Copyright Exceptions for Libraries and Research:
Internat’l Perspectives and Local Action

Kenneth D. Crews, J.D., Ph.D.
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Thank You

Why Libraries?
• Why Copyright and Libraries?
  – Mission of Libraries:
    • To Preserve and Provide Access to Information Resources
  – Mission of Copyright:
    • To Encourage the Creation of New Works
    • To Encourage their Public Dissemination
    • To Serve Private Interests of Ownership and Public Interests of Access and Creativity

EIFL
American University of Armenia
Why Libraries?

- Why Libraries and Copyright?
  - Legal Deposit
  - Published Works
  - Building Collections of the National Library
- Libraries as Economic Catalyst
  - Purchasers of Books, Music, Film, and More
  - Licensing of Databases and Digital Collections
- Libraries as Users of Copyrights
  - Public Lending
  - Reproduction and Distribution for Specific Needs

A Copyright Interlude

- Scope of Works
  - Nearly Unlimited
- Automatic Copyright Protection
- Long Duration
  - Life of the Author, plus 50 Years or More
- Broad Scope of Rights
  - Reproduction, Distribution, and More
- Risks and Penalties
- Subject to Limitations and Exceptions

Why Libraries?

- Why Library Exceptions in Copyright?
  - The British Copyright Act of 1956
  - U.S. Copyright Act of 1976
  - Tunis Model Act of 1976
  - Multinational Trade Agreements
- Why WIPO?
  - Administration of Berne and Other Agreements
  - Growing Importance of Exceptions
  - Libraries, Education, and Disabilities
Why Libraries?

• Why Politics?
  – Libraries are Information
  – Information can be Challenging

• Politics and Economics
  – Copyright as Border between Libraries and Publishers: “Rights vs. Limitations”
  – Libraries build Resources
  – Libraries offer Public Access
  – Libraries make and share Copies

Why Libraries?

• The Activities of Libraries
  – Preservation and Replacement
  – Copies for Research and Study
    • “Making Available” on Dedicated Terminals
  – Interlibrary “Loans”
  – Lending and “Public Lending”
  – Needs of Persons with Disabilities
  – Mass Digitization
  – Dealing with “Orphan Works”

The Studies: 2008 to 2015

SCCR 30, June 2015

SCCR 17, November 2008

SCCR 29, December 2014
Role of WIPO

• World Intellectual Property Organization
  – Agency of the United Nations
  – Administration of Multiple IP Treaties
    • Berne Convention
    • WIPO Copyright Treaty
    • WIPO Performances Treaty
    • Marrakesh Treaty
  – Member States: 188
  – Exceptions beginning 2005

The 2015 Study

• WIPO: 188 Member Countries
• Found: Statutes from all 188 Countries
• No Library Exception: 32 Countries
• General Exception Only: 31 Countries

General Library Exception

From the Tunis Model Act:
“the reproduction, by photographic or similar process, by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, of literary, artistic or scientific works which have already been lawfully made available to the public, provided that such reproduction and the number of copies made are limited to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author...
Scope of Exceptions

- Preservation and Replacement
- Private Study and Research
  - Making Available on the Premises
- Copy Machines in the Library
- Limitations on Remedies
- Technological Protection Measures
  - “Anticircumvention”
  - Exemptions for Libraries

Context of Exceptions

- Structure of Copyright Law
  - Grants Right to Owners
  - Subject to Limitations & Exceptions
- Multinational Treaties & Agreements
  - Berne Convention
  - WIPO Copyright Treaty
  - WTO and TRIPs
- Regional Agreements
- Subject to the Three-Step Test

Berne: Three-Step Test

Article 9(2): “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

Article 13: “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.”

Diversity of Exceptions

- No Library Exception
- General Library Exception
- Preservation or Replacement
- Private Research or Study
  - Making Available on the Premises
- Anticircumvention of Technological Measures
  - Exemptions for Libraries
Yet there are Patterns

- British Copyright Act, 1956
- Tunis Model Statute, 1976
- Bangui Agreement
- Cartagena Agreement
- Regional Trends
- Even the U.S. Copyright Act
  - Liberia
  - South Africa

The Bangui Agreement

Notwithstanding the provisions of Article 9, a library or archive service whose activities are not directly or indirectly profit-making may, without the consent of the author or other holder of copyright, make individual copies of a work by means of reprographic reproduction,

(i) where the work reproduced is an article or a short extract from a written work, other than a computer program, with or without illustration, published in a collection of works or in an issue of a newspaper or periodical, and where the purpose of reproduction is to meet the request of a natural person;

(ii) where the making of such copy is for the purpose of preserving and, if necessary, in the event of it having been lost, destroyed or made unusable, replacing it or, for replacing a copy that has been lost, destroyed or rendered unusable in the permanent collection of another library or other archive service.

