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
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 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”
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: 191
  - Exceptions beginning 2005

The Studies: 2008 to 2017

SCCR 30, June 2015

SCCR 17, November 2008

SCCR 29, December 2014

Watch for a 2017 Study on the WIPO website.

The 2015 (2017) Study

- **WIPO: 188 Member Countries**
  - Now 191
- **Found: Statutes from all 188 Countries**
  - All 191 Countries Today
- **No Library Exception: 32 Countries**
  - Today: 28 Countries
- **General Exception Only: 31 Countries**
  - Today: 21 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

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.”

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?

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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

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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
Armenia (III)

Improvements and Adjustments?
- Digital Technologies
- Preservation (not just Replacement)
- Completion
- Flexibility of Amounts
- Include Unpublished Works
- Access by Dedicated Terminals
- Role of Licenses
- Relationship to Fair Use or Fair Practice

Armenia (Future Possibilities?)
- Digital Technology
- Preservation
- Interlibrary Loan/Document Supply
- Internal Library Use
- Orphan Works
- Data and Text Mining/Research Support
- Education Support
- Persons with Disabilities
- Fair Use / Fair Practice

What is Fair Use?
- Section 107 of the Copyright Act
- Based on Four Factors:
  - Purpose of the Use
  - Nature of the Work Used
  - Amount and Substantiality of the Portion
  - Effect on the Market for the Work
Bill Graham Archives v. Dorling Kindersley Ltd., 448 F.3d 605 (2nd Cir. 2006).

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

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
- Needs of Education
  - Classroom Copies
  - Online and Distance Education
  - Library Services
- Cross-Border Delivery of Works
- Fair Use / Fair Practice

Copyright Exceptions for Libraries and Research

Thank You!

Twitter: @kcrews