

Libraries, Copyright, Research & Development: Unlocking the Potential of Limitations & Exceptions

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PURPOSE OF COPYRIGHT

- Copyright as a **means** and not an **end**.
 - “Publicization” vs “Propertization”/“Privatization” of knowledge
 - “for the encouragement of learning”

COPYRIGHT & LIBRARIES

The copyright system and libraries ought to achieve similar goals
– the promotion of research and development

COPYRIGHT, RESEARCH & DEVELOPMENT

No Poverty

Food security

Good health & well-being

Quality Education

Gender Equality & Reduced Inequalities

Decent Work & Economic Growth
(Human Capital Formation)

Clean Water, Clean Energy, Climate Action, Conservation & Biodiversity

OBJECTIVES OF CONTEMPORARY COPYRIGHT SYSTEMS

- **IceTV Pty Limited v Nine Network Australia Pty Limited**, 2009 HCA 14, 25: “The “social contract” envisaged by the Statute of Anne, and still underlying the present Act, was that an author could obtain a monopoly, limited in time, in return for making a work available to the reading public.”
- **EU InfoSoc Directive Preamble** [14]: “This Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching.”
- **US Constitution**, art I § 8 c. 8: “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”
- **CCH v Law Society of Upper Canada**, 2004 SCC 13 [10]: “The Copyright Act is usually presented as a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator”

OBJECTIVES OF COPYRIGHT – INT’L INSTRUMENTS

- The **TRIPS Agreement** (preamble) recognizes “the **underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives**”
- Article 7: The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, **to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare**, and to a balance of rights and obligations
- Article 8(1): Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and **to promote the public interest in sectors of vital importance to their socio-economic and technological development**, provided that such measures are consistent with the provisions of this Agreement.

OBJECTIVES OF COPYRIGHT – INT’L INSTRUMENTS

- **WIPO Copyright Treaty (Preamble):** *“Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention”*
- **Marrakesh VIP Treaty (Preamble):**
*“Emphasizing the importance of **copyright protection as an incentive and reward for literary and artistic creations and of enhancing opportunities for everyone**, including persons with visual impairments or with other print disabilities, to participate in the cultural life of the community, to enjoy the arts and to share scientific progress and its benefits”*
*“Recognizing the need to **maintain a balance between the effective protection of the rights of authors and the larger public interest, particularly education, research and access to information**, and that such a balance must facilitate effective and timely access to works for the benefit of persons with visual impairments or with other print disabilities”*

LIMITATIONS & EXCEPTIONS

- L&Es permit uses of copyrighted works that could otherwise be excluded by copyright owners during the term of copyright protection.
- limit the scope of uses that require the permission of copyright owners.
- L&Es can be
 - General (as it relates to works and users) – e.g., fair use & fair dealing
 - Specific (to works and/or users) – e.g., L&Es for libraries & archives, L&Es relating to computer programs
- Models for L&Es framework
 - Open-ended General L&Es (e.g., US fair use)
 - Close-ended General L&Es (e.g., UK & Canadian fair dealing)
 - Enumerated specific L&Es (e.g., EU countries)
 - A combination of both

LIBRARIES & COPYRIGHT EXCEPTIONS

Libraries are gateways to the exercise/use of L&Es for research.

Copyright, contractual, and tech restrictions on libraries = restrictions on end users

L&Es are integral to the core functioning of libraries

LIBRARIES & COPYRIGHT EXCEPTIONS

Preservation activities

Interlibrary loans

Digital lending

Circumvention of TPMs for non-infringing uses

Contract override prevention clauses

Recognition of general exceptions as applicable to libraries

Technological neutrality

GLOBAL MINIMUM STANDARDS



L&Es for libraries must be advanced on all fronts



WIPO SCCR



Minimum mandatory L&Es for libraries

THANK YOU!

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