

Copyright Exceptions: A Typology Analysis

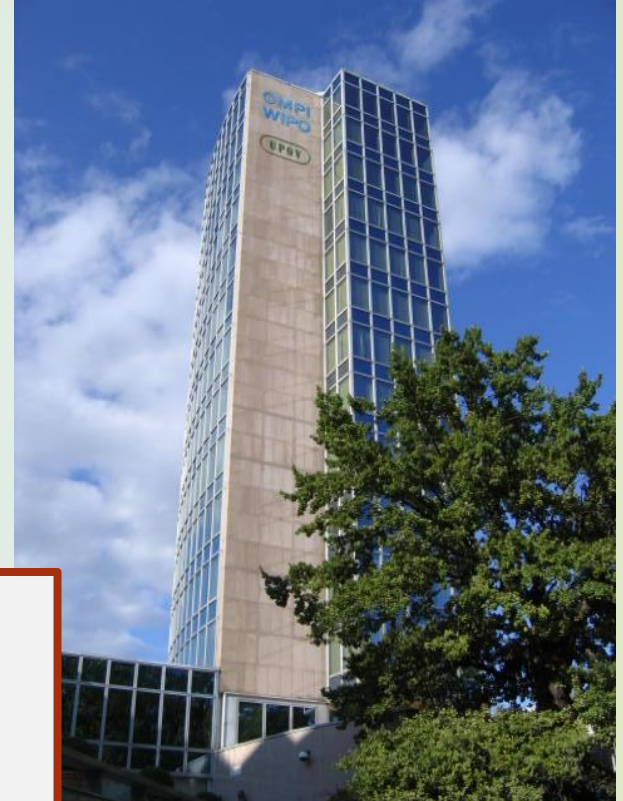
- Libraries
- Archives
- Museums
- Education

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The Analysis:

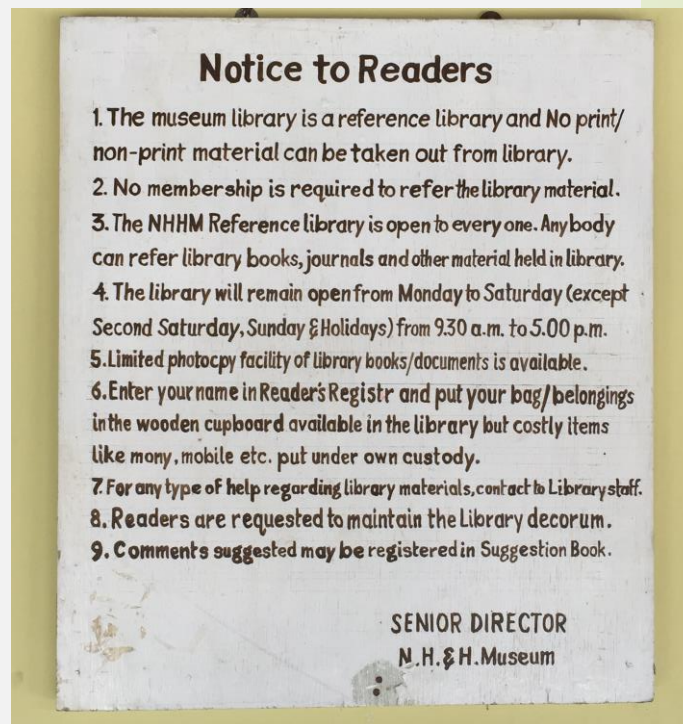
Exceptions for Libraries & Archives

➤ First Study of E&L for Libraries and Archives:

- SCCR/17 – November 2008
- Report: <http://bit.ly/1tB8ryb>
- 149 Member States

➤ Most Recent Study:

- SCCR/35 – November 2017
- Report: <http://bit.ly/2htmCf6>
- 191 Member States





The Objectives: ***A Typology Analysis***

- **Focus on E&L for Libraries**
- **Identification of Topics** (examples):
 - Preservation & Replacement Copies
 - Library Lending & Document Delivery
 - Copies for Private Study & Research
 - Text Mining & Data Mining
 - Orphan Works
 - Limits on Infringement Liabilities
- **Issues & Elements for Lawmaking**

