

World Intellectual Property Organization
22nd Session of the Standing Committee on Copyright and Related Rights
Statement of the United States of America on
Limitations and Exceptions Relating to Libraries and Archives
June 22, 2011

Thank you, Mr. Chairman.

The United States recognizes that libraries and archives are central to our knowledge ecosystem.

Libraries and archives advance knowledge by providing access to works that comprise the cumulative knowledge, cultural heritage, and collective memories of the world's nations and peoples. They are essential to the knowledge economy of the 21st century -- supporting research, learning, innovation and creative activity; providing access to diverse collections; and providing information and services to the general public, including disadvantaged communities and vulnerable members of society.

Many libraries and archives also undertake important preservation activities, utilizing specialized training and techniques, scarce resources, and sophisticated technologies. Commitments like these secure the world's cultural, artistic, and scientific heritage for the current and future generations. And, Mr. Chairman, we know that full participation in our information society requires access to information, creative expression, and ideas.

Throughout the world, national copyright laws have long recognized the special role of libraries and archives in achieving the system's goals of encouraging creativity, innovation, and learning. As we learned from the comprehensive study carried out by Professor Kenneth Crews on behalf of this Committee, 128 of the 149 countries surveyed have at least one statutory library exception that specifically permits libraries to make copies of copyrighted works under certain circumstances in connection with the performance of library services. Most countries have multiple statutory provisions. These limitations and exceptions support private research and study, preservation and replacement of materials, and access to materials, including document supply and interlibrary lending.

In the United States, our primary library exception is Section 108 of the Copyright Act. A library or archive is eligible to use the carefully crafted exception if its collections are open to the public or are available to researchers who are not affiliated with the institution, but who are doing research in a specific field. In addition, the copying must be made "without any purpose of direct or indirect commercial advantage," and provide notice of copyright or possible copyright protection.

Libraries may make copies of materials for purposes of preserving items in the collection or replacing items that are damaged, deteriorating, lost, or stolen, or stored in an obsolete format. Section 108 sets out specific requirements for making copies of published or unpublished works for these purposes. Section 108 further authorizes libraries to make a

single copy of certain types of works to give to a researcher or other user of the library for that person's individual use, whether acquired from the library's collections or through interlibrary loan, under certain conditions.

Other limitations and exceptions in our copyright act support library services, such as the longstanding American doctrine of fair use, codified in Section 107 of our law, and a limitation on statutory damages for employees or agents of libraries and archives, acting within the scope of employment, who "believed and had reasonable grounds for believing" that they provided copies of materials under the fair use doctrine.

As described in the U.S. response to this Committee's questionnaire on copyright limitations and exceptions, the United States has undertaken work in recent years to study the need to update our current library and archive copyright exceptions and limitations to address adequately the special challenges and opportunities afforded by digital resources and technologies. The Library of Congress [National Digital Information Infrastructure and Preservation Program](#) (NDIIPP), in cooperation with the U.S. Copyright Office, convened a Section 108 Study Group, which included representatives from affected stakeholder groups. The Study Group had the mission of providing findings and recommendations on how to revise the copyright law in light of the changes wrought by digital media in order to ensure an appropriate balance among the interests of creators and other copyright holders, libraries and archives in a manner that best serves the national interest. Its final report was released in 2008. We look forward to sharing additional information about this process and other aspects of our national experience with library exceptions.

While Professor Crews's study addressed libraries and archives, the Study Group observed that museums share many of the same public service roles as these institutions, and we encourage Member States to consider museums in any comprehensive studies of limitations and exceptions for libraries and archives.

While limitations and exceptions must be tailored to address the needs of an individual country, we do believe that there are some general objectives and principles to which Member States can agree. We note, with interest, the Statement of Principles on Copyright Exceptions and Limitations for Libraries and Archives prepared by Electronic Information for Libraries, International Federation of Library Associations and Institutions, and the Library Copyright Alliance, which was distributed at this Committee's Eighteenth Session.

In looking at objectives and principles on which Member States can agree, we might consider the following:

We can recognize, for example, the importance of limitations and exceptions for libraries and archives and encourage all Member States to adopt them.

We can recognize that limitations and exceptions can and should enable libraries and archives to carry out their public service role of preserving works that comprise the

cumulative knowledge of the world's nations and people. In this regard, exceptions can enable libraries and archives to make copies of published and unpublished works for purposes of preservation and replacement, under certain circumstances. Similarly, exceptions may enable libraries and archives to preserve materials – in a variety of media and formats -- at risk of deterioration, damage, or loss, which may include the migration of content from obsolete storage formats. We note that legal deposit systems help develop national collections and may help in preservation efforts, particularly if they include many categories of works published in multiple formats.

We also may recognize the objective of enabling libraries and archives to carry out their public service role of advancing research and knowledge. Reasonable exceptions can establish the framework enabling libraries and archives to supply copies of certain materials to researchers and other users directly or through intermediary libraries. In addition, copyright laws may recognize limitations on the liability of certain types of damages applicable to libraries and archives and their employees that act in good faith, believing or having reasonable grounds to believe that they have acted in accordance with copyright law. Of course, adequate safeguards should be in place to ensure accountability with these provisions.

These objectives are informed by our own experiences, and we are eager to learn about the experiences of other Member States. Mr. Chairman, the United States looks forward to our next meeting and to exploring, in greater depth, the role of library and archive exceptions in meeting the goals of the copyright system.