

Standing Committee on Copyright and Related Rights

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UPDATED VERSION OF THE DOCUMENT “OBJECTIVES AND PRINCIPLES FOR
EXCEPTIONS AND LIMITATIONS FOR LIBRARIES AND ARCHIVES” (SCCR/26/8)

prepared by Delegation of United States of America

INTRODUCTION

This document is an updated version of the document “Objectives and Principles for Exceptions and Limitations for Libraries and Archives” ([SCCR/26/8](#)) that the United States introduced at the twenty-sixth session of the Standing Committee on Copyright and Related Rights in 2013.

It aspires to encourage Member States to facilitate the public service role of libraries and archives by adopting carefully crafted exceptions and limitations that enable these institutions to carry out their important public missions, as further discussed below.

A robust copyright system that incentivizes continued innovation and artistic expression is paramount to the flourishing of humanity and creative economies. International copyright treaties provide a framework for the recognition and protection of the rights of creators in the member countries. This framework sets up the minimum standard for meaningful copyright protection to reward authors and artists for their work, and to incentivize further creativity. It also allows adoption of exceptions and limitations to copyright in the public interest, such as facilitating preservation, reproduction and distribution of copyrighted materials by libraries and archives, under specific limited circumstances. Because such use does not require authorization by rightsholders, Member States must carefully craft exceptions and limitations within their domestic laws that are consistent with the boundaries of the three-step test.¹

Current international framework provides sufficient flexibilities, pursuant to well-established standards, for countries to enact or revise national exceptions and limitations that are tailored to their own social, economic and cultural needs, while consistent with international obligations.

ADOPTION OF NATIONAL EXCEPTIONS

Objectives:

Encourage Member States to adopt well-focused exceptions and limitations in their national laws that are consistent with their international obligations, including the three-step test, and facilitate the public service role of libraries and archives, and maintain the balance between the rights of authors, artists and publishers, and the public interest, particularly in research, education, preservation, and access to information.

Encourage Member States, when adopting or revising exceptions and limitations for libraries and archives, to consider adding museums and other non-profit institutions that function as a library, archives, or museum as eligible entities. Similar to libraries and archives, museums share many of the same public service roles as libraries and archives and often carry the responsibility for the preservation and stewardship of the cultural knowledge and heritage.

Therefore, it is likewise important to support their mission of curating, studying, and sharing information, knowledge, and cultural heritage with the public.

Principles:

Exceptions and limitations, which are an integral part of national copyright systems, play a critical role in enabling libraries, archives, and museums to meet the needs of the public, helping individuals to achieve their full potential and engage with others through learning and exchange of knowledge and culture.

¹ The international copyright system gives Member States wide discretion to enact copyright exceptions and limitations to advance national cultural and educational policies, subject to the general obligation that exceptions and limitations to exclusive rights are confined to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. See e.g., Berne Convention, Art. 9(2).

Exceptions and limitations for libraries, archives, and museums help individuals seeking, obtaining, and disseminating information, including cultural, artistic, and scientific knowledge, so that such individuals may participate meaningfully in public life.

Exceptions and limitations advance knowledge, creativity, and innovation by preserving and providing access to the world's cultural, artistic, and scientific heritage.

Both affirmative protections for authors and exceptions and limitations, including those for library, archival, and museum services, are vital to achieving the copyright system's goals of encouraging creativity, innovation, dissemination of knowledge, and learning.

It is essential that exceptions and limitations for libraries, archives, and museums be applied solely to noncommercial activities, and not apply to those undertaken for direct or indirect commercial advantage.

PRESERVATION

Objectives:

Encourage Member States to enable libraries and archives to carry out their public service role of preserving works by adopting exceptions and limitations for their preservation activities, and to consider adding museums and other non-profit institutions that function as a library, archives, or museum as eligible entities.

Principles:

Exceptions and limitations can and should enable libraries, archives, and museums to carry out their public service role of preserving works that comprise the cumulative knowledge, heritage, and culture of the world's nations and peoples.

To that end, exceptions and limitations can and should enable libraries, archives, and museums to make copies of published and unpublished works, including highly ephemeral materials, for purposes of preservation and replacement, under certain appropriate circumstances. Those circumstances may include preservation and replacement in both analog and digital formats, or migration of content from obsolete storage formats to more stable formats on an ongoing basis, as reasonably necessary and as incidental to technology for a specific, limited preservation purpose.

SUPPORT FOR RESEARCH AND SCHOLARSHIP

Objectives:

Encourage Member States to enable libraries and archives to carry out their public service role of advancing research and knowledge by adopting exceptions and limitations for purposes of research and scholarship, and to consider adding museums and other non-profit institutions that function as a library, archives, or museum as eligible entities.

Principles:

Libraries, archives, and museums advance knowledge by providing access to their collections, which together comprise the cumulative knowledge of the world's nations and peoples.

Libraries, archives, and museums are essential to the knowledge economy of the twenty-first century – supporting research, learning, innovation and creativity; providing access to diverse collections; and providing information and services to the general public, including disadvantaged communities and vulnerable members of society.

Reasonable exceptions and limitations can and should establish the framework enabling libraries, archives, and museums to supply copies of certain materials to researchers, scholars, and other users, directly or through eligible intermediary institutions, and accessible either on premises or, with effective digital security measures, remotely, under certain appropriate circumstances. Those circumstances may include access by a single user at a time, for a limited time, and only where the library, archives, or museum has no notice that the copy would be used for any purpose other than private study, scholarship, or research.

EXCEPTIONS AND LIMITATIONS IN A DIGITAL ENVIRONMENT

Objectives:

Encourage Member States to enable libraries and archives to carry out their public service role in the digital environment by adopting exceptions and limitations for providing public access to their digital collections, and to consider adding museums and other non-profit institutions that function as a library, archives, or museum as eligible entities.

Principles:

Digital technologies are changing how libraries, archives, and museums obtain, preserve, and provide access to digital content in their collections.

Limitations and exceptions should appropriately ensure that libraries, archives, and museums can preserve and provide access to information and materials developed and/or disseminated in digital form and through networked technologies, while implementing reasonable and effective digital security measures.

Libraries, archives, and museums have a role, along with authors, artists, and publishers of content, in facilitating the availability of cultural materials online in a flexible, secure, and non-commercial manner, to thereby promote further creativity, innovation, and equal access to knowledge and information.

OTHER GENERAL OBJECTIVES AND PRINCIPLES

Other exceptions and limitations, including general use exceptions, may also play an important role in enabling libraries, archives, and museums to carry out their public service role.

Exceptions and limitations that permit libraries, archives, or museums who own a particular lawfully acquired or lawfully made copy of a work to publicly display, or authorize the public display of that copy, under certain appropriate circumstances, are important to advancing institutional missions.

Member States should recognize limitations on the liability of certain types of damages applicable to libraries, archives, and museums, and their employees and agents authorized to act on behalf of the institution within the scope of their employment, that act in good faith, believing or having reasonable grounds to believe that they have acted in accordance with the copyright law.

Rightsholders have a critical role in ensuring sustainable access to copyrighted works in developed and developing countries. Where rapidly changing technology requires flexible solutions, Member States should encourage collaborative and innovative solutions among all stakeholders.

Libraries, archives, and museums should have reasonable and effective safeguards and digital security measures in place to ensure the responsible and lawful exercise of exceptions and limitations.

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