Copyright Exceptions: A Typology Analysis

- Libraries
- Archives
- Museums
- Education

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Geneva, Switzerland
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The Analysis:
Exceptions for Libraries & Archives

- **First Study of E&L for Libraries and Archives:**
  - SCCR/17 – November 2008
  - 149 Member States

- **Most Recent Study:**
  - SCCR/35 – November 2017
  - 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

#### Statutory Provision:

**Preservation of Works.**

#### Library Services:
- Copies to prevent loss.
- Copies in response to loss or damage.
- Copies for deposit in other libraries for security or safekeeping.

<table>
<thead>
<tr>
<th>Primary:</th>
<th>Secondary:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reproduction.</td>
<td>Distribution (if the copies may be loaned by the library). Circumvention (if the original is secured by TPM).</td>
</tr>
</tbody>
</table>

#### Scope of Works:
- Published or unpublished works.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.

#### Condition of the Works:
- 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).

#### Purpose of Use:
- Preservation.
- Add to collections.
- Add to collections of another library or archive.

- 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

<table>
<thead>
<tr>
<th>Category of Library Activity</th>
<th>Own Implementation</th>
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<tbody>
<tr>
<td><strong>TOPIC:</strong> Preservation</td>
<td></td>
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<td><strong>Statutory Provision:</strong></td>
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**Identifies and Organizes:**
- Conceptual Topic
- Statutory Provision
- Library Services
### Closer Look at the Analysis: Column 2

<table>
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<tr>
<th>Activity</th>
<th>Owner’s Rights Implicated</th>
<th>Elements Statutory</th>
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**Identifies and Organizes:**
- Rights of Copyright Owners
- Rights Affected Primarily
- Rights Affected Secondarily
Closer Look at the Analysis:

**Column 3**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Elements of Statutory Exceptions</th>
<th>Elements Ongoing</th>
</tr>
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**Identifies and Organizes:**
- Scope of Works
- Condition of the Works
- Purpose of the Use

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### Closer Look at the Analysis: Column 4

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### 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
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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