

COPYRIGHT EXCEPTION FOR LIBRARIANS

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Abstract

This paper describes how to apply copyright exceptions for librarians in academic life and how librarians can help teachers, students and researchers. Researchers, copyright exceptions and librarians are related to be an excellent research. Research is an essential tool to develop a country. To be a good research, teachers and students need copyright exceptions and advices of librarians. Copyright exceptions for researchers and educational purposes are provided in Section 2 of Myanmar Copyright Act 1914. Section 22 of the Myanmar Copyright Draft Law 2015 provides about exceptions for libraries and archives. However, it is needed to point out detail on the roles and responsibilities of librarians.

Keywords: copyright, exception and librarians.

Introduction

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps and technical drawings.¹

Copyright infringement happens when someone uses the copyright-protected work of someone else, (a book, an article, a song, etc.), without permission.² Copyright infringement is the use of works protected by copyright law without permission, infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works.³

Copyright law aims to achieve a balance between the interests of creators, so they receive a just reward for their works, and the public interest in terms of ensuring the public has access to such works.⁴ In this way,

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¹ <http://www.wipo.int/copyright>

² <http://www.wipo.int/sme/documents/copy...>

³ <http://en.m.wikipedia.org/wiki/Copy...>

⁴ <http://www.wipo.int/2017/04/article-0003>

copyright law supports further creation as well as the growth of knowledge and culture and its diffusion. Examples for exceptions of copyright are private use, educational use, and artistic works in public places, use for libraries and archives, use for disabled persons and use for informatory purpose for public. Libraries play an essential role in serving the public interest by preserving and making such works available to the public.

Many librarians act as mediators, guides or even, in some cases formal teachers. They help people to recognize their information needs, identify and access relevant sources and make judgments about the value of that information. To facilitate this, libraries have traditionally collected and organized information, in a wide variety of formats, from books and journals to audio-visual materials and special collections. Increasingly library collections are available in digital format which means that copyright law, licensing terms and digital rights management technologies can have a big impact on how and whether information is used.¹ In other countries, libraries exist for disabled persons, for example, Gallaudet University in United States has a library for deaf persons.

Librarians are permitted to assist researchers and students by providing limited copies of books, plays and musical scores, pictures and photos, literary, dramatic, musical and artistic works for non-commercial research and private study. The amount that can be copied is restricted to a reasonable proportion.² In Sydney University, students can quote 10% of a work for research. Researchers can cite 5% of a work in University of Leeds. For educational purpose, in University of London, teachers and students can quote 10% of a work. Librarians have duty to know how many percentage of a work can be quoted for researchers such as students because plagiarism is a crime for students. Librarians will help students and researchers to know relevant sources. Librarians can cite 10% of a work to help researchers who are students and teachers. This rules out unfair or unreasonable uses such as copying a whole film for “research” instead of buying the DVD and generally

¹ <http://www.copyrightuser.org/.../libraries>

² <https://www.swfed.org.uk/.../IPO>

means that only a part of a work can be copied. Use made of the work should be accompanied by sufficient acknowledgement¹.

Library Exceptions in the World

Library exceptions in National Copyright Statutes analyzed by WIPO are as follows;

In 2014 data revised in 2017 by Kenneth D. Crews from WIPO, 33 member countries have no library exception, 34 countries possess general library exception, and other countries accept diversity of library exceptions.

- **General Library Exception.** Some countries have a broad and flexible provision that permits a library or other institution to make copies of works, usually subject to various conditions, but not limited to particular purposes. Many more countries have a general exception together with other provisions, but it is especially insightful to note those countries rely solely on a general exception, without the benefit of a more specific library statute.
- **Copies for Research and Study.** One of the most common statutes within this study is the provision permitting a library or other institution to make copies (usually single copies) at the request of a user, often specifically for that person's research or private study. This category of statutes includes any provision that authorizes the library to make a copy of a work for a user, whether "research and study" is noted in the statute or not.
- **Making Available.** The European Union directive of 2001, as described above, led many E.U. countries to adopt a statute allowing libraries to make digital works available to users on the premises, usually for their research or study.²
- **Copies for Preservation or Replacement.** Among the most common library exceptions are statutes that authorize the library to make copies of works for preservation, without necessarily requiring that the work

¹ <https://www.swfed.org.uk/.../IPO>

² WIPO, Standing Committee on Copyright and Related Rights, "Study on Copyright Limitations and Exceptions for Libraries and Archives", Geneva, November 13 to 17, 2017, p.9.

first be at risk. Almost as common are statutes authorizing libraries to replace existing copies in the collection, or in the collection of another library, if the work is lost, damaged, deteriorated, or otherwise in jeopardy?

