Library Copyright Statutes Around the World:
An EIFL Webinar

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Thank You!

EIFL

And the Many Librarians
Working with Copyright!
Today’s Objectives

• The Connection: Copyright and Libraries
  – 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
Today’s Objectives

- Survey Findings in the WIPO Study
- Understand the Context of Library Exceptions
- Review Examples of Diverse Statutes
- Identify Possibilities for Future Change
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**
The Law of Exceptions

- 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
The Role of 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

SCCR 17, November 2008

SCCR 29, December 2014
The 2015 Study

• WIPO: 188 Member Countries
• Found: Statutes from all 188 Countries

• No Library Exception: 32 Countries

• General Exception Only: 31 Countries
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**
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.”
Diversity of Exceptions

- No Library Exception
- General Library Exception
- Preservation or Replacement
- Private Research or Study
  - Making Available on the Premises
- Anti-circumvention of Technological Measures
  - 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?
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
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
Preservation or Replacement
Kyrgyzstan

Preservation

• **Who:** Libraries and Archive Services
• **What:** Lawfully Published Works
• **Why:** To Restore or Replace Lost or Damaged Copies
  – And supply to other libraries
• **How:** Reprographic reproduction
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
Preservation or Replacement (Art. 23(1)(2))

- **Who:** Libraries, Educational Establishments, Museums, and Archives
- **What:** Works in the Collections
- **Why:** Preserving or Replacing a Work that has been lost or destroyed, etc.
- **How:** Reprographic Reproduction
- **Note:** The Three-Step Test applies to all statutory exceptions (Art. 19)
Nepal

Replace

- **Who:** Public Libraries and Archives
- **What:** Any Works made available in the library or archive
- **Why:** To reproduce a work is lost, destroyed, old, or incapable of being obtained
  - No direct or indirect economic profit
- **How:** Medium Not Specified
Preservation (§ 51A)

- **Who:** Officers of Libraries or Archives
- **What:** Manuscripts, Original 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
Preservation or Replacement

- **Georgia:**
  - Lawfully published works only
  - Reprographic Reproduction
  - Adds language of the Three-Step Test (Art. 18(9))

- **Ghana:**
  - Published articles and other short works
  - Reprographic Reproduction
  - Subject to collective licensing
  - Permission required for more than a single copy
Preservation or Replacement

• **Kazakhstan:**
  – Lawfully published works only
  – Single copy
  – Limited reproduction technologies

• **Moldova:**
  – Replacement Provision, not Preservation
  – Lawfully published works only
  – Reprographic Reproduction, explicitly not allowing digital technologies
Breaking the Pattern

• **Belarus**
  – Allows use of Digital Technologies

• **Czech Republic**
  – **Who:** Greatly Expanded
  – **What:** Wide Range including Unpublished Works
  – **How:** Allows any Media
Research or Study

Canadian Copyright Law
Fourth Edition
Lesley Ellen Harris

WILEY
Research or Study

- **Who:** Public Libraries and Archives
- **What:** Works made available in the library or archive
- **Why:** Research or study, at the request of a person
  - No direct or indirect economic profit
- **How:** Medium Not Specified
Maldives

Research or Study

• **Who:** Library or archive
  - Does not serve direct or indirect commercial gain

• **What:** Published article, other short work, or short extract of a work

• **Why:** Copy will be used solely for the purpose of study, scholarship, or private research

• **How:** Reprographic reproduction
  - No Collective License
India

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

• **How**: Medium Not Specified
Research or Study

- **Algeria:**
  - Published works
  - Exception does not apply if a Collective License is available

- **Botswana:**
  - Also conditioned on Collective License
  - Reprographic Reproduction only

- **Chile (Article 71J):**
  - Excerpts of any work; use any medium
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...”
General Library Exceptions

- **Hungary:**
  - General Provision; copies for research or archiving
  - Minor parts of “disclosed” works

- **Montenegro:**
  - Enacted in 2011
  - Applies to “disclosed” works
  - Certain works barred
  - Copies allowed “for internal use”
  - Exceptions are subject to Three-Step Test
General Library Exceptions

• **Serbia:**
  – Applies to all works in the collections
  – Copies for archival purposes
  – Allows any medium
  – Exceptions are subject to Three-Step Test

• **Slovenia:**
  – Applies to disclosed works; Certain works barred
  – Copies for “internal use” by the institution
  – Collective Licensing; Levies on copying equipment
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
  – Maintains the Fair Use alternative
Innovations in Statutes:

The European Union


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”
• Research or Study (Making Available)
  – Libraries
  – Works that are lawfully available to the public
  – Make Available in digital form at dedicated terminals on the premises
    • Temporary Availability
    • Simultaneous Access with other copies
    • Users may not make Digital Copies
  – For research or private study for individual members of the public
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
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
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
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
Library Copyright Statutes Around the World

Thank You!

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