



The Flexibilities of the Copyright System at the International Level

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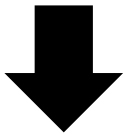
Contents

- Introduction
- Limitations and exceptions in international copyright treaties
- WIPO SCCR agenda item on limitations and exceptions

Introduction

Principles of copyright system

- Good balance between rights and public interests
- Fundamental (constitutional) rights/public interests (e.g. freedom of speech, education and research, freedom of information)



Interest of
users
public interest



Interest of
copyright
holder

Flexibilities of copyright system

- Types

- Limitations and exceptions

- “Open” or “free” licensing schemes (e.g. Creative Commons license)

- Public domain

Flexibilities of copyright system

■ Types

- Limitations and exceptions

- Public domain

- “Open” or “free” licensing schemes (e.g. Creative Commons license)

Limitations and exceptions in international copyright treaties

Types of limitations and exceptions

- Limits to the object of copyright protection
e.g. ideas, theories, simple data, fixation requirements
- Exclusion of some categories of works
e.g. laws, administrative acts
- Permitted uses without authorization and remuneration:
“Free uses”
- Permitted uses by law with remuneration: “non-voluntary licensing system”

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Free uses

- Provisions addressing specific utilizations
(e.g. civil law countries)

- Provisions establishing general criteria, to be used by courts to determine permitted utilizations
(e.g. common law countries; US fair use, UK fair dealing)
 - Substantiality of use (quantity, ratio of use)
 - Purpose/character of use (non-commercial use)
 - Impact of use on market
 - Nature of work to be used

International framework

- Berne Convention includes several provisions related to exceptions and limitations.
 - Only one (arguably) mandatory: Article 10(1) on quotations.
 - Three-step test (Article 9(2)): “outer limit”, setting a framework for drafting of copyright limitations and exceptions in the national laws.

Three-step test in Berne

- *“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.**”*

Three-step test in TRIPs

- *“Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.” (Article 13)*
 - Widens the scope of applicability to all economic rights
 - Declares the test in mandatory terms
 - Enforcement mechanisms

Three-step test in WCT

- *“It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.”*

(Agreed statement on Article 10 of WCT)

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“Non-Voluntary Licenses”

- Legal License: the use is permitted by the law itself (e.g. Private copy)
- Compulsory License: the law obliges the rightholder to grant the permission when requested (e.g. Recording of musical works)

Non-Voluntary Licenses for Developing Countries

- Possibility for Developing Countries to benefit their nationals with *“non-voluntary licenses in respect of: a- translation for the purpose of teaching, scholarship or research; and b- reproduction for use in connection with systematic instructional activities of works protected under the Convention.”*

(Appendix to Berne Convention)

- 37 developing countries incorporate provisions on this in national law*.

* Study on Copyright Limitations and Exceptions for Educational Activities, Daniel Seng, 2016

WIPO SCCR agenda item on limitations and exceptions

Topics at SCCR

- SCCR: **S**tanding **C**ommittee on **C**opyright and **R**elated Rights
 - Current agenda items
 - Protection of broadcasting organizations
 - **Limitations and exceptions for libraries and archives, museums, education and research, and persons with disabilities other than visually handicapped**
 - Copyright in digital environment
 - Resale right
 - Theater directors' right

Discussions at SCCR

- Libraries and archives

■ Why?

- Preservation
- Replacement
- Document supply
- Interlibrary lending
- Reproduction for research or education
- Etc.

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- Right of reproduction
 - Right of distribution
 - Right of communication to the public
 - Right of making available to the public
 - Rental rights

Etc.

