

Copyright Limitations and Exceptions For Libraries and Archives

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The Context of “Library Exceptions”

- Structure of Copyright Law
 - Grants Right to Owners
 - Permits Limitations & Exceptions
- Berne Convention:
 - Article 2: Extends protection to literary and artistic works.
 - Article 9(2): Exceptions consistent with the “Three-Step Test”

Berne: 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.**”

TRIPs: The Three-Step Test

- 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.**”

The Diversity of “Library Exceptions”

- General Exceptions for Library Copying
 - Includes Administrative Copying
- Research or Study
 - Making Available
- Preservation or Replacement
- Document Delivery and ILL

The Diversity of “Library Exceptions”

- Copy Machines on Premises
- Limitation on Remedies
- Exception to Anticircumvention Statutes

The WIPO Study

- WIPO: 184 Member Countries
- Located: Statutes from 149 Countries
- No Library Exception: 21 Countries
- Solely General Exception for Libraries: 27 Countries

Subject of Library Exceptions

- Copying for Research or Study
 - 74 Countries
- Copying for Preservation
 - 72 Countries
- Copying for Replacement
 - 67 Countries
- Document Supply: 17 Countries
- ILL: 6 Countries
- Anticircumvention: 26 Countries

Diversity Among the Library Exceptions

Issues: Copies for Research or Study

- Copies for Users
- Limited to Research or Study
- Proof of User's Purpose
- Limited Types of Works
- Unpublished Works
- Making Available on Premises
- Availability of Licenses
- Digital Formats

Diversity Among the Library Exceptions

Copies for Research or Study: Example

- Separate Statutes:
 - Literary, Dramatic, Musical Works
 - Journal Articles
 - Unpublished Works
- Major Differences
 - Amount that may be Copied
 - Restrictions by Author on Unpublished Works

Diversity Among the Library Exceptions

Copies for Research or Study: Example

- Digital Copies Permitted
 - Librarian provides statement of terms of use
 - Librarian must destroy additional copies made in the process
- Library may charge Fee
 - Not more than the cost of services
 - Plus contribution to general expenses

Diversity Among the Library Exception

Issues: Preservation or Replacement

- Single or Multiple Copies
- Damage to or Condition of the Work
- From or for Permanent Collection of the Library
- Deposit in Another Library
- Availability of the Work on Market for Purchase
- Digital Formats

Diversity Among the Library Exceptions

Copies for Preservation: Example

- Separate Statutes:
 - Preservation of Library Materials
 - Preservation of Sound Recordings and Film
- Major Difference:
 - The preservation copy of the SR or Film does not constitute infringement of included material.

Diversity Among the Library Exceptions

Copies for Preservation: Example

- The work already has been damaged, deteriorated, lost, stolen.
- Protect the work against loss or deterioration.
- Library must certify that copy is not reasonably available on the market.
- Original work in the library collections.

“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 no conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author...”

“General Library Exception”

Another Example:

