

# **Committee on Copyright and other Legal Matters (CLM)**

**Standing Committee on Copyright and Related Rights (SCCR): 17th Session, Geneva, 3-7 November 2008**

## **Copyright Limitations and Exceptions for Libraries**

Effective copyright law must balance the interests of creators of intellectual works and the users' rights to use protected works to further creative endeavour, learning and research. The exclusive rights of copyright held by the creator are tempered by exceptions and limitations for users. For libraries, copyright exceptions are critical to meeting our missions to support learning and research, promote the flow of information, provide equitable access to information to the public, preserve cultural heritage and encourage free expression. Without limitations to copyright, the advancement of knowledge and innovation could not proceed.

There is an integral link between limitations and exceptions and the fundamental human rights expressed in the United Nation's Universal Declaration of Human Rights: equality, the right to education, freedom of expression and the right to access culture and share in scientific advancement. While copyright is mandated by international treaties, most limitations and exceptions are optional, dependent upon the statutes in each country. This has resulted in great variations that are often in conflict with one another in a globalized, networked world. While owners' rights have been strengthened and extended, limitations and exceptions for users have not, creating a critical imbalance.

Libraries support the need for creators to be rewarded for their work. However, libraries rely on limitations and exceptions to fulfil their mandate to collect, organize, preserve, and make available the world's cultural and scientific heritage. Library exceptions expand the accessibility of library collections, support the research needs of library users, and enhance education. They allow libraries to copy works in copyright for the purposes of teaching, research, and preservation, and to serve people with disabilities who may require special formats for accessibility.

Information is the raw material of the knowledge society, therefore exceptions and limitations have grown in importance. In his Study on Copyright Limitations and Exceptions for Libraries and Archives (2008), Kenneth Crews analyzed the statutes of 149 WIPO Member States and found that 128 of them had at least one library exception. However, 21 countries have no library exception in their copyright law, only 72 have provisions that allow copying for preservation, and just 74 countries have exceptions for research or study.

Exceptions are important to libraries everywhere, but they are of critical importance to developing countries whose capacity to access knowledge is defined primarily by exceptions and limitations.

Effective library programs and services are a means of advancing knowledge. Libraries must have limitations and exceptions to copyright law to fulfil their public service mission.

It should be permissible for work that has been lawfully acquired by a library or other educational institution to be made available over a network in support of classroom teaching or distance education in a manner that does not unreasonably prejudice the rights holder. Subject to appropriate limitations, a library or educational institution should be permitted to make copies of a work in support of classroom teaching.

■ **Research or private purposes**

Copying individual items for or by individual users should be permitted for research and study.

■ **Preservation**

A library should be permitted to make copies of published and unpublished works in its collection for purposes of preservation including migrating content to different format.

■ **Orphan works**

An exception is needed to resolve the problem of orphan works, where the rightsholder cannot be identified or located.

■ **Interlibrary document supply**

This is a collaborative system of resource sharing amongst libraries because no single library can own every book, journal or published work. Libraries should be able to supply documents to the user directly or through the intermediary library irrespective of the format and the means of communication.

■ **Provision for persons with disabilities**

A library should be permitted to convert material from one format to another to make it accessible to persons with disabilities. The exception should not be format-specific to accommodate technological advances. To avoid duplication of costly alternative format production, cross-border transfer should be permitted.

■ **Technological protection measures (TPMs) that prevent lawful uses**

It should be permissible for libraries and their users to circumvent a technological protection measure for the purpose of making a non-infringing use of a work. Implementation of anti-circumvention legislation in many nations exceeds the requirements of Article 11 of the WIPO Copyright Treaty, effectively eliminating existing exceptions in copyright law.

■ **Contracts v statutory exceptions**

Contracts should not be permitted to trump exceptions and limitations. A British Library study of 100 contracts offered to it found that 93% overrode exceptions to copyright law. The goals and policies providing for exception are important statements of national and international principle and should not be varied by contract.

■ **Copyright term**

Consistent with the Berne Convention, the term of copyright should be the life of the author plus 50 years. The term of copyright or related rights should not be further extended. A robust public domain provides new opportunities for creativity, research, and scholarship.

The Library Copyright Alliance, the International Federation of Library Associations and Institutions, and Electronic Information for Libraries call for the limitations and exceptions to copyright for libraries as outlined in this document as a minimum. We endorse the proposal presented at the Sixteenth Session of the WIPO Standing Committee on Copyright and Related Rights by Brazil, Chile, Nicaragua, and Uruguay for work related to exceptions and limitations.

We believe that there is a need for WIPO SCCR to adopt a work plan that will identify national models and best practices and will achieve consensus on a recommended set of minimum exceptions and limitations, and that will implement the appropriate recommendations from the WIPO Development Agenda.

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