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

The Studies: 2008 to 2015

SCCR 30, June 2015

SCCR 17, November 2008

SCCR 29, December 2014
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.”

The 2015 Study

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

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
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- **What:** Published or Unpublished?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?

Red: No Library Exception
Green: General Exception Only

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
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  - Copies of Unpublished Works (after many years)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

Former British Colonies: Imperial Statute Model

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

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
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?

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.

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
  – Dedicated Terminals (2001)
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”

United Kingdom

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  - Published & Unpublished Works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

Canada

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


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

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 Archives

Thank You!