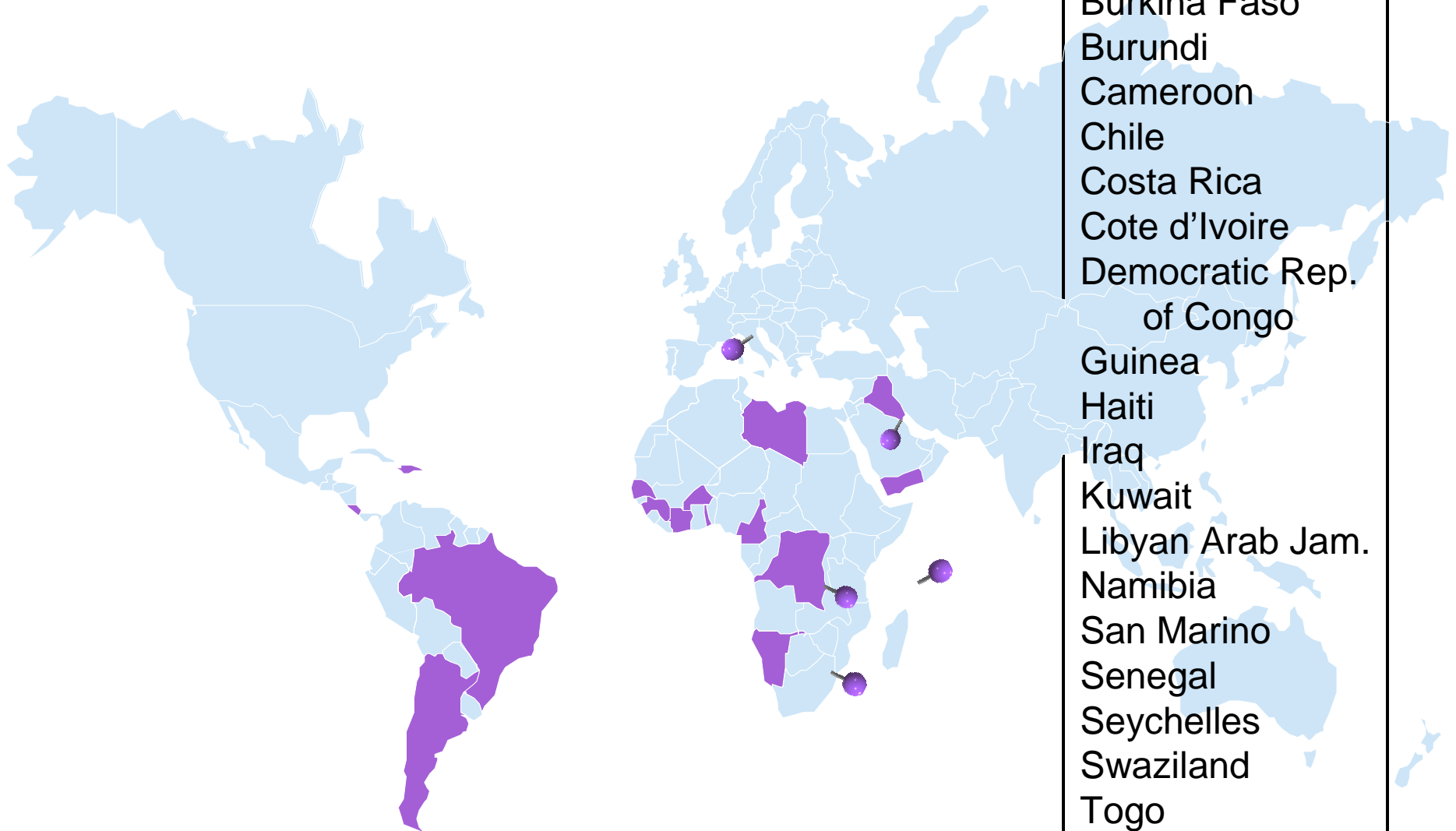
- Copying by Nonprofit Libraries and Archives
- Works in the Permanent Collection
- Single Copies
- Not reasonably available on the Market
- Retain the copy in the collection, or transfer to another library

General Library Exception

Albania	Lesotho
Angola	Malawi
Austria	Malaysia
Bulgaria	Mali
Cape Verde	Mongolia
Congo	Nigeria
Croatia	Oman
Cyprus	Portugal
Djibouti	Rwanda
Greece	Slovenia
Indonesia	Sri Lanka
Jordan	Syria
Kenya	Tunisia
	Tanzania

