

**Copyright Exceptions for
Libraries & Archives:
*Chilean Leadership and Progress***



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Libraries and Copyright

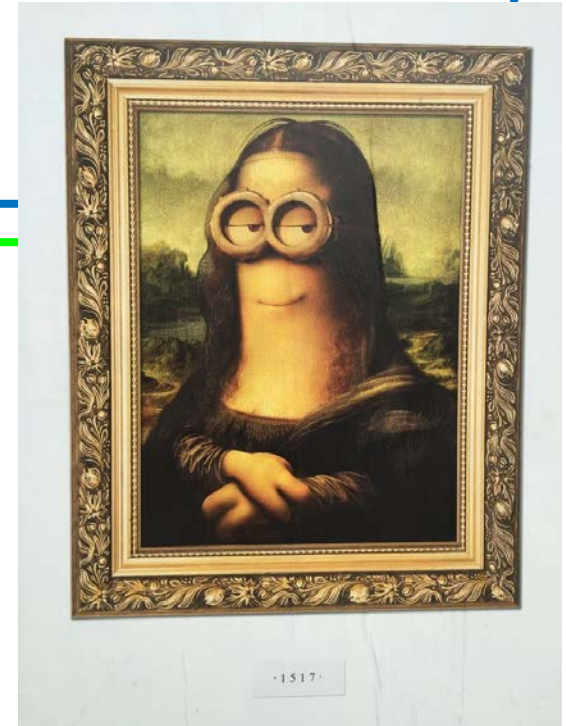
- **Why Libraries and Copyright?**
 - **Legal Deposit**
 - Published Works
 - Building Collections of the National Library
 - **Libraries as Economic Catalyst**
 - Purchasers of Books, Music, Film, and More
 - Licensing of Databases and Digital Collections
 - **Libraries as Users of Copyrights**
 - Public Lending
 - Reproduction and Distribution for Specific Needs

The Mission

- **Why Copyright and Libraries?**
 - **Mission of Libraries:**
 - **To Preserve and Provide Access to Information Resources**
 - **Mission of Copyright:**
 - **To Encourage the Creation of New Works**
 - **To Encourage their Public Dissemination**
 - **To Serve Private Interests of Ownership and Public Interests of Access and Creativity**

A Copyright Interlude

- **Scope of Works**
 - Nearly Unlimited
- **Automatic Copyright Protection**
- **Long Duration**
 - Life of the Author, plus 50 Years or More
- **Broad Scope of Rights**
 - Reproduction, Distribution, and More
- **Risks and Penalties**
- **Subject to Limitations and Exceptions**



Why Copyright?

- Copyright has Expansive **Scope**
 - Works, Rights & Term of Protection
- **Mission** of Libraries and Copyright Law
 - *Law*: To Encourage **Creation** and **Dissemination** of New Creative Works
 - *Libraries*: To **Preserve** and Provide **Access** to the Full Range of Information Resources
- Many **Library Activities** have immediate implications for Copyright Law

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.**”

TRIPs

Article 13: “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.**”



Origins and Progress

- **WIPO Initiatives**
 - Original Proposal, 2004
 - Background Statement, 2005
 - Further Proposal, 2008
 - Multiple Studies, 2008
 - Libraries, Blind, Education
 - Marrakesh Treaty, 2013
 - Needs of the Visually Impaired
 - The Effort began with **Leadership from Chile**

L&E Initiative 2004

November 2004: Proposal from Chile

Proposal to add to the agenda “the subject of exceptions and limitations to copyright and related rights for the purposes of education, libraries and disabled persons....”

The L&E Discussion

The SCCR meeting in 2004 addressed:

“understanding of the need to have adequate limitations, learning from existing models and **moving towards agreement on exceptions and limitations** for public interest purposes which, like **minimum standards, were to be envisaged in all legislations** for the benefit of the international community.”

L&E Initiative 2005

November 2005 Proposal from Chile:

- Identification of national models
- Analysis of L&E to promote creativity
- “Establishment of agreement on exceptions and limitations **for purposes of public interest** that must be envisaged as a **minimum** in all national legislations for the benefit of the community.”

