

**Library Copyright Statutes
Around the World:
*An EIFL Webinar***



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Thank You!

EIFL

***And the Many Librarians
Working with Copyright!***



Today's Objectives

- **The Connection: Copyright and Libraries**
 - **Mission of Libraries:**
 - To Preserve and Provide Access to Information Resources
 - **Mission of Copyright:**
 - To Encourage the Creation of New Works
 - To Encourage their Public Dissemination
 - To Serve Private Interests of Ownership and Public Interests of Access and Creativity

Today's Objectives

- **Survey Findings in the WIPO Study**
- **Understand the Context of Library Exceptions**
- **Review Examples of Diverse Statutes**
- **Identify Possibilities for Future Change**



A Copyright Interlude

- **Scope of Works**
 - Nearly Unlimited
- **Automatic Copyright Protection**
- **Long Duration**
 - Life of the Author, plus 50 Years or More
- **Broad Scope of Rights**
 - Reproduction, Distribution, and More
- **Risks and Penalties**
- **Subject to Limitations and Exceptions**

The Law of Exceptions

- **Why Library Exceptions in Copyright?**
 - The British Copyright Act of 1956
 - U.S. Copyright Act of 1976
 - Tunis Model Act of 1976
 - Multinational Trade Agreements
- **Why WIPO?**
 - Administration of Berne and Other Agreements
 - Growing Importance of Exceptions
 - Libraries, Education, and Disabilities

The Role of Libraries

- **The Activities of Libraries**
 - **Preservation and Replacement**
 - **Copies for Research and Study**
 - **“Making Available” on Dedicated Terminals**
 - **Interlibrary “Loans”**
 - **Lending and “Public Lending”**
 - **Needs of Persons with Disabilities**
 - **Mass Digitization**
 - **Dealing with “Orphan Works”**

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>

The 2015 Study

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

General Library Exception

From the Tunis Model Act:

“the reproduction, by **photographic** or similar process, by **public libraries**, non-commercial documentation centers, scientific institutions and educational establishments, of literary, artistic or scientific **works which have already been lawfully made available to the public**, provided that such reproduction and the number of copies made are **limited** to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author...”

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

Context of Exceptions

- **Structure of Copyright Law**
 - Grants Right to Owners
 - Subject to Limitations & Exceptions
- **Multinational Treaties & Agreements**
 - Berne Convention
 - WIPO Copyright Treaty
 - WTO and TRIPs
- **Regional Agreements**
- **Subject to the Three-Step Test**

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.**”

Diversity of Exceptions

- No Library Exception
- General Library Exception
- Preservation or Replacement
- Private Research or Study
 - Making Available on the Premises
- Anti-circumvention of Technological Measures
 - 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:** Purpose? Conditions and Proof?
- **How:** Analog or Digital?

Armenia (I)

Replacement (Art. 24(3)(a))

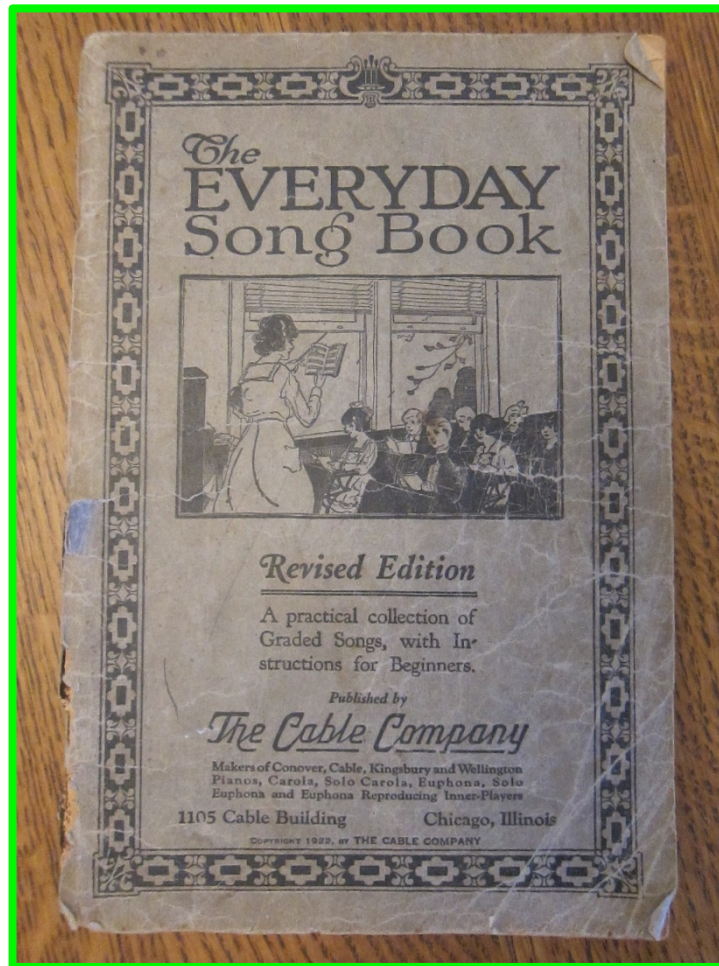
- **Who:** Libraries, Archives, and Educational or Cultural Institutions
- **What:** Lawfully Published Works
- **Why:** Restoring or Replacing a Work in the Collections
- **How:** Reprographic Reproduction