- **Interlibrary Loan or Document Supply.** Much less common are statutes that permit libraries to make copies of works to provide to other libraries for the libraries' use or for delivery to users at their request.
- **Anti-circumvention.** Many countries have enacted provisions barring the circumvention of technological protection measures. Some of those countries also have enacted certain exemptions. This study identifies countries that have statutory exemptions explicitly applicable to libraries.

Some countries have enacted statutes on specialized needs of libraries. Each country often includes brief references to other copyright provisions that might be important to libraries, such as personal copying, public lending, fair dealing, the needs of disabled persons, and much more.¹ Today, in the world, there have so many developed situations but children who possess poor parents can't do to library because they also work for their survivals. So, it is needed to have relevant libraries for poor children who are included as disable persons.

Library Exceptions in Myanmar

In ancient time, Myanmar government try to possess every library exist in every ward. So, nowadays, Myanmar have 93% literacy rate. There are 55,755 registered public libraries in Myanmar, but only 4,868 are considered active in 2014.² In Myanmar, there are developing with e-libraries and mobile libraries. But accessing good quality books is still needed.

In 1914 Copyright Act, there is no specific provision for a library. In 2015 Copyright Draft Law, there has a library's provision. 2017 Copyright Draft Law is more complete than 2015. Besides, exceptions for educational

¹ WIPO, Standing Committee on Copyright and Related Rights, "Study on Copyright Limitations and Exceptions for Libraries and Archives", Geneva, November 13 to 17, 2017, pp 9-10.

² <https://asiafoundation.org/2014/02/05/myanmars-libraries-a-potential-catalyst-for-community-development/>

use are contained in Section 2 (1) (iv) Part I under Schedules, An Act to amend and consolidate the Law relating to Copyright of the **Myanmar** Copyright Act 1914 which provides that copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright. Provided that the following acts shall not constitute an infringement of copyright: The publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists. Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged.¹

Section 22 of **Myanmar** Copyright Draft Law 2015 provides that notwithstanding Sub-section 12 (a), the reproduction for any library or archive can be made as a single copy for the following purposes without the permission of the author or copyright owner; (a) if the reproduction is a literary or artistic work, it would have to be of a published work a part of another literary or artistic work or excerpt and shall have made at the request of some person (b) according to Sub-section (a) the reproduction (i) the library or archive must be satisfied that reproduction is being made only for study, teaching or personal research purposes (ii) if the works are different from and unrelated to each other, separate copies must be made, (c) if reproduction is made for preserving of a copy or if necessary, for use as a substitute or if needed, in order to replace a collection, of the work , maintained and preserved by some other similar library or archive and which has become lost, destroyed, or unusable for lending purposes... (d) according to Sub-section (c), if irrefutable evidence can be shown that the reproduction of such a copy cannot be got in spite of efforts made to find one.²

¹ The Myanmar Code, Volume X, Published under the Authority of the Government of the Union of Myanmar, 1954.