Red: No Exception
Green: General Only
Yellow: Bangui Agreement
The Bangui Influence?

- Mali 2008
- Moldova 2010
- Oman 2008
- Rwanda 2009
- Sierra Leone 2011
- Sri Lanka 2003
- Tunisia 2009
- Turkmenistan 2012

Red: No Library Exception

Green: General Exception Only

Diversity of Exceptions

- Who: Libraries, Archives, Museums?
- What: Published or Unpublished? Articles or Full Works? Movies or Music?
- When: During Term of Economic Rights? After the Term?
- Why: Purpose? Conditions and Proof?
- How: Analog or Digital?
Armenia (I)

Replacement (Art. 24(3)(a))
- **Who:** Libraries, Archives, and Educational or Cultural Institutions
- **What:** Lawfully Published Works
- **Why:** Restoring or Replacing a Work in the Collections
- **How:** Reprographic Reproduction

Armenia (II)

Research or Study (Art. 24(3)(b))
- **Who:** Libraries and Archives
- **What:** Articles and Short Works published in collections; Short Extracts of published works
- **Why:** Study and Research at the request of a user
- **How:** Reprographic Reproduction

Comparable Statutes

- **Kazakhstan**
  - No Preservation Provision
  - No Digital Technology
  - Published Works Only
- **Similar Statutes**
  - Kyrgyzstan
  - Tajikistan
  - Moldova
Breaking the Pattern

- Belarus
  - Allows use of Digital Technologies
- Czech Republic
  - Who: Greatly Expanded
  - What: Wide Range including Unpublished Works
  - How: Allows any Media
- Uzbekistan
  - Adds “Making Available” on the Premises

India (I)

- General Library Exception
  - For Use of the Library
  - Limited to Books and a few other works
- Preservation
  - Noncommercial Public Libraries
  - Any type of work
  - Preservation in Digital Medium

India (II)

- Research and Study
  - Who: Library, Museum, or other Institution allowing Public Access
  - What: Unpublished literary, dramatic, or musical works
  - Why: Research, private study, or with a view to publication
  - When: If more than 60 years from the date of death of the author
  - How: Medium Not Specified
USA (I)

- Section 108 of the US Copyright Act
- Enacted in 1976, Amended 1998
- Statutes along the British Model
- Main Subjects:
  - Preservation and Replacement
  - Copies for Research or Study
    - Short Works
    - Entire Works
  - Copies for Interlibrary Loans

USA (II)

- The Good:
  - Relatively Clear Language
  - Addresses Traditional Needs
  - Preservation and Replacement
    - Applies to all types of works
  - Research or Study
    - Allows copies of full articles, book chapters, and even entire books in some instances
  - Preserves Fair Use

USA (III)

- The Not-So-Good:
  - Does not Address Innovative Needs
    - Orphan Works
    - Mass Digitization
  - Preservation and Replacement
    - Digital Copies limited to “Premises” of the Library
  - Research or Study
    - Generally Print Works Only
  - Creative “20-Year” Rules disappoints
  - Fair Use is Open to Debate
Innovations in Statutes:  
 Relatively Few

- Canada
  - Eased Limits on Research Copies
  - Allows Interlibrary Loans
- Russia
  - Expanded and Detailed Provisions
  - Explicit application of Digital Technologies
- United Kingdom
  - Eased Limits on Research Copies
  - Expanded Provisions for Diverse Works & Media
- Japan and France
  - Digital Programs at National Libraries

Innovations in Statutes:  
The European Union


Permitted Exception: “communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of [libraries and archives] of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections”

Implications

- Libraries and Archives are a Priority
  - Enacted in Most Countries
- Exceptions Debated in Additional Countries
  - United States, Australia, Brazil
- Uneven Application of Digital Technologies
- Little Innovation in Scope and Language
- Influence of Models and Agreements
Implications, Part II

- Political Realities
- Competing Interests
- Economics & Culture
- History
- Regional Agreements
  - European Union
  - Bangui Agreement
- Role for WIPO – Possible New Treaty

The Challenge Ahead

- Application to Digital Technologies
- Expansion of Library Services
  - Interlibrary Loans
  - Services to the Visually Impaired
  - Mass Digitization for Preservation
  - Relationship to Licenses
  - Use of Orphan Works
- First Sale & Digital Exhaustion of Rights
- Cross-Border Delivery of Works

Copyright Exceptions for Libraries and Research

Thank You!

Twitter: @kcrews