



International Federation of
Library Associations and Institutions



COPYRIGHT, LIBRARIES AND ARCHIVES: 188 VARIETIES – TIME FOR ONE GLOBAL FRAMEWORK

LOCAL USERS AND GLOBAL RESOURCES

Digital technologies have changed libraries, archives, access to information, and indeed the world. The information landscape has been revolutionized.

Libraries and archives support the work of scientists and scholars that is increasingly collaborative, inter-disciplinary and global. As new opportunities for search and resource discovery are enabled by the digital revolution, there is a growing demand for access to materials held in libraries and archives in other countries.

Librarians and archivists are also collaborating with each other. For example, preservation and digitization – a core function of libraries and archives – is an expensive operation. Therefore to lower the costs, most of which are funded from the public purse, to reduce duplication of efforts, and to maximize impact, libraries and archives are exploring opportunities for shared preservation infrastructures both within a country and with neighbouring countries, using new technological opportunities.

"The borderless nature of digital technologies means it no longer makes sense for each EU country to have its own rules for telecommunications services, copyright, data protection, or the management of radio spectrum." European Commission Priority: Digital Single Market.¹

GLOBAL RESOURCES AND NATIONAL LAWS

So how do national copyright laws that govern many of these activities appear from the perspective of today's libraries and archives? Here are some of the facts.

The majority of member states of the World Intellectual Property Organization (WIPO) have "at least one statutory library exception," i.e. 83% or 156 countries of the 188 countries surveyed.² This is good news. However, less good is the fact that 17% (32 countries) still have no provision at all for libraries or archives in their copyright law.

Of the 188 member states, nearly half of countries (48% or 90 countries) do not explicitly allow libraries to make copies for research or study. The situation is even worse for archives with two-thirds (67% or 126 countries) not permitting archives to make copies for research or study. Of the 188 member states, nearly one half of countries do not explicitly allow libraries (47% or 88 countries) or archives (45% or 85 countries) to make copies for preservation purposes.

As national laws are being updated, maybe the situation will improve? Unfortunately the trend regarding digital services suggests otherwise. For those countries that have introduced amendments since 2008, digital copying is expressly barred in more than 50% even, in some cases, for preservation.

And in countries with new anti-circumvention protections, while some 40 countries have thankfully exempted libraries, half have provided no library exception. The effect is that where a technological protection measure is applied to digital content, the library simply cannot avail of its exception. This means that in practice, the law is giving with one hand, and taking away with the other.

¹ European Commission Digital Single Market. Available at http://ec.europa.eu/citizens-dialogues/bulgaria/sofia/index_en.htm

² WIPO Standing Committee on Copyright and Related Rights: Study on Copyright Limitations and Exceptions for Libraries and Archives, Kenneth Crews, J.D, Ph.D, (June 10, 2015). Available at: www.wipo.int/meetings/en/doc_details.jsp?doc_id=290457

The WIPO 2015 study throws up a further layer of complexity that permeates all the statutes, as the conditions for **who** may copy, **what** may be copied, the **purpose** and the **format** of the copies vary significantly. The following table illustrates the maze of variations in how irregularly existing exceptions are applied.

Who may copy?	What may be copied?	Under what conditions?	How?
<ul style="list-style-type: none"> • Libraries that receive public funding • Publicly accessible libraries • Public libraries • All libraries • Documentation centres • Record houses 	<ul style="list-style-type: none"> • Published or unpublished works • Extracts, articles or full works • Movies, software or music 	<ul style="list-style-type: none"> • Library needs • Research or study only • Proof of user's purpose • Commercial availability • Making available on the premises • After expiration of economic rights 	<ul style="list-style-type: none"> • Electronic copies • On any media • Reprographic reproduction • Reproduction by photographic or analogous processes • Photocopying or with the aid of other technical means other than publishing

How can the law become workable for librarians and archivists?

“Not licensed to fill” is a phrase encountered every day by librarians around the world. It means that a request for a document that is not available in the user's home library is denied by the supply library due to licence restrictions. License restrictions can override copyright exceptions and limitations where they do exist. Such restrictions prevent access by the public and scholars, and fail libraries.

Libraries and archives need basic global standards set out in copyright law that cannot be taken away by licence terms. This would allow libraries to negotiate fair terms for public and institutional needs – based on copyright law – to ensure access for all.

Prof. Kenneth Crews noted the influence of models in national law-making, such as UNESCO's Tunis model law (1976), the Bangui Agreement, the so-called British model and the influence of European Union directives.³ However, as each model is different, and as each country chooses its own elements to apply, at best a degree of partial or regional harmonization can be achieved. And **the Internet is not regional**.

“WIPO is in a position to shape the next model,” said Prof Crews, “to provide guidance to help countries develop statutes that are cognizant of the technology, and the growing range of library issues and activities, and that are cognizant of the fact that information exchange is crossing borders.”⁴

Libraries and archives believe that WIPO, as a multilateral organization that sets international copyright rules, has a responsibility and a mandate. This is why libraries and archives are asking WIPO member states for an international treaty to establish basic global standards to ensure equal treatment of digital resources, to protect the ability to acquire and lend digital collections, and to safeguard our cultural and scientific heritage in the digital environment.

Countries will still have the ability to craft provisions that exceed the basic standards. Licences will still have an important role to enable activities that **go beyond what is permitted in the law**. But there will be a common global understanding that protects core library and archive activities in the digital environment. This would recognize how technology is changing the way that people seek information, and the way that libraries and archives respond to people's needs.

Adapted from a blog post by Teresa Hackett, Copyright and Libraries Programme Manager, Electronic Information for Libraries (EIFL), April 27, 2015. Available at <http://www.eifl.net/blogs/copyright-and-libraries-186-varieties-time-on-e-global-framework>

³ Presentation at WIPO's Standing Committee on Copyright and Related Rights (SCCR/29)

⁴ Ibid.