| Category of Library Activity | Owner's Rights Implicated | Elements of Statutory Exceptions | Elements for Ongoing Consideration |
|--|---|--|--|
| TOPIC: Preservation | | | |
| <p>Statutory Provision:</p> <p>Preservation of Works.</p> <p>Library Services:</p> <ul style="list-style-type: none"> • Copies to prevent loss. • Copies in response to loss or damage. • Copies for deposit in other libraries for security or safekeeping. | <p>Primary:</p> <p>Reproduction.</p> <p>Secondary:</p> <p>Distribution (if the copies may be loaned by the library).</p> <p>Circumvention (if the original is secured by TPM).</p> | <p><i>Scope of Works:</i></p> <ul style="list-style-type: none"> • Published or unpublished works. • Printed works. • Music & sound recordings. • Audiovisual works. • Works protected by neighboring rights. • Excluded types of works (e.g., computer programs). • Work must be in the collections of the library. <p><i>Condition of the Works:</i></p> <ul style="list-style-type: none"> • At risk of loss. • Damaged, deteriorating, lost, stolen. • Fragile. • Rendered unusable. • Obsolete format or technology. • Rare works. • Culturally important works. • Replacement not available on the market (if copying entire work). <p><i>Purpose of Use:</i></p> <ul style="list-style-type: none"> • Preservation. • Add to collections. • Add to collections of another library or archive. | <ul style="list-style-type: none"> • Application of Digital Technology. • Implications of License or Agreement for Acquisition of the Work. • Implications of Extended Collective Licensing. • Number of Copies Allowed. • Permitted Uses of the Copies. • Simultaneous Availability of the Original and the Copy. • Authority for Cross-Border Transfers. • Making Copies of Works Before Lending or Exporting Originals. • Extent of Proof or Documentation of Compliance with Statute. |

Closer Look at the Analysis:

Column 1

| Category of Library Activity | Own Impl |
|---|---|
| TOPIC: Preservation | |
| Statutory Provision: Preservation of Works. | Prim Repr Seco |
| Library Services: <ul style="list-style-type: none"> Copies to prevent loss. Copies in response to loss or damage. Copies for deposit in other libraries for security or safekeeping. | Distri copie loane librar Circu the c secu |

Identifies and Organizes:

- Conceptual Topic
- Statutory Provision
- Library Services

Closer Look at the Analysis: Column 2

| Activity | Owner's Rights Implicated | Elements Statutory |
|--|---|---|
| | | |
| <p>of</p> <p>ices:</p> <p>event loss. response to ge. deposit in s for</p> | <p>Primary:</p> <p>Reproduction.</p> <p>Secondary:</p> <p>Distribution (if the copies may be loaned by the library).</p> <p>Circumvention (if the original is secured by TPM).</p> | <p>Scope</p> <ul style="list-style-type: none"> • Pu • Pri • Mu • Au • Wa • rig • Ex • co • Wa • of <p>Condi</p> <ul style="list-style-type: none"> • At risk of • Damage • stolen. • Fragile. • Rendere • Obsolete • Rare wo • Culturall • Replace • the mark • work). <p>Purpose</p> |

Identifies and Organizes:

- Rights of Copyright Owners
- Rights Affected Primarily
- Rights Affected Secondarily

Closer Look at the Analysis: Column 4

| Questions | Elements for Ongoing Consideration |
|--|--|
| <p>Published works.</p> <p>Recordings.</p> <p>Neighboring works (e.g., sound recordings).</p> <p>Works:</p> <p>Original, lost, or destroyed.</p> <p>Technology.</p> <p>Works available on the entire</p> | <ul style="list-style-type: none"> • Application of Digital Technology. • Implications of License or Agreement for Acquisition of the Work. • Implications of Extended Collective Licensing. • Number of Copies Allowed. • Permitted Uses of the Copies. • Simultaneous Availability of the Original and the Copy. • Authority for Cross-Border Transfers. • Making Copies of Works Before Lending or Exporting Originals. • Extent of Proof or Documentation of Compliance with Statute. |

Ongoing Considerations:

- Digital Technologies
- Role of Licenses
- Application of ECL
- Cross-Border Transfers
- Proof & Documentation

Objectives of the Analysis

- **Systematic Perspective on Copyright Limitations & Exceptions**
- **Identify Relationships among Interests:**
 - Library Services
 - Access to Information
 - Building & Protecting Collections
 - Rights of Owners
 - Creation & Dissemination of Works
 - Selling & Licensing in the Marketplace




Policymaking and the Analysis

➤ **Better Understanding of Legal Standards**

- Isolating Elements of Existing Law
- Identifying Elements for Future Lawmaking
- Identifying Elements for Further Evaluation

➤ **Elements of E&L as Choices**

- Choices as a Manifestation of Policy
- Choices as an Identification of Priorities



Operational Objectives of the Analysis

- **Draws Elements from Actual Statutes**
 - Most recent study: November 2017
 - Statutes from 191 Member States
- **Presents the Elements in a Systematic Manner**
- **Identifies Possibilities**
 - Elements that Appear in the Traditional Constructs
 - Elements that are Often Unresolved
 - Seldom Appear in Statutes, or
 - Are the Subject for Ongoing Consideration
- **Provides the Building Blocks (Elements) for New Lawmaking**



Hypothetical: Preservation Statute

Notwithstanding the rights of the author or copyright owner, a **library or archive** that provides services for neither direct nor indirect commercial objectives, may make copies of **works held in its collection**, for **preservation**, including for **deposit** in another library or archive for security and safekeeping, provided that the work is **damaged, deteriorated, rare, or at risk of loss**, and the library or archive has determined after an **investigation of the market** that a new copy is not available at a reasonable price.

