



Creative Commons Statement to the World Intellectual Property  
Organization Standing Committee on Copyright and Related Rights - 43rd  
Session

13-17 March 2023

Thank you Chair for giving me the floor. I wish to congratulate you on your election and thank the Secretariat for organizing this session. I speak on behalf of Creative Commons, a leading, global non-profit organization that helps overcome legal obstacles to better sharing of knowledge and creativity to address the world's most pressing challenges, and the steward of the widely-used Creative Commons license suite for open content.

**Broadcasting Treaty (SCCR/43/3)**

Mr. Chair, the proposed Broadcasting Treaty has been on this Committee's agenda for a quarter of a century and the protracted discussions spanning these 25 years evidence the misguided rationales of this draft instrument. Although the [Second Revised Draft Text](#) of the Broadcasting Treaty, published on 11 January 2023, is an improvement over past versions, it remains highly problematic from Creative Commons' perspective, and we remain firmly opposed to it. While we agree that broadcast content plays a key role in today's society, the Draft misses the mark in ensuring access to and use of such content while respecting copyright's core purpose.

First and most fundamentally, there is no rationale for an anti-piracy treaty for content that is already protected by three other WIPO digital treaties and by signal encryption mechanisms. We oppose any new layer of post-fixation rights, especially on works that are not owned, licensed or compensated by the broadcasting organization or are in the public domain.

Second, the Draft lacks robust exceptions and limitations enshrined in international law that guarantee access to broadcast content for purposes of research, education, journalism, cultural preservation and creativity. While the Draft Text now includes a few, rather narrow, exceptions and limitations (Article 11), none of these are mandatory and could easily be eschewed by member states in their national implementation. In the event that a potential treaty creating new broadcast rights would be agreed, it would need to include at least the following mandatory exceptions: all copyright exceptions; all exceptions under the Rome Convention; and clear and coherent exceptions for preservation, online uses, and uses for libraries, archives, museums, education, research, and access for people with disabilities.

Third, the Draft threatens to unduly curtail the possibilities offered by open licensing. We [remain concerned](#) that a broadcaster might be able to restrict access to or distribution of works already

licensed under a Creative Commons license. This is particularly concerning given the way that open licenses like Creative Commons licenses are one way to improve distribution, allow for remix creativity, and enrich the resources available on popular free knowledge platforms such as Wikipedia. For example, in 2020, [German public broadcaster ZDF released dozens of videos of its documentary series Terra X under CC licenses](#), leading to a massive increase in the amount of content available under open licenses for the benefit of users across the world. The videos on [climate change](#) published in 2019 [soon found their way into prominent Wikipedia articles](#), leading to hundreds of thousands of views.

In sum, Mr. Chair, the Draft fails to strike the right balance at the core of the copyright system. It deals a severe blow to the public domain, threatens to unduly curtail the possibilities offered by open licensing, and is antithetical to people's freedom to share and right to equitable access to knowledge. Without the possibility of accessing, using and reusing broadcasts in the public interest, members of society are deprived of their fundamental freedoms, an outcome we cannot accept under any circumstances.

### **Exceptions and limitations**

Mr. Chair, preservation, access, sharing, use, and reuse of cultural heritage are essential ingredients of thriving and resilient societies and are demonstrated contributors to sustainable development. Alas, overly restrictive or outdated copyright laws continue to raise unnecessary barriers around cultural heritage. For instance, copyright has created a "[twentieth century black hole](#)" of access to heritage; that is, European heritage materials created between 1940 and 2000 are underrepresented in digital images available online, thereby skewing the perspective on our recent history. Copyright laws that do not allow for the full use of the public domain, that do not allow for exceptions and limitations for educational and other legitimate uses, and that do not allow institutions to make use of modern technology to digitize, preserve and give access to their collections, make it nearly impossible for people to access and enjoy cultural heritage and for institutions to fulfill their crucial missions.

Creative Commons stewards copyright licenses and public domain tools to enhance the sharing of a wide variety of creative content. But while they advance global sharing, they are not designed to establish a general, permissive framework for everyone — that is the role of clear, effective, and consistent limitations and exceptions, the pillars on which cultural heritage institutions can rest to fulfill their mission and conduct their basic functions, including preservation and uses for teaching, learning, and research, within and across borders.

Global challenges such as climate change, armed conflicts, and the COVID-19 pandemic are causing unprecedented hardship to institutions and the communities that they serve. These challenges are compounded by a lack of international limitations and exceptions that would support institutions' global digital presence. In December of last year, [CC published a guide for policymakers with five concrete calls to action](#), emphasizing the need to legally permit the necessary activities of cultural heritage institutions. We call on them to:

- Enable cultural heritage institutions to reproduce and make copyright protected heritage available for use and reuse by the public for noncommercial purposes.

- Permit all necessary activities that allow users to make use of heritage for non-commercial purposes and to use heritage to participate in public discourse.

Mr. Chair, we welcome the [Toolkit on Preservation](#) (SCCR/43/4); it is a valuable resource that provides important guidance. However, this document fails to consider the crucial aspect of access in preservation efforts. Preservation is not just about storage, it is about how our heritage lives on in the interpretations and creations of researchers, creators and every one of us. Access is a precondition for preservation that is meaningful, inclusive and sustainable. Moreover, this document is not a substitute for an international normative instrument that would guarantee clear and certain exceptions for preservation at the international level. We thus urge WIPO Member States to approve the African Group Draft Work Program on Exceptions and Limitations (SCCR/42/4 REV.) in its current state, as it provides a solid framework to continue building on previous substantial work of the Committee and advance the discussions on this crucial agenda item. The Committee should define reasonable timelines for real progress to be achieved in support of cultural heritage institutions and their millions of users worldwide. Mr. Chair, while we urgently seek solutions to make our planet livable, the possibilities to share our cultural heritage are what will make our lives worth living. The time to act is now.

Thank you.

[End of document]