Armenia (II)

Research or Study (Art. 24(3)(b))

- **Who:** Libraries and Archives
- **What:** Articles and Short Works published in collections; Short Extracts of published works
- **Why:** Study and Research at the request of a user
- **How:** Reprographic Reproduction

Preservation or Replacement



Kyrgyzstan

Preservation

- **Who:** Libraries and Archive Services
- **What:** Lawfully Published Works
- **Why:** To Restore or Replace Lost or Damaged Copies
 - And supply to other libraries
- **How:** Reprographic reproduction

Czech Republic

Replacement (Article 37(1)(b))

- **Who:** Libraries, Archives, Museums, Galleries, Schools, Universities, and other Nonprofit School-related and Educational Establishments
- **What:** Any work and phonograms and AV works
- **Why:** Replacing a work that is damaged or lost
- **How:** Any medium

Lithuania

Preservation or Replacement (Art. 23(1)(2))

- **Who:** Libraries, Educational Establishments, Museums, and Archives
- **What:** Works in the Collections
- **Why:** Preserving or Replacing a Work that has been lost or destroyed, etc.
- **How:** Reprographic Reproduction
- **Note:** The Three-Step Test applies to all statutory exceptions (Art. 19)

Nepal

Replacement

- **Who:** Public Libraries and Archives
- **What:** Any Works made available in the library or archive
- **Why:** To reproduce a work is lost, destroyed, old, or incapable of being obtained
 - No direct or indirect economic profit
- **How:** Medium Not Specified

Australia

Preservation (§ 51A)

- **Who:** Officers of Libraries or Archives
- **What:** Manuscripts, Original Works, Published Works, Works in the Collections
 - Declaration that Published Work is not Available
- **Why:** Preservation or Replacement
 - Display on Dedicated Terminals on Premises
- **How:** Any medium

Preservation or Replacement

- **Georgia:**
 - Lawfully published works only
 - Reprographic Reproduction
 - Adds language of the Three-Step Test (Art. 18(9))
- **Ghana:**
 - Published articles and other short works
 - Reprographic Reproduction
 - Subject to collective licensing
 - Permission required for more than a single copy

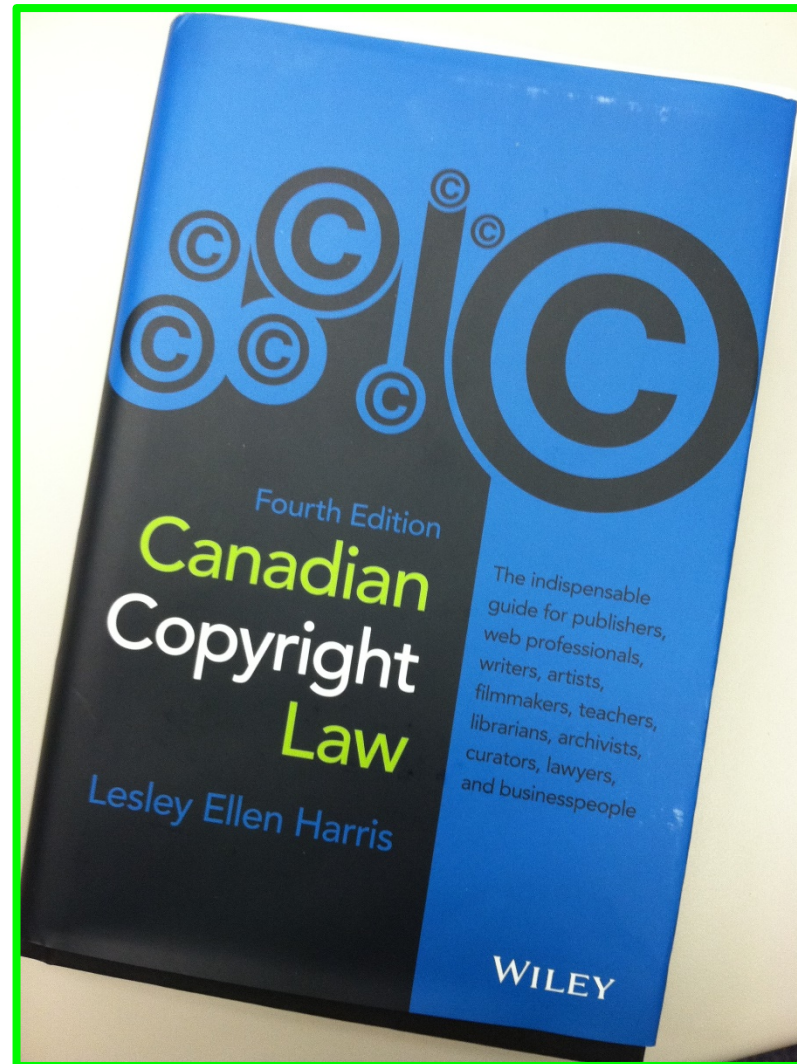
Preservation or Replacement

- **Kazakhstan:**
 - Lawfully published works only
 - Single copy
 - Limited reproduction technologies
- **Moldova:**
 - Replacement Provision, not Preservation
 - Lawfully published works only
 - Reprographic Reproduction, explicitly not allowing digital technologies

