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PROGRAMME



# Regional Seminar on Building Awareness of the Principles and Functions of Copyright in Today's Changing Environment

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**Copyright Exceptions and Limitations in the Digital  
Environment in Selected Cases**

By

Nic Garnett, Interight, Bangkok

WIPO has paid particular attention to this complex area of copyright for some years:

Link to Studies:

<http://www.wipo.int/copyright/en/limitations/>

Refer to **WIPO Study On Limitations And Exceptions Of Copyright And Related Rights In The Digital Environment**

prepared by **Mr. Sam Ricketson**

Professor of Law, University of Melbourne  
and Barrister, Victoria, Australia

[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=16805](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805)

## Professor Ricketson refers to 3 categories of limitations and exceptions:

- ❑ **Limitations** - provisions that exclude, or allow for the exclusion of, protection for particular categories of works or material
- ❑ **Exceptions** - provisions that allow for the giving of immunity (usually on a permissive, rather than mandatory, basis) from infringement proceedings for particular kinds of use, for example, where this is for the purposes of news reporting or education, or where particular conditions are satisfied.
- ❑ **Compulsory licences** - provisions that allow a particular use of copyright material, subject to the payment of compensation to the copyright owner

## Berne Convention – Limitations & Exceptions

<i>SOURCE</i>	<i>SUBJECT MATTER</i>	<i>JUSTIFICATION</i>	<i>L, E OR CL</i>	<i>M OR P</i>	<i>RIGHTS</i>	<i>CONDITIONS</i>
2(4)	<b>Official texts (LW)</b>	Informatory	L	P	All	None
2(8)	<b>News of the day and press information (LW)</b>	Informatory	L	M	All	None
2bis(1)	<b>Political and legal speeches (LW)</b>	Informatory	L	P	All	None
2bis(2)	<b>Public lectures, etc (LW)</b>	Informatory	E	P	R, B	Informatory purpose
9(2)	<b>General (All works)</b>	General	E, CL	P	R	3 step test
10(1)	<b>Quotation (All works)</b>	Informatory	E, CL	M	All	1 Fair practice 2 Justified by purpose
10(2)	<b>Illustration in teaching (All works)</b>	Educational	E, CL	P	R, B	1 Illustration 2 Fair practice
10bis(1)	<b>Newspaper, etc Articles, broadcast works (LW)</b>	Informatory	E	P	R, B	1 No reservation 2 Indication of source
10bis(2)	<b>Reporting current events (all works)</b>	Informatory	E	P	Photos, cine, B	Informatory purpose
11bis(2)	<b>Broadcasting (all works)</b>	Public access	CL	P	B	1 Equitable remuneration 2 Moral rights respected
11bis(3)	<b>Ephemeral recording (music &amp; words)</b>	Convenience, archival preservation	E, CL	P	R	1 Must be “ephemeral” 2 Exceptional documentary character” (archival)
13(1)	<b>Recording of music and words</b>	New industry	CL	P	R	1 Already recorded 2 Equitable remuneration
14bis(2)(b)	<b>Cine works–co-authors (limited)</b>	Convenience	E	P	R, B, PP	No contrary stipulation
17	<b>Censorship (all works)</b>	State power	L	P	All rights	Must be for censorship reasons, none other

LW/ literary works; E/ Exceptions; L/ Limitations; CL/ Compulsory license; R/ Reproduction; B/ all rights under art 11bis(1); PP/ Public performance; PR/ Public recitation; P/ Permissive; M/ Mandatory

# National Approaches to Limitations & Exceptions

- ❑ Open-ended, formulaic provisions:

e.g. Section 107 of the US Copyright Act 1976

- ❑ Defined lists:

e.g. Article 5 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

## **The three step test sets the boundary for limitations and exceptions**

Berne Convention, Art. 9(2):

It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works [protected under the Convention] 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.

# Other International Agreements

## ❑ TRIPS

Members shall confine limitations and 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

## ❑ WIPO Copyright Treaty 1996 (WCT)

Agreed statement: The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention.

Agreed statement to Article 10: It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

## ❑ Trans-Pacific Partnership 2016 (TPP)

# Temporary Copies

There are 3 general principles:

- ❑ Temporary reproductions as a matter of international and national law constitute reproductions governed by copyright
- ❑ The right of reproduction as it relates to temporary copies may be subject to an exception
- ❑ Any exception must comply with the three step test



# **The European Model: Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society**

## **Article 2: Reproduction right**

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part

## **Article 5: Exceptions and limitations**

1. Temporary acts of reproduction referred to in Article 2, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable:

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use

of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2

# Safe Harbour & Notice and Take Down

## TPP

### Article 18.82: Legal Remedies and Safe Harbours

1.....(b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.....

2.....(c) storage, at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider; and (d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), .....(a) With respect to the functions referred to in paragraph 2(c) and paragraph 2(d), these conditions shall include a requirement for Internet Service Providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the copyright infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice of alleged infringement from the right holder or a person authorised to act on its behalf

# Issues

- Striking the balance between cultural creativity and technological innovation
- Striking the balance between the interests of rights holders and rights users
- Enforcing rights on the internet
- The use of Technical Protection Measures
- Managing the scope of limitations and exceptions
- Establishing efficient licensing mechanisms

# Conclusions

- ❑ Harmonise the definition, understanding and application of the exception relating to temporary copies
- ❑ Review the working of safe harbour provisions with particular reference to qualifying internet service providers
- ❑ Governments must work with rights holders and rights users to establish the necessary infrastructure for the fair and efficient management of rights