

TABLE OF CONTENTS

Preamble

I. General Provisions

- Article 1: Relationship with Other Agreements
Article 2: Beneficiaries and Scope of Protection under this Treaty
Article 3: Nature of the Exceptions

II. Rights for Libraries and Archives (Mandatory Exceptions or Limitations to Copyright and Related Rights)

- Article 4: Right to Parallel Importation
Article 5: Right to Cross-Border Uses of Works and Materials Reproduced Under an Exception or Limitation
Article 6: Right to Library Lending
Article 7: Right to Library Document Supply
Article 8: Right of Preservation of Library and Archival Materials
Article 9: Right to Use of Works and Other Material under Related Rights for the Benefit of Persons with Disabilities
Article 10: Right to the Use of Works for Education, Research and Private Study
Article 11: Right to the Use of Works for Personal and Private Purposes
Article 12: Right to Access Retracted and Withdrawn Works Published in Databases or on Websites
Article 13: Right to Use of Orphan Works

III. Additional Protections

- Article 14: Obligation to Respect Exceptions to Copyright and Related Rights
Article 15: Obligations Concerning Technological Protection Measures
Article 16: Limitation on Liability for Libraries and Archives
Article 17: Other Exceptions and Limitations Not Mandated by this Treaty
Article 18: Provisions on Implementation and Enforcement of Exceptions And Limitations

IV. Administrative and Final Clauses

Articles 19 - 28

DRAFT Working Document Version 3.0
5 April 2011

(with explanatory notes)

Preamble

The Contracting Parties,

Acknowledging the role of libraries and archives as repositories of works that comprise the cumulative knowledge of the world's nations and its peoples;

Acknowledging the public service mission of libraries and archives, to enable the advancement of knowledge essential to teaching, research and the public interest;

Recognizing the fundamental role of libraries in serving disadvantaged communities, vulnerable and socially prioritised members of society;

Acknowledging that libraries and archives now operate in a global digital environment and are an international network of scientific and cultural heritage repositories and access service providers;

Emphasizing that in the future the historical record will be primarily digital and thus require appropriate copyright exceptions and limitations for libraries and archives to collect and preserve digital material in order to ensure the progress of research, scholarship and culture;

Emphasizing that the copyright laws of many nations which currently provide exceptions and limitations in the print environment need to be amended to enable libraries and archives to operate efficiently in the global digital environment;

Emphasizing the need to prevent copyright exceptions and limitations from being undermined by licensing practices and the use of technological protection measures that hinder libraries and archives in the performance of their functions;

Recognizing that copyright laws must strike a balance between the interests of the public and the interests of authors and other rightholders to fulfil the fundamental purpose of encouraging creativity, learning and the dissemination of knowledge;

DRAFT Working Document Version 3.0
5 April 2011

Recognizing the need for a global approach to copyright exceptions and limitations, and a minimum level of international harmonization, to secure the effective and unhindered flow of information essential for global equality of access to research, ideas and innovation;

Noting that developing and transition nations have taken less advantage of flexibilities available under international copyright law, including copyright exceptions and limitations, that would enable their libraries and archives to fulfil their public mandates.

Have agreed as follows:

I. General Provisions

Article 1

Relationship with Other Agreements

Treaty Text

- 1) This Treaty is consistent with obligations set out under the following conventions and treaties:
 - a) The Paris Act of July 24, 1971 of the Berne Convention for the Protection of Literary and Artistic Works (hereinafter the “Berne Convention”);
 - b) the WIPO Copyright Treaty 1996 (hereinafter the “WCT”);
 - c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the “Rome Convention”);
 - d) the WIPO Performances and Phonograms Treaty 1996 (hereinafter the “WPPT”);
 - e) the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (hereinafter the “TRIPS Agreement”).
 - f) Contracting Parties agree that, to the extent that this Treaty applies to literary and artistic works as defined in the Berne Convention, it is a special agreement within the meaning of Article 20 of that Convention, as regards Contracting Parties that are countries of the union established by that Convention.