L&E Initiative 2005

November 2005 Background Statement:

- “Digital technology has opened up new opportunities”
- “The principle of balance is most certainly the value which best reflects the expectations of society”
- “Limitations are inherent in the intellectual property system”

L&E Initiative 2005

November 2005 Background Statement:

- Exceptions “constitute instruments for delimiting and protecting a heritage of public property and areas of freedom for the use of knowledge and products of human creativity”
- Differences among exceptions are an obstacle “for the acceptable use of works by disabled persons, libraries and public archives”

L&E Initiative 2008

March 2008 Proposal from Brazil, Chile, Nicaragua, and Uruguay:

- Identification of national models
- Analysis of L&E to promote creativity
- “Establishment of agreement on exceptions and limitations for purposes of public interest that must be envisaged as a minimum in all national legislations for the benefit of the community”

L&E Initiative 2008

March 2008: WORK PLAN Proposal from Brazil, Chile, Nicaragua, and Uruguay

- Research on L&E
- Review of Existing L&E
- Implications of Specific L&E
- “prescriptive minimum global framework”
- Other exceptions as “best practices”
- Mandatory minimum exceptions

The Studies: 2008 to 2015

SCCR 30, June 2015

Available: <http://bit.ly/1GjpcGr>



SCCR 17, November 2008

Available: <http://bit.ly/1tB8ryb>

SCCR 29, December 2014

Available: <http://bit.ly/1A9ImgV>

The 2015 Study

- WIPO: **188** Member Countries
- Found: Statutes from all **188** Countries



The 2015 Study

- **WIPO: 188 Member Countries**
- **No Library Exception: 32 Countries**
 - Significance: **156 Countries**
 - Indicator of the Importance of Libraries
- **General Exception: 31 Countries**
 - “General” Means: Exception applies to Libraries, but not to Specific Activities
 - Result: **125 Countries** have Specific Exceptions for Libraries & Archives

General Library Exception

From the Tunis Model Act:

“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...”

