

**Copyright Exceptions for Libraries:
A Global Outlook**



Kenneth D. Crews, J.D., Ph.D.

Twitter: @kcrews

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Thank You!



Why Copyright?

- **Copyright has Extensive Reach**
 - Books, Periodicals, Art, Photographs
 - Motion Pictures, Computer Software, Websites
- **Copyright Applies Automatically**
 - No need for Notice or Registration
- **Copyright Lasts for Many Years**
 - Life of Author, plus at least 50 Years
- **Rights, Infringement, and Exceptions**
 - Fair Use and Specific Limitations & Exceptions

Why Copyright?

• Another Answer:

– Mission of Libraries:

- To Preserve and Provide Access to Information Resources

– Mission of Copyright:

- To Encourage the Creation of New Works
- To Encourage their Public Dissemination
- To Serve Private Interests of Ownership and Public Interests of Access and Creativity

The Studies: 2008 to 2015

SCCR 30, June 2015

Available: <http://bit.ly/1GjpcGr>

SCCR 17, November 2008

Available: <http://bit.ly/1tB8ryb>

SCCR 29, December 2014

Available: <http://bit.ly/1A9ImgV>

Role of WIPO

• World Intellectual Property Organization

– Agency of the United Nations

– Administration of Multiple IP Treaties

- Berne Convention
- WIPO Copyright Treaty
- WIPO Performances Treaty
- Marrakesh Treaty

– Member States: 188

– Exceptions beginning 2005



Berne: Three-Step Test

Article 9(2): "It shall be a matter for legislation in the countries of the Union to **permit the reproduction** of such works in **certain special cases**, provided that such reproduction does **not conflict with a normal exploitation** of the work and does **not unreasonably prejudice the legitimate interests of the author.**"

The 2015 Study

- **WIPO: 188 Member Countries**
- **Found: Statutes from all 188 Countries**
- **No Library Exception: 32 Countries**
- **General Exception Only: 31 Countries**

General Library Exception

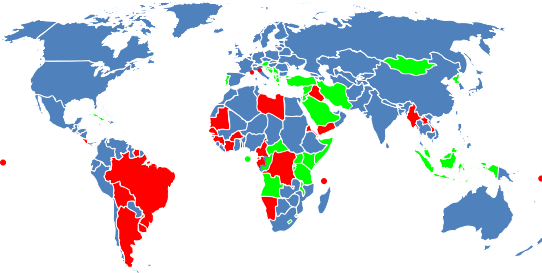
From the Tunis Model Act:

"the reproduction, by **photographic** or similar process, by **public libraries**, non-commercial documentation centers, scientific institutions and educational establishments, of literary, artistic or scientific **works which have already been lawfully made available to the public, provided that such reproduction and the number of copies made are limited to the needs of their activities**, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author..."

Scope of Exceptions

- **Preservation and Replacement**
- **Private Study and Research**
 - Making Available on the Premises
- **Copy Machines in the Library**
- **Limitations on Remedies**
- **Technological Protection Measures**
 - “Anticircumvention”
 - Exemptions for Libraries

Red: No Library Exception
Green: General Exception Only



Diversity of Exceptions

- **Who:** Libraries, Archives, Museums?
- **What:** Published or Unpublished? Articles or Full Works? Movies or Music?
- **When:** During Term of Economic Rights? After the Term?
- **Why:** Purpose? Conditions and Proof?
- **How:** Analog or Digital?

USA

- **Section 108 of the US Copyright Act**
- **Enacted in 1976, Amended 1998**
- **Statutes along the British Model**
- **Main Subjects:**
 - **Preservation and Replacement**
 - **Copies for Research or Study**
 - Short Works
 - Entire Works
 - **Copies for Interlibrary Loans**

The British Model: Australia

- **Multiple Statutory Provisions:**
 - § 51A: Preservation & Replacement
 - § 51B: Preservation by Cultural Institutions
 - § 49(1): Research or Study (Published Works)
 - § 51(1): Research or Study (Unpublished Works)
 - § 51(2): Research of Study (Unpublished Theses)
 - § 50(2): Supplying to Other Libraries
 - § 40: Fair Dealing for Research and Study
 - § 200AB: Library Administrative Uses
 - § 39A: Liability for Unsupervised Machines

Preservation or Replacement



Australia

Preservation (§ 51A)

- **Who:** Officers of Libraries or Archives
- **What:** Manuscripts, Original Artistic Works, Published Works, Works in the Collections
 - Declaration that Published Work is not Available
- **Why:** Preservation or Replacement
 - Display on Dedicated Terminals on Premises
- **How:** Any medium

Australia: Exposure Draft

Preservation (§ 113H)

- **Who:** Officers of Libraries or Archives
 - Libraries open to public directly or through ILL
- **What:** Copyrighted Material
 - Work is in the collection, or
 - Version cannot be obtained for preservation
- **Why:** Preserving the Collection
 - Electronic access at the library or archives
- **How:** Medium or format not specified

Which Technologies?



Finland

Preservation & Replacement (Art. 16)

- **Who:** Archives, and libraries and museums open to the public.
- **What:** Works from the collections of the institution.
- **Why:** To preserve the material; For technical reconstruction and restoration of the material.
- **How:** Medium not specified.

Czech Republic

Replacement (Article 37(1)(b))

- **Who:** Libraries, Archives, Museums, Galleries, Schools, Universities, and other Nonprofit School-related and Educational Establishments
- **What:** Any work and phonograms and AV works
- **Why:** Replacing a work that is damaged or lost
- **How:** Any medium

Innovations in Statutes:

The European Union

- **Orphan Works Directive, 2012**
 - **Information Society Directive, 2001**
- Permitted Exception:* "communication or making available, for the purpose of **research or private study**, to individual members of the public by **dedicated terminals on the premises** of [libraries and archives] of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections"

Innovations in Statutes:

Relatively Few

- **Canada**
 - Eased Limits on Research Copies
 - Allows Interlibrary Loans
- **Russia**
 - Expanded and Detailed Provisions
 - Explicit application of Digital Technologies
- **United Kingdom**
 - Eased Limits on Research Copies
 - Expanded Provisions for Diverse Works & Media
- **Japan and France**
 - Digital Programs at National Libraries

Implications

- **Libraries and Archives are a Priority**
 - Enacted in Most Countries
- **Exceptions Debated in Additional Countries**
 - United States, Brazil, and Australia
- **Uneven Application of Digital Technologies**
- **Little Innovation in Scope and Language**
- **Influence of Models and Agreements**

The Challenge Ahead

- **Application to Digital Technologies**
- **Expansion of Library Services**
 - Services to the Visually Impaired
 - Interlibrary Loans
 - E-Lending of Materials
 - Mass Digitization
 - Growth of Licensing
 - Use of Orphan Works



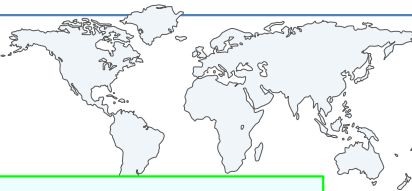
So Many Issues

- Duration of Copyright Protection
- Extended Collective Licenses
- Public Lending Laws
- First Sale and Cross-Border Activities
- Cultural Protection and Economic Growth
- Trade Agreements and the TPP
- The *[insert verb]* of the European Union
- Fair Use or Fair Dealing

Potential of Fair Use

- Advocated amendment to the Copyright Act
 - “Open Norms”
 - Flexible application to Diverse Media
 - Flexible application to Diverse Needs
- Encourages Innovation
- Fills Gaps in Specific Exceptions
- Preparation for an Uncertain Future
- Anticipates the Revolution

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