Copyright Exceptions for Libraries: A Global Outlook

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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

SCCR 17, November 2008

SCCR 29, December 2014

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?
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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