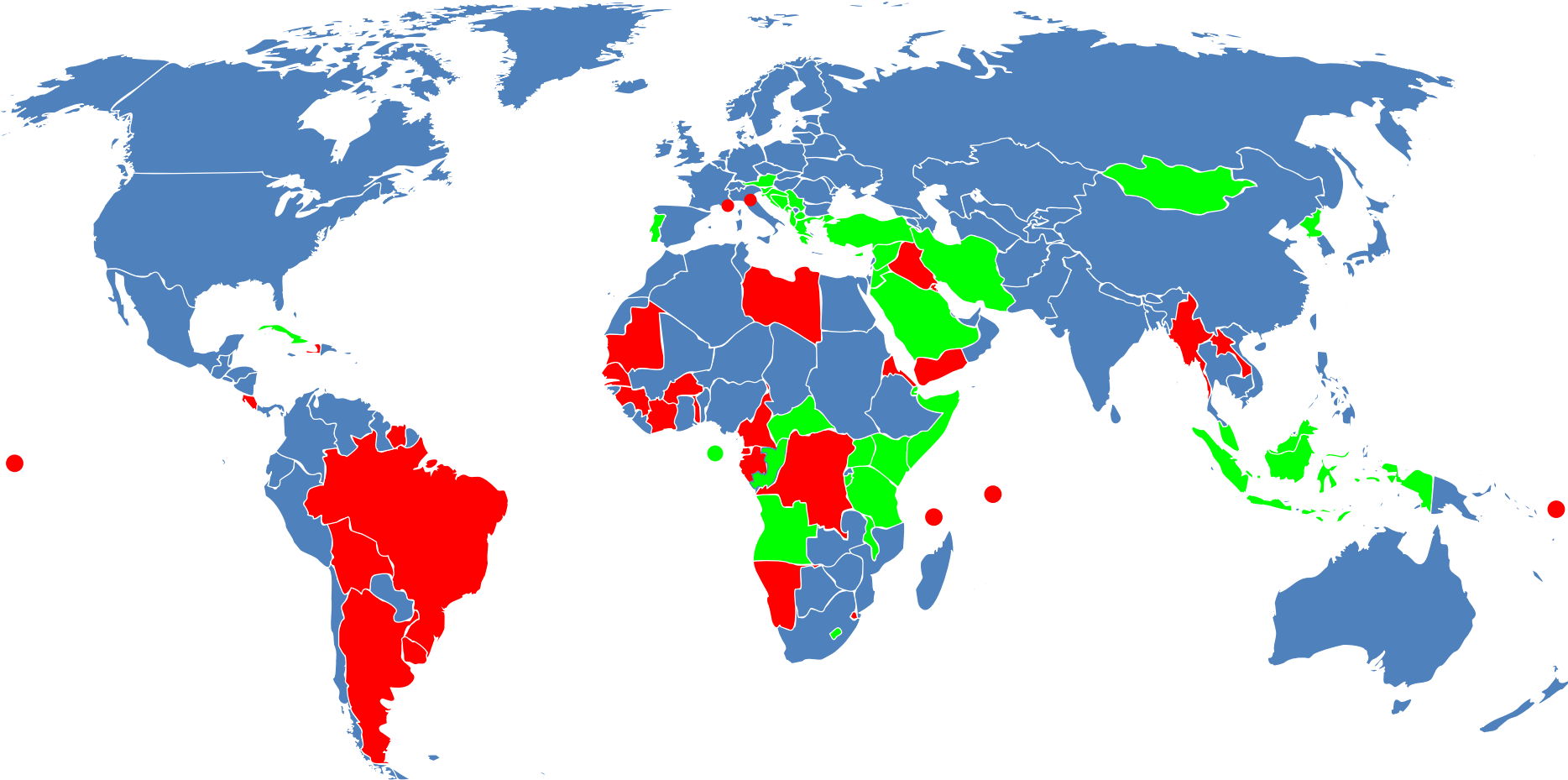
Scope of Exceptions

- **Preservation and Replacement**
- **Private Study and Research**
 - Making Available on the Premises
- **Document Supply or Interlibrary Loans**
- **Copy Machines in the Library**
- **Limitations on Remedies**
- **Technological Protection Measures**
 - “Anticircumvention” of Tech Protection Measures

Diversity of Exceptions

- **Who:** Libraries, Archives, Museums?
- **What:** Published or Unpublished? Articles or Full Works? Movies or Music?
- **When:** During Term of Economic Rights? After the Term?
- **Why:** Conditions and Proof?
- **How:** Analog or Digital?

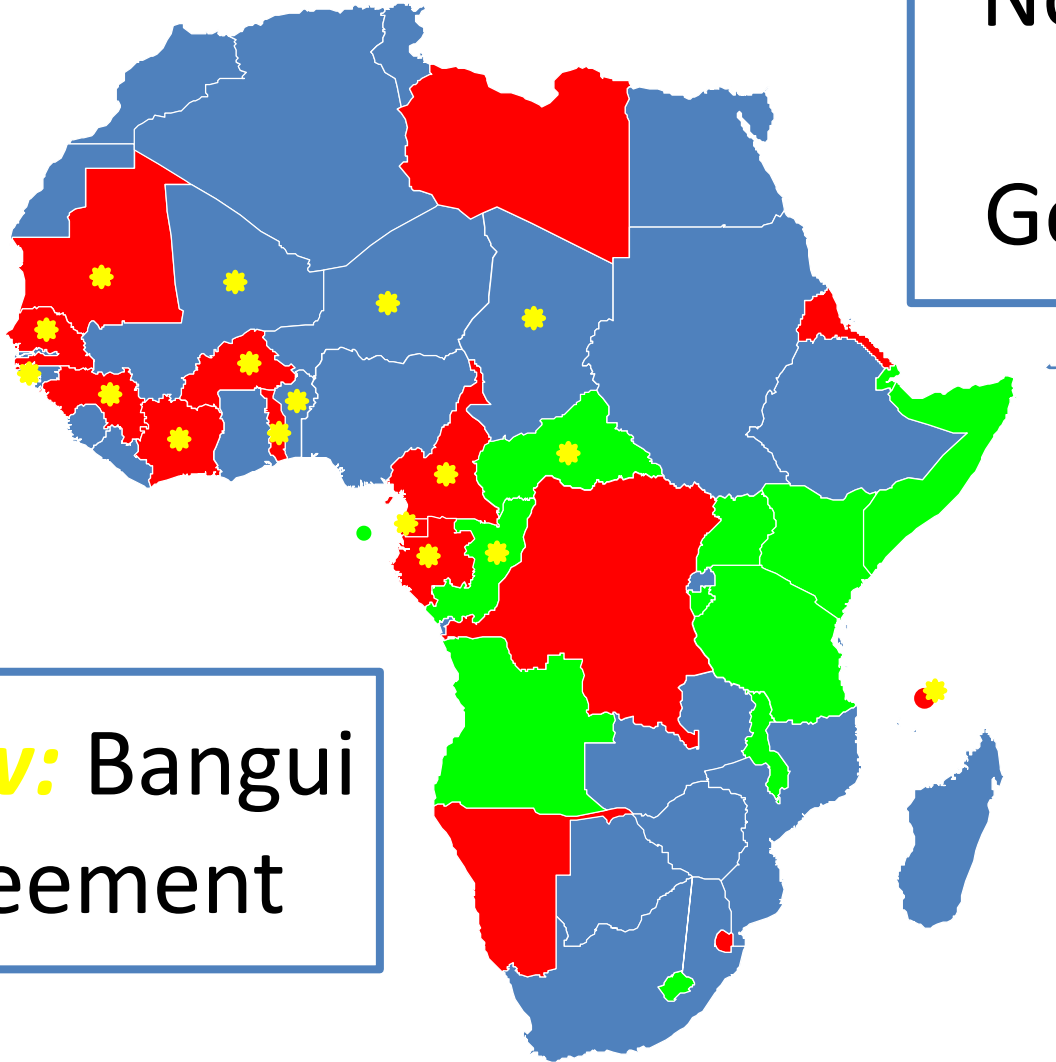
Red: No Library Exception
Green: General Exception Only



