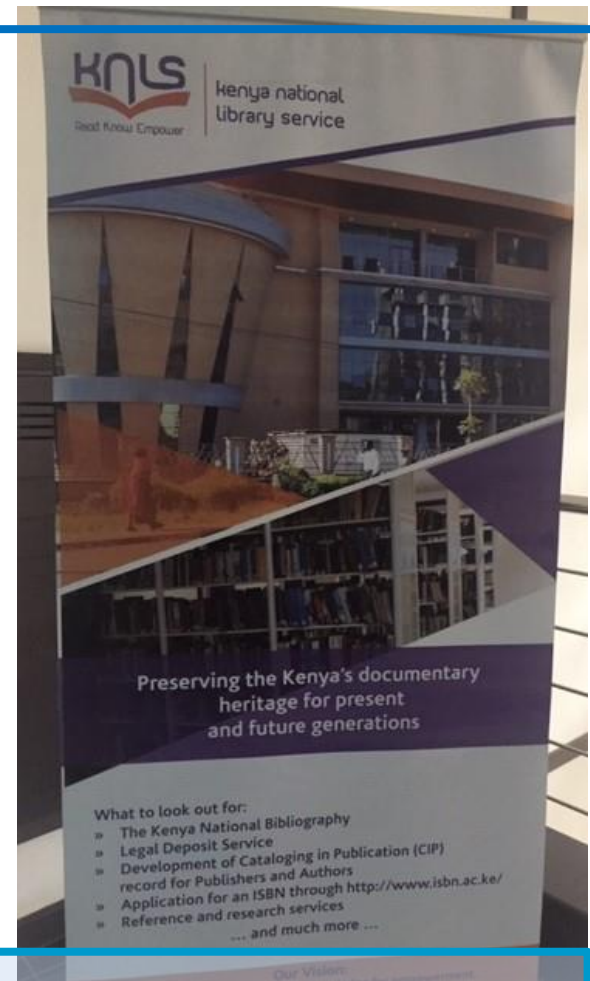


Copyright Exceptions & Limitations: *Libraries & Services*



Kenneth D. Crews, J.D., Ph.D.
World Intellectual Property Organization
Nairobi, Kenya June 2019

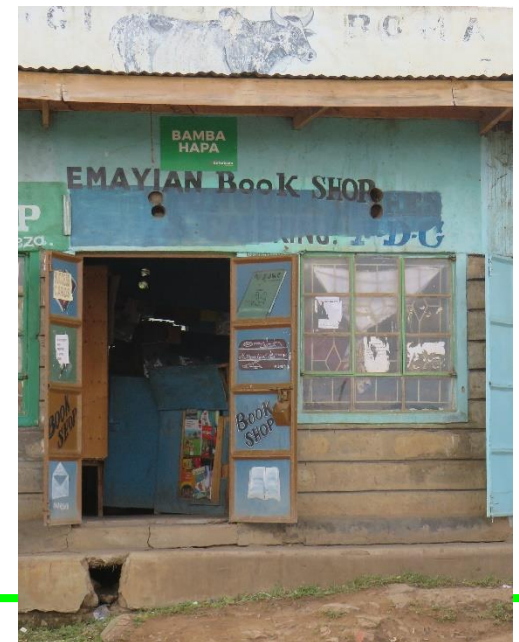
Three Main Points



- **ONE:**
 - *Copyright Exceptions for Libraries are fundamental to the law of most countries.*
- **TWO:**
 - *African countries disproportionately have no exception or only a general exception.*
- **THREE:**
 - *Specialized exceptions in Africa are almost entirely limited to preservation and study.*