Discussions at SCCR

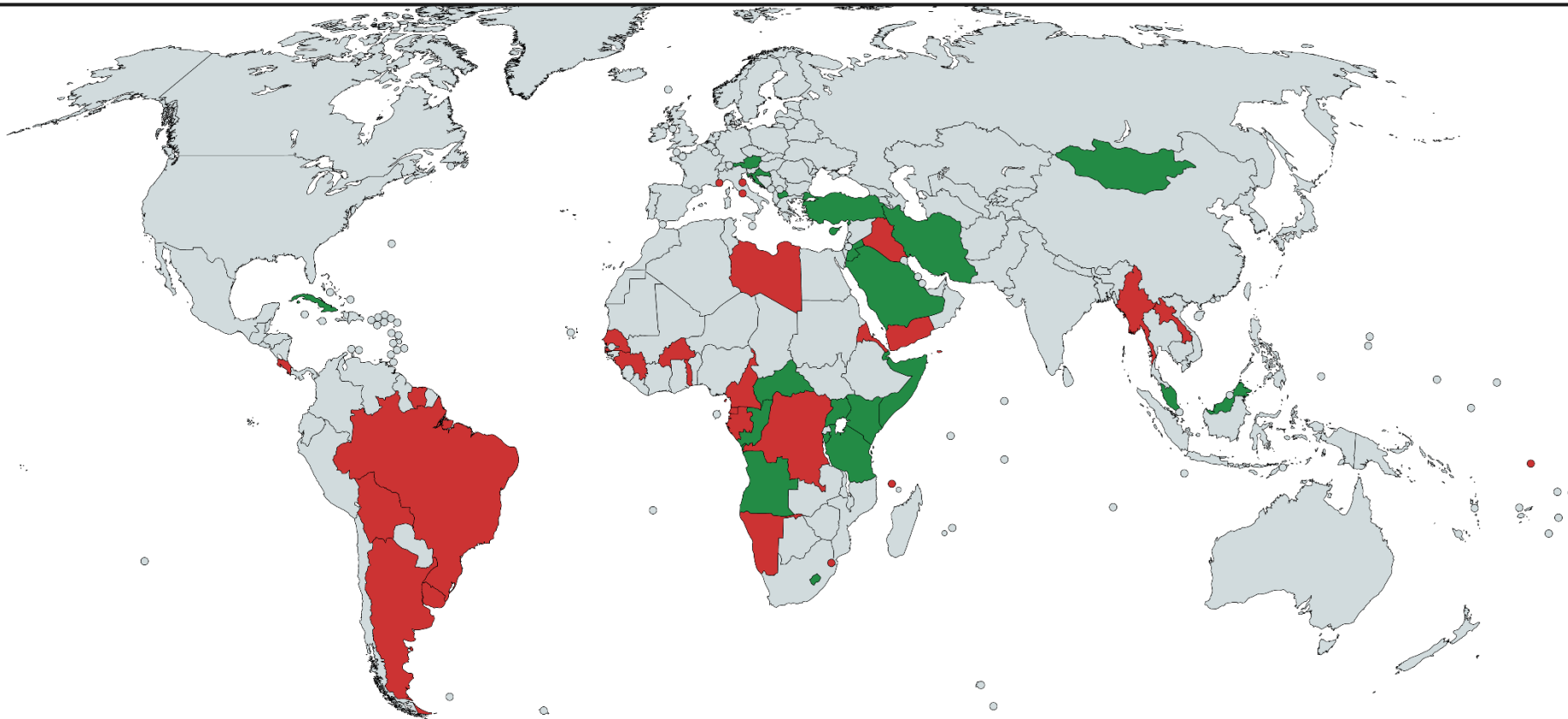
- Libraries and archives

- Kenneth Crews' study (2008, 2014, 2015 and 2017)
 - 2017 results: among 191 WIPO member states
 - No library exception: 28 countries
 - General exception only: 21 countries
 - Trends
 - Fewer countries with no exception
 - Fewer countries with only general exception
 - Influence of models: Countries tend to look to neighbors, trade partners, and multinational consortia for inspiration and guidance when drafting statutes.

Red: No Library Exception

Green: General Exception Only

All Others: Specialized Exceptions



Discussions at SCCR

- Education and research

- Daniel Seng's study (2016, 2017)
 - Private/personal use
 - Quotations
 - Educational reproduction
 - Educational publications
 - School performances
 - Educational broadcasts and communications
 - Compulsory licenses for educational reproductions and translations
 - TPMs
 - Contract
 - Liability

Discussions at SCCR

- Other topics on limitations and exceptions

- **Persons with disabilities other than visually handicapped:** Scoping study (2017)
- **Museums:** Progress report on study on museum limitations and exceptions. A study will be presented in SCCR/36 (2018)

Next step of SCCR

- Draft Action Plans on Limitations and Exceptions

- Study

- Brainstorming among experts

- Regional seminars

- Conference

etc.

- Next SCCR: May 28 – June 1, 2018



Thank you !

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