DRAFT Working Document Version 3.0
5 April 2011

Explanatory Note – Article 1

"Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works, "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971, "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961; "TRIPS Agreement" refers to the Agreement on Trade Related Aspects of Intellectual Property Rights, of the General Agreement on Tariffs and Trade (GATT) adopted in 1994' "WTC" refers to the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996, and "WPPT" refers to the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996.

Article 2

Beneficiaries and Scope of Protection under this Treaty

Treaty Text

- 1) Contracting Parties shall accord the protection provided under this Treaty to libraries and archives¹ that are located in the territory of any Contracting Party.

- 2) Subject to the provision of Article 20 of this Treaty, the protection provided for in this Treaty shall be granted for non-commercial uses with respect to all works subject to copyright and other works subject to related rights, in any format, digital and non-digital.

Explanatory Note – Article 2

This Treaty governs the use of all copyright works and also of all materials protected by related rights, by libraries and archives, the people who work for libraries and archives, and those who use libraries and archives. It applies to the above materials in any format, digital and non-digital. This Article applies the provisions of this Treaty to protected material outside the scope of the Berne Convention, in particular to related rights and sui generis rights. The convergence of text and multimedia formats is increasing, for example, in online news reporting or in scientific articles that include embedded video clips. This Article aims to ensure that the provisions of the Treaty apply when, for example, an e-book contains some recorded music or when an audio recording of a text includes speakers with performers' rights. The wording of sub-paragraph 1 is modelled from Article 3(1) of the WPPT.

¹ For the purposes of this Article, the term "libraries and archives" shall also include their employees and agents.

**Article 3
Nature of the Exceptions**

Treaty Text

- 1) Exceptions or limitations to copyright or related rights mandated by this Treaty in the following Articles, unless required otherwise, shall not be conditional upon remuneration to authors or to any other rightholder.
- 2) Contracting Parties that at the time of signature of this Treaty, expressly grant in their national legislation remuneration for the exceptions or limitations referred to in the preceding paragraph may, in a notification deposited with the Director General of WIPO, declare that such remuneration will be maintained, when ratifying or acceding to the present Treaty.

Explanatory Note – Article 3

This Article specifies that, unless otherwise indicated, the uses permitted by this Treaty shall not be subject to remuneration to an author or other rightholder. In cases where national laws currently permit such remuneration, these provisions may be maintained. Such remuneration is not related to library service charges.

**II. Rights for Libraries and Archives
(Mandatory Exceptions or Limitations to Copyright and Related Rights)**

**Article 4
Right to Parallel Importation**

Treaty Text

- 1) Contracting Parties shall provide to libraries and archives the right to buy, import or otherwise acquire copyrighted works or material subject to related rights that are legally available in any country, even in cases where the respective Contracting Party does not provide for international exhaustion of the distribution or importation right after the first sale or other transfer of ownership of such work or matter.

Explanatory Note – Article 4

According to Article 8 (1) WPPT and Article 6(1) WCT, authors have an exclusive right to authorize the making available to the public of the original and copies of their work through sale or other transfer of ownership. Also, according to the same provisions, countries have the freedom to determine that the first sale or transfer, with the authorization of the rightholder, exhausts such a distribution right, nationally or internationally.

Some countries provide only for national exhaustion, prohibiting persons and institutions in such countries to buy and import from third countries without special authorization. This limits the availability of works and fosters higher prices because there is less competition on the market. To prevent the situation where a library is restricted from acquiring works or lending works to patrons that have been bought in third countries, the treaty provides that even in cases where

DRAFT Working Document Version 3.0
5 April 2011

national exhaustion of the distribution right after the first sale applies, libraries are authorized to buy and import works from foreign countries to be incorporated in their collections.

Article 5
Right to Cross-Border Uses of Works and Materials Reproduced under an Exception or Limitation

Treaty Text

It shall be permissible for libraries and archives located in the territory of a Contracting Party to send, receive or to exchange a copy of a copyrighted work, or matter subject to related rights, to or from a library or archive located in the territory of another Contracting Party, when such a copy has been made in accordance with this Treaty.

