contracting Parties consistent with Article 5(1) shall be unenforceable.

#### **Article 8 Obligations Concerning Technological Protection Measures<sup>12</sup>**

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent libraries, archives, and museums from enjoying the limitations and exceptions provided by the Contracting Parties consistent with Article 5(1).

#### **Article 9 Limitation on Liability<sup>13</sup>**

1. A librarian, archivist, or museum curator acting within the scope of his or her duties, should be protected from claims for damages, from criminal liability, and from copyright infringement, when the action is performed in good faith: a) in the belief, and where there are reasonable grounds for believing, that the work is being used as permitted within the scope of a limitation or exception in this Treaty, or in a way that is not restricted by copyright; or b) in the belief, and where there are reasonable grounds for believing, that the work is in the public domain or under an open content license.

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<sup>9</sup> Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

<sup>10</sup> See SCCR/26/4 Prov from the African Group; Amendment 64 Article 3 Text and data mining adopted by the European Parliament on 12 September 2018; UK Copyright, Designs and Patents Act 1988 (as amended) Section 29A.

<sup>11</sup> See SCCR/22/12 from the African Group (Article 19); SCCR/34/5 Chart on Libraries and Archives (topic 10).

<sup>12</sup> See SCCR/22/12 from the African Group (Article 18); SCCR/23/5 from Brazil, Ecuador and Uruguay; SCCR/29/4 from the African Group, Brazil, Ecuador, India and Uruguay (topic 10); SCCR/34/5 Chart on Libraries and Archives (topic 9)

<sup>13</sup> See SCCR/23/5 from Brazil, Ecuador and Uruguay; SCCR/29/4 from the African Group, Brazil, Ecuador, India and Uruguay (topic 8); SCCR/34/5 Chart on Libraries and Archives (topic 8).

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2. When a Contracting Party provides for secondary liability regimes, libraries, archives, and museums shall be exempt from liability for the actions of their users.

### **IV. Administrative and Final Clauses**

#### **Article 10 Assembly**

1. a. The Contracting Parties shall have an Assembly.
- b. Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.
- c. The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
2. a. The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
- b. The Assembly shall perform the function allocated to it under Article xx in respect of the admission of certain intergovernmental organisations to become party to this Treaty.
- c. The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
3. a. Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
- b. Any Contracting Party that is an intergovernmental organisation may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organisation shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
4. The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.
5. The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and,

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subject to the provisions of this Treaty, the required majority for various kinds of decisions.

### **Article 11 International Bureau**

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty. These shall include the commissioning of regular studies on the implementation of the Treaty and the organisation of technical assistance to developing and transition nations to enable them to fully implement the provisions of this Treaty.

### **Article 12 Eligibility for Becoming Party to the Treaty**

1. Any Member State of WIPO may become party to this Treaty.
2. The Assembly may decide to admit any intergovernmental organisation to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorised, in accordance with its internal procedures, to become party to this Treaty.
3. The European Union, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

### **Article 13 Rights and Obligations under the Treaty**

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

### **Article 14 Signature of the Treaty**

This Treaty shall be open for signature until December \_\_\_\_\_, by any Member State of WIPO and by the European Community.

### **Article 15 Entry into Force of the Treaty**

This Treaty shall enter into force three months after 20 instruments of ratification or accession by States have been deposited with the Director General of WIPO.



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## **Article 16 Effective Date of Becoming Party to the Treaty**

This Treaty shall bind:

- a. the 15 States referred to in Article 15 from the date on which this Treaty has entered into force;
- b. each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- c. the European Union, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 25, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- d. any other intergovernmental organisation that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

## **Article 17 Denunciation of the Treaty**

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

## **Article 18 Languages of the Treaty**

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
2. An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organisation that may become party to this Treaty, if one of its official languages is involved.

## **Article 19 Depositary**

The Director General of WIPO is the depositary of this Treaty.