Yet there are Patterns

- **British Copyright Act, 1956**
- **Tunis Model Statute, 1976**
- **Bangui Agreement**
- **Cartagena Agreement**
- **Regional Trends**
- **Even the U.S. Copyright Act**
 - **Liberia**
 - **South Africa**

Red:
No Exception
Green:
General Only



Yellow: Bangui
Agreement

The British Model

- **Founded in the Copyright Act of 1956**
- **Multiple Specific Provisions**
- **Preservation and Research (added later)**
- **Copies for Research and Study**
 - **Conditions**
 - **Evidence that the use is for private study**

Former British Colonies: **Imperial Statute Model**



Antigua & Barbados	Egypt	Saint Lucia
Australia	Fiji	Saint Vincent & The Grenadines
Bahamas	Ghana	Sierra Leone
Belize	Grenada	Singapore
Bhutan	Jamaica	Trinidad & Tobago
Botswana	Nepal	United Arab Emirates
Brunei	New Zealand	United States
Darussalam	Nigeria	Zimbabwe
Canada	Pakistan	
Dominica	Qatar	

USA

- **Section 108 of the US Copyright Act**
- **Enacted in 1976, Amended 1998**
- **Statutes along the British Model**
- **Main Subjects:**
 - **Preservation and Replacement**
 - **Copies for Research or Study**
 - **Short Works**
 - **Entire Works**
 - **Copies for Interlibrary Loans**

Copyright and Chile

- **Before 2010:**
 - No Copyright Exception for Libraries & Archives
 - Limited reproduction of Cultural Works
- **Revision of 2010:**
 - Copies for Personal Use; Copies on Dedicated Terminals; Copies for Preservation & Replacement (71I, 71J, 71K)
 - Limited public performance statute (71N)
 - Adopted Berne Appendix for Translations (71L)

Copyright in Chile, 2010

Artículo 71 I. Las bibliotecas y archivos que no tengan fines lucrativos podrán, sin que se requiera autorización del autor o titular ni pago de remuneración alguna, reproducir una obra que no se encuentre disponible en el mercado, en los siguientes casos:

(continued....)

