

Copyright Exceptions & Limitations: *Libraries and Archives*



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World Intellectual Property Organization

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The Studies: 2008 and 2014

SCCR 17, November 2008

Available: <http://bit.ly/1tB8ryb>

SCCR 29, December 2014

Available: <http://bit.ly/1A9ImgV>

The 2008 Study

- **WIPO: 184 Member Countries**
- **Located: Statutes from 149 Countries**
- **No Library Exception: 21 Countries**
- **General Exception Only: 27 Countries**

The 2014 Supplement & Update

- **WIPO: 184 Member Countries**
 - **Today: 187 Member Countries**
- **Located: Statutes from 149 Countries**
 - **Today: Statutes from 186 Countries**
- **No Library Exception: 21 Countries**
 - **Today: 33 Countries**
- **General Exception Only: 27 Countries**
 - **Today: 34 Countries**

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**

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.**”

TRIPs

Article 13: “Members **shall confine limitations or exceptions** to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate **interests of the right holder.**”



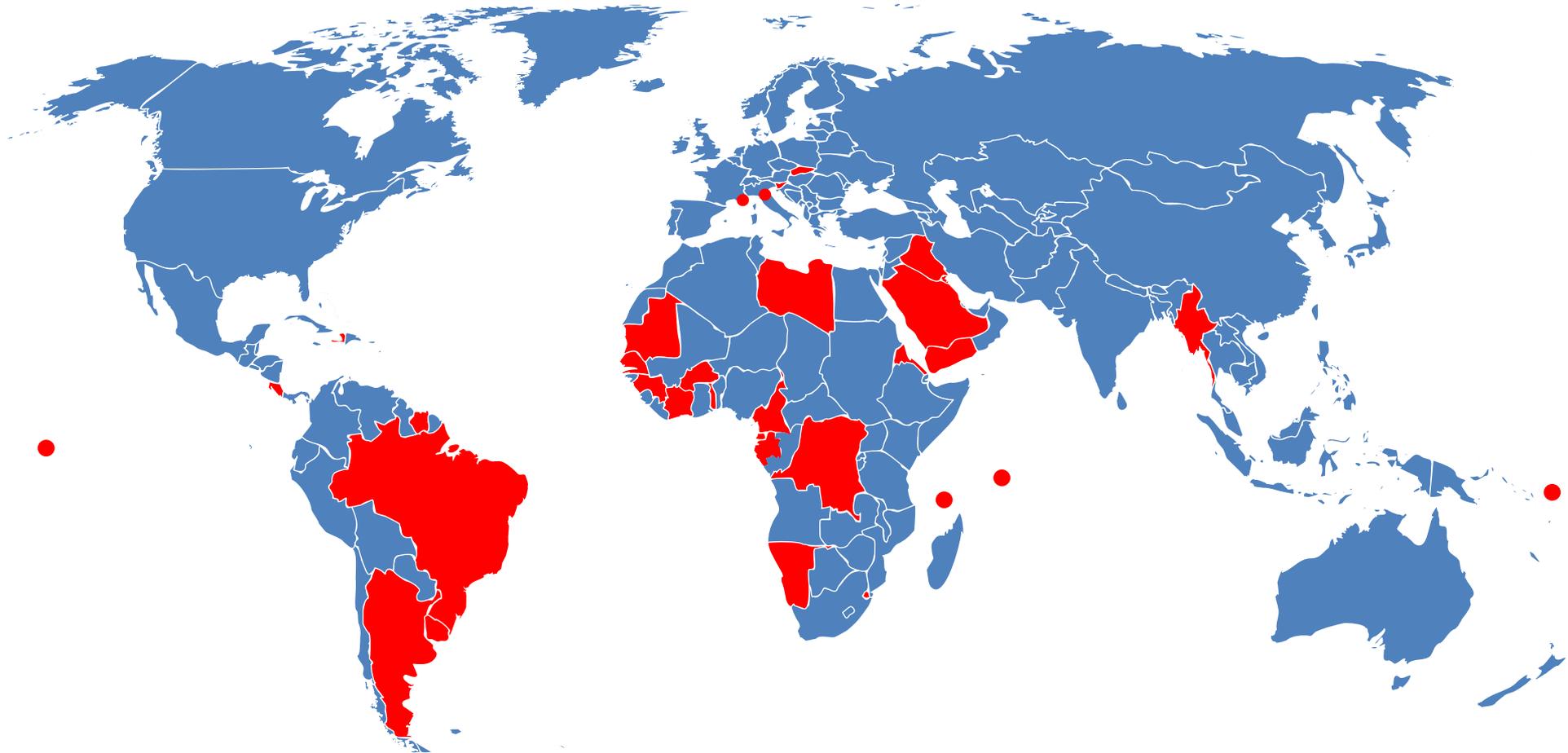
Diversity of Exceptions

- No Library Exception
- General Library Exception
- Preservation or Replacement
- Private Research or Study
 - Making Available on the Premises
- Anticircumvention of Technological Measures
 - Exceptions for Libraries

