

**Copyright Exceptions for  
Libraries & Archives:  
Insights and Lessons**



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**Why Copyright?**

- **Copyright has Expansive Scope**
  - Works, Rights & Term of Protection
- **Mission of Libraries and Copyright Law**
  - **Law:** To Encourage **Creation** and **Dissemination** of New Creative Works
  - **Libraries:** To **Preserve** and Provide **Access** to the Full Range of Information Resources
- **Many Library Activities have immediate implications for Copyright Law**

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**The Studies: 2008 to 2015**

SCCR 30, June 2015

Available: <http://bit.ly/1GjpcGr>



SCCR 17, November 2008

Available: <http://bit.ly/1tB8ryb>

SCCR 29, December 2014

Available: <http://bit.ly/1A9ImgV>

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### 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.**"

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### The 2015 Study

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



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### 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

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### 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- **What:** Published or Unpublished?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:** Conditions and Proof?
- **How:** Analog or Digital?

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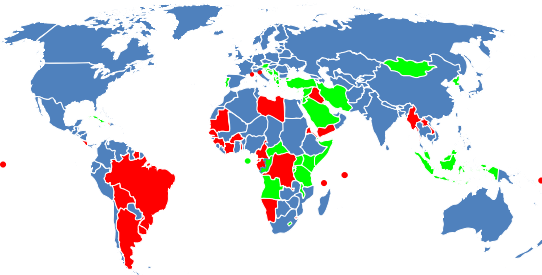
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**Red:** No Library Exception  
**Green:** General Exception Only



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### The British Model

- **Founded in the Copyright Act of 1956**
- **Multiple Specific Provisions**
- **Preservation and Research (added later)**
- **Copies for Research and Study**
  - Conditions
  - Evidence that the use is for private study

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**The British Copyright Statute:**

Distinctive Traits, 1956-1988

- 1956: First "library exception" statute
  - Copies of Articles
  - Copies of Published Works
  - Copies of Unpublished Works (after many years)
  - Limited Qualified Libraries
  - Restricted Conditions

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**Former British Colonies:  
Imperial Statute Model**

Antigua & Barbados	Egypt	Saint Lucia
Australia	Fiji	Saint Vincent & The Grenadines
Bahamas	Ghana	Sierra Leone
Belize	Grenada	Singapore
Bhutan	Jamaica	Trinidad & Tobago
Botswana	Nepal	United Arab Emirates
Brunei	New Zealand	United States
Darussalam	Nigeria	Zimbabwe
Canada	Pakistan	
Dominica	Qatar	

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**USA**

- 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

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### What About Fair Use?

- **Relationship to Section 108**
  - Preserved under Section 108(f)(4)
- **How is it Preserved?**
  - **Alternative** to Section 108?
  - Defined **limit** on Section 108? (HathiTrust)
  - Means for **defining** Fair Use?
  - **Supplement** to Section 108?
  - **Complement** to Section 108?

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### Integration of 107 and 108

- Fair Use as **Complement** to Section 108
- **Enhancement of Section 108**
- **What the US Lacks:**
  - Exception for Personal Copies
  - Exception for Transitory Copies
  - “View to Publication”
- **Fair Use fills those Gaps**
- **Fair Use covers the User’s actions, while Section 108 covers the Library.**

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### Innovations in Statutes:

*Relatively Few*

- **Canada**
  - Eased Limits on Research Copies & ILL
- **Russia**
  - Expanded and Provisions & Digital Technologies
- **United Kingdom**
  - Eased Limits on Research Copies
  - Expanded Provisions for Diverse Works & Media
- **Japan and France**
  - Digital Programs at National Libraries
- **European Union**
  - Orphan Works Directive (2012)
  - Dedicated Terminals (2001)

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### Innovations in Statutes:

*The European Union*

- Orphan Works Directive, 2012
- Information Society Directive, 2001

*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”

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### United Kingdom

- Expanded Provisions
  - Supply to Other Libraries, Preservation, More
- Copies for Research & Study
  - Published & Unpublished Works
- Expanded Technologies
- Orphan Works
- Dedicated Terminals

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### Canada

- Expanded Provisions
  - Preservation & Replacement
- Copies for Research & Study
- Interlibrary Loan
  - Requests for Private Study
  - Intermediate Copies
  - Digital Technologies

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### Poland

- Digital Preservation of Unpublished Works
- Digital Access on Dedicated Terminals
- Orphan Works Directive
- MOU for Out-of-Commerce Works
- Quotation Right
- Incidental Use
- Repeal of *Domaine Public Payant*

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### 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

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**Copyright:**  
*Exceptions for Libraries and Archives*



**Thank You!**

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