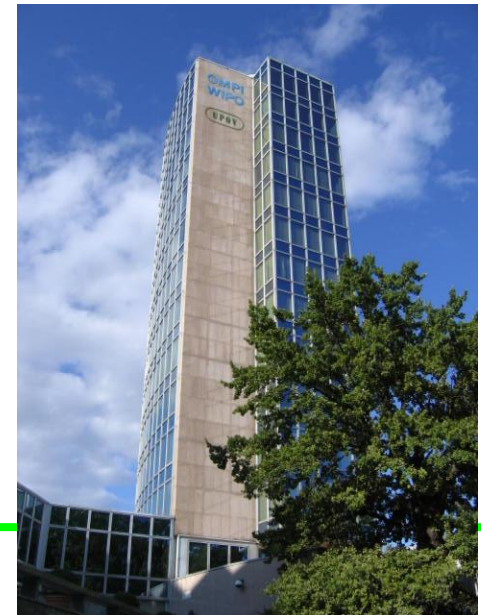
Libraries and Copyright

- **Similarity of Mission**
 - *Libraries:* To Preserve and Provide Access to Information Resources
 - *Copyright:* To Encourage the Creation and Dissemination of New Works
- **Library Services and Copyright**
 - Reproduction and Distribution
 - Displays and Performances
 - Derivative Works

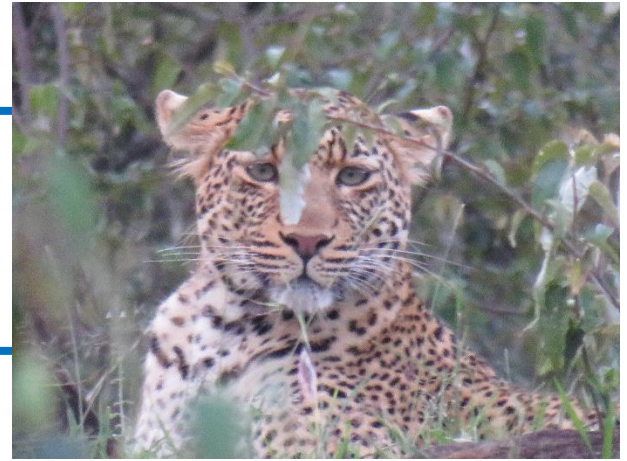


Context of Exceptions

- **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**



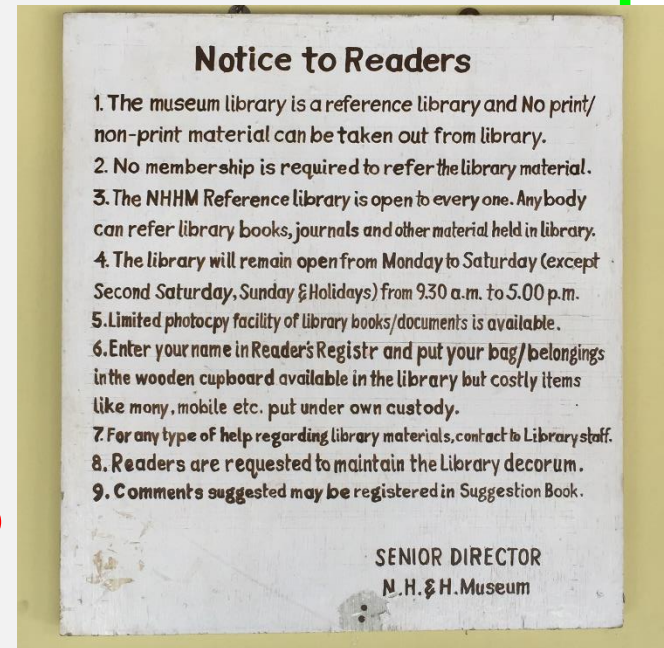
Berne: *Three-Step* Test



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.**”

Copyright, Libraries, and SCCR

- **First Study of E&Ls for Libraries and Archives:**
 - SCCR/17 – November 2008
 - Report: <http://bit.ly/1tB8ryb>
 - 149 Member States
- **Most Recent Study:**
 - **SCCR/35** – November 2017
 - Report: <http://bit.ly/2htmCf6>
 - **191** Member States



Four Types of Library Exceptions

- **Type 1: No Library Exception**
 - Plus two Member States with no General © Law
- **Type 2: General Library Exception**
 - Some diversity about applicable libraries and works within the scope.
- **Type 3: Specific Library Exceptions**
 - High diversity of statutes
 - Trend toward following models
- **Type 4: Anti-circumvention Exemptions**

Type 2: General Library Exception

- **Tunis Model Act (UNESCO 1976):**

“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...”