Explanatory Note – Article 5

This Article addresses the variation in the scope of exceptions across national laws of Contracting Parties. If an exception in Country A is more expansive than in Country B, this Article ensures that a copy of a work made in Country A is legal in Country B. It also ensures that such copies of works may be sent and received across borders. This provision contains a safeguard for rightholders because the copy must be made in accordance with the requirements of this Treaty. In other words, not every copy made under a national exception might benefit from this provision, if the exception is not in accordance with this Treaty.

Article 6
Library Lending

Treaty Text

- 1) It shall be permissible for a library to lend a lawfully acquired copyrighted work, or matter subject to related rights, to a person, or to another library for subsequent loan to a person, by any means. It is understood that lending that gives rise to a payment the amount of which does not go beyond what is necessary to cover the operational costs is a non-commercial service.
- 2) Notwithstanding the provisions of paragraph (1), any Contracting Party which, at the time of becoming party to this Treaty, expressly provides for a public lending right subject to remuneration, may keep such right, provided that such Contracting Party, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Director General of WIPO accordingly. The same Contracting Party may, at any time, withdraw the said notification.

DRAFT Working Document Version 3.0
5 April 2011

Explanatory Note – Article 6

Library lending is essential for education, learning, research, and culture. It promotes access to information and it furthers social and economic development. It is in the public interest that lending be unrestricted by a public lending right in national legislation or by contractual provisions.

This Treaty is not intended to override public lending rights implemented in national laws prior to signature of this Treaty. New technologies enable digital lending and parallels lending of physical books.

As Article 2 already specifies the exclusion of commercial uses in this Treaty, it is not further incorporated into this Article. However, clarification is provided that fees paid to the library for cost recovery purposes do not constitute commercial lending. The wording is modelled from a recital in the European Directive on rental and lending right (Council Directive 92/100/EEC).

Article 7
Right to Library Document Supply

Treaty Text

It shall be permissible for a library or archive to supply a copy of any work, or of material subject to related rights, lawfully acquired or accessed by the library or archive, to another library or archive for subsequent supply to any of its users, by any means, including digital transmission, provided that such use is compatible with fair practice as determined in national law.

Explanatory Note – Article 7

No library within a country can own every book, journal, other published work, or multimedia materials (to which related rights also apply), and archives hold unique content in all media. It is sometimes necessary for libraries and archives to supply copies of works to users upon request. Additionally, it is sometimes necessary for libraries to supply each other with copies of works in response to requests from individual users. This is commonly known as ‘document supply’.

It is essential for global knowledge exchange and the process of scholarly communication that libraries and archives not be prevented by copyright laws from supplying copies of works directly to users, using the most efficient means of communication.

Some national laws allow for document supply services while others contain no provision at all. Broad access to information is vital for the advancement of knowledge, particularly in developing countries. International agreement is therefore needed to ensure global provision of document supply services

**Article 8
Right of Preservation of Library and Archival Materials**

Treaty Text

- 1) It shall be permissible for libraries and archives to reproduce works, or materials subject to related rights, lawfully acquired or accessed by the library or archive for the purposes of preservation or replacement, in accordance with fair practice.
- 2) Copies that have been reproduced for the purposes of preservation or replacement may be used as substitutes for the original works or material preserved or replaced, in accordance with fair practice.

Explanatory Note – Article 8

Libraries and archives have a unique responsibility to preserve world's historical and cultural record and to make it accessible for future generations. Exceptions for library and archival preservation are common in national laws, but in more than half of the world's countries, libraries and archives lack legal certainty with respect to digital preservation activity. The preservation exceptions in many national laws do not apply to certain categories of copyright works, or material protected by related rights such as audiovisual materials and sound recordings, and they do not clearly apply to digital materials such as e-books and websites. At the same time, many non-print works are created in formats that are inherently unstable or will soon become obsolete.