Copyright in Chile, 2010

Artículo 71 I. (continued):

a) Cuando el ejemplar se encuentre en su colección permanente y ello sea necesario a los efectos de preservar dicho ejemplar o sustituirlo en caso de pérdida o deterioro, hasta un máximo de dos copias. **b)** Para sustituir un ejemplar de otra biblioteca o archivo que se haya extraviado, destruido o inutilizado, hasta un máximo de dos copias. **c)** Para incorporar un ejemplar a su colección permanente. Para los efectos del presente artículo, el ejemplar de la obra no deberá encontrarse disponible para la venta al público en el mercado nacional o internacional en los últimos tres años.

Para los efectos del presente artículo, el ejemplar de la obra no deberá encontrarse disponible para la venta al público en el mercado nacional o internacional en los últimos tres años.

Copyright in Chile *Analysis*

- **Who:** Libraries and Archives that are not for profit
- **What:** Any work in the permanent collection that is not commercially available; 2 copies.
- **When:** If the work has not been on the market within the past three years.
- **Why:** Preserve or replace the work
- **How:** “Reproduction” allows any technology.

Innovations in Statutes:

Relatively Few

- **Canada**
 - Eased Limits on Research Copies & ILL
- **Russia**
 - Expanded and Provisions & Digital Technologies
- **United Kingdom**
 - Eased Limits on Research Copies
 - Expanded Provisions for Diverse Works & Media
- **Japan and France**
 - Digital Programs at National Libraries
- **European Union**
 - Orphan Works Directive (2012)
 - Dedicated Terminals (2001)

Innovations in Statutes:

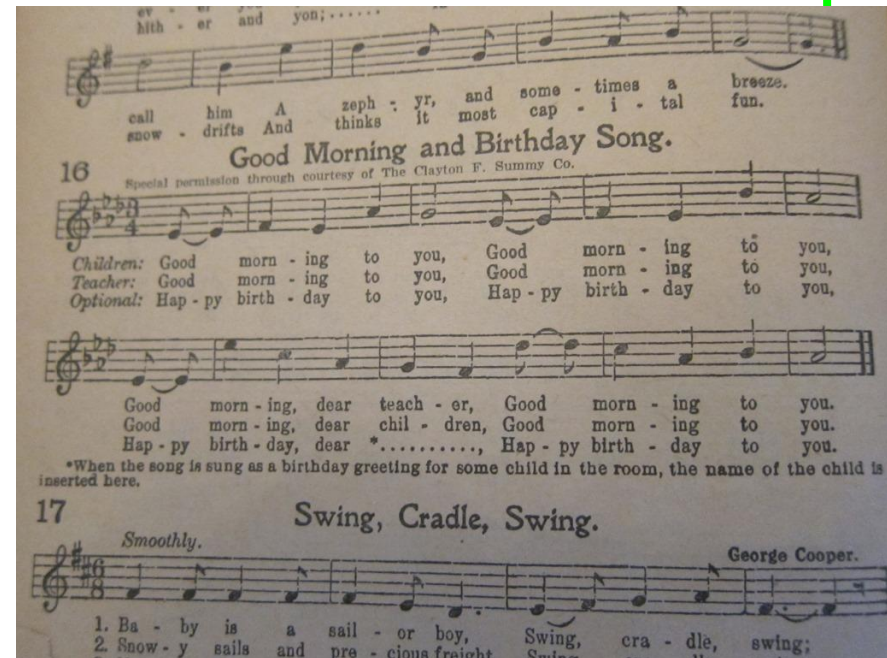
The European Union

- **Orphan Works Directive, 2012**
- **Information Society Directive, 2001**

Permitted Exception: “communication or making available, for the purpose of **research or private study**, to individual members of the public by **dedicated terminals on the premises** of [libraries and archives] of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections”

Implications, Part II

- Political Realities
- Competing Interests
- Economics & Culture
- History
- Regional Agreements
 - European Union
 - TPP
- Role for WIPO – Possible New Treaty?



The Challenge Ahead

- **Application to Digital Technologies**
- **Expansion of Library Services**
 - Interlibrary Loans
 - Services to the Visually Impaired
 - Mass Digitization for Preservation
 - Relationship to Licenses
 - Use of Orphan Works
- **First Sale & Digital Exhaustion of Rights**
- **Cross-Border Delivery of Works**

Copyright Exceptions for Libraries and Research

Thank You!



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