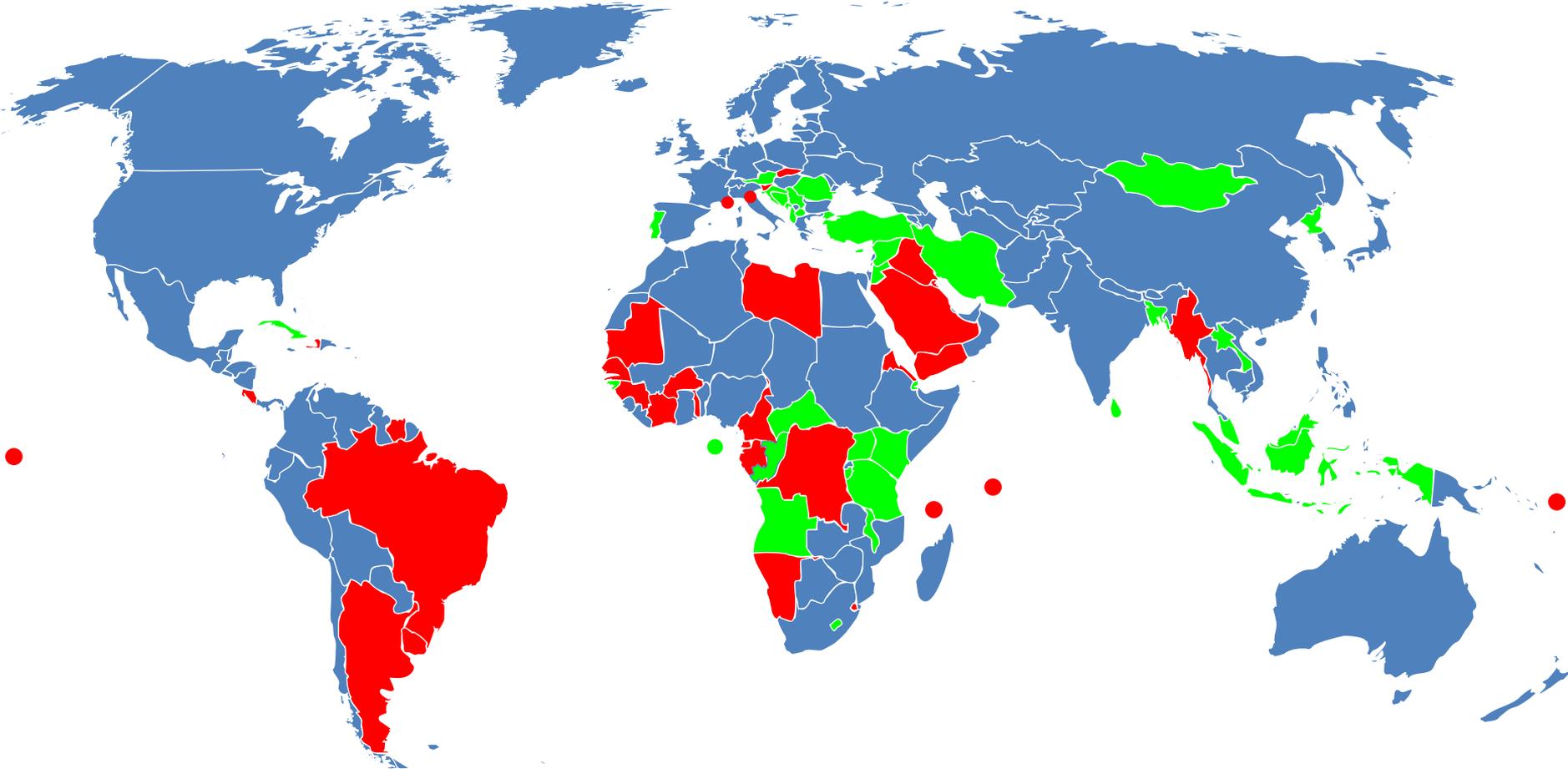
Diversity of Exceptions

- **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?

