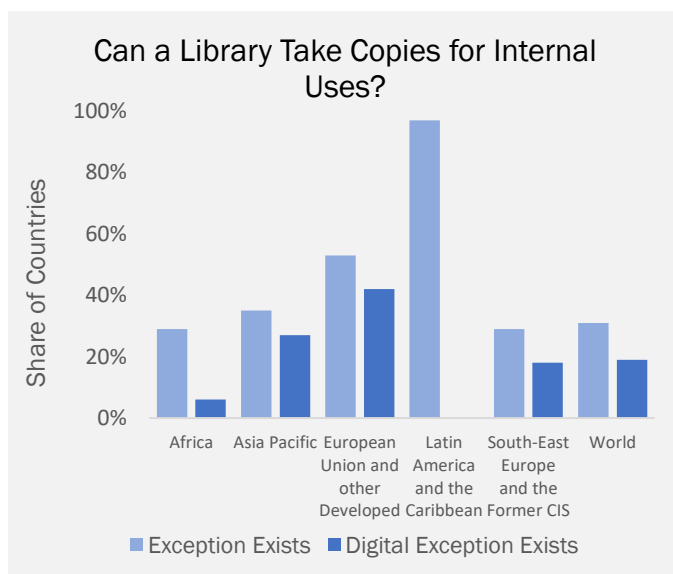


The way in which copyright regimes are designed have a significant impact on the ability of libraries, as well as archives, museums, educators and researchers to fulfil their missions. The degree to which they include exceptions and limitations – and whether these are adapted to the digital age – determines whether they can work effectively to support research and preservation. Despite consensus on these goals, libraries do not always benefit from the same possibilities.

This means not only that some countries are better equipped to support research and preservation, but also that it can be very difficult to work across borders. Moreover, not all exceptions are adapted for digital uses, for example because they explicitly forbid digital copying, or strictly limit the number of copies. This paper, based on data from 186 covered by Professor Kenneth Crews in his 2017 report to SCCR, sets out data on the existence of exceptions – including of those which are adapted to a digital age.



Internal Library Uses

Libraries take copies of works as part of their work in storing and organising materials in order to make it easier for users to find them. This includes activities such as cataloguing, creating bibliographies, taking out insurance or other activities that do not involve copies of the work being made available to the public. These activities therefore have no impact on markets, but are a key part of ensuring that libraries can function effectively.

The data shows that less than a third of countries globally have exceptions for this purpose, and in turn, less than two thirds of these are adapted to the digital world. This risks leaving libraries unable to use digital tools in their own management without fear of breaking the law.

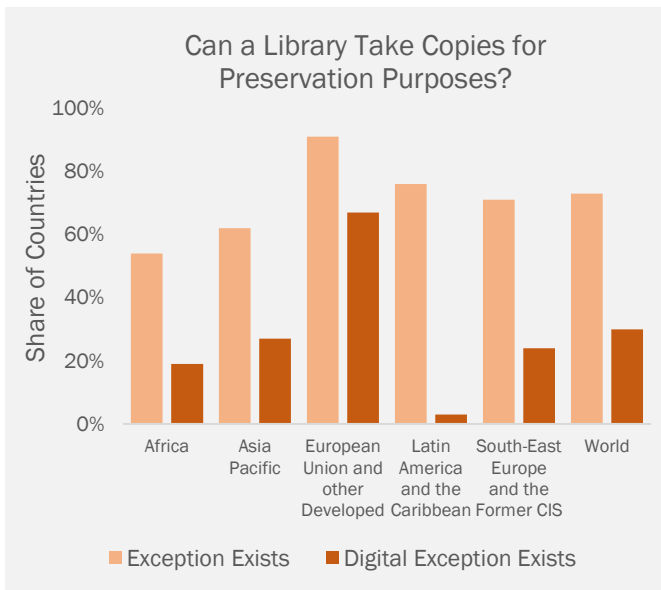
Uses for Research

As highlighted in the introduction, supporting research is a key part of the work of libraries. Research copying – in order to support study or analysis – makes a major contribution to this.

Given the consensus around the importance of research, around two thirds of countries have a research exception, and less than half of these ensure that this is adapted to the digital age. There is variation between regions, with 88% of countries in South-East Europe and the Former CIS having such exceptions, but barely half of African countries being in this situation.



Dramatically, while South-East Europe and the former CIS has the highest share of countries with research exceptions, it has the lowest share of countries with exceptions adapted to the digital age – just 12%.



Preservation Copying

Finally, another core public interest activity of libraries is their work to preserve and safeguard the historical record. This too often requires copying at various stages, both in order to replace or repair works, or pre-emptively.

Globally, almost 75% of countries have preservation exceptions in one shape or another. However, only 30% have ones that allow for digitisation and storage of digital copies of works. The European Union and other developed countries have the highest share of laws which include such exceptions (91%), and also

have a high share adapted to digital uses (67%). Africa has fewest, with just 54% of countries with such exceptions, and only 19% which allow for digital preservation.

Conclusions

These results demonstrate, first of all, the degree to which key copyright exceptions and limitations are more common in richer countries – the European Union and other Developed group always comes first or second.

Secondly, it underlines that the existence of exceptions in general does not always mean the exception of digital-read exceptions. For both research and preservation, fewer than half of the exceptions in place are suitable for a digital environment.

Finally, and linked to the above, it is clear that richer countries are in general much better prepared, in terms of their laws, to enable their libraries to operate in a digital environment. In the meanwhile, libraries in others are less able to support innovation and safeguard heritage using newer technologies. This may be linked to greater capacity in government to legislate, as well as the pressure from entities such as the European Union.

Implications

- 1) There is broad acceptance of the value of exceptions for preservation in particular (over 50% of countries in each region) – this could be the basis for a global consensus.
- 2) There is an urgent need to update exceptions for the digital age, in order not to undermine efforts to realise their objectives.
- 3) There is a need to bring everyone up to a basic minimum standard of exceptions and limitations in order to avoid creating new gaps between developed and developing countries in terms of their ability to support the delivery of public goods.