² Section 22 of Myanmar Copyright Draft Law 2015

Section 25 of the **Myanmar** Copyright Draft Law 2017 provides that notwithstanding Sub-section 15 (a), the reproduction for any library or archive can be made as a single copy for the following purposes without the permission of the author or copyright owner; (a) if the reproduction is a literary or artistic work, it would have to be of a published work, a part of another literary or artistic work or excerpt and shall have been made at the request of some person. But such reproduction (i) the library or archive must be satisfied that the reproduction is being made only for study, teaching or personal research purposes (ii) if the works are different from and unrelated to each other, separate copies must be made, (b) if reproduction is made for preserving of a copy or if necessary, for use as a substitute or if needed, in order to replace a collection, of the work , maintained and preserved by some other similar library or archive and which has become lost, destroyed, or unusable for lending purposes... Such reproduction (i) if irrefutable evidence can be shown that the reproduction of such a copy cannot be got in spite of efforts made to find one, (ii) if the works are different from and unrelated to each other, separate copies must be made. (c) literary and artistic works can be copied as follows; for the purposes of copying and preservation, (i) a library or an archive can get a copy of the work or a copy of an integral part of it from another archive or a library if its own collection is incomplete or if a copy cannot be got from the market or publisher or in collecting literary and artistic works for an organization. (ii) a library or an archive can copy a literary or artistic works if in spite of trying, it cannot get permission to do so from the right holder or if it cannot get it from the market or the publisher.¹ (iii) users may study copies which are made in accordance with Sub-sections (a) and (b), within a library or an archive's premise. Beside, a library or an archive can borrow such copies to users to private study and to study within its premises. (d) Libraries can support each other by means of post, fax or safe electronic connections. But such electronic files of literary and artistic works shall be copied on paper and deleted immediately thereafter. Besides, the library that receives the copy may provide its users with such paper copies. (e) A library or an archive may translate a literary and artistic work, which it got officially for the purpose of education or research, when its users cannot

¹ Section 25 of Myanmar Copyright Draft Law 2017

access it in a required language. But such translation cannot be used for other purposes. (f) A person or an organization can translate literary or artistic works from other languages to the language of minority groups and *vice versa* for the purpose of giving information but not for economic reasons.¹

In 2017 Copyright Draft Law, there is a need to provide the appropriate amount to copy for a library.

Copyright exceptions for library are different in practices by the legislations of the countries.

Library Exceptions in Canada

Section 30(2)(2) of the Canadian Copyright Act 1985 declares that it is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, by reprographic reproduction, for any person requesting to use the copy for research or private study, a copy of a work that is, or that is contained in, an article published in

- (a) a scholarly, scientific or technical periodical; or
- (b) a newspaper or periodical, other than a scholarly, scientific or technical periodical, if the newspaper or periodical was published more than one year before the copy is made.

Under certain conditions, educational institutions or persons acting under their authority can make limited copies for instruction and examinations:

- Instructors can copy a work onto a board, flip chart or similar surface and project a work using an overhead projector or similar device. The projection must be on the school's premises for educational purposes only. Digital projectors are arguably covered by this Section.

¹ Section 25 of Myanmar Copyright Draft Law 2017

- For the purposes of an exam or test, instructors can reproduce, translate or perform a work when it is not commercially available in an appropriate medium.

Other educational exceptions are discussed in the Sections covering translation and performance, broadcasting and playing sound recordings and images. Canadian libraries, archives and museums benefit from exceptions that facilitate the delivery of print and electronic works. They may do anything that individuals may do for themselves as long as it is for private study, research, criticism or review. For example, library personnel are allowed to make a copy of an article to be placed on course reserve for a faculty member.¹

CCH Canadian Ltd v Law Society of Upper Canada,² is a landmark Supreme Court of Canada case that established the threshold of originality and the bounds of fair dealing in Canadian copyright law. A group of publishers sued the Law Society of Upper Canada for copyright infringement for providing photocopy services to researchers. The Court unanimously held that the Law Society's practice fell within the bounds of fair dealing.

"In order to qualify as a library is included in fair dealing, the Great Library: (1) must not be established or conducted for profit; (2) must not be administered or controlled by a body that is established or conducted for profit; and (3) must hold and maintain a collection of documents and other materials that is open to the public or to researchers." Since Chief Justice McLachlin already concluded the library's dealings were fair, she did not need to rule on this issue. Regardless, she determined that the Great Library would have qualified for the library exemption.

Since the Great Library was found not to have infringed on copyrighted material, no determination was made as to whether the Court of Appeals was correct in denying injunctive relief.³ Especially, Copyright exceptions are determined upon the Article 9(2) of the Berne Convention 1886. It must be certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate

¹ <http://fairuse.stanford.edu/overview/academic-and-educational-permissions/non-coursepack>.