Red: No Library Exception



Red: No Library Exception
Green: General Exception Only

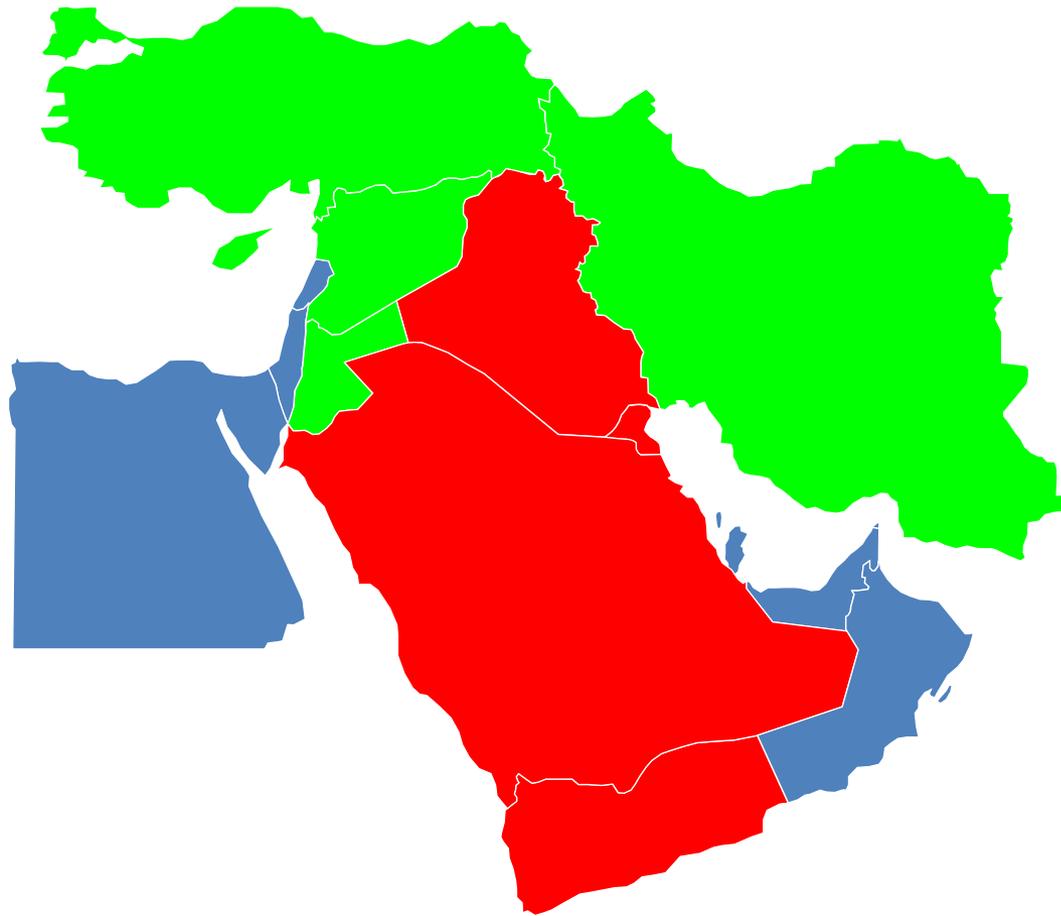


General Library Exception

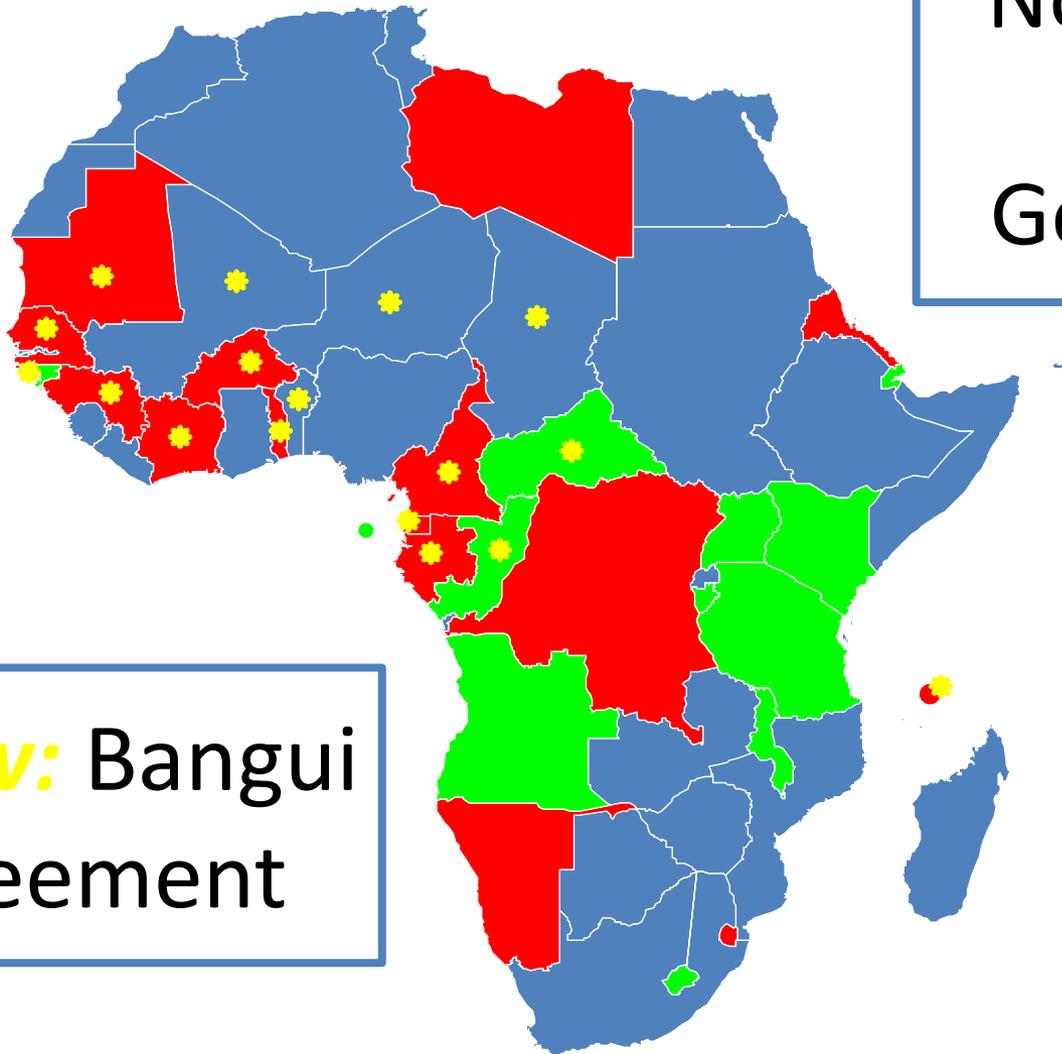
From the Tunis Model Act:

“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...”

Red: No Library Exception
Green: General Exception Only



Red:
No Exception
Green:
General Only



Yellow: Bangui
Agreement

The Bangui Agreement

Notwithstanding the provisions of Article 9, a library or archive service whose activities are **not** directly or indirectly **profit-making** may, without the consent of the author or other holder of copyright, make **individual copies** of a work by means of **reprographic** reproduction,

(i) where the work reproduced is an **article or a short extract** from a written work, other than a computer program, with or without illustration, published in a collection of works or in an issue of a newspaper or periodical, and where the purpose of reproduction is to **meet the request of a natural person**;

