

Copyright Exceptions for Libraries: A Typology Analysis



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



➤ ***Protecting Collections***

➤ Building, Preserving, Organizing

➤ ***Facilitating Access***

➤ Opening, Sharing, Publishing

➤ ***Promoting Cultural Heritage***

➤ Creating, Disseminating, Learning

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 Role of Libraries: *Scope of Copyright E&Ls*

- ▶ **Identification of Topics** (examples):
 - ▶ Preservation & Replacement Copies
 - ▶ Copies for Private Study & Research
 - ▶ Library Lending & Document Delivery
- ▶ **Additional Issues:**
 - ▶ Text Mining & Data Mining
 - ▶ Orphan Works
 - ▶ Limits on Infringement Liabilities

TOPIC:

Preservation of Works

Definition: Copyright exception authorizing libraries to make reproductions and other uses of copyrighted works for the primary purpose of preserving the works.

Category of Library Activity	Owner's Rights Implicated	Elements of Statutory Exceptions	Elements for Ongoing Consideration
<p>Statutory Provision:</p> <p>Preservation of Works.</p> <p>Library Functions:</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>Scope of Works:</p> <ul style="list-style-type: none">• Published or unpublished works.• Printed works.• Music & sound recordings.• Audiovisual works.• Works protected by neighboring rights. <p>Condition of the Works:</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).• Work must be in the collections of the library. <p>Purpose of Use:</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 to be made.• Permitted uses of the copies by the library or by users.• 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.

TOPIC:

Copies for Study & Research

Definition: Copyright exception authorizing libraries to make reproductions and other uses of copyrighted works for the purpose of accessing or providing copies of the works for study and other activities by library users.

Category of Library Activity	Owner's Rights Implicated	Elements of Statutory Exceptions	Elements for Ongoing Consideration
<p>Statutory Provision:</p> <p>Copies to Give to Users for Study & Research.</p> <p>Library Services:</p> <ul style="list-style-type: none">• Fulfilling user requests for individual copies of specific works.• Copies for individual private study.• Copies made for users with a view to publication (the library may supply a copy, but the requesting user must clear rights for the publication).	<p><i>Primary:</i></p> <p>Reproduction. Distribution. Making available.</p> <p><i>Secondary:</i></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.• Textual works.• Photographs and images.• Images accompanying textual work.• Music.• Sound recordings. <p><i>Purpose of Use:</i></p> <ul style="list-style-type: none">• Private study.• Private research.• Personal use.• View to publication. <p><i>Amount of the Work:</i></p> <ul style="list-style-type: none">• Short works, articles, book chapters.• Entire works or long works (if replacement not available on the market). <p><i>Condition of the Works:</i></p> <ul style="list-style-type: none">• Work must be in the collections.• Search the market to confirm whether available (before copying whole works).	<ul style="list-style-type: none">• Application of digital technologies.• Implications of license or agreement for acquisition of the work.• Implications of extended collective licensing.• Delivery of copies to users outside the library.• Relationship to interlibrary lending or document delivery.• Authority for cross-border transfers.• Liability for subsequent activity by user.• Multiple requests for the same work.• Photographs and other ancillary or embedded works.• Retaining a copy in the library's digital archive.

Closer Look at the Analysis: Column 1

works for study and on	Over Im
Category of Library Activity	
Statutory Provision:	Pri
Copies to Give to Users for Study & Research.	Re Dis Mc
Library Services:	Se
<ul style="list-style-type: none">• Fulfilling user requests for individual copies of specific works.• Copies for individual private study.• Copies made for users with a view to publication (the library may supply a copy, but the requesting user must clear rights for the publication).	Cir the sec

Identifies and Organizes:

- Conceptual Topic
- Statutory Provision
- Library Services

Closer Look at the Analysis: Column 2

and other activities
Owner's Rights Implicated
<i>Primary:</i> Reproduction. Distribution. Making available.
<i>Secondary:</i>
Circumvention (if the original is secured by TPM).

Identifies and Organizes:

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

Closer Look at the Analysis: Column 3

es by library users.

ts	Elements of Statutory Exceptions	E
	<p><i>Scope of Works:</i></p> <ul style="list-style-type: none">• Published or unpublished works.• Textual works.• Photographs and images.• Images accompanying textual work.• Music.• Sound recordings.	
e.		
f	<p><i>Purpose of Use:</i></p> <ul style="list-style-type: none">• Private study.• Private research.• Personal use.• View to publication.	
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	<p><i>Amount of the Work:</i></p> <ul style="list-style-type: none">• Short works, articles, book chapters.• Entire works or long works (if replacement not available on the market).	
	<p><i>Condition of the Works:</i></p> <ul style="list-style-type: none">• Work must be in the collections.• Search the market to confirm whether available (before copying whole works).	

Identifies and Organizes:

- Scope of Works
- Purpose of the Use
- Amount of the Work Used
- Condition of the Works

Closer Look at the Analysis:

Column 4

Elements for Ongoing Consideration

- Application of digital technologies.
- Implications of license or agreement for acquisition of the work.
- Implications of extended collective licensing.
- Delivery of copies to users outside the library.
- Relationship to interlibrary lending or document delivery.
- Authority for cross-border transfers.
- Liability for subsequent activity by user.
- Multiple requests for the same work.
- Photographs and other ancillary or embedded works.
- Retaining a copy in the library's digital archive.

