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Limitations and Exceptions in International Copyright and Related Rights Treaties

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LIMITATIONS AND EXCEPTIONS IN INTERNATIONAL COPYRIGHT AND RELATED RIGHTS TREATIES

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ABSTRACT

Copyright limitations and exceptions have been an integral part of international copyright and related rights treaties since the original text of the Berne Convention in 1886, which protected the ability to adopt exceptions for uses for “educational” and “scientific” uses. Since that instrument, there has been great -- if uneven -- development of norms on limitations and exceptions. Currently, the World Intellectual Property Organization’s Standing Committee on Copyright and Related Rights is considering limitations and exceptions in the draft text for a treaty on broadcast organizations as well as a proposal from the African Group for a work programme on limitations and exceptions for libraries, archives, museums, education and research. To the consideration of those proposals, this document presents the text of limitations and exceptions provisions in international copyright and related rights treaties from 1886 to the present in chronological order.

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LIMITATIONS AND EXCEPTIONS PROVISIONS IN INTERNATIONAL COPYRIGHT
AND RELATED RIGHTS TREATIES

I. BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC
WORKS, ORIGINAL TEXT 1886²

Article 8

The faculty of making lawful the borrowing from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, is reserved to the legislature of the countries of the Union and to the special agreements existing or to be concluded between them.

II. ROME CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS
OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS, 1961³

Article 15. Permitted Exceptions

1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:

- (a) private use;
- (b) use of short excerpts in connection with the reporting of current events;
- (c) ephemeral fixation by a broadcasting organisation by means of its

² Translated from French. Available at: <https://www.wipo.int/wipolex/en/text/278701>. Accessed on Mar. 03, 2023.

³ Available at: <https://www.wipo.int/treaties/en/ip/rome/>. Accessed on Mar. 03, 2023.

own facilities and for its own broadcasts;

(d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organisations, as it provides for, in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

III. BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, STOCKHOLM REVISION 1967⁴

Article 2

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 9. Right of Reproduction

(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.

Article 10. Certain Free Uses of Works

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union,

⁴ Available at: <https://www.wipo.int/wipolex/en/text/278720>. Accessed on Mar. 03, 2023.

and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

Article 10bis. Further Possible Free Uses of Works

1. Of certain articles and broadcast works; 2. Of works seen or heard in connection with current events

(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Appendix: Special Provisions Regarding Developing Countries⁵

Article II. Limitations on the Right of Translation

(2) (a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

⁵ Available at: <https://www.wipo.int/wipolex/en/text/283698>. Accessed on Mar. 03, 2023.

...

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate

...

(9) (a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization (ii: “only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession”)

Article III. Reproduction

(2)(a)(ii) ... copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works

IV. BRUSSELS CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE, 1974⁶

Article 4

No Contracting State shall be required to apply the measures referred to in Article 2(1) where the signal distributed on its territory by a distributor for whom the emitted signal is not intended

(i) carries short excerpts of the programme carried by the emitted signal, consisting of reports of current events, but only to the extent justified by the informatory purpose of such excerpts, or

(ii) carries, as quotations, short excerpts of the programme carried by the emitted signal, provided that such quotations are compatible with fair practice and are justified by the informatory purpose of such quotations, or

(iii) carries, where the said territory is that of a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, a programme carried by the emitted signal, provided that the distribution is solely for the purpose of teaching, including teaching in the framework of

⁶ Available at: <https://www.wipo.int/treaties/en/ip/brussels/>. Accessed on Mar. 03, 2023.

adult education, or scientific research.

Article 7

This Convention shall in no way be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly.

V. WTO AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS), 1994⁷

Article 8 - Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 13 - Limitations and Exceptions

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.

VI. WIPO COPYRIGHT TREATY (WCT), 1996⁸

Article 10 - Limitations and Exceptions

(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in 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.

(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation

⁷ Available at: https://www.wto.org/english/docs_e/legal_e/31bis_trips_03_e.htm. Accessed on Mar. 03, 2023.

⁸ Accessible at: <https://www.wipo.int/wipolex/en/text/295166>. Accessed on Mar. 3, 2023.

of the work and do not unreasonably prejudice the legitimate interests of the author.

Agreed statement concerning Article 10

It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.

VII. WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT), 1996

Article 16, Limitations and Exceptions

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.

Agreed statement concerning Articles 7, 11 and 16.

The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

Agreed statement concerning Article 16

The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty.

VIII. BEIJING TREATY ON AUDIOVISUAL PERFORMANCES, 2012⁹*Article 13 - Limitations and Exceptions*

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer

Agreed statement concerning Article 13

The Agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty (WCT) is applicable mutatis mutandis also to Article 13 (on Limitations and Exceptions) of the Treaty.

Agreed statement concerning Article 15 as it relates to Article 13

It is understood that nothing in this Article prevents a Contracting Party from adopting effective and necessary measures to ensure that a beneficiary may enjoy limitations and exceptions provided in that Contracting Party's national law, in accordance with Article 13, where technological measures have been applied to an audiovisual performance and the beneficiary has legal access to that performance, in circumstances such as where appropriate and effective measures have not been taken by rights holders in relation to that performance to enable the beneficiary to enjoy the limitations and exceptions under that Contracting Party's national law. Without prejudice to the legal protection of an audiovisual work in which a performance is fixed, it is further understood that the obligations under Article 15 are not applicable to performances unprotected or no longer protected under the national law giving effect to this Treaty.

⁹ Available at: <https://www.wipo.int/wipolex/en/text/295837>. Accessed on Mar. 03, 2023.

IX. MARRAKESH TREATY TO FACILITATE ACCESS TO PUBLISHED WORKS
FOR PERSONS WHO ARE BLIND, VISUALLY IMPAIRED OR OTHERWISE
PRINT DISABLED, 2013¹⁰

*Article 4. National Law Limitations and Exceptions Regarding Accessible
Format Copies*

1. (a) Contracting Parties shall provide in their national copyright laws for a limitation or exception to the right of reproduction, the right of distribution, and the right of making available to the public as provided by the WIPO Copyright Treaty (WCT), to facilitate the availability of works in accessible format copies for beneficiary persons. The limitation or exception provided in national law should permit changes needed to make the work accessible in the alternative format.

Article 5. Cross-Border Exchange of Accessible Format Copies

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party

¹⁰ Available at: <https://www.wipo.int/wipolex/en/text/295837>. Accessed on Mar. 03, 2023.