



International Federation of
Library Associations and Institutions

The IFLA Perspective: An International Treaty on Copyright Exceptions and Limitations for Libraries and Archives

IFLA Presidential Meeting
The Hague, April 14, 2001

Winston Tabb
Chair IFLA Committee on Copyright and Other Legal Matters







IFLA Core Values

- **We believe that people, communities and organizations need for their physical, mental, democratic and economic well-being, free access to information, ideas and works of imagination**





IFLA Professional Priority: The Advocacy Pillar

Balancing the Intellectual Property Rights of Authors with the Needs of Users

IFLA assumes a dual responsibility, both to the producers of intellectual property and to libraries as representatives of information users, because safeguarding and providing access to products of the mind are fundamental to the growth of knowledge.





Balancing the Intellectual Property Rights of Authors with the Needs of Users

- IFLA works to protect *the rights of authors and the role of libraries* by playing an active role with organizations such as WIPO and UNESCO in the drafting of appropriate treaties and legislative models which recognize the dichotomy between the rights of authors and the needs of users.





Balancing the Intellectual Property Rights of Authors with the Needs of Users

- IFLA also works to assure that intellectual property rights support the universal availability of information by such activities as encouraging national legislation for *legal deposit* and assuring the right of libraries to make copies of published documents in a manner consistent with principles of *fair use*. Safeguarding these rights must involve both the owners of intellectual property and its users. It necessitates working in collaboration with authors, publishers and librarians





The Statute of Anne, 1710

An Act for the Encouragement of
Learning”

with books to be

“delivered . . . before such Publication made, ...
for the Use of the Royal Library, Libraries of the
Universities of *Oxford and Cambridge, the*
Libraries of the Four Universities in Scotland,
the Library of *Sion College in London, and the*
Library commonly called the Library belonging
to the Faculty of Advocates at *Edinburgh*. . . .





Library-Related Principles for Achieving Balance (2004)

- A robust and growing public domain promotes creativity, research, and scholarship - government works, government-funded research, facts, copyright term
- Effective library programs advance knowledge – preservation, lending, copies for teaching, access for disabled
- Creativity and technological progress result from individual research – circumvention of technological protection measures, copying for personal research
- Copyright should not be superseded by trade agreements or contracts

<http://www.ifla.org/en/publications/library-related-principles-for-the-international-development-agenda-of-the-world-intell>





Access to Knowledge (A2K) Treaty (2005)

Librarians urge:

- Weigh costs & benefits of intellectual property rights
- Think of i.p. as a means (for innovation, creativity, technical development) not an end
 - Forego one-size-fits-all approach
 - Develop flexibilities and limitations

<http://www.ifla.org/en/publications/statement-supporting-a-development-agenda-for-wipo-spring-2005>





The WIPO Library Study 2008

WIPO: 184 Member Countries

Located: Statutes from 149 Countries

No Library Exception: 21 Countries

Solely General Exception for
Libraries: 27 Countries



Subject of Library Exceptions

- Copying for Research or Study: 74 Countries
- Copying for Preservation: 72 Countries
- Copying for Replacement: 67 Countries
- Document Supply: 17 Countries
- ILL: 6 Countries
- Anticircumvention: 26 Countries



