



EIFL Draft Law on Copyright (2016) Including Model Exceptions and Limitations for Libraries and their Users

This document contains the exceptions and limitations in the EIFL Draft Law with their footnotes. It also sets out examples of provisions in national laws that permit the activity described in the exceptions. It is a work in progress and may be updated from time to time.

The EIFL Draft Law on Copyright is available [here](#).
Comments and feedback are always welcome. Please email info@eifl.net.
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<p>8 Reproduction for private purposes and research</p> <p>(1) It shall not be a violation of this Law to reproduce a work for private non-commercial purposes or for the purposes of research.</p> <p>(2) The fair practice under subsection (1) shall not include the reproduction of the whole or of a substantial part of a book or of a musical work in the form of notation without fair compensation to the owner of copyright.</p>	<p>Private non-commercial purposes means reproductions by or for the individual user, immediate circle of family of the user and acquaintances.</p> <p>‘Fair practice’, derived from Article 10 of the Berne Convention, means certain permitted uncompensated uses of a work. Fair practice implies an objective appreciation of what is normally considered admissible, to be determined by national courts.</p> <p>WIPO Guide to the Berne Convention (1978).</p>	<ul style="list-style-type: none"> • Canada and the US: this activity likely would be considered a fair use in the United States and a fair dealing in Canada.
<p>9 Temporary reproduction</p> <p>(1) Anyone is permitted to make temporary copies of a work:</p> <p>(1) which are transient or incidental;</p> <p>(2) which are an integral and essential part of a technical process;</p> <p>(3) the sole purpose of which is to enable a transmission of a work in a network between third parties by an intermediary, or a lawful use of a work; and</p> <p>(4) which have no independent economic significance.</p>	<p>The definition of “reproduction” proposed in Section 2 (xxiv) of the draft Law includes, as an act of reproduction, the storage of works in an electronic medium. However, certain incidental and temporary storages in electronic form should be covered by an exception. A text for an appropriate exception is proposed in Section 9.</p>	<ul style="list-style-type: none"> • EU: this exception is similar to Article 5(1) of the EU Information Society Directive. Article 5(1) is a mandatory exception and is implemented in all EU member states. Similar language has been adopted by numerous other countries. • South Africa: Copyright Amendment Bill, 2019 Article 12C

<p>10 Quotation</p> <p>It shall be permitted to make quotations of a work, which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose. The quotation shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.</p>	<p>See Article 10(1) of the Berne Convention.</p>	<ul style="list-style-type: none"> • Multiple: The copyright laws of many countries include a quotation exception similar to this.
<p>11 Reproduction for educational activities</p>		
<p>(1) For the purpose of educational activities copies may be made of works, recordings of works, broadcast in radio and television provided the copying is done by a person giving or receiving instruction and does not exceed the extent justified by the purpose;</p>		<ul style="list-style-type: none"> • Canada and the US: When the material copied is not designed for the educational market, this activity also likely would be considered a fair use in the United States and a fair dealing in Canada. • South Africa: Copyright Amendment Bill, 2019 Article 12D(1).
<p>(2) Educational establishments may incorporate the copies made under subsection (1) in printed and electronic course packs, study packs, resource lists and in any other material to be used in the course of instruction and/or in virtual learning environments, managed learning environments, virtual research environments and library environments hosted on a secure network and</p>		<ul style="list-style-type: none"> • US: The course-pack provision of the new South African copyright law is consistent with recent fair use decisions in the United States. In a lawsuit brought by publishers against Georgia State University, the U.S. Court of Appeals for the Eleventh Circuit rejected the publishers' effort to find GSU's electronic reserve system was infringing as a matter of law. Importantly, the court distinguished earlier cases publishers had brought against

<p>accessible only by the persons giving and receiving instruction at or from the educational establishment making such copies;</p>		<p>commercial photocopy shops that assembled course-packs from this case, where the university maintained the copies on its servers for non-commercial educational purposes. Additionally, the fair use analysis of the U.S. Court of Appeals for the Second Circuit in <i>Authors Guild v. HathiTrust</i> was influenced by the security measures employed by HathiTrust, a consortium of research libraries that stored the full text of millions of digitized books. The South African provision requires similar security measures.</p> <ul style="list-style-type: none"> • South Africa: Copyright Amendment Bill, 2019 Article 12D(2)
<p>(3) Persons receiving instruction may incorporate portions of works in printed or electronic form in assignments and portfolios, theses and in dissertations for personal use and library deposit;</p>		<ul style="list-style-type: none"> • Canada and the US: this activity likely would be considered a fair use in the United States and a fair dealing in Canada. • South Africa: Copyright Amendment Bill, 2019 Article 12D(6).
<p>(4) The source of the work reproduced and the name of the author shall be indicated as far as is practicable on all copies made under subsection (1) to (3);</p>		
<p>The permission under subsection (1) shall not extend to reproductions for commercial purposes and shall include the reproduction of a whole textbooks where the textbook is either out of print, the owner of the right cannot be found,</p>		<ul style="list-style-type: none"> • US: Some of the exceptions for libraries and archives in the U.S. Copyright Act apply when copies cannot be obtained at a “fair price,” see 17 U.S.C. 108(c)(1) or a “reasonable price” (17 U.S.C. 108(h)(2)(b).