Breaking the Pattern

- **Belarus**
 - Allows use of Digital Technologies
- **Czech Republic**
 - **Who:** Greatly Expanded
 - **What:** Wide Range including Unpublished Works
 - **How:** Allows any Media

Research or Study



Fourth Edition
**Canadian
Copyright
Law**

Lesley Ellen Harris

The indispensable
guide for publishers,
web professionals,
writers, artists,
filmmakers, teachers,
librarians, archivists,
curators, lawyers,
and businesspeople

WILEY

Nepal

Research or Study

- **Who:** Public Libraries and Archives
- **What:** Works made available in the library or archive
- **Why:** Research or study, at the request of a person
 - No direct or indirect economic profit
- **How:** Medium Not Specified

Maldives

Research or Study

- **Who:** Library or archive
 - Does not serve direct or indirect commercial gain
- **What:** Published article, other short work, or short extract of a work
- **Why:** Copy will be used solely for the purpose of study, scholarship, or private research
- **How:** Reprographic reproduction
 - No Collective License

India

Research and Study

- **Who:** Library, Museum, or other Institution allowing Public Access
- **What:** Unpublished literary, dramatic, or musical works
- **Why:** Research, private study, or with a view to publication
- **How:** Medium Not Specified

Research or Study

- **Algeria:**
 - Published works
 - Exception does not apply if a Collective License is available
- **Botswana:**
 - Also conditioned on Collective License
 - Reprographic Reproduction only
- **Chile (Article 71J):**
 - Excerpts of any work; use any medium

General Library Exception

From the Tunis Model Act:

“the reproduction, by **photographic** or similar process, by **public libraries**, non-commercial documentation centers, scientific institutions and educational establishments, of literary, artistic or scientific **works which have already been lawfully made available to the public**, provided that such reproduction and the number of copies made are **limited** to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author...”

General Library Exceptions

- **Hungary:**
 - General Provision; copies for research or archiving
 - Minor parts of “disclosed” works
- **Montenegro:**
 - Enacted in 2011
 - Applies to “disclosed” works
 - Certain works barred
 - Copies allowed “for internal use”
 - Exceptions are subject to Three-Step Test

General Library Exceptions

- **Serbia:**
 - Applies to all works in the collections
 - Copies for archival purposes
 - Allows any medium
 - Exceptions are subject to Three-Step Test
- **Slovenia:**
 - Applies to disclosed works; Certain works barred
 - Copies for “internal use” by the institution
 - Collective Licensing; Levies on copying equipment

USA (I)

- **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**

USA (II)

- **The Good:**
 - **Relatively Clear Language**
 - **Addresses Traditional Needs**
 - **Preservation and Replacement**
 - **Applies to all types of works**
 - **Research or Study**
 - **Allows copies of full articles, book chapters, and even entire books in some instances**
 - **Preserves Fair Use**

USA (III)

- **The Not-So-Good:**
 - **Does not Address Innovative Needs**
 - Orphan Works
 - Mass Digitization
 - **Preservation and Replacement**
 - Digital Copies limited to “Premises” of the Library
 - **Research or Study**
 - Generally Print Works Only
 - **Creative “20-Year” Rules disappoints**
 - **Maintains the Fair Use alternative**

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”

Kyrgyzstan

- **Research or Study (Making Available)**
 - Libraries
 - Works that are lawfully available to the public
 - Make Available in digital form at dedicated terminals on the premises
 - Temporary Availability
 - Simultaneous Access with other copies
 - Users may not make Digital Copies
 - For research or private study for individual members of the public

Innovations in Statutes:

Relatively Few

- **Canada**
 - Eased Limits on Research Copies
 - Allows Interlibrary Loans
- **Russia**
 - Expanded and Detailed Provisions
 - Explicit application of Digital Technologies
- **United Kingdom**
 - Eased Limits on Research Copies
 - Expanded Provisions for Diverse Works & Media
- **Japan and France**
 - Digital Programs at National Libraries

Innovations: Australia

- **Multiple Statutory Provisions:**
 - § 51A: Preservation & Replacement
 - § 51B: Preservation by Cultural Institutions
 - § 49(1): Research or Study (Published Works)
 - § 51(1): Research or Study (Unpublished Works)
 - § 51(2): Research of Study (Unpublished Theses)
 - § 50(2): Supplying to Other Libraries
 - § 40: Fair Dealing for Research and Study
 - § 200AB: Library Administrative Uses
 - § 39A: Liability for Unsupervised Machines

Implications

- **Libraries and Archives are a Priority**
 - Enacted in Most Countries
- **Exceptions Debated in Additional Countries**
 - United States, Australia, Brazil
- **Uneven Application of Digital Technologies**
- **Little Innovation in Scope and Language**
- **Influence of Models and Agreements**

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**

Library Copyright Statutes Around the World

Thank You!



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