Hypothetical: Preservation Statute

Elements in the Statute:

- Library or Archive
 - *No Commercial Purpose*
- Purpose: Preservation and Deposit
- Works Held in the Collection
 - *Damaged, Deteriorating, Rare, At Risk*
- Investigation of Market
 - *Determined that New Copy is not Available*

Hypothetical: Preservation Statute

Other Provisions of the National Copyright Act:

- Definitions:
 - *Copy, Work, Reproduction, and more*
- General Requirements for E&L:
 - *Credit to Owner and Source*
 - *Copyright Notice or Statement on Copies*
 - *No Payment of Fees*
 - *Relationship to License*
 - *Relationship to Moral Rights*
 - *Application of Three-Step Test*

Hypothetical: Preservation Statute

Open Issues for Ongoing Consideration:

- Role of Collective License or ECL
- Application of Digital Technologies
 - *Within the definition of “Copy”?*
- Use of the Preservation Copy
 - *Add to the Collection?*
 - *Simultaneous Use with Original?*
- Meaning of Market Search and Price
 - *Documentation of the Process & Compliance?*



The Analysis: **Benefits for Law and WIPO**

➤ **Guidance for:**

- National Legislation
- Multinational Guidance for Member States

➤ **Elements of New Legal Drafting:**

- Elements Define the Reach of the Law
- Elements Create Choices for Lawmakers
- Elements Remind Lawmakers of the Issues Needing Attention

➤ **Elements and the Role of Licensing:**

- Licensing has the Potential to Serve Many Needs
- Elements can Define the Application and Limits of Licensing



The Analysis: Beyond Preservation

➤ **Applicable Institutions**

- Types of Libraries
- Archives
- Educational Institutions
- Museums

➤ **General Conditions**

- Copyright Statements
- Cite Source and Owner
- Application of Licenses
- Extended Collective Licenses
- Three-Step Test
- No Fee or Permission

➤ **General Library Uses**

- Copies for Library Purposes
- Library Needs
- Administration of Library
- Indexing & Cataloging
- Library Exhibitions

➤ **Library Lending**

- Physical Works
- Digital Works
- Export & Import of Works

➤ **Interlibrary Lending**

- Document Delivery



The Analysis: Beyond Preservation

➤ **Preservation**

➤ **Replacement**

- Condition of Works
- Works in the Collections
- Obsolete Format
- Rendered Unusable

➤ **Orphan Works**

- Reasonable Search
- Notifications
- Use of Orphan Works
- Mass Digitization

➤ **Private Study & Research**

- Types of Works
- Short & Entire Works
- Search of Market
- Images & Embedded Works

➤ **Dedicated Terminals**

- Digitized Works
- Types of Works
- Number of Accessible Copies
- Access on Networks
- Restrictions on Copying
- Application of Licenses



The Analysis: **Beyond Preservation**

➤ **Technological Protection**

- Circumvention
- Exemptions
- Method for Circumventing
- Limitation on Liability

➤ **Digital Collections**

- Text Mining
- Data Mining

➤ **Persons with Disabilities**

- Specialized Formats
- Authorized Entities

➤ **Equipment at the Library**

- Permitted Uses
- Liability of Library

➤ **Limitation on Library Liabilities**

➤ *And Many More Topics!*

Copyright Exceptions for Education

- ▶ **Holistic and unified view of use of E&L for education, including:**
 - ▶ limitations and exceptions to enable adaptations and translations for educational activities (beyond the Berne Appendix).
 - ▶ provisions that restrict or limit copyright liability of educational institutions.
 - ▶ provisions that limit scope of contracts that seek to override copyright limitations and exceptions for educational activities.
 - ▶ (hypothetical) scope of "digital copying" and "digital dissemination."
 - ▶ scope of flexibilities, limitations and exceptions to TPM, RMI for educational activities (focusing on WCT and WPPT memberships).

Copyright Exceptions for Education

- ▶ **Types of copyright rights implicated by educational activity:**
 - ▶ for educational activities, main rights implicated are:
 - ▶ reproduction, communication
 - ▶ other rights implicated are (depending on activity):
 - ▶ performance, adaptation, translation, arrangement
 - ▶ TPM and RMI rights are also implicated:
 - ▶ circumvention or flexibility where TPM protected works interfere with educational activity
 - ▶ removal or flexibility where RMI works interfere with educational activity

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Thank You!

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