<p>authorized copies of the same edition of the text book are not for sale in the country or cannot be obtained at a price reasonably related to that normally charged in the country for comparable works.</p>		<ul style="list-style-type: none"> • South Africa: Copyright Amendment Bill, 2019 Article 12D(4) substitutes ‘reasonable T&Cs for price.
<p>11A Inter-library document supply A library may supply to another library a copy of a work whether by post, fax or email. A copy may be supplied by the receiving library to a user of such library for their research and or private use.</p>		<ul style="list-style-type: none"> • US: this provision is similar to 17 U.S.C. 108(d) and (e). • South Africa: Copyright Amendment Bill, 2019 Article 19C(13).
<p>11B Translations</p> <p>(1) A library or a person giving or receiving instruction may translate works provided this is not done for commercial purposes. Such translations may be used for private educational, teaching and research purposes only;</p> <p>(2) A person or a public body may translate works from or into minority languages and communicate to the public such translations for non-commercial public information purposes.</p>	<p>The Stockholm Conference for the revision of the Berne Convention (1967) affirmed an implied exception to the right of reproduction with respect to translation.</p>	<ul style="list-style-type: none"> • Chile: where a work is not available in Spanish within certain time periods, libraries and archives may translate for the purpose of research or study by their users (Article 71, 2011). • Japan: a library may translate a single copy of a work that is publicly available at the request of a user for the purpose of investigation (Article 31(1)(i) and 43(ii). In addition, the National Diet Library, the National and Parliamentary library, offers translation services for members of parliament.
<p>11C Communication to the public for educational and research purposes</p> <p>(1) An educational establishment may communicate to persons affiliated as</p>	<p>A provision for communication to the public is only necessary for countries that have created an equivalent exclusive right i.e. countries implementing the WIPO Copyright Treaty (WCT) and/or the WIPO</p>	<ul style="list-style-type: none"> • US: 17 U.S.C. 110(2) of the U.S. Copyright Act permits displays and performances in the course of distance education.

<p>persons receiving instruction at or from such educational establishment the reproductions and the translations permitted by this Law solely for private, educational and research purposes provided this is done via a secure network.</p>	<p>Performances and Phonograms Treaty (WPPT).</p>	
<p>12 Libraries and archives</p> <p>(1) Libraries and archives may use and distribute copies of works as part of their activities in accordance with subsections (2) – (12) provided this is not done for commercial purposes.</p>		
<p>(2) Such institutions may make copies of works in their collection for the purpose of back-up and preservation. Such institutions may also make copies of publicly accessible websites for the purposes of preservation.</p>		<ul style="list-style-type: none"> • Multiple: in Africa: Ethiopia, Madascar, Mozambique, Sudan and Zambia; in the Americas, Panama and Peru; in Australasia, New Zealand; and in Europe, Czech Republic, Denmark, Estonia, Ireland, Latvia, Lithuania and Slovakia. The exceptions in these countries vary considerably but all permit the making of preservation or replacement copies of any kind of work, whether published or unpublished, by or for libraries and archives. • They also permit more than one copy to be made and (with some restrictions in a few cases) permit copies to be made in digital formats. See 17 U.S.C. 108(b) and (c) and Article 6 of the EU DSM Directive. • South Africa: Copyright Amendment Bill, 2019 Article 19C(5)