Type 2: General Library Exception

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

Type 3: Specialized Exceptions

- **Preservation and Replacement**
- **Private Study and Research**
- **Making Available on the Premises**
 - **Dedicated Terminals**
- **Document Delivery & Interlibrary Loans**
- **Copy Machines in the Library**
- **Technological Protection Measures**
 - **Exemption for Libraries (Type 4)**

Type 3: Diversity of Exceptions

- ***Who*** may Use the Exception?
 - *Libraries? Archives? Museums? More?*
- ***What*** may be Copied?
 - *All Works? Short Works? Published Works?*
 - *Specific types of Works? Music? Film? Software?*
- ***When*** may it be copied?
 - *Physical Damage? Lost? Deteriorating?*
 - *Not on the Market? Proof of Market and Use?*
- ***Why*** may it be copied?
- ***How*** – *Analog or Digital? Reprographic?*

Type 2: General Library Exception

- **Elements of the Tunis General Exception:**

Who: “public libraries, non-commercial documentation centers, scientific institutions and educational establishments”

What: “literary, artistic or scientific works which have already been lawfully made available to the public”

When: “do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author”

Why: “limited to the **needs of their activities**”

How: “the reproduction, by photographic or similar process”

Type 3: Specialized Exceptions

	Worldwide	Africa
Total Countries	191	53 = 28%
Research & Study	105	25 = 24%
Preservation	102	26 = 25%
Replacement	98	25 = 26%

Type 3: Specialized Exceptions

	Worldwide	Africa
Total Countries	191	53 = 28%
Dedicated Terminals	34	3
Document Supply	22	1
Interlibrary Loans	9	1
Completion	7	1

The Bangui Agreement

Notwithstanding the provisions of Article 9, a library or archive service whose activities are **not** directly or indirectly **profit-making** may, without the consent of the author or other holder of copyright, make **individual copies** of a work by means of **reprographic** reproduction,

(i) where the work reproduced is an **article or a short extract** from a written work, other than a computer program, with or without illustration, published in a collection of works or in an issue of a newspaper or periodical, and where the purpose of reproduction is to **meet the request of a natural person**;

(ii) where the making of such copy is for the purpose of **preserving** and, if necessary, in the event of it having been **lost, destroyed or made unusable, replacing** it or, for replacing a copy that has been lost, destroyed or rendered unusable in the permanent collection of another library or other archive service.

