Library & Archive Associations
Advocating at the World Intellectual Property Organization: input and outcomes

Victoria Owen ~ Chief Librarian
University of Toronto Scarborough
CLM/EBLIDA Satellite Conference, Strasbourg
August 13-14, 2014
Context for Treaty Libraries and Archives

Why are librarians and associations involved?

- Worldwide libraries and archives are regarded as 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;

- Being aware of WIPO Copyright Treaty’s recognition of “the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works”, including “the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention”
Library & Archives at WIPO
The Players

• National library associations from Europe, North and South American
World Intellectual Property Organization

• WIPO: UN body that sees itself as “the global forum for intellectual property services, policy, information and cooperation.

• “Our mission is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all.”

• 187 member states and 250 non-governmental organizations (NGOs) (IFLA, ICA, SAA, LCA, CLA) and intergovernmental organizations (IGOs) (UNESCO) have official observer status at WIPO meetings

http://www.wipo.int/about-wipo/en/
Copyright in the Global Context
The Players

• WIPO:
  – Treaties for right holders
  – Treaty for the Visually Impaired – first user treaty
  – Treaty for Libraries and Archives

• What impact does the library presence at WIPO have?
  – Library activism and advocacy

• UNESCO – parallel track
  – Vancouver Declaration on Digitization and Preservation & Draft Recommendation
  – Draft Recommendation in UNESCO approval process

Image: Nicholas Raymond: http://freestock.ca/flags_maps_g80-world_map__abstract_acrylic_p2970.html
WIPO – Standing Committee on Copyright and Related

• Gather twice annually in Geneva
  NGOs make formal statements on library issues
  Meet Member States informally to clarify and respond to questions
  In July 2014 NGOs
  Addressed specific Questions from Chair
  On digital © matters
  • CLA & other LAs
  • IPA beside/behind
  • IGOs -UNESCO
    – UN body
    – Role overlap
WIPO – Standing Committee on Copyright and Related Rights

• Treaty (instrument) for libs & archives
  – On agenda at WIPO - SCCR
  – Precedent with Marrakesh
  – Facing similar opposition
Exceptions and Limitations for Libraries and Archives

WIPO SCCR 26/3 - Official Document with 11 articles

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

- Preservation
- Right of Reproduction and Safeguarding copies
- Legal Deposit
- Library Lending
- Parallel Importation
- Cross-border uses
- Use of Orphan Works, Retracted Works, and Works out-of-Commerce
- Liability of libraries and archives
- Technological Measures of Protection
- Contracts
- Right to Translate Works
Exceptions and Limitations for Libraries and Archives

• At SCCR we often hear the need for L&Es breaks along a north south divide

• Yesterday confirmed that our concerns are international
  – None of us have what we need to disseminate knowledge and preserve our cultural heritage materials in the digital environment

• Press forward for the appropriate instrument
International Instruments -1

International statements of law and principle - open to interpretation

• **Treaty** - matters of gravity requiring solemn agreement
  – (WIPO Copyright Treaty 1996, WIPO Performances and Phonograms Treaty 1996, Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled 2013)

• **Convention** –
  – generic convention – customary rules and general principles as a source of law, synonymous with generic term ‘treaty’
  – Specific convention – multilateral,

WIPO website
International Instruments - 2

• Charter
  – Particularly formal and solemn instruments

• Declaration
  – Declares aspirations. Generically can be binding at international law if parties agree to binding obligations;
  – (Universal Declaration of Human Rights 1948; Moscow Declaration on Digital Information Preservation 2011)
International Instruments - 3

• **Recommendation (UNESCO)**
  – Encouragement to adopt a particular approach in a given manner in a specific cultural sphere – **not legally binding**
  – Principles and norms for international regulation; invitation for member states to take legislative or other steps required to conform; not subject to ratification.
  – **Possessing great authority** – intended to influence national laws and practices;
  – Adoption of recommendation creates an **obligation** – even for those that neither approved nor voted for it.
International Agreements Affecting Copyright

• Provide policy space for L&Es

• Conventions
  – Berne 1886
  – Equal treatment of all works under national law
    • Minimum standards
    • No formalities
    • Allows for exceptions
International Agreements Affecting Copyright

• Treaties
  – **WIPO** Copyright Treaty 1996 (WCT)
    • Protections arising from IT advances
    • Computer programs, rental, TPMs
    • Article 11 allows flexibility in domestic law
    • Maintain protection of performers and producers of phonograms
    • Article 18 allows flexibility in domestic law

• There is adequate policy space for L&Es
Due to the impasse of SCCR28, the WIPO General Assembly of 2014 is not currently in the position to decide upon the convening of a Diplomatic Conference in 2016 for adoption of a Treaty for the Protection of Broadcasting Organizations. Similarly, there is no recommendation for the General Assembly’s adoption regarding limitations and exceptions for libraries and archives. However, the mandate of WIPO’s General Assembly 2012 still applies:

"The Committee was reminded that the terms of the work program adopted by the 2012 General Assembly recommended that the SCCR continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), with the target to submit recommendations on limitations and exceptions for libraries and archives to the General Assembly by the 28th session of the SCCR."
WIPO – SCCR

• We have a long way to go… must advocate
  • Where it matters
  • Multiple venues
  – Facing enormous pressure from rights orgs, EU
  – Focus on maintaining place on the agenda
  – Strategy to deal with opposition
  – Pursue a parallel track with UNESCO and at the national level with legislators
Example of Parallel Track Initiative

- UNESCO Charter on the Preservation of Digital Heritage
- The Memory of the World in the Digital Age: Digitization and Preservation, 2012 at UBC

- **UNESCO/UBC Vancouver Declaration:**
  - Digital strategy for management and preservation of recorded information
  - Preservation frameworks
  - *International legal framework* of copyright exceptions and limitations to ensure preservation and access to cultural heritage in digital format;
  - Strategies for open government and open data
  - Need for *political and intellectual leadership*
The 37th session of the General Conference requested UNESCO to prepare a draft Recommendation on preservation and access to documentary heritage, including digital heritage (37/Resolution 53)

The Government of Poland hosted an international expert meeting that convened in Warsaw on 26-27 June 2014 in order to deepen the consultations and facilitate the process of drafting of the first version of this normative instrument.

Pressed hard to have language in the Recommendation:
- Member States are urged to revise copyright laws and legal deposit regimes as required to ensure they are fully effective for preserving and accessing digital documentary heritage specifically, and the documentary heritage generally.
Thank you.