<p>(3) If a work or a copy of such work, in such an institution's collection, is incomplete, such an institution may make or procure a copy of the missing parts from another institution.</p>		<ul style="list-style-type: none"> • US: 17 U.S.C. 108(b) and (c). • South Africa: Copyright Amendment Bill, 2019 Article 19C(6)
<p>(4) Such institutions may make copies of works that are or should be available in their collections in their chosen format, if they cannot reasonably be acquired in such format through general trade or from the publisher.</p>		<ul style="list-style-type: none"> • US: 17 U.S.C. 108(c) allows the making of a preservation copy if the library's copy is in an obsolete format. Fair use might permit additional format shifting. • South Africa: Copyright Amendment Bill, 2019 Article 19C(9).
<p>(5) This Law does not prevent the making of copies in accordance with the provisions of the Act [on legal deposit of published works].</p>		<ul style="list-style-type: none"> • South Africa: Copyright Amendment Bill, 2019 Article 19C(8)
<p>(6) Such institutions may make copies of works where the permission of the author or other owner of copyright cannot after reasonable endeavour be obtained or where the work is not available by general trade or from the publisher.</p>		<ul style="list-style-type: none"> • EU: The EU Orphan Works Directive permits the use of orphan works by cultural heritage institutions. The EU Directive on the Digital Single Market further facilitates use of works that are out-of-commerce. (Out-of-commerce works might include orphan works). • Israel: has an orphan works exception.
<p>(7) Copies in whatever format made in accordance with subsections 3-6 or acquired pursuant to the Act [on legal deposit of published works] may be used by users for personal use or study on the premises of the establishment with or without the means</p>		

of technical equipment and can be lent to users. The same applies in special cases to copies made in accordance with subsection (2).		
(8) Notwithstanding any other section, libraries and archives shall be permitted to buy, import, or otherwise acquire copyright works that are legally available in any country.		<ul style="list-style-type: none"> • US: the U.S. also follows an “international exhaustion” rule. • South Africa: Copyright Amendment Bill, 2019 Article 19C(10).
(9) Notwithstanding subsection 6(d), a library or archive may lend copyright works incorporated in tangible media to a user, or to another library.		<ul style="list-style-type: none"> • US: In the U.S., as in many other countries that provide a distribution right, the distribution right with respect to a work is exhausted after the first authorized sale of that copy. • South Africa: Copyright Amendment Bill, 2019 Article 19C(2).
(10) Notwithstanding subsection 6(e), a library or archive may provide temporary access to copyright works in digital or other intangible media, to which it has lawful access, to a user, or to another library, for consumptive use.		<ul style="list-style-type: none"> • Canada and the US: This activity may be considered a fair use in the United States or fair usealing in Canada. • South Africa: Copyright Amendment Bill, 2019 Article 19C(3).
(11) Libraries and archives may reproduce and make available, as appropriate, in any format for preservation, research or other legal use, any copyright work which has been retracted or withdrawn from public access, but which has previously been	Subject to national law or court decisions.	<ul style="list-style-type: none"> • South Africa: Copyright Amendment Bill, 2019 Article 19C(11)

<p>communicated to the public or made available to the public by the author or other rightsholder.</p>		
<p>(12) A librarian or archivist acting within the scope of his or her duties, shall be protected from claims for damages, from criminal liability, and from copyright infringement, when the action is performed in good faith:</p> <ul style="list-style-type: none"> - In the belief, and where there are reasonable grounds for believing, that the work is being used as permitted within the scope of an exception in this Act, or in a way that is not restricted by copyright; or - in the belief, and where there are reasonable grounds for believing, that the work, or material protected by related rights, is in the public domain or under an open content license. <p>Librarians and archivists shall be exempt from liability for the actions of their users.</p>		<ul style="list-style-type: none"> • Bahamas: Libraries are barred from incurring statutory damages, if the employee or agent of the library made a reproduction of a copyrighted work, and believed that the activity was a fair dealing. • Morocco and the US: limited liability of a library for violation of the anticircumvention provision, if the library can demonstrate that it did not believe that it was committing a violation. • US: Libraries and employees and agents acting within the scope of employment are not liable for statutory damages if they believed that the copying was within fair use. • Liberia: adopted essentially identical language as above. • South Africa: Copyright Amendment Bill, 2019 Article 19C(14).
<p>13 Reproduction, broadcasting and communication to the public for informatory purposes</p> <p>The following acts shall be permitted in respect of a work without the authorization of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:</p> <p>(a) the reproduction by the press, the</p>	<p>(a) See Article 10bis of the Berne Convention</p>	<ul style="list-style-type: none"> • Canada and the US: this activity may be considered a fair use in the United States or a fair dealing in Canada.

<p>broadcasting or communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved;</p> <p>(b) for the purpose of reporting current events, the reproduction and the broadcasting or communication to the public of excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose;</p> <p>(c) the reproduction in a newspaper or periodical, the broadcasting or communication to the public of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information.</p>		
<p>14 Caricature, parody and pastiche</p> <p>Notwithstanding the provisions of section 7 of this Law, use may be made of works and phonograms for the purpose of caricature, parody or pastiche.</p>		<ul style="list-style-type: none"> • Canada and the US: this activity likely would be considered a fair use in the United States and a fair dealing in Canada.

