



Libraries and Society Can Benefit When Flexible Limitations and Exceptions Supplement Specific-Purpose Exceptions in Copyright Law

The Library Copyright Alliance (LCA) believes that discussions of how the international copyright framework can best support libraries should include flexible limitations alongside specific-purpose exceptions. LCA offers this document as a contribution to the ongoing discussion on limitations and exceptions for libraries.

Benefits of Flexible Limitations and Exceptions in Copyright Law

- **Flexibility Can Help Fulfill Copyright's Purpose and Safeguard Important Rights and Freedoms:** In many countries, copyright law is intended to serve the dual goals of supporting creators and improving cultural creativity and access for society. In these countries, flexible exceptions can supplement specific-purpose exceptions to ensure that copyright provides appropriate protection to authors while also safeguarding other important policy objectives which may not otherwise be accommodated within copyright law, such as protecting citizens' freedom of expression and rights of privacy; fostering innovation; and promoting creativity, access to information, and diversity of thought.
- **Flexibility Can Support Economic Development:** To maximize economic development, countries must balance supporting the protection of copyrighted goods and services with cultivating an environment of creativity, innovation, and knowledge advancement. Because innovation cannot be perfectly predicted and therefore incorporated into specific-purpose exceptions, incorporating flexibility can allow this environment to flourish while protecting author rights.
- **Flexibility Can Support Information-Sharing Across Borders and Increase Communities' Access to Information:** Incorporating flexibility into domestic copyright law encourages the sharing of information across borders, thus allowing more efficient use of limited resources and advancing cross-cultural understanding. Flexibility also can facilitate the exchange of resources between communities with library access and those that may lack access.
- **Flexibility Allows Copyright Law to Be More Enduring and Relevant:** Flexibility, when supplementing specific-purpose exceptions, provides an enduring legal framework that can withstand evolving circumstances, including rapid changes in technology, whereas a system with only specific-purpose and technology-specific exceptions will likely require more frequent statutory revision to adapt to changing times.

The United States Library Experience: An Example of How Flexibility Can Support Libraries

Flexibility allows the public to realize its investment in libraries and also benefits society as a whole. Flexible limitations and exceptions under U.S. copyright law, especially fair use, aid LCA member libraries in performing key activities, including:

- **Mass Digitization:** U.S. libraries have recently been able to rely on fair use to support the digitization of works in their collections, including orphan works, and the creation of large-scale shared digital repositories for specific purposes such as full-text search and preservation.
- **Orphan Works:** Orphan works can easily become lost or inaccessible to the public without the stewardship of libraries. Fair use is especially well-suited to providing access to orphan works for libraries' non-commercial purposes because fair use is equitable in nature and can flexibly accommodate problems that arise from evolving circumstances, such as the inability to identify a work's copyright owner. Flexibility can supplement other solutions to the orphan works problem, such as remedies limitations. U.S. libraries rely on fair use to move forward with digital preservation and tailored access programs.
- **Facilitating Education and Research through E-Reserves:** U.S. libraries have created e-reserves and other electronic platforms to provide students with access to library materials needed for coursework. In the absence of an exception expressly permitting the making available of e-reserve materials, academic libraries have successfully relied on fair use to provide access to excerpts of course materials to enrolled students for the term of a course.
- **Providing Access to Users with Print Disabilities:** New technologies—such as text-processing technologies and text-to-speech functionality in web browsers—present opportunities for libraries to increase accessibility to users with print disabilities. U.S. libraries rely on fair use to provide access and to create accessible format materials and, in doing so, overcome lack of clarity in the existing statutory exception to take advantage of advances in technology that best support users with print disabilities.