Libraries and archives must be allowed flexibility to copy, format-shift and migrate copyright works and materials protected by related rights to different formats for preservation purposes. The preservation exception must apply to all types of works, and to materials in all media and formats, and permit as many copies to be made in as many different formats as are necessary to meet professional preservation standards. However, the number of preservation copies of a work that may be made available to the public should not exceed the number of originals acquired by the library. Materials in libraries can become damaged through day-to-day use, therefore the backup copy may be used for safety reasons.

**Article 9
Right to Use of Works and Other Material under Related Rights for the Benefit of Persons with Disabilities**

Treaty Text

- 1) A library or archive which has acquired a work, or material protected by related rights, that is not accessible to a person with a disability, shall be permitted to adapt, reproduce, transmit, communicate and make available the work, or material under related rights, in a form that is accessible to that person, and supply the copy to the person with a disability by any means.

DRAFT Working Document Version 3.0
5 April 2011

- 2) Where a work, or material protected by related rights, has been made in an accessible form under paragraph (1), this shall not prevent further accessible forms of any type from being made for, and supplied to, any other persons with a disability by any means, including digital transmission.
- 3) Any accessible copy of a work, or of material protected by related rights, made under paragraphs (1) and (2), may be transferred or loaned to any other library or archive in any country for the purpose of enabling the other library or archive to supply an accessible copy of the work to a person with a disability by any means, including digital transmission.
- 4) This Article does not apply to a Contracting Party if, or to the extent that, the permitted use is provided by another Treaty administered by WIPO to which is also party

Explanatory Note – Article 9

This provision permits copies to be made in accessible formats of works for the benefit of persons with disabilities, including blind, visually impaired and other reading disabled persons. In the context of this Article ‘accessible to a person with a disability’ means that a work is useable or is made useable so that person with a disability can enjoy and utilise it to the same or similar extent as can a person without a disability.

New technologies make it possible for people with disabilities to have access to works in the same way as other people. Electronic publications in principle could be accessible, but often are not, due to TPMs preventing the use of read-aloud software.

The needs of people with disabilities in developing nations require particular attention from the international community. Cross-border transfer currently leads to legal uncertainties that undermine the use of new technologies and services that can improve the lives of disabled persons. A costly waste of effort and money is being expended by charities with slender resources to convert works into accessible formats on a national basis. Instead of such expensive duplication, these organizations should be able to share their accessible formats across borders. This would greatly benefit disabled persons in all countries, and especially those in developing countries. Library provisions must be permitted for the benefit of disabled persons, to enable their use of information through any media regardless of national borders.

If the treaty proposal by Brazil, Ecuador and Paraguay relating to limitations and exceptions for blind, visually impaired and other reading disabled persons (SCCR/18/5) permitting these uses is adopted first at WIPO, this Article will be deleted from the draft Treaty.

Article 10
Right to the Use of Works for Education, Research and Private Study

Treaty Text

- 1) It shall be permissible for libraries and archives upon request from a user, and by their users, to reproduce by any means a work, and material subject to related rights, lawfully acquired or accessed by the library or archive for the purposes of education, research, or private study, provided that such use is compatible with fair practice as determined in national law.
- 2) It shall be permissible for libraries and archives to communicate to the public and make available by any means a work, and material subject to related rights, lawfully acquired or accessed by the library or archive upon request from a user for the purposes of education, research, or private study, provided that such use is compatible with fair practice as determined in national law.

Explanatory Note – Article 10

Libraries and archives play an integral role in the educational missions of schools, higher educational institutions, and societies. Exceptions for use of library and archival material in support of education, research, private study, and lifelong learning need to be explicit in national laws and they need to allow for uses in both physical and digital environments.

New technologies enable secure virtual learning and research environments. Libraries and archives are at the forefront of efforts to provide access to information in new ways. Exceptions and limitations must keep pace so that the students of tomorrow continue to benefit from provisions that the international copyright system has long justified in the public interest.