(ii) where the making of such copy is for the purpose of **preserving** and, if necessary, in the event of it having been **lost, destroyed or made unusable, replacing** it or, for replacing a copy that has been lost, destroyed or rendered unusable in the permanent collection of another library or other archive service.

The Bangui Agreement

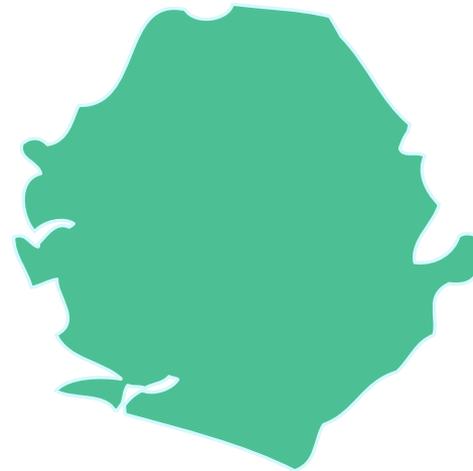
- Two Subjects:
 - Preservation and Replacement
 - Copies for Users
- Brief:
 - Few Words
- Succinct:
 - Few Conditions

The British Model

- **Founded in the Copyright Act of 1956**
- **Multiple Statutes**
- **Preservation and Research**
- **Possible: Document Supply and ILL**
- **Conditions**
- **Evidence that the use is for private study**

Sierra Leone

- British Settlement, 1787
- Settlement of Former Slaves, 1808
- Sierra Leone Protectorate, 1896
- Colony established, 1924
- Constitution, 1951
- Independence, 1961



Sierra Leone

- **Copyright Act of 1965**
 - Modeled on the British Act of 1956
 - Distinct Provisions for Research Copying:
 - Articles, Literary Works, Unpublished Works
 - Supplying Copies to other Libraries
- **Copyright Act of 2011**
 - Reflects the Bangui Agreement
 - Brief Provisions: Private Study & Preservation

The Bangui Influence?