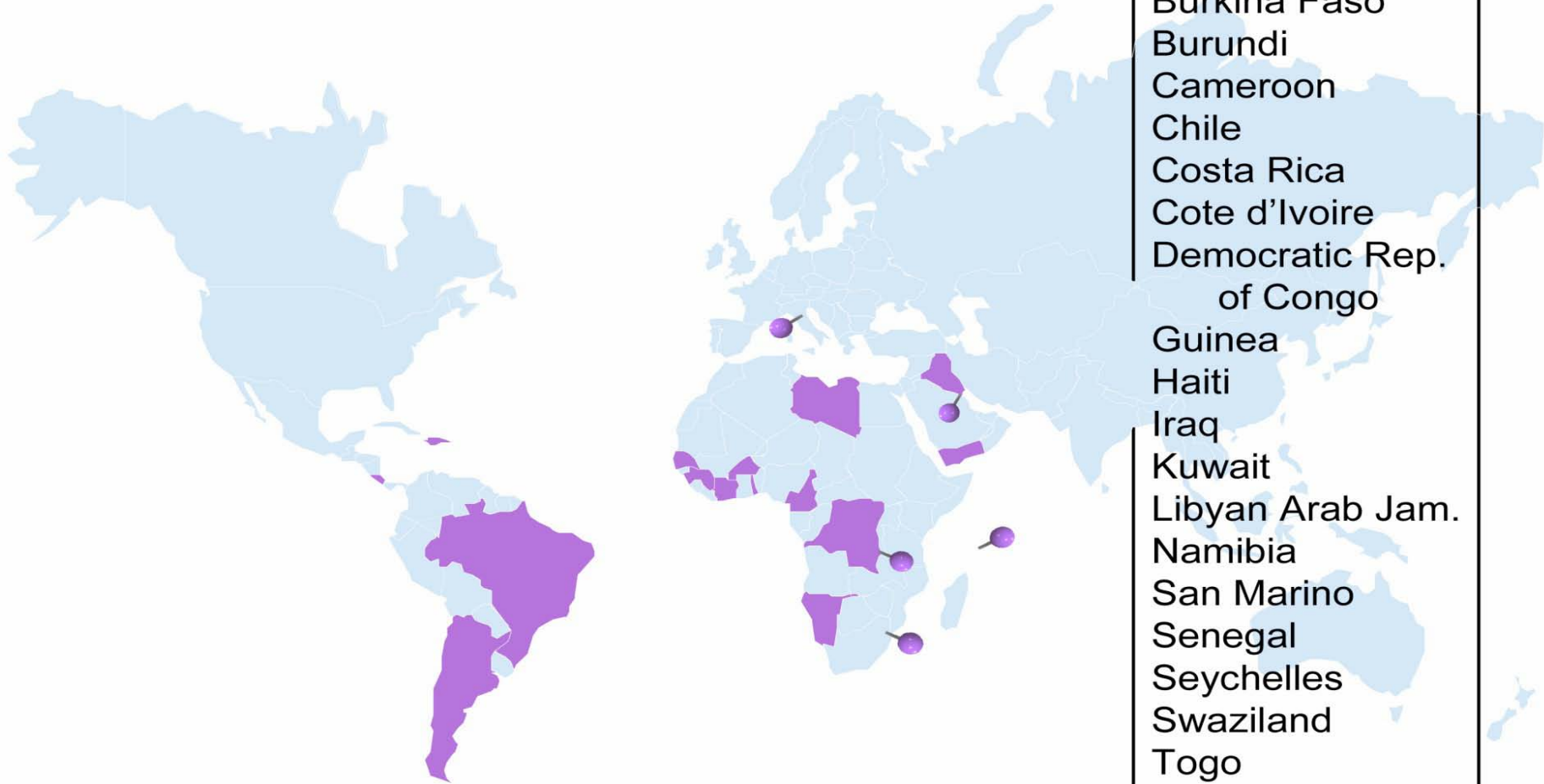
General Library Exception

Albania	Lesotho
Angola	Malawi
Austria	Malaysia
Bulgaria	Mali
Cape Verde	Mongolia
Congo	Nigeria
Croatia	Oman
Cyprus	Portugal
Djibouti	Rwanda
Greece	Slovenia
Indonesia	Sri Lanka
Jordan	Syria
Kenya	Tunisia
	Tanzania