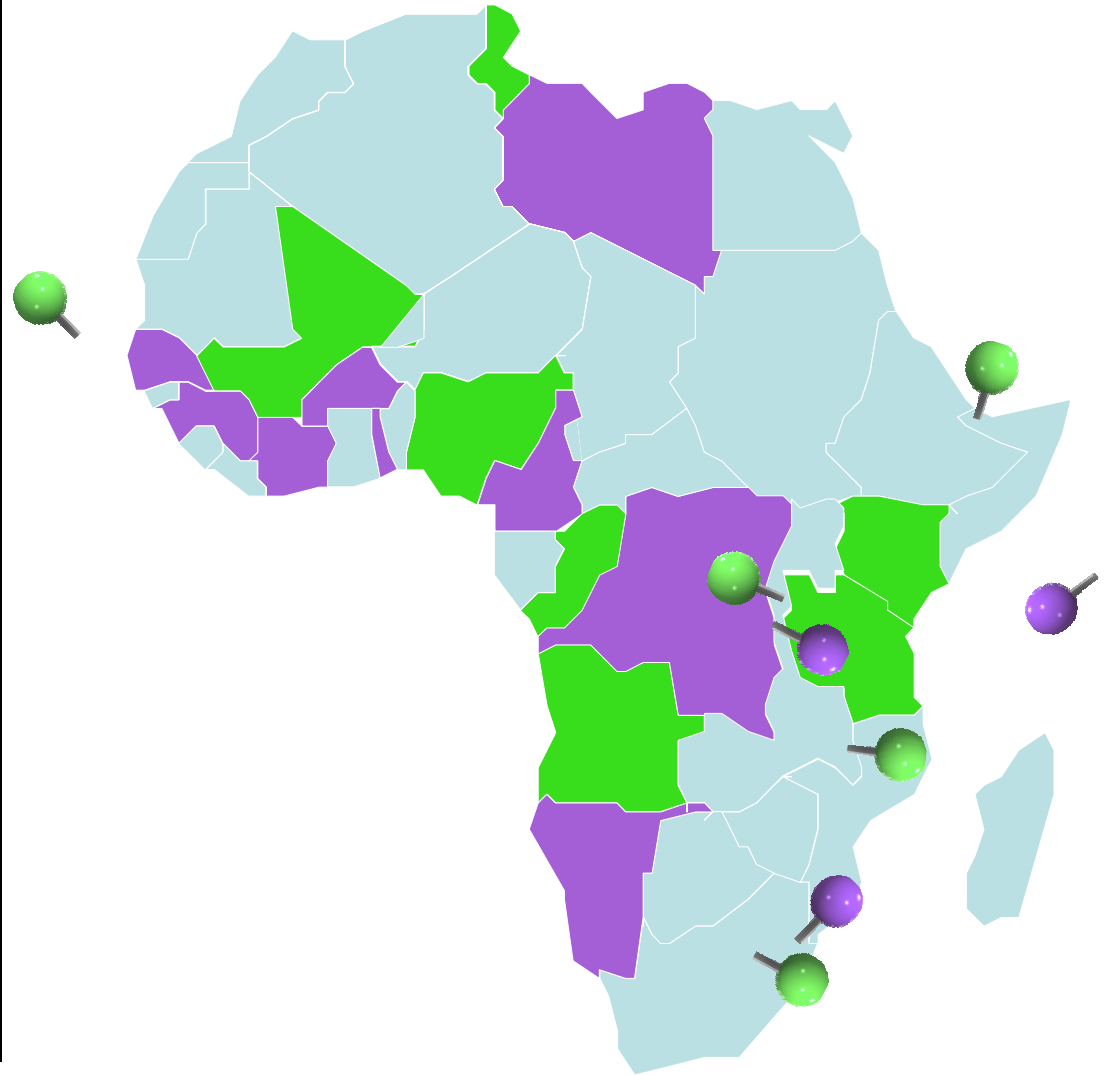


No Library Exception



- Argentina
- Brazil
- Burkina Faso
- Burundi
- Cameroon
- Chile
- Costa Rica
- Cote d'Ivoire
- Democratic Rep.
of Congo
- Guinea
- Haiti
- Iraq
- Kuwait
- Libyan Arab Jam.
- Namibia
- San Marino
- Senegal
- Seychelles
- Swaziland
- Togo
- Yemen

General	None
Angola	Burkina Faso
Cape Verde	Burundi
Verde	Cameroon
Congo	Cote d'Ivoire
Djibouti	Democratic Rep. of Congo
Kenya	Guinea
Lesotho	Libyan Arab Jam.
Malawi	Namibia
Mali	Senegal
Nigeria	Seychelles
Rwanda	Swaziland
Tunisia	Togo
Tanzania	



Underlying the Diversity and Trends

- Political Realities
- Competing Interests
- Economic & Cultural Values
- History (British Imperial Statute)
- Regional Agreements
 - European Union
 - Bangui Agreement
- Model Copyright Act

Anticircumvention and “Library Exceptions”

WIPO Copyright Treaty (1996)