- **Mali 2008**
- **Moldova 2010**
- **Oman 2008**
- **Rwanda 2009**
- **Sierra Leone 2011**
- **Sri Lanka 2003**
- **Tunisia 2009**
- **Turkmenistan 2012**



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

Innovations in Statutes:

The European Union

- **Orphan Works Directive, 2012**
- **Information Society Directive, 2001**

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”

Library Exception:
**Digital Copies on
Dedicated Terminals**



- Belarus**
- Chile**
- China**
- Iceland**
- Kyrgyzstan**
- Montenegro**
- Norway**
- Russia**
- Singapore**

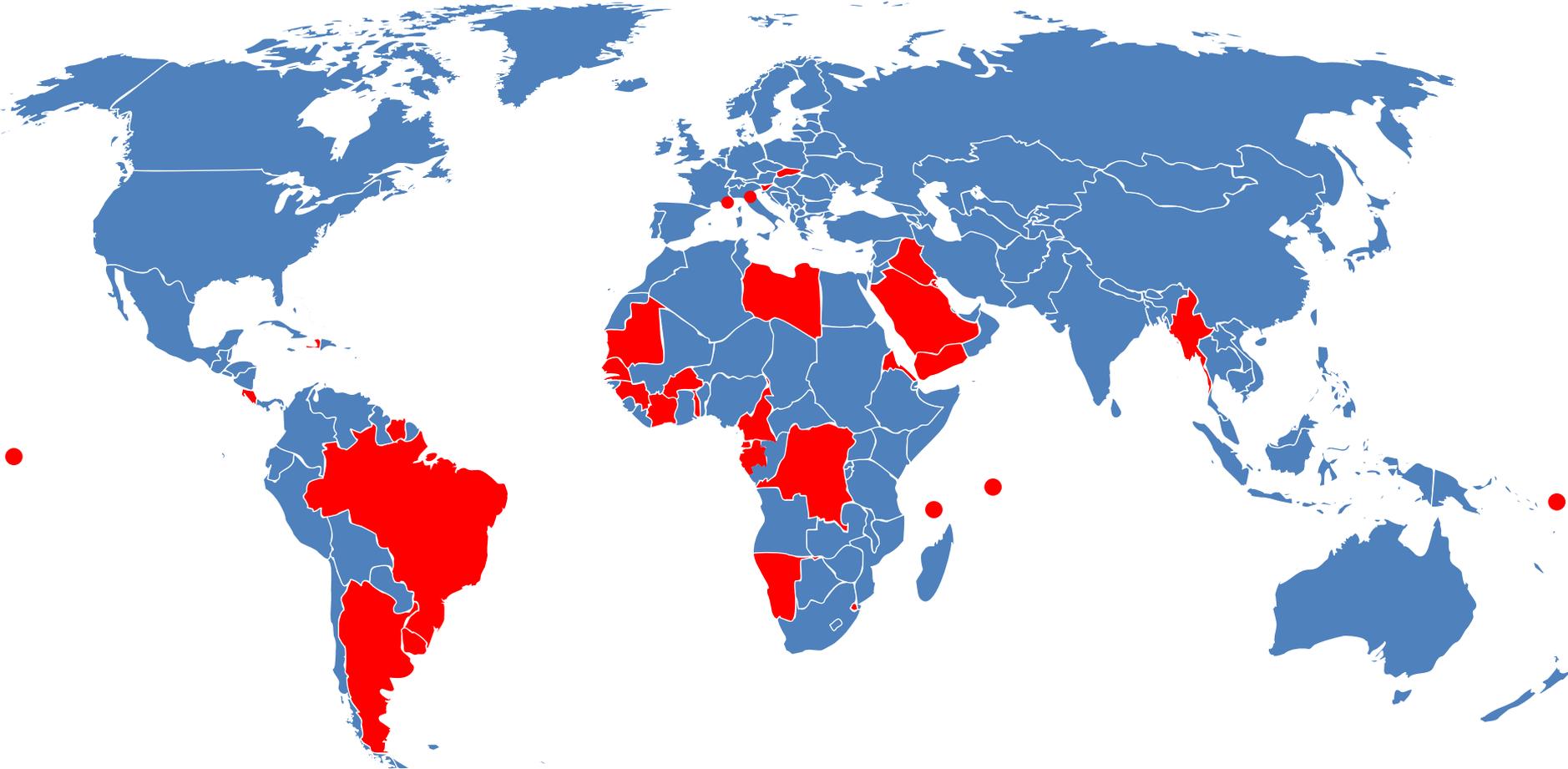
Implications

- 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

Implications, Part II

- **Political Realities**
- **Competing Interests**
- **Economic & Cultural Values**