<p>15 Reproduction and adaptation of computer programs</p> <p>(1) The reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the author or other owner of copyright, provided that the copy or adaptation is necessary:</p> <p>(a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;</p> <p>(b) for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable;</p> <p>(c) to observe, study, or test the functioning of the computer program in order to determine the ideas and principles which underlie any element of the program, including the information necessary to achieve the interoperability of an independently created computer program with other programs.</p> <p>(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer</p>		<ul style="list-style-type: none"> • Multiple: these activities are permitted under Articles 5 and 6 of the EU Software Directive and 17 U.S.C. 117 and fair use in the United States. • These activities are also permitted in Australia, Canada, Chile, India, Israel, Kenya, Korea, Malaysia, Malawi, New Zealand, Norway, Russia, Serbia, Singapore, Switzerland, Turkey, Thailand, UK, Zimbabwe. • South Africa: Copyright Amendment Bill, 2019 Article 19B.
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<p>program ceases to be lawful.</p>		
<p>16 Display of works</p> <p>The public display of originals or copies of a work (in parts and in whole) shall be permitted without the authorization of the author for the purpose of promotion of the work, testing of the work or for the training of users of the work; It shall be permitted to publicly display or publicly perform parts of a work as part of a presentation at a conference, seminar or workshop or other such similar activity without authorization of the author.</p>		<ul style="list-style-type: none"> • Canada and the US: this activity may be considered a fair use in the United States and a fair dealing in Canada.
<p>17 Persons with disabilities</p> <p>(1) An accessible format copy of a work may be created and distributed, including by import or export, for persons who are blind, visually impaired or otherwise disabled, without authorization of its author or copyright owner.</p>	<p>This provision complies with the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013).</p> <p>The provision includes persons with other disabilities, such as deaf people. Persons with other disabilities is a topic on the agenda of WIPO's Standing Committee on Copyright and Related Rights.</p>	<ul style="list-style-type: none"> • Multiple: National Implementations of the Marrakesh Treaty, Association of Research Libraries. Available online here. • South Africa: Copyright Amendment Bill, 2019 Article 19D(1)
<p>17A Public documents</p> <p>(1) Official texts of a legislative, administrative and legal nature, and official translations of such text are not</p>	<p>See Article 2(4) of the Berne Convention (1971).</p>	<ul style="list-style-type: none"> • US: the U.S. Supreme Court affirming that the law is not subject to copyright protection. Further, works created by U.S. government employees do not receive copyright protection per 17 U.S.C. 105.

<p>subject to copyright. (2) Libraries and archives may request and disseminate to the public official publications issued by government ministries, departments and agencies.</p>		
<p>17B Reproduction for computational analysis</p> <p>(1) A person who has lawful access to a work does not infringe copyright in the work by making copies of the work, or by making derivative works of that work, provided that the copies or derivative works are made in order that the person may carry out a computational analysis of anything recorded in the work. (2) The person in paragraph (1) may make available quotations from the work.</p>		<ul style="list-style-type: none"> • EU: DSM Directive permits text and data mining for research purposes. • UK: Based on Section 29A, The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014, UK. • US: TDM is considered a fair use in the United States.
<p>17C Fair dealing</p> <p>(1) In addition to the uses specifically authorized by section 8 through 17B, fair dealing with a copyright work, including such use by reproduction in copies or phonorecords for purposes such as research, private study, scholarship, teaching, criticism, comment, parody, review, or the reporting of news or current events, does not infringe copyright in the work.</p>		<ul style="list-style-type: none"> • Singapore: the Copyright Act of Singapore is an excellent example of a modern statute that has interpreted and applied “fair dealing” in this manner, by making the list of permissible purposes open. • Multiple: Examples of Flexible Limitations and Exceptions from Existing and Proposed Laws http://infojustice.org/wpcontent/uploads/2012/12/Appendix-II.pdf . See also CCH Canadian Ltd v Law Society of Upper

<p>(2) For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the question shall take account of all factors which appear to it to be relevant, including—</p> <p>(a) the nature of the work in question;</p> <p>(b) the amount and substantiality of that part of the work affected by the act in relation to the whole of the work;</p> <p>(c) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; and</p> <p>(d) the effect of the act upon the potential market for, or the commercial value of, the work.</p>		<p>Canada [2004] 1 SCR 339,[1] 2004 SCC 13 (interpreting Canadian fair dealing law flexibly); Fair Use/Fair Dealing Handbook, http://infojustice.org/archives/29136.</p>
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