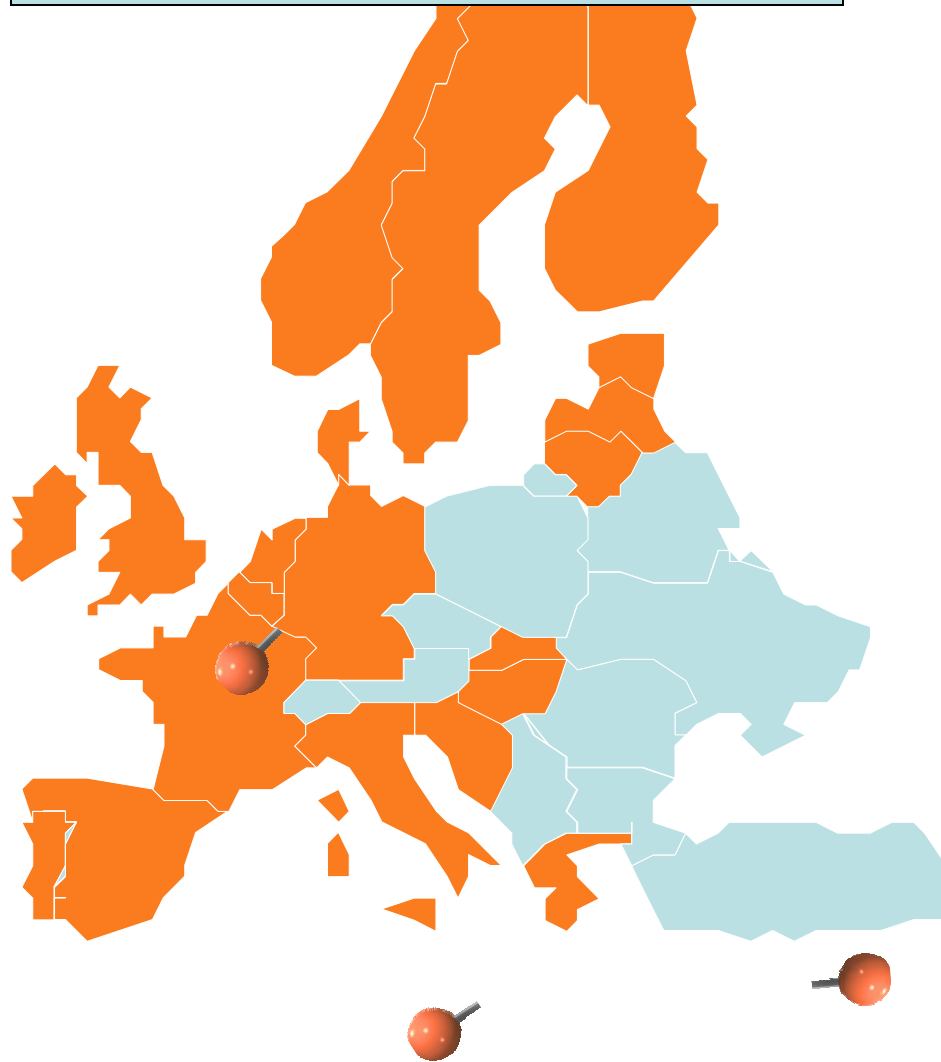
Members shall “provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights...”

Anticircumvention and “Library Exceptions”

EU Copyright Directive (2001)

“...Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with [cited provisions of the Directive] the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned.”

Library Exception to Anticircumvention



Belgium Croatia Cyprus Denmark Estonia Finland France Germany Greece Hungary Ireland Italy	Latvia Lithuania Luxembourg Malta Netherlands Norway Portugal Slovakia Spain Sweden United Kingdom
Australia Singapore USA	

Case Studies

- The Need for an Exception
- Problems of Statutory Interpretation
- General vs. Specific Statutes
- Demand for Digital Technologies
- Challenge of Collective Licensing
- Scope of Preservation Activities
- Anticircumvention as Barrier

Reflections on Worldwide Library Exceptions

- Diversity of Subject Matter
- Variation in Details and Conditions
- Struggle with Technological Change
- Constraint of Competing Interests
- Economic Condition of Libraries
- Compensation to Rightsholders
- Implementation & Education

Thank You!

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