Article 11
Right to the Use of Works for Personal and Private Purposes

Treaty Text

- 1) It shall be permissible for libraries and archives to reproduce, and to communicate to the public and make available by any means, including digital transmission, a work, and material protected by related rights, lawfully acquired or accessed by the library or archive, for the personal or private use of the user, provided that such use is compatible with fair practice as determined in national law.
- 2) It shall be permissible for library and archive users to reproduce a work, and material protected by related rights, lawfully acquired or accessed by the library or archive, for personal or private use, and to retain the copies, provided that such use is compatible with fair practice as determined in national law.

DRAFT Working Document Version 3.0
5 April 2011

Explanatory Note – Article 11

Use of copyright works for personal or private purposes is one of the most universally accepted provisions in national copyright laws. It recognises the need for an individual to make copies of works for a variety of purposes in their everyday lives, including recreation, entertainment, and personal development, in accordance with fair practice - see Article 10 of the Berne Convention. This Article permits libraries and archives to make such copies on behalf of users, and for library and archive users to make copies of works obtained from a library or archive.

Article 12

Right to Access Retracted and Withdrawn Works Published in Databases or on Websites

Treaty Text

- 1) It shall be permitted for libraries and archives to reproduce, preserve and make available in any format any work, and any material protected by related rights, which has been retracted or withdrawn from public access, but which has previously been communicated to the public or made available to the public by the author or other rightholder.

- 2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.

Explanatory Note – Article 12

Libraries and archives have an important duty to preserve the public record for posterity, including any modifications or retractions made to it, and to make it available to users. This includes providing access to copyright works, and material protected by related rights, which are no longer available to the public because they have been withdrawn from databases or websites.

The Right of Communication to the Public was first introduced in the WIPO Copyright Treaty (Article 8). Unlike the distribution right, the Right of Communication to the Public is not subject to the principle of exhaustion, also known as the “first sale doctrine”. The (unintended) consequence is that an important safeguard is removed for libraries and archives with a duty to maintain and preserve the public record, regardless of the format of the material. As copyright works, and materials protected by related rights, are to an ever increasing degree ‘published’ by being communicated to the public, or are made available to the public in databases or on websites, and not by being conventionally published and distributed as physical copies, serious gaps in the public record will occur without this provision.

DRAFT Working Document Version 3.0
5 April 2011

This is why an exception to the communication to the public right is necessary. When a work is retracted or withdrawn from public access and no longer made available to the public, it must be permissible for libraries and archives, as keepers of the literary record, to reproduce the work and make it available to the public. The commercial interests of the author or other rightholder will not be harmed – as the work has been withdrawn – and it is the only means to safeguard the integrity of the historical record from distortions, falsifications or cover-ups.

Article 13
Right to Use of Orphan Works

Treaty Text

- 1) It shall be permissible for libraries and archives to reproduce and otherwise use a work, and material protected by related rights, for which the author or other rightholder cannot be identified or located after reasonable inquiry, including by making the work available to the public.
- 2) If the author or other rightholder subsequently identifies him or herself to the library or archive that has used the work, or material protected by related rights, as permitted under sub-paragraph (1), the author or other rightholder, subject to Articles 11 and 12 of this Treaty, shall be entitled to claim equitable remuneration for future use or to request termination of the use.

Explanatory Note – Article 13

Orphan works are defined as works for which rightholders cannot be located. To avoid the risk of liability, libraries and archives tend to forego the use of orphan works. Content of high academic and cultural significance is too often locked up with little or no prospect of contributing to the knowledge society. Identifying, locating, and contacting lost rightholders can be a complex and costly process, and in many cases it yields no results. An exception is needed that limits the risk of liability for libraries and archives with respect to use of orphan works that may otherwise be forgotten in the digital age.

III. Additional Protections

Article 14

Obligation to Respect Exceptions to Copyright and Related Rights

Treaty Text

1) Any contractual provisions that prohibit or restrict the exercise or enjoyment of the exceptions and limitations in copyright adopted by Contracting Parties according to the provisions of this Treaty, shall be null and void.

Explanatory Note – Article 14

Library access to most digital information is subject to licences that often undermine statutory exceptions and limitations supporting library activities. The private law of contract for digital information products is overriding the public law of copyright. If this situation continues, many of the major copyright exceptions for research, study, preservation and private copying in national laws will be inapplicable in the digital environment. The goals and policies providing for exceptions are important statements of national and international principle and should not be set aside or varied by contract.