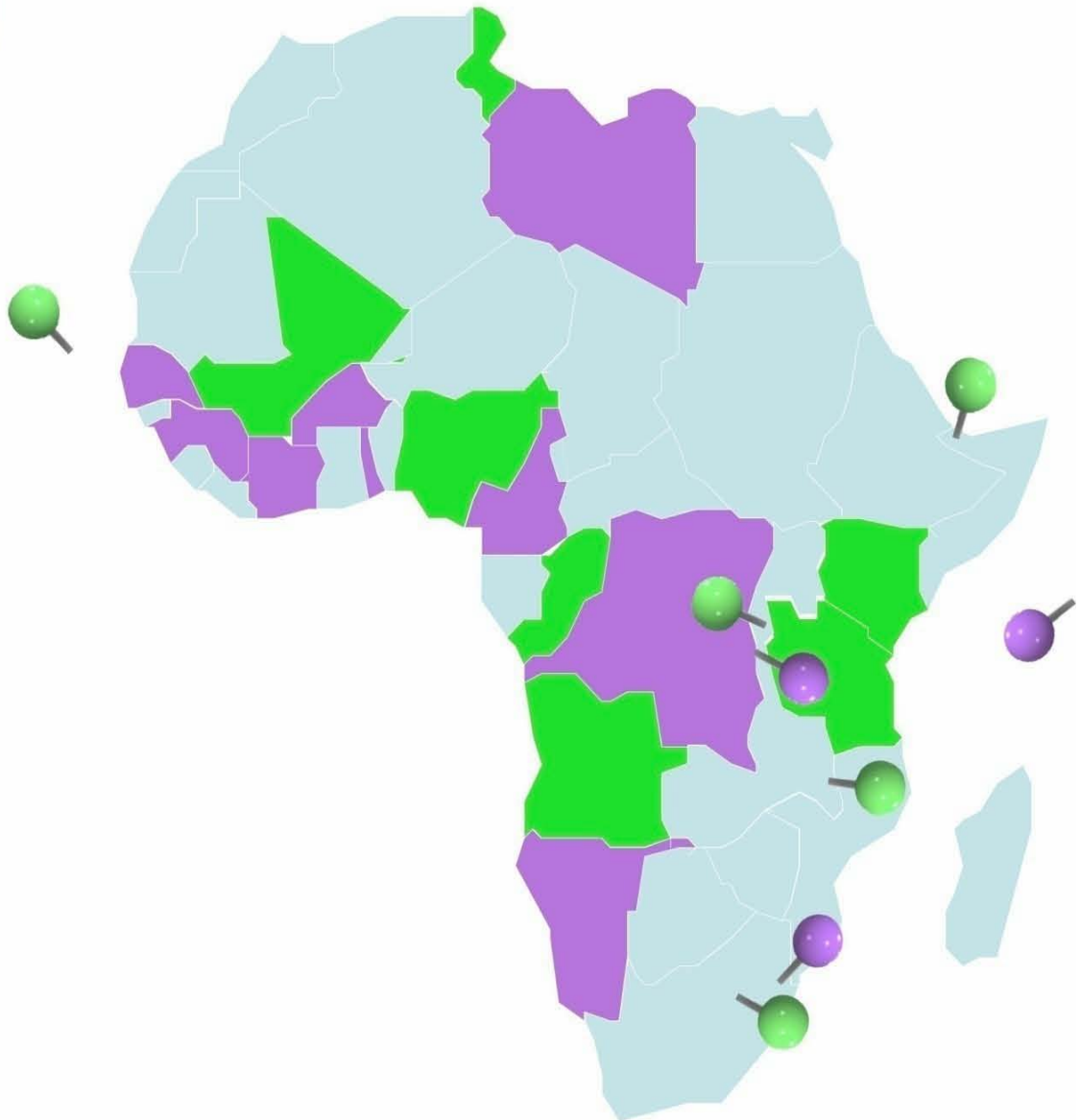
No Library Exception



- Argentina
- Brazil
- Burkina Faso
- Burundi
- Cameroon
- Chile
- Costa Rica
- Cote d'Ivoire
- Democratic Rep. of Congo
- Guinea
- Haiti
- Iraq
- Kuwait
- Libyan Arab Jam.
- Namibia
- San Marino
- Senegal
- Seychelles
- Swaziland
- Togo
- Yemen



General	None
Angola	Burkina Faso
Cape Verde	Burundi
Congo	Cameroon
Djibouti	Cote d'Ivoire
Kenya	Democratic Rep. of Congo
Lesotho	Guinea
Malawi	Libyan Arab Jam.
Mali	Namibia
Nigeria	Senegal
Rwanda	Seychelles
Tunisia	Swaziland
Tanzania	Togo





Study on Limitations and Exceptions for Libraries and Archives

- Professor Kenny Crews, WIPO 2008
- http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192





Conceiving an International Instrument on Limitations and Exceptions to Copyright

P. Bernt Hugenholtz and Ruth L. Okediji

www.ivir.nl/publicaties/hugenholtz/finalreport2008.pdf

- The task of developing a global approach to limitations and exceptions... is one of the major challenges facing the international copyright system today... a multilateral instrument that can effectively harness various national practices with regard to L&E's can provide a framework for dynamic evaluation of how global copyright norms can be most effectively translated into a credible system that appropriately values author and user rights, is a necessity.





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Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives

May 2009

- <http://www.ifla.org/publications/statement-of-principles-on-copyright-exceptions-and-limitations-for-libraries-and-archi>





CLM Exceptions Working Group

August 2009

- Teresa Hackett, Chair, eIFL/Ireland
- Shirley Leung, Hong Kong
- Victoria Owen, Canada
- Tim Padfield, UK (ICA)
- Janice Pilch, USA
- Barbara Stratton, UK
- Luis Villarroel, Chile
- Harald von Hielmcrone, Denmark
- Winston Tabb and Stuart Hamilton, ex officio





Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives

April 2011

- Preamble
- I. General Provisions (1-3)
- II. Rights for Libraries and Archives
(Mandatory Exceptions or Limitations to
Copyright and Related Rights) (4-13)
- III. Additional Protections (14-18)
- IV. Administrative and Final Clauses (19-28)





Article 4, “Right to Parallel Importation”

- “...the right to buy, import or otherwise acquire copyrighted works” even when a country does not provide for “international exhaustion”





Article 5, “Right to Cross-border Uses of Works..Reproduced under an E&L”

Article 6, “Library Lending”

Article 7, “Right to Library Document Supply”

- Libraries and archives may send, receive or exchange copies of copyright works; may lend works; and may supply copies of works, including digitally, “provided that such use is compatible with fair practice as determined in national law.”