- **History**
- **Regional Agreements**
 - **European Union**
 - **Bangui Agreement**
- **Role for WIPO**

~~**Red:** No Library Exception~~
Blue: Diversity of Exceptions



The Challenge Ahead

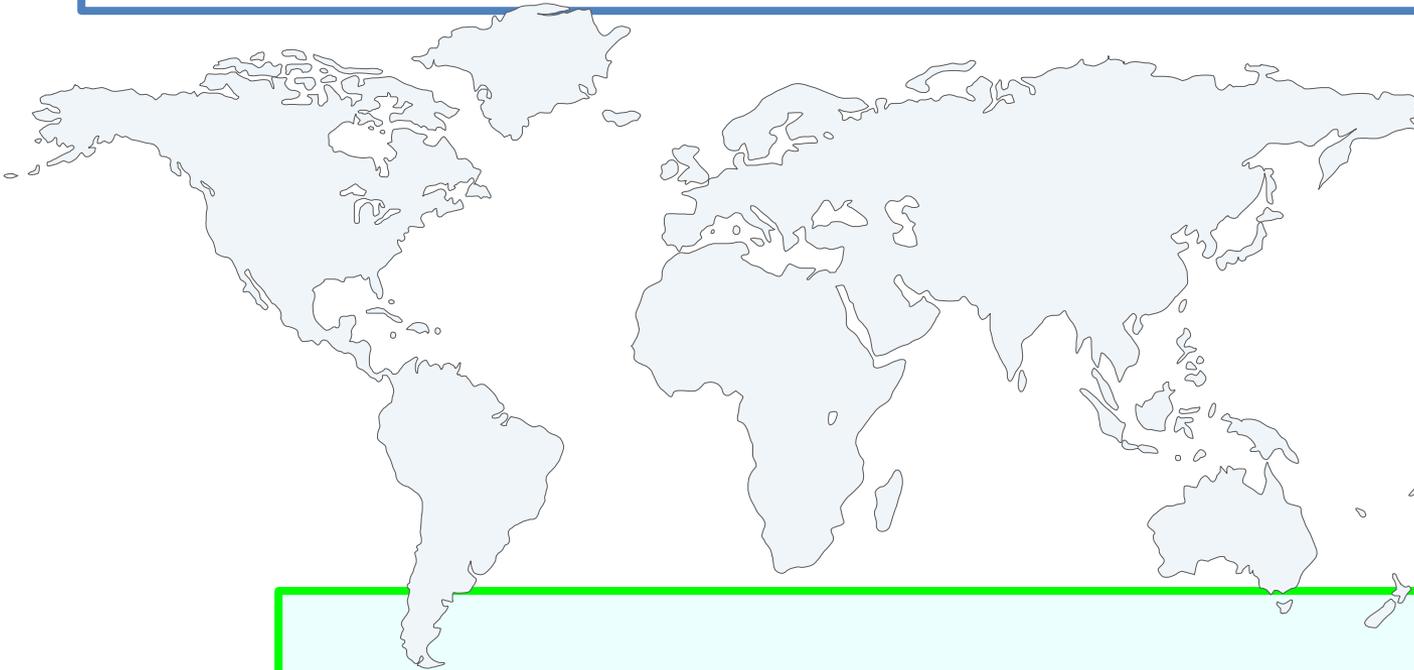
- Application to Digital Technologies
- Expansion of Library Services
 - Interlibrary Loans
 - Services to the Visually Impaired
 - Mass Digitization for Preservation
 - Relationship to Licenses
 - Use of Orphan Works

The Challenge Ahead

- First Sale and Exhaustion of Rights
 - Transfers of Copies
 - International Transfers
- Cross-Border Transfers
 - Fundamental to WIPO
 - Imbalance of Access and Technologies
- Copyright Education
 - For Libraries and the Public



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Thank You!