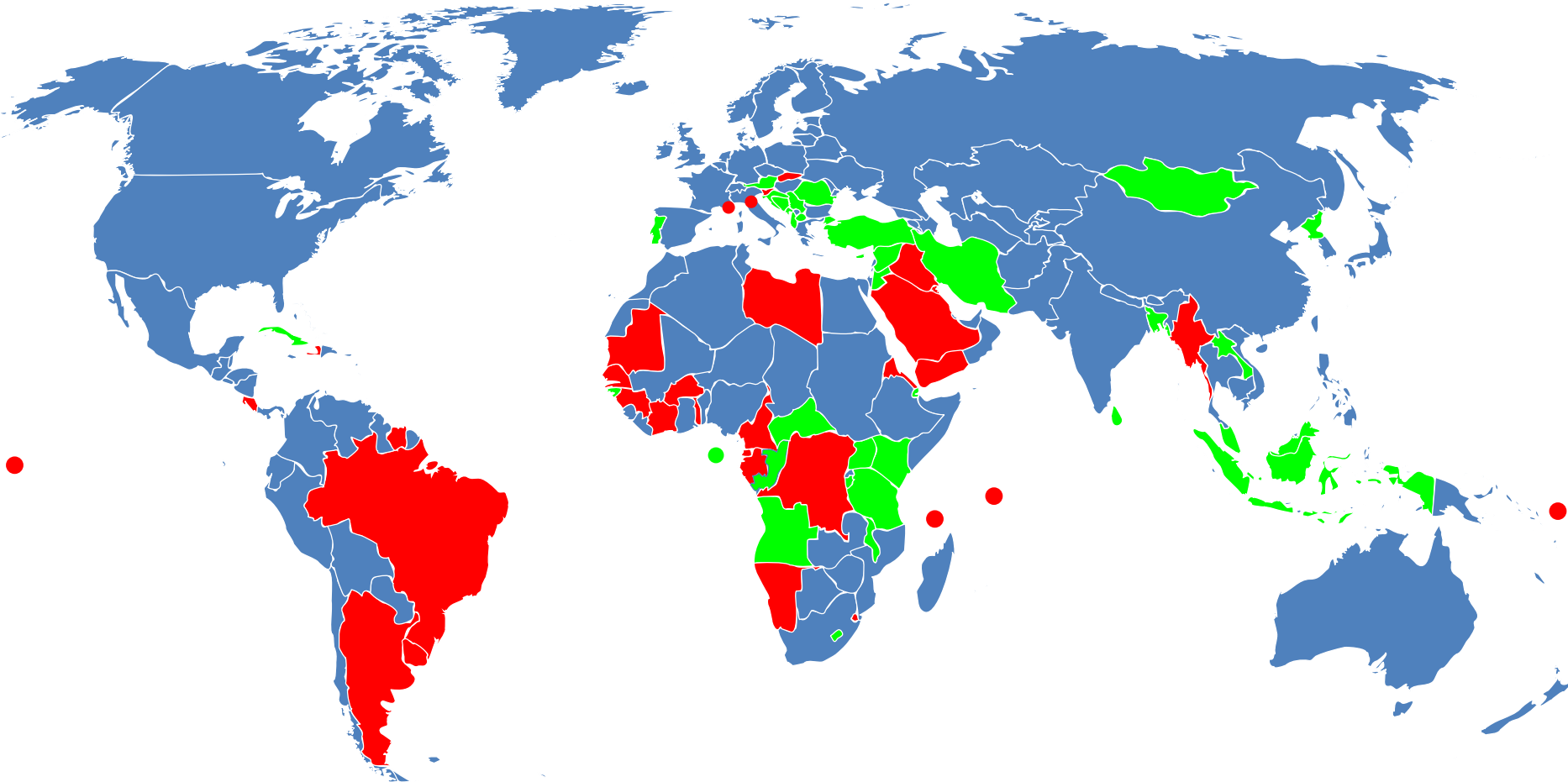
The British Model

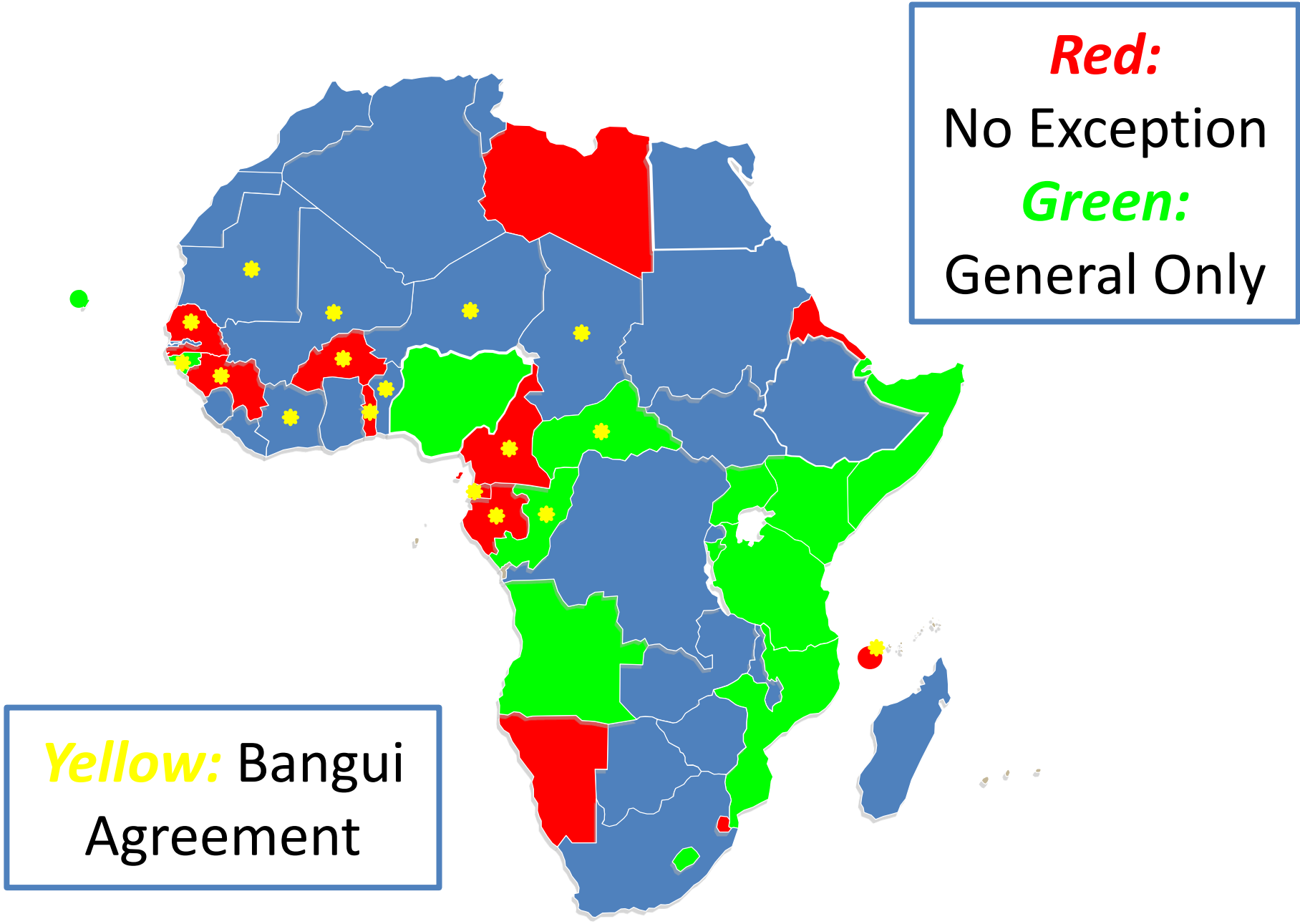
- **Founded in the Copyright Act of 1956**
- **Multiple Statutes**
- **Preservation and Research**
- **Possible: Document Supply and ILL**
- **Conditions**
- **Evidence that the use is for private study**

Type 1: No Exception
Type 2: General Exception

	Worldwide	Africa
Total Countries	191	53 = 28%
No Exception	28	13 = 46%
General Exception	31	14 = 45%
General Exception Only	21	10 = 48%

Red: No Library Exception
Green: General Exception Only





Red:
No Exception

Green:
General Only

Yellow: Bangui Agreement

Type 1: **No** Library Exception (13)

Burkina Faso

Cameroon

Comoros

Dem. Rep. of Congo

Equatorial Guinea

Eritrea

Eswatini

Gabon

Guinea

Libya

Namibia

Senegal

Togo

Type 2: *General Library Exception* (14)

** Countries with ONLY a General Exception*

Angola*

Burundi*

Cabo Verde

Central African Rep.*

Congo*

Djibouti*

Guinea-Bissau

Kenya*

Lesotho*

Mozambique

Nigeria

Somalia*

Uganda*

U.Rep. Tanzania*

Type 3: Specialized Library Exception

Algeria

Benin

Botswana

Chad

Cote d'Ivoire

Egypt

Ethiopia

Gambia

Ghana

Liberia

Madagascar

Malawi

Mali

Mauritania

Mauritius

Morocco

Niger

Rwanda

Sao Tome and Principe

Seychelles

Sierra Leone

South Africa

Sudan

Tunisia

Zambia

Zimbabwe

Implications

- **Priority**

- Library Exceptions enacted in Most Countries
- Preservation of Culture; Access to Information

- **Opportunity**

- Growth of Digital Technologies
- Expansion of Libraries & Archives

- **Innovation**

- Digital Applications & International Sharing

**Copyright Exceptions &
Limitations:
*Libraries & Services***

Thank You!



Copyright & Contact

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