Accordingly, licence terms that seek to undermine copyright exceptions and limitations should not be enforceable against libraries and archives. Given the global nature of digital information, action is needed at international level to maintain a balance between private law and public law.

This provision is modelled on Article 15 of the European Directive on the legal protection of databases (Directive 96/9/EC) and Article 9(1) of the European Directive on the legal protection of computer programs (Directive 91/250/EEC)

Article 15

Obligations Concerning Technological Protection Measures

Treaty Text

- 1) Contracting Parties shall ensure that libraries and archives might benefit from the exceptions and limitations provided in this Treaty, even where technological measures have been used in connection with a work and material protected by related rights.
- 2) Where technological measures have been used in connection with a work, or material protected by related rights, and there is no effective solution to ensure the full and timely use of the exceptions or limitations provided by this Treaty, as required by paragraph (1), such technological protection measures may be circumvented by libraries and archives.
- 3) In order to comply with paragraph (2) Contracting Parties shall:

DRAFT Working Document Version 3.0
5 April 2011

- (a) permit the service of circumvention for non infringing purposes; and
- (b) permit the acquisition of tools necessary to achieve circumvention; and
- (c) establish an appeal mechanism for the timely resolution of disputes

so that the service or tools can be made available to those permitted to circumvent under paragraph (2).

Explanatory Note – Article 15

It should be permissible for libraries and archives to circumvent a technological protection measure (TPM) for the purpose of making a non-infringing use of a work or of material protected by related rights. Implementation of anti-circumvention legislation in many nations exceeds the requirements of Article 11 of the WCT, effectively eliminating existing exceptions in copyright law. Few countries have introduced an effective system for anti-circumvention for the benefit of libraries and archives. This has affected the ability of libraries and archives to undertake digital preservation, or even to use some works at all in situations where a TPM key has been lost.

Exceptions and limitations are policy-based legal principles. The use of TPMs without appropriate exceptions reduces national and international information policy to the terms of private contracts, which too often undermine public policy. Moreover, most existing statutory exceptions to anti-circumvention have been heavily criticised as unworkable. The global nature of digital information requires that action be taken at the international level to ensure that public policy is not overridden by private locks.

Article 16
Limitation on Liability for Libraries and Archives

Treaty Text

- 1) A library or archive, or any employee or agent of a library or archive, acting within the scope of his or her duties, shall be protected from claims for damages, from criminal liability, and from copyright infringement, subject to the conditions in paragraph (3), when the action is performed in good faith:
 - a) in the belief that the work, or material protected by related rights, is being used as permitted within the scope of an exception or limitation, or in a way which is not restricted by copyright; or
 - b) in the belief that the work, or material protected by related rights is in the public domain or under a open license.
- 2) When a Contracting Party provides for secondary liability regimes, libraries and archives shall be exempt from such liability for the actions of their users.

DRAFT Working Document Version 3.0
5 April 2011

Explanatory Note – Article 16

Libraries and archives are critical intermediaries in the advancement of knowledge and learning by fostering public access to information resources. Libraries and library staff strive to adhere to the law, and they respect the legitimate interests of rightholders. In fulfilling their public mandate, libraries and archives throughout the world handle vast amounts of information daily, inevitably facing questions of interpretation and application of the law. Librarians, who are ordinarily not professionally trained in the law, commonly need to answer their own questions about copyright without the benefit of specialised legal advice.

Member States should offer the protection of limited liability for libraries and archives, and their employees and agents who act in good faith in applying copyright law.

