



Limitations and Exceptions to Copyright and Related Rights

Michele Woods
Director
WIPO Copyright Law Division

**Ono Academic Law School
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Major Topics on SCCR Agenda

- Protection of broadcasting organizations
- Limitations and exceptions:
 - Libraries and archives
 - Education and research institutions
 - Persons with other disabilities
- Previously MVT – now covered by ABC



Future SCCR Agenda Items

- New agenda items suggested:
 - Resale royalty right proposed at SCCR/27
 - Orphan works
 - Topics without normative goal: licensing, collective management
- Request for procedure to choose topics
- Timing?

Limitations and Exceptions



L&Es in general

- Limits to the object of copyright protection: ideas, theories, simple data, and fixation requirements
- Exclusion of some categories of works (e.g. laws, administrative acts)
- Permitted uses without authorization and remuneration (e.g. quotation, illustration, news reporting, “fair use”)
- Permitted uses by law with remuneration: mandatory or compulsory licensing system (e.g. private copy + levies, mechanical reproduction)

International Framework

- The Berne Convention includes several provisions related to exceptions and limitations.
- Only one provision is mandatory for contracting parties: Article 10(1) on quotations.
- Libraries and archives are not mentioned amongst allowable exceptions, but Article 9(2), better known as the three-step-test, sets a framework for the drafting of copyright exceptions in the national laws of member countries.
- Three-step test also found in TRIPS, WCT, WPPT

Three-Step Test

- *“It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works 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.**”*

TRIPS Agreement

- Article 13: The TRIPs agreement TST version:
 - *“Members shall confine limitations or 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.”*
- Widens the scope of applicability of the three-step-test to limitations and exceptions related to all economic rights.
- Declares the test in mandatory terms.
- Reference the beneficiaries as “rights holders” as opposed to “authors”.
- Enforcement mechanisms.

WIPO Copyright Treaty

- Reaffirms the authority of countries to develop exceptions to the rights of copyright owners, in terms parallel to the three-step test of Berne, through Article 10(1):
 - *“Contracting parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.”*
- Does not contain any specifications on the limitation to the right of reproduction in the context of reprographic reproductions by libraries or archives.

WCT (cont.)

- Agree Statement concerning Art. 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.*
 - *It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”*

Libraries and Archives

- Document **SCCR/23/8** adopted during **SCCR 24** – 56 pages
- Working Document Containing Comments on and Textual Suggestions Towards an Appropriate International Legal Instrument (in Whatever Form) on Exceptions and Limitations for Libraries and Archives
- US Statement of Objectives and Principles



Libraries and Archives (cont.)

- Vast majority of countries have library limitations or exceptions; wide variation
- IFLA treaty proposal
- SCCR working text
- No recommendation to 2014 and 2015 Assemblies
- Next SCCR meeting December 2015

WIPO Assemblies



Libraries and Archives: Topics for Discussion

- Preservation
- Right of Reproduction and Safeguarding Copies
- Legal Deposit
- Library Lending
- Parallel Importations
- Cross-Border Uses
- Orphan Works, Retracted and Withdrawn Works, and Works Out of Commerce
- Limitations on Liability of Libraries and Archives
- Technological Measures of Protection
- Contracts
- Right to Translate Works

Libraries and archives (cont.)

- No recommendations at 2015 GA
- Next steps
 - SCCR to continue substantive discussions based on the Chair's non-paper
 - Study on Copyright Limitations and Exceptions for Museums to be presented December 2015
 - Possible regional seminars or meetings

Education and research and persons with other disabilities

- Many countries have education limitations and exceptions; wide variation
- African Group treaty proposal
- SCCR working text; not yet adopted by Committee
- Work plan – 2015 deadline for recommendation to Assemblies – no recommendation

Education and research and persons with other disabilities (cont.)

■ No recommendations for GA

↔ 2012 GA Mandate

“target to submit recommendations by SCCR 30”

■ Requests from Member States

- Secretariat to update regional studies of 2009 to cover all WIPO Member States, and to consolidate them into one single study
- Secretariat to prepare a scoping study on limitations and exceptions for persons with other disabilities (e.g. captioning for hearing impaired)

Education and research and persons with other disabilities

- Document **SCCR/24/8 Prov.** (not yet adopted) – 60 pages
- Provisional Working Document Towards an Appropriate International Legal Instrument (in Whatever Form) on Limitations and Exceptions for Educational, Teaching And Research Institutions and Persons with Other Disabilities Containing Comments and Textual Suggestions



Education and research and persons with other disabilities: Topics for Discussion

- Preamble
- General provisions
- Flexibilities
- Three-step test
- Scope of the three-step test
- Obligations/proposals to update exceptions
- Ongoing WIPO work plan/best practices and experiences
- Uses: Educational, Teaching and Research institutions
- Uses: In classroom



Education and research and persons with other disabilities: Topics for Discussion (cont.)

- Uses: Outside classroom
- Availability on an interactive basis and communication to the public for educational purposes
- Anthologies and Chrestomathies
- Distance learning
- Research
- Reverse engineering
- Persons with other disabilities
- General comments
- Broader topics with implications for education: technology
- Orphan works and withdrawn or out-of-print works



Education and research and persons with other disabilities: Topics for Discussion (cont.)

- Public domain
- Contracts
- ISP Liability
- Importation and exportation
- Public health or security



Recent L&E Studies

- Update and consolidation of Crews library exceptions studies
- Study on limitations and exceptions for museums

Other Recent Study Topics

- Comparative copyright law – videogames
- Comparative copyright law – ISP liability
- Comparative law – copyright relinquishment

Accessible Books Consortium

■ Accessible Books Consortium:

- Official launch in June 2014
- Permanent structure
- Permanent WIPO activity

ABC Major Areas of Activity

- TIGAR project – database of accessible works available from many authorized entities
- Capacity building – helping developing countries to build institutions and develop accessible works (especially textbooks)
- Inclusive publishing – work on ways to have more works “born accessible”



Thank you!

www.wipo.int/copyright

Michele.Woods@wipo.int