Ongoing Considerations:

- Digital Technologies
- Role of Licenses
- Application of ECL
- Cross-Border Transfers
- Subsequent Uses

TOPIC:

Lending of Physical Works

Definition: Copyright exception authorizing libraries to make uses of copyrighted works in non-digital formats for purpose of lending those works to library users.

Category of Library Activity	Owner's Rights Implicated	Elements of Statutory Exceptions	Elements for Ongoing Consideration
<p>Statutory Provision:</p> <p>Concept: Exhaustion of rights of distribution upon first sale of a copy of a work.</p> <ul style="list-style-type: none">• Accepted as a customary practice in many countries.• Enacted as a statutory provision in some countries. <p>Library Services:</p> <p>Enables circulation of books and other works in the library collections.</p>	<p>Primary:</p> <p>Distribution.</p> <p>Secondary:</p> <p>Public display. Public performance.</p>	<p>Scope of the Works:</p> <ul style="list-style-type: none">• Generally applies to any type of work.• Right to lend a particular copy is sometimes allowed only to the owner of the copy; if so, a library may exercise this provision only with respect to works in the collections.	<ul style="list-style-type: none">• Application to works in the library collections by loan or license, but not legally owned by the library.• Variations for certain works, such as software and music.• Extension of the provision to permit public displays of copies, and perhaps performances.• Whether to have an explicit statute or to rely on a long-standing doctrine of exhaustion.

TOPIC:

General Library Exception

Definition: Copyright exception authorizing libraries to make uses of copyrighted works, but with no specific purposes explicitly stated in the statute.

Category of Library Activity	Owner's Rights Implicated	Elements of Statutory Exceptions	Elements for Ongoing Consideration
<p>Statutory Provision:</p> <p>Allows uses of works for the purposes of the library, without limitation to any specific purpose or activities.</p> <p>Library Functions and Services:</p> <p>Because no specific purpose or library-related activity is included, the general exception can allow any or all library services.</p>	<p><i>Primary:</i></p> <ul style="list-style-type: none">Reproduction.Distribution.Making available.Public display.Public performance. <p><i>Secondary:</i></p> <ul style="list-style-type: none">Derivative works.Moral rights.Anticircumvention.Translation rights.	<p><i>Scope of the Works:</i></p> <ul style="list-style-type: none">Works in the collection of the library.Works that are lawfully available to public.Whole or parts of works.Excluded types of works (e.g., computer programs). <p><i>Scope of the Use:</i></p> <ul style="list-style-type: none">Library purposes only.Regular activities of the library.Internal library activities only.Not for uses of works by library users.Use must be on the premises of the library. <p><i>Limitations on Activities:</i></p> <ul style="list-style-type: none">While a general library exception does not specify any library activities, it may include terms that condition or restrict application:Single copy only.Number of copies limited to needs of the purpose.Published or unpublished works.Disclosed works.Exclusion of certain works, such as computer software and databases.Consistent with conventional library practices.	<ul style="list-style-type: none">Of the libraries with a general library exception, only a few also have one or more specific exceptions.The Tunis Model Act of 1976 includes multiple terms that may not be suitable for contemporary needs and modern library services.Some countries include terms from the Three-Step Test in the language of a general exception.Application of digital technologies.Extension to works under neighboring rights.Need to advise users about responsibility for downstream uses.May be subject to general remuneration to rightsholders.

Objectives of the Analysis

- **Systematic Perspective to Copyright Limitations & Exceptions**
- **Identify Relationships among Interests:**
 - Libraries, Authors, Publishers, Public, More.
- **Understanding of Legal Standards**
- **Elements of E&L as Choices in Lawmaking**
 - Policies & Priorities
 - Domestic Legislation
 - International Instruments



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



Guiding Policy Decisions: Finding the Right Balance

➤ Domestic Legislation

- Which Elements are Most Important?
- What Domestic Needs Merit Attention?

➤ International Instrument

- Which Elements are Critical for Achieving Objectives in Member States?
- What Level of Detail Should be Confirmed?
- What Flexibilities Should be Allowed to States?
 - Allowed for a Changing Future?



Guiding Policy Decisions: *Finding the Right Balance*

- **Balance of Interests**
- **Balance of Practical Limits**
- **Balance of Diversity**
 - ***Diversity of Interests***
 - ***Diversity of Views & Priorities***
 - ***Diversity of Guidance Details***
 - ***Diversity of Works***

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Thank You!

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Notice to Readers

1. The museum library is a reference library and No print/ non-print material can be taken out from library.
 2. No membership is required to refer the library material.
 3. The NHHM Reference library is open to every one. Anybody can refer library books, journals and other material held in library.
 4. The library will remain open from Monday to Saturday (except Second Saturday, Sunday & Holidays) from 9.30 a.m. to 5.00 p.m.
 5. Limited photocopy facility of library books/documents is available.
 6. Enter your name in Reader's Registr and put your bag/belongings in the wooden cupboard available in the library but costly items like mony, mobile etc. put under own custody.
 7. For any type of help regarding library materials, contact to Library staff.
- Readers are requested to maintain the Library decorum.
Comments suggested may be registered in Suggestion Book.

SENIOR DIRECTOR
N. H. & H. Museum



Analysis

- **Better**

- Isolating

- **Elements**

- Choices



Analysis

- **Better**

- Isolating

- **Elements**

- Choices



