

**Copyright Exceptions & Limitations:**  
*Libraries and Archives*



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World Intellectual Property Organization  
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**Libraries and Copyright**

- **Similarity of Mission**
  - *Libraries:* To Preserve and Provide Access to Information Resources
  - *Copyright:* To Encourage the Creation and Dissemination of New Works
- **Library Services and Copyright**
  - Reproduction and Distribution
  - Displays and Performances
  - Derivative Works

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**Copyright, Libraries, and SCCR**

- **First Study in 2008**
  - Surveyed 149 Member States
- **Second Complete Study in 2015**
  - All 188 Member States
- **New Complete Study in 2017**
  - All 191 Member States
  - Revised Charts in 2017: 74 Member States

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## Four Types of Library Exceptions

- **Type 1: No Library Exception**
  - Plus two Member States with no General © Law
- **Type 2: General Library Exception**
  - Some diversity about applicable libraries and works within the scope.
- **Type 3: Specific Library Exceptions**
  - High diversity of statutes
  - Some trends of following models
- **Type 4: Anti-circumvention Exemptions**

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## Type 2: General Library Exception

- **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...”

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## Type 2: General Library Exception

- **Elements of the Tunis General Exception:**
  - “limited to the needs of their activities”
  - “public libraries, non-commercial documentation centers, scientific institutions and educational establishments”
  - “the reproduction, by photographic or similar process”
  - “literary, artistic or scientific works which have already been lawfully made available to the public”
  - “do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author”

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### The 2017 (and 2015) Study

- WIPO Today: **191** Member Countries
  - **2015:** 188 Members
- Found: Statutes from all **191** Countries
- **No Library Exception: 28** Countries
  - **2015:** 32 Countries
- **General Exception Only: 21** Countries
  - **2015:** 31 Countries

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### The Initial Findings

- **Libraries are Fundamental**
  - They are Part of the Copyright Equation
  - They are part of the statutes of most countries.
- **Trend toward Library Exceptions**
  - Fewer countries today with no exception
- **Trend toward Specific Exceptions**
  - Fewer countries relying on General Exception

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**Red:** No Library Exception



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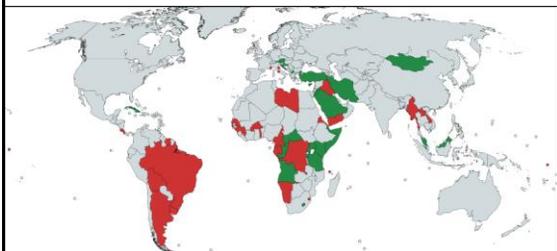
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**Red:** No Library Exception  
**Green:** General Exception Only



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### **Type 3: Specialized Exceptions**

- Preservation and Replacement
- Private Study and Research
- Making Available on the Premises
- Document Delivery & ILL
- Copy Machines in the Library
- Limitations on Remedies
- Technological Protection Measures
  - Type 4: Exemptions for Libraries

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### **Type 3: Frequency of Exceptions**

- Number of Member States:**
- Preservation: **102**
  - Replacement: **98**
    - Completion: **7**
  - Private Study and Research: **105**
    - Making Available (Dedicated Terminals): **34**
  - Document Delivery or ILL (or both): **28**
  - Type 4: Technological Protection Measures
    - Exemptions for Libraries: **53**

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### Type 3: 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:** Conditions and Proof?
- **How:** Analog or Digital?

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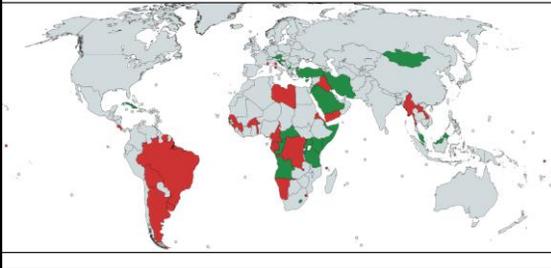
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- Red:** No Library Exception
- Green:** General Exception Only
- All Others:** Specialized Exceptions




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### 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**

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### 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.**"

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### The Influence of Models

- **British Copyright Act**
  - Multiple Provisions
  - Preservation & Research
  - Document Delivery & ILL
- **Bangui Agreement**
  - Simple and Clear
  - Preservation & Research




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### The Influence of Models

- **European Union**
  - Information Society Directive, 2001
  - Orphan Works Directive, 2012
- **Making Available**
  - Digitized Works
  - On the Premises of the Library
- **Influence Beyond the EU**
  - Non-EU Enactments: 14

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### Innovations in Statutes:

*Three Examples*

• **Member State ONE:**

- Entirely New Copyright Act.
- Simple provisions on Replacement & Research.
- Limited to published works for Research.
- Limited to photocopy technology.

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### Innovations in Statutes:

*Three Examples*

• **Member State TWO:**

- Entirely New Copyright Act.
- Library Exception is principally about preservation & research copying.
- Structured as a series of conditions with exceptions; 27 discreet provisions, often overlapping in their application.
- Multiple restrictions on format of the copy; some uses limited to paper copies.
- Some allowance for digital technologies, but with restrictions on keeping or using the digital file.

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### Innovations in Statutes:

*Three Examples*

• **Member State THREE:**

- New statutes replacing previous Library Exceptions.
- Detailed provisions on expanded range of services.
- Expanded scope of works.
- Expanded use of Digital Technologies.
- Additional provisions on data mining, waivers by contract, orphan works, and more.

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## Implications

- Libraries and Archives are a Priority
  - Enacted in Most Countries
  - Active Consideration in Many Countries Today
- Uneven Application of Digital Technologies
  - Growth of Digital Technologies
  - Continued reliance on “Reprographic Reproduction” and even photocopying
- Modest Innovation in Scope and Language
- Influence of Models and Agreements

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## The Challenge Ahead

- Application to Digital Technologies
- Expansion of Library Services
  - Interlibrary Loans
  - Services to the Visually Impaired
  - Digitization for Preservation & Research
  - Relationship to Licenses & Contract Waivers
  - Uses of Orphan Works
- Cross-Border Communications and Uses
- Practical Statutes & Copyright Education

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**Copyright Exceptions & Limitations:**  
*Libraries and Archives*

**Thank You!**



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