Article 8, “Right of Preservation of Library and Archival Materials”

- may “reproduce works...lawfully acquired...for the purposes of preservation or replacement” and may use those copies as substitutes “in accordance with fair practice”





Article 9, “Right to Use Works...for the Benefit of Persons with Disabilities”

- may “adapt, reproduce, transmit, communicate and make available” an accessible copy; supply the copy by any means; and subsequently lend that copy to other libraries/archives in any country





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

Article 11, “Right ...for Personal and Private Purposes”

- Such uses must be compatible with “fair practice” as determined in national law; copies may be made by the library/archive or the individual for these uses.





Article 12, “Right to Access Retracted and Withdrawn Works Published in Databases or on Websites”

- Libraries/archives should be able to preserve and make available retracted or withdrawn works, with proper notice, to safeguard the integrity of the historical record.





Article 13, “Right to Use of Orphan Works”

- Libraries/archives must be able to reproduce and make available to the public, works for which the rightholder cannot be identified/located. Any rightholder who emerges should be able to claim “equitable remuneration for future use or to request termination of the use.”





Article 14, “Obligation to Respect Exceptions to Copyright...”

Article 15, “Obligations Concerning Technological Protection Measures”

- Contractual provisions that impede exercise of exceptions and limitations shall be null and void
- Libraries/archives must be able to circumvent TPM’s to make non-infringing uses





Article 16, “Limitation on Liability...,” Article 17, “Other Exceptions and Limitations...”

- Library and archive staff should not be liable when their actions are performed in good faith
- The treaty does not preclude contracting parties from enacting broader exceptions and limitations for libraries/archives





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Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives

In 2004, Chile recommended that the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organisation (WIPO) undertake a review of the current state of exceptions and limitations within the larger realm of intellectual property regimes. This recommendation was adopted by WIPO in 2005, and WIPO subsequently initiated a series of studies on exceptions and limitations in specific sectors.

Particularly relevant to the work of IFLA was the study commissioned by WIPO from Professor Kenneth Crews, "Study on Limitations and Exceptions for Libraries and Archives," which WIPO published in 2008. The results of this study revealed that numerous Member States had either no exceptions or limitations for libraries and archives in their national copyright legislation, or had only minimal, general provisions.

To examine the issues and what should be done for the benefit of libraries and archives worldwide, in April 2009 IFLA and EIFL convened a workshop at the British Library comprising librarians, intellectual property specialists, the World Blind Union, and representatives of other NGO's to develop a set of principles that should drive creation of an appropriate instrument to facilitate the mission of libraries throughout the world.

At its World Library and Information Congress in Milan in 2009, the IFLA Governing Board approved the principles, and asked the Chair of IFLA's Committee on Copyright and Other Legal Matters to appoint a working group to draft an instrument, based on those principles, for consideration by the Member States of WIPO. After wide consultation with librarians, representatives of Member States and other knowledgeable individuals, IFLA's working group has developed a "Treaty on Copyright Exceptions and Limitations for Libraries and Archives". In preparation for the work on exceptions and limitations for libraries and archives scheduled for November 2011, we offer this proposal to further informed discussion of the issues.

read the full text: [Draft Treaty on Copyright Exceptions and Limitations for Libraries and Archives](#)

CLM (Committee on Copyright and other Legal Matters), Archives, Draft, WIPO

<http://www.ifla.org/en/publications/draft-treaty-on-copyright-exceptions-and-limitations-for-libraries-and-archives>



WIPO Copyright Committee

Conclusions November 12, 2010

- “Following a global and inclusive approach, the SCCR agrees to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), taking into account the proposals already tabled or any additional submissions”;
- “...the Committee will undertake text-based work on appropriate exceptions and limitations for libraries, archives...”
- SCCR 23 November 2011: “Three additional working days [added] to the SCCR regular session dedicated to exceptions and limitations for libraries and archives”
- **“SCCR regular agenda item on exceptions and limitations: Focus on limitations and exceptions for libraries and archives”**





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Thank you

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