

Standing Committee on Copyright and Related Rights

Thirty-Fourth Session
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INFORMAL CHART ON LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND
ARCHIVES

prepared by the Chair

CHAIR'S INFORMAL CHART ON LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

This chart is designed to serve as a useful tool to provide a structure to discuss the substance of each topic, drawing on the many resources before the Committee. This will allow the Committee to have an evidence-based discussion respecting different views, understanding that the goal is not to guide the discussion toward any particular or undesired outcome but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome.

No	Topic	Summary remarks by the Chair
1	Preservation	<p>Principle: In order to ensure that libraries and archives can carry out their public service responsibility for the preservation, including in digital form, of the cumulative knowledge and heritage of nations, limitations and exceptions for the making of copies of works may be allowed so as to preserve and replace works under certain circumstances.</p> <p>Concerns: There is legal uncertainty regarding whether existing limitations and exceptions for preservation/replacement purposes are applicable to digital context. This includes the question if the digital conversion/format shifting should be considered as a reproduction act. Without legal certainty, libraries and archives may not achieve their missions out of fear of conducting illegal acts, such as unauthorized uses for preservation/replacement copies. Additional safeguards should be introduced to avoid unauthorized uses of such copies.</p> <p>Suggested approach: Ensure that existing or proposed limitations and exceptions will enable libraries and archives to make digital preservation and digital conversion/format shifting for the purpose of carrying out their mission. These limitations and exceptions should cover also born-digital works. Attention should be given to limit the purposes of reproduction for preservation/replacement avoiding any misuse of these limitations and exceptions.</p>

No	Topic	Summary remarks by the Chair
2	Right of reproduction for research and similar purposes	<p>Principle: Reasonable limitations and exceptions should enable libraries and archives to reproduce and opt for distributing materials for research and similar purposes without fear of engaging in illegal activities.</p> <p>Concerns: It is important to secure for research and similar purposes the introduction of limitations and exceptions to reproduction rights will not affect negatively the balance between rightholders' interests and the public interest.</p> <p>Suggested approach: These limitations and exceptions should not affect the normal exploitation of the works and prejudice the legitimate interests of rightholders.</p>
3	Legal deposit	<p>(It is suggested to remove this topic from the list, taking into account that its nature is not strictly relevant to limitations and exceptions to copyright.)</p>
4	(National) Library lending	<p>Principle: Reasonable limitations and exceptions should enable libraries and archives to lend materials to patrons either directly or through inter-library loan both in printed format and by digital means within the same jurisdiction.</p> <p>Concerns: The distribution of works through library lending, especially in digital format, should not enable unauthorized uses of the works. There is legal uncertainty regarding whether digital distribution is benefit from the existing limitations and exceptions for library lending. Adequate licensing schemes working efficiently should not be undermined. These limitations and exceptions should not affect the regime of exhaustion of right of distribution.</p> <p>Suggested approach: The limitations and exceptions should allow lending by digital means with adequate safeguards to avoid unauthorized uses (e.g. TPMs, confinement of access to the terminals in the receiving libraries). The applicability of the limitations and exceptions on national library lending should be subsidiary to the existence of effective licensing schemes. It should be clarified that existing exhaustion regimes should not be affected by these specific limitations and exceptions.</p>
5	Parallel importations	<p>(It is suggested to remove this topic from the list, taking into account that it is a question to be addressed under topic 6 below).</p>

No	Topic	Summary remarks by the Chair
6	<p>Cross-border uses (including: - international library lending - parallel importation)</p>	<p>Principle: Libraries and archives should be able to import, export and exchange works and copies of works across borders, particularly for research and similar purposes, in order to achieve the public service mission through cooperation especially in developing and least developed countries.</p> <p>Concerns: The limitations and exceptions should not affect legitimate established market of published works.</p> <p>Suggested approach: In order not to affect the legitimate established markets, these limitations and exceptions for cross border uses should not affect the normal exploitation of the work and should not prejudice the legitimate interests of rightholders.</p>
7	Orphan works	<p>(It is suggested to remove Retracted and Withdrawn Works, and Works Out of Commerce from this topic, as they should be part of later debate).</p> <p>Principle: The use of orphan works should be assured for the benefit of libraries and archives to achieve their public service mission under certain conditions in order not to deprive users of access to valuable information.</p> <p>Concerns: These limitations and exceptions should not affect legitimate moral and economic rights of authors and other rightholders.</p> <p>Suggested approach: Provisions to adequately compensate rightholders, either directly or through collective management, once they are identified should be included. These limitations and exceptions should not entail the liability of activities undertaken in good faith after the reasonable diligent search prior to the use of the work. Such limitations or exceptions should also respect moral rights.</p>
8	Limitations on liability of libraries and archives	<p>Principle: Librarians should be able to fulfil their public interest mission in a responsible and prudent way without facing legal liability for good faith activities.</p> <p>Concern: Infringing activities carried out by libraries and archives should be subject to sanctions where undertaking knowingly or with reasonable grounds to know that they constitute infringement activities.</p> <p>Suggested approach: Apply to limitations to liability to good faith activities carried out by libraries and archives except when carried out knowingly or with reasonable grounds to know that they constitute infringement activities.</p>

No	Topic	Summary remarks by the Chair
9	Technological measures of protection	<p>Principle: Limitations and exceptions granted by law should not be emptied of their effect through the application of technological protection measures. Libraries should be allowed to acquire and apply tools to remove such measures, in order to fulfil their public interest missions.</p> <p>Concerns: Circumvention allowed by the limitations and exceptions to TMPs should be limited to legitimate uses.</p> <p>Suggested approach: Appropriate measures should be taken to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent libraries and archives from enjoying the limitations and exceptions provided for them by national laws.</p>
10	Contracts	Even if it is not a limitation or exception but a horizontal issue, the impact of contractual arrangements in the said limitations and exceptions for libraries and archives requires further discussion.
11	Right to translate works	Translating works in special circumstances for archiving reasons and to reach indigenous or native languages, or for research purposes, is a need that has been described. Further discussion is required.

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