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Computer & Communications Industry Association

CCIA Intervention for SCCR 16 *March 2008*

Thank you Mr. Chairman for the opportunity to speak today in this important debate. CCIA offers its congratulations both to you, and to your vice chairs, on your election.

CCIA members represent a broad cross-section of the information and communications technology (ICT) industries, and collectively represent more than \$200 billion in annual revenues across international technology markets. They thus have a substantial stake in the effective operation of the international system of copyright and related rights. It is for this reason that we welcome an exploration of new topics for work in the committee – especially a discussion related to exceptions and limitations.

Today, there is work to be done both to make the legacy of the Berne Convention more effective, and more relevant, and to foster greater appreciation for the incredible value of the system in recognising and providing a mechanism for encouraging the creative impulse that drives the development of humanity.

ICT innovation is fostering creation and diffusion of artistic works, which in turn benefit from the uptake of ICT. Appropriate limitations and exceptions ensure that by encouraging artistic protection we do not discourage innovation. Transfer of technology between countries thus requires both robust protection and robust limitations and exceptions focused on promoting technological innovation. An IPR regime tailored to account for innovative tools that utilize and disseminate the world's information will foster the growth of national information infrastructures and hasten the development process.

We believe that a debate and work in relation to L&Es, Mr. Chairman, is the best way in which to accomplish these objectives.

Why? For two reasons.

Firstly, because controversies between stakeholders are very often related to whether or not a given act is covered by an exception or limitation.

Secondly, because it will enhance copyright's credibility, which is undermined by an unfortunate public perception that copyright is out of step with the digital environment – leading to the notion that copyright unduly restricts availability of content. This encourages non-compliance, leading to calls for greater enforcement and larger penalties,

feeding a vicious cycle. A discussion about L&Es can lead to breaking that cycle – a cycle we believe is harmful to all parties.

Showing the world that the copyright system can respond to the rapid pace of technological change, as well as more effectively foster essential public interests like education and research – and the promotion of innovation and commercial and artistic opportunity – would increase the perceived value of copyright in the public mind.

With that increased legitimacy, Mr. Chairman, we submit that there would be more respect for copyright – the resulting benefits being obvious. We submit that where there are sufficiently robust and appropriate L&Es, strong enforcement will be less controversial, since the rules will be clearer, and perceived as more legitimate in the public mind than is regrettably sometimes presently the case.

We submit that a discussion and resulting work plan related to L&Es should focus primarily on the *types of uses* that actually characterize modern copyright – especially digital uses.

Consider uses such as preservation of orphan works, the indexing of content for search, the transmission of digital content across networks by intermediaries, and the use of creative works in home and personal environments – our copyright system can safeguard these essential activities while still providing robust protection to authors and creators.

A frank and thoughtful conversation about these examples and others is an essential precursor to a productive debate about limitations and exceptions.

Mr. Chairman, we believe that in order to have a truly informed debate, we need more information. While there is considerable accumulated legal analyses in the field, there is a dearth of empirical, evidence-based research that contrasts the effects that different implementations of limitations and exceptions have in practical application.

We need to understand, *inter alia*:

- Is there a connection between broad, or narrow, exceptions and limitations and the growth of certain industrial sectors, and why?
- Does the presence of some, or all, or specific kinds, of exceptions and limitations increase economic output – and if so in what industries, and in what ways?
- For those countries with a long history as parties to the major international instruments in the field: have they increased, or reduced, the extent of some, or all, limitations and exceptions in their legal regimes, and if so why – and was the effect intended by those changes borne out in fact?
- What unintended consequences have resulted from new limitations and exceptions, especially those brought into legal effect as a consequence of states becoming party to the WIPO Internet Treaties – accepting that both positive and negative unintended consequences are possible?
- Has the implementation of the Internet treaties had the effect of reducing the applicability of exceptions and limitations in the digital environment over non-

digital environments – and if so, has that reduction been beneficial or not beneficial, both in respect of those affected and of the copyright and related rights system more generally?

The answers to these questions should inform debate on this subject.

Preparing studies that have economic, statistical, and legal elements is complex – certainly more complex than a study of legal regimes alone. In this vein, we offer for your consideration a study commissioned by CCIA on the economic value of fair use in the economy of the United States of America. What we found is that the economic value of fair use is enormous. There are copies available outside on the table.

In short, Mr. Chairman, let us not make assumptions. Let us not rely upon points of view, or opinions – ours or anyone else's. Let us rely upon facts.

We should recognise that the existing copyright system, like the creative impulse itself, is never complete, never finished. We must always look with fresh eyes at the system, and recognise that there are always opportunities to make the system more relevant, and more effective, for everyone.

We are at the service of all parties now and on a continuing basis as the discussion progresses.