

Copyright Exceptions: Libraries and Archives

Kenneth D. Crews, J.D., Ph.D.

World Intellectual Property Organization

Singapore

29-30 April 2019



The Analysis:

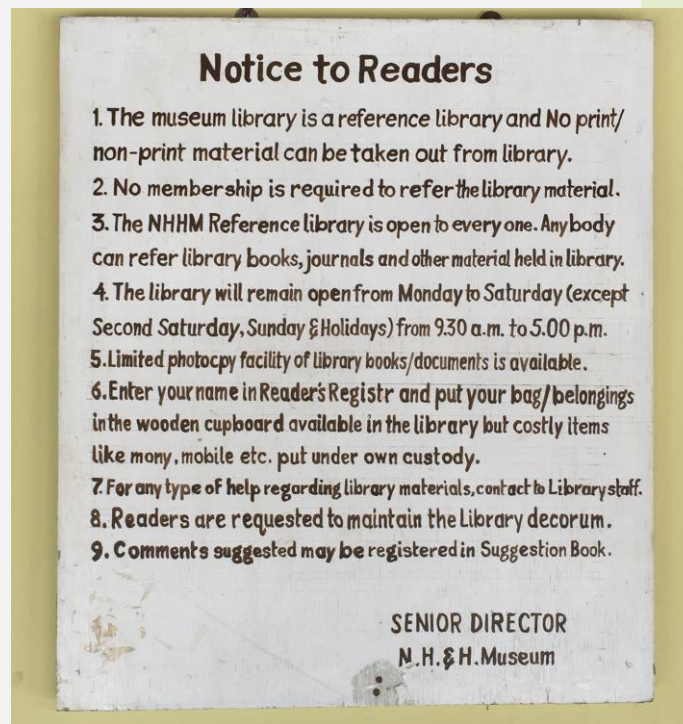
Exceptions for Libraries & Archives

➤ First Study of E&Ls 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 Objectives: *Why Copyright & 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**
 - Role of the Typologies

Data from the Region: Our Copyright Exceptions

Member States: 33 Represented

- **No Exception** for Libraries: **4 member states**
- **General Exception: 9**
 - *General Exception Only: 4*
- Copies for **Private Study: 22**
- Copies for **Preservation: 18**
- Copies for **Replacement: 17**
- **Other:** ILL; Document Delivery; Completion

Preservation Exception: Diversity of Statutes

- **Who** may Use the Exception?
 - *Libraries? Archives? Museums? More?*
- **What** may be Copied?
 - *All Works? Short Works? Published Works?*
 - *Specific types of Works?*
- **Conditions** of the Work?
 - *Physical Damage? Lost? Deteriorating?*
 - *Not on the Market?*
- **Medium** of Use: *Digital? Reprographic?*

Preservation Exception: Diversity of Statutes

➤ **Who** may Use the Exception?

➤ *Country A: Libraries.*

➤ *Country B: Libraries and archives.*

➤ *Country C: Public libraries, non-commercial document centers, educational establishments, and scientific and cultural institutions.*

➤ *Country D: Cultural institution, defined as a library, archive, museum, or gallery that is publicly funded in whole or in part.*

Preservation Exception: Diversity of Statutes

➤ **What** may be Copied?

➤ Country A: Works (in the collection).

➤ Country B: Non-digital works.

➤ Country C: Literary, dramatic, or musical works, including any artistic work contained within the work and the typographical arrangement.

➤ Which takes us to the **Typologies**:

Category of Library Activity	Owner's Rights Implicated	Elements of Statutory Exceptions	Elements for Ongoing Consideration
TOPIC: Preservation			
<p>Statutory Provision:</p> <p>Preservation of Works.</p> <p>Library Services:</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><i>Scope of Works:</i></p> <ul style="list-style-type: none"> • 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. <p><i>Condition of the Works:</i></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). <p><i>Purpose of Use:</i></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. • 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

Category of Library Activity	Own Impl
TOPIC: Preservation	
Statutory Provision: Preservation of Works.	Prim Repr
Library Services: <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. 	Seco Distri copie loane librar Circu the c secu

Identifies and Organizes:

- Conceptual Topic
- Statutory Provision
- Library Services

Closer Look at the Analysis: Column 2

Activity	Owner's Rights Implicated	Elements Statutory
<p>of</p> <p>ices:</p> <p>event loss. response to ge. deposit in s for</p>	<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</p> <ul style="list-style-type: none"> • Pu • Pri • Mu • Au • Wa • rig • Ex • co • Wa • of <p>Condi</p> <ul style="list-style-type: none"> • At risk of • Damage • stolen. • Fragile. • Rendere • Obsolete • Rare wo • Culturall • Replace • the mark • work). <p>Purpose</p>

Identifies and Organizes:

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

Closer Look at the Analysis: Column 4

Questions	Elements for Ongoing Consideration
<p>• Published works.</p> <p>• Recordings.</p> <p>• Neighboring works (e.g., sound recordings).</p> <p>• Collections.</p> <p>• Works:</p> <p>• Original, lost, or destroyed.</p> <p>• Works made available on digital technology.</p> <p>• Works made available on digital technology.</p> <p>• Works made available on digital technology.</p>	<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. • 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.

Ongoing Considerations:

- Digital Technologies
- Role of Licenses
- Application of ECL
- Cross-Border Transfers
- Proof & Documentation

Objectives of the Analysis

- **Systematic Perspective to 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&Ls as Choices**

- Choices as a Manifestation of Policy
- Choices as an Identification of Priorities

➤ **Which Elements Serve Our Needs?**

- In Domestic Legislation and International Law?

Copyright Exceptions: **Libraries & Archives**

Thank You!

Kenneth D. Crews, J.D., Ph.D.

World Intellectual Property Organization

Singapore

29-30 April 2019