Article 17

Other Exceptions and Limitations Not Mandated by this Treaty

Treaty Text

- 1) Nothing in this Treaty shall prevent a Contracting Party from retaining any provision in its national laws on exceptions and limitations extending beyond what is required to comply with this Treaty, so long as that provision complies with being party to any of the conventions and treaties identified in Article 1.
- 2) Nothing in this Treaty shall prevent a Contracting Party from the exercise of fair use and fair dealing, or other limitations or exceptions that are in accordance with international law.
- 3) Nothing in this Treaty shall prevent a Contracting Party from making any new provision on exceptions and limitations at any time so long as that provision is compliant with this Treaty and any of the obligations that the Contracting Party has as a result of being a party to any of the conventions and treaties identified in Article 1.

DRAFT Working Document Version 3.0
5 April 2011

Explanatory Note – Article 17

This Article enables a Contracting Party to retain any exceptions and limitations in areas addressed by this Treaty, that may go beyond what is required by this Treaty, provided they are devised with regard to existing treaty obligations. Furthermore, it enables the creation of new exceptions and limitations in areas not addressed by this Treaty, provided (1) they are compliant with this Treaty and (2) they are devised with regard to other existing treaty obligations.

A general free use exception consistent with fair practice helps ensure the effective delivery of library services. In some nations, general free use exceptions are limited to purposes such as research and study, criticism or review, news reporting, parody or satire, and judicial proceedings. In other countries, notably the U.S., the U.K. and a range of Commonwealth countries, it is accepted that fair use or fair dealing extends to certain library activities as a complement to specific library exceptions. Fair use and fair dealing serve the further purpose of permitting libraries and archives to adapt services to emerging needs before specific exceptions may be amended. This Article establishes that specific library and archival exceptions do not represent the outer limits of permissible activities undertaken by libraries and archives.

Article 18

Provisions on Implementation and Enforcement of Exceptions and Limitations

Treaty Text

- 1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
- 2) Contracting Parties shall ensure that procedures are available under their law to provide effective and timely resolution of any disputes as to the scope of the measures required by paragraph (1) so that any challenges to the enjoyment of mandated exceptions and limitations to copyright do not unreasonably prevent, deter or delay their rightful enjoyment.

In meeting the requirements of paragraph (2), Contracting Parties shall include measures to limit the costs of any procedures for the resolution of disputes, including in proceedings before the courts, so that costs borne by any party to a dispute are proportionate to the matter to be resolved and where appropriate take into account the ability of a party to pay.

Explanatory Note – Article 18

Many copyright and licensing disputes, serious enough to require legal intervention, are amenable to speedy and affordable arbitration and ruling by regulatory agencies or ‘small claims’ courts, which streamline the whole process and help keep down costs. However, in many countries such facilities do not exist, so libraries can rarely afford to refer copyright or licensing disputes for judicial resolution, since, if the matter must go to the full court, they face lengthy and costly legal proceedings. This provision is needed to ensure that such tribunals or ‘small claims’ procedures can be made available in as many countries as possible because the cost of copyright and licensing litigation is prohibitively expensive and time-consuming, and is often out of proportion to the redress sought by the rightholder. It would do much to make justice in copyright matters accessible to libraries as well as to other copyright stakeholders, both nationally and across borders.

IV. Administrative and Final Clauses

Article 19
Assembly

(1) (a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2) (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

(3) (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

(4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions

Article 20
International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty. These shall include the commissioning of regular studies on the implementation of the Treaty and the organisation of technical assistance to developing and transition nations to enable them to fully implement the provisions of this Treaty.

Article 21
Eligibility for Becoming Party to the Treaty

- (1) Any Member State of WIPO may become party to this Treaty.
- (2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
- (3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 22
Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 23
Signature of the Treaty

This Treaty shall be open for signature until December _____, by any Member State of WIPO and by the European Community.

Article 24
Entry into Force of the Treaty

This Treaty shall enter into force three months after 20 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 25
Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (i) the 20 States referred to in [Article 27](#) from the date on which this Treaty has entered into force;
- (ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to [Article 27](#), or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 26
Denunciation of the Treaty

DRAFT Working Document Version 3.0
5 April 2011

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 27
Languages of the Treaty

(1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

(2) An official text in any language other than those referred to in [paragraph \(1\)](#) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 28
Depositary

The Director General of WIPO is the depositary of this Treaty.