² [2004] 1 SCR 339, 2004 SCC 13

³ https://en.wikipedia.org/.../CCH_C..

interests of the authors. It will take a decision upon whether it is fair use or not. In EU, public libraries have Public Lending Right. E-Lending is the special thing for EU. In Singapore, the provisions of library are divided into sectors by sectors such as for copying for preservation and other purposes, copying of unpublished works and copying for published works. In *Basic Books, Inc. V. Kinko's Graphics Corp* 758 F. Supp. 1522 (S.D.N.Y. 1991) case, Kinko's Graphics services affect the market of Basic Books so their copying are not fair use even they have reason for educational purpose. In *Authors Guild V. HathiTrust* 755 F.3d 87 (2d Cir. 2014) and *Authors Guild V. Google, Inc.* No. 13-4829 (2d Cir. 2015) cases, the uses of transformative are limited and they do not harm the market of right holders so the Court considered as fair use. So libraries can computerize their collections for researchers found on a fair use as reasoning.

Methods and materials

- Studying on international conventions, Laws of Canada and Myanmar relating to Copyright Exceptions for Librarians
- Studying on cases, published books and websites.

Findings

Copyright exceptions for library vary from country by country, university by university and case by case. In each country, there have their national legislation so library exceptions will depends on their legislations. But knowledge transfer relies upon libraries and librarians can assist researchers and public by getting relevant exceptions. Is Section 25 of Myanmar Copyright Draft Law 2017 in line with fair use which is come out from Article 9(2) of the Berne Convention, 1886? From my point of view, in our country, library exceptions are needed to provide in details. Myanmar is not a rich country so it cannot give public lending right in Section 25 of the Myanmar Copyright Draft Law 2017. But it can allow a reasonable portion (amount) that must be fair for public and authors. If a single copy of small portion of a book will be taken by users in one day after one day, the whole book will be in their hands and the market of the author will affect.

Conclusion

Copyright exceptions for library must be rigid and effective. Because librarians can help public, researchers and children to gain better lives by getting precious knowledge and information. Librarians can guide researchers what measures cannot or can quote from authors, what measures can be plagiarism and how researchers can cite. Especially, Myanmar needs many librarians who help people to be more educated by performing their duties. So, copyright exceptions for library should provide effectively.

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<http://www.wipo.int>copyright>

<http://www.wipo.int>sme>documents>copy...>

<http://en.m.wikipedia.org>wiki>Copy...>

<http://www.wipo.int>2017/04>article-0003>

Annex (1) Provisions relating to library exceptions in Myanmar

	Myanmar Copyright Act 1914	Myanmar Copyright Draft Law 2017
Library or Archives	-	<p>Sec 25</p> <p>The reproduction for any library or archive can be made as a single copy</p> <ul style="list-style-type: none"> - for study, teaching or personal research purposes at the request of some person, - for preserving and for replacement in a collection of works from some other similar library. <p>Libraries can support each other by means of post, fax or safe electronic connections.</p> <p>A library or an archive may translate a literary and artistic work for education in a required language</p> <p>A person or an organization can translate literary or artistic works from other languages to the language of minority groups and <i>vice versa</i> for information.</p>

Source: A Comparative Study of “fair use” in Japanese, Canadian and US Copyright Law by Susan Wilson and Cameron Hutchison.

Annex (2) Library exceptions in National Copyright Statutes analyzed by WIPO

Library Exceptions in National Copyright Statutes Summary of Findings of a 2017 Study for the World Intellectual Property Organization Study by Kenneth D. Crews Total Countries in the Study: 191	
Exception	Number of Countries
No Library Exception that have enacted no copyright statutes.)	28(today 33) (In addition, two countries
General Library Exception (Note: The statistic is the number of countries With <i>only</i> a general exception and no specific Library exception.)	21 (today 34)
Copies for Library Users (for Research or Study or similar stated purpose)	105
Preservation or Replacement	Preservation: 102 Replacement: 98
Research or Study (Making Available on dedicated terminals)	34
Document Supply or Interlibrary Loan	Document Supply:22 Interlibrary Loan: 9
Anti-Circumvention of Technological Protection Measures- Exemption for Libraries	53

Source: Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised (2017 Edition) prepared by Kenneth D. Crews, J.D., Ph.D.