

Why Libraries?

- **Why Libraries and Copyright?**
 - Legal Deposit
 - Published Works
 - Building Collections of the National Library
 - Libraries as Economic Catalyst
 - Purchasers of Books, Music, Film, and More
 - Licensing of Databases and Digital Collections
 - Libraries as Users of Copyrights
 - Public Lending
 - Reproduction and Distribution for Specific Needs

A Copyright Interlude

- **Scope of Works**
 - Nearly Unlimited
- **Automatic Copyright Protection**
- **Long Duration**
 - Life of the Author, plus 50 Years or More
- **Broad Scope of Rights**
 - Reproduction, Distribution, and More
- **Risks and Penalties**
- **Subject to Limitations and Exceptions**



Why Libraries?

- **Why Library Exceptions in Copyright?**
 - The British Copyright Act of 1956
 - U.S. Copyright Act of 1976
 - Tunis Model Act of 1976
 - Multinational Trade Agreements
- **Why WIPO?**
 - Administration of Berne and Other Agreements
 - Growing Importance of Exceptions
 - Libraries, Education, and Disabilities

Why Libraries?

- **Why Politics?**
 - Libraries are Information
 - Information can be Challenging
- **Politics and Economics**
 - Copyright as **Border** between Libraries and Publishers: *“Rights vs. Limitations”*
 - Libraries build **Resources**
 - Libraries offer **Public Access**
 - Libraries make and share **Copies**

Why Libraries?

- **The Activities of Libraries**
 - Preservation and Replacement
 - Copies for Research and Study
 - *“Making Available”* on Dedicated Terminals
 - Interlibrary *“Loans”*
 - Lending and *“Public Lending”*
 - Needs of Persons with Disabilities
 - Mass Digitization
 - Dealing with *“Orphan Works”*

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



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

Context of Exceptions

- Structure of Copyright Law
 - Grants Right to Owners
 - Subject to Limitations & Exceptions
- Multinational Treaties & Agreements
 - Berne Convention
 - WIPO Copyright Treaty
 - WTO and TRIPs
- Regional Agreements
- Subject to the Three-Step Test

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.**”

TRIPs

Article 13: “Members **shall confine limitations or exceptions** to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate **interests of the right holder.**”



Diversity of Exceptions

- No Library Exception
- General Library Exception
- Preservation or Replacement
- Private Research or Study
 - Making Available on the Premises
- Anticircumvention of Technological Measures
 - Exemptions for Libraries

Yet there are Patterns

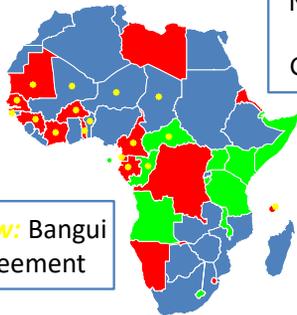
- British Copyright Act, 1956
- Tunis Model Statute, 1976
- Bangui Agreement
- Cartagena Agreement
- Regional Trends
- Even the U.S. Copyright Act
 - Liberia
 - South Africa

The Bangui Agreement

Notwithstanding the provisions of Article 9, a library or archive service whose activities are **not** directly or indirectly **profit-making** may, without the consent of the author or other holder of copyright, make **individual copies** of a work by means of **reprographic** reproduction,

(i) where the work reproduced is an **article or a short extract** from a written work, other than a computer program, with or without illustration, published in a collection of works or in an issue of a newspaper or periodical, and where the purpose of reproduction is to **meet the request of a natural person;**

(ii) where the making of such copy is for the purpose of **preserving** and, if necessary, in the event of it having been **lost, destroyed or made unusable, replacing** it or, for replacing a copy that has been lost, destroyed or rendered unusable in the permanent collection of another library or other archive service.



Red:
No Exception
Green:
General Only

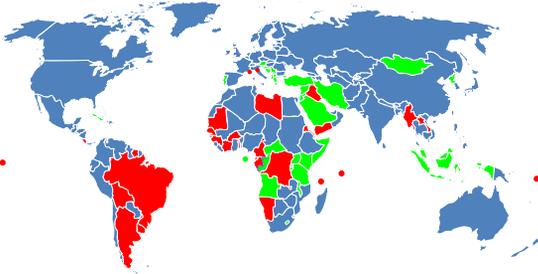
Yellow: Bangui Agreement

The Bangui Influence?

- Mali 2008
- Moldova 2010
- Oman 2008
- Rwanda 2009
- Sierra Leone 2011
- Sri Lanka 2003
- Tunisia 2009
- Turkmenistan 2012



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?

Armenia (I)

Replacement (Art. 24(3)(a))

- **Who:** Libraries, Archives, and Educational or Cultural Institutions
- **What:** Lawfully Published Works
- **Why:** Restoring or Replacing a Work in the Collections
- **How:** Reprographic Reproduction

Armenia (II)

Research or Study (Art. 24(3)(b))

- **Who:** Libraries and Archives
- **What:** Articles and Short Works published in collections; Short Extracts of published works
- **Why:** Study and Research at the request of a user
- **How:** Reprographic Reproduction

Comparable Statutes

- **Kazakhstan**
 - No Preservation Provision
 - No Digital Technology
 - Published Works Only
- **Similar Statutes**
 - Kyrgyzstan
 - Tajikistan
 - Moldova

Breaking the Pattern

- **Belarus**
 - Allows use of Digital Technologies
- **Czech Republic**
 - Who: Greatly Expanded
 - What: Wide Range including Unpublished Works
 - How: Allows any Media
- **Uzbekistan**
 - Adds “Making Available” on the Premises

India (I)

- **General Library Exception**
 - For Use of the Library
 - Limited to Books and a few other works
- **Preservation**
 - Noncommercial Public Libraries
 - Any type of work
 - Preservation in Digital Medium

India (II)

- **Research and Study**
 - Who: Library, Museum, or other Institution allowing Public Access
 - What: Unpublished literary, dramatic, or musical works
 - Why: Research, private study, or with a view to publication
 - When: If more than 60 years from the date of death of the author
 - How: Medium Not Specified

USA (I)

- **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

USA (II)

- **The Good:**
 - Relatively Clear Language
 - Addresses Traditional Needs
 - Preservation and Replacement
 - Applies to all types of works
 - Research or Study
 - Allows copies of full articles, book chapters, and even entire books in some instances
 - Preserves Fair Use

USA (III)

- **The Not-So-Good:**
 - Does not Address Innovative Needs
 - Orphan Works
 - Mass Digitization
 - Preservation and Replacement
 - Digital Copies limited to “Premises” of the Library
 - Research or Study
 - Generally Print Works Only
 - Creative “20-Year” Rules disappoints
 - Fair Use is Open to Debate

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

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”*

Implications

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

Implications, Part II

- Political Realities
- Competing Interests
- Economics & Culture
- History
- Regional Agreements
 - European Union
 - Bangui Agreement
- Role for WIPO – Possible New Treaty?



The Challenge Ahead

- Application to Digital Technologies
- Expansion of Library Services
 - Interlibrary Loans
 - Services to the Visually Impaired
 - Mass Digitization for Preservation
 - Relationship to Licenses
 - Use of Orphan Works
- First Sale & Digital Exhaustion of Rights
- Cross-Border Delivery of Works

Copyright Exceptions for Libraries and Research

Thank You!



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