



PROGRAM ON
INFORMATION JUSTICE AND
INTELLECTUAL PROPERTY

Broadcast Exceptions

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Objectives of L&E provisions in Int'l Law

- Protecting
- Promoting
- Requiring / harmonizing
- Confining

Article 15

Permitted Exceptions: 1. Specific Limitations; 2. Equivalents with copyright

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 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.

Draft Broadcast Treaty

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 broadcasting organizations as they provide, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.

(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 programme-carrying signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

Protecting Specific Exceptions

[Proposal on Limitations and Exceptions

(3) It is presumed that the following, inter alia, constitute special cases which do not conflict with the normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the right holder:

(a) private use

(b) the use of excerpts in connection with the reporting of current events;

(c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

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

(e) the use to specifically allow access by persons with impaired sight or hearing, learning disabilities, or other special needs;

(f) the use by libraries, archives or educational institutions, to make publicly accessible broadcast protected by any exclusive rights of the broadcasting organization, for purposes of preservation, education and/or research;

(g) any use of any kind in any manner or form of any part of a broadcast where the program, or any part of it, which is the subject of the transmission is not protected by copyright or any related right thereto.]

Protecting Openness and Flexibility

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.

-WCT Agreed Statements

US-Korea FTA

ARTICLE 18.4: COPYRIGHT AND RELATED RIGHTS

FN 11 Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.

Marrakesh Treaty, Art 10

3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, other international treaties, and Article 11.

Max Planck Declaration

3. The Three-Step Test's restriction of limitations and exceptions to exclusive rights to certain special cases does not prevent
- (a) legislatures from introducing **open ended limitations** and exceptions, so long as the scope of such limitations and exceptions is reasonably foreseeable; or
 - (b) courts from
 - applying existing statutory limitations and exceptions to similar factual circumstances *mutatis mutandis*; or
 - creating further limitations or exceptions, where possible within the legal systems of which they form a part.

Protecting TPM Exceptions

Beijing Treaty Art. 15, FN (TPMs)

10 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.

Promoting Balance

TPP Art. 18.66

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 18.65

(Limitations and Exceptions), including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.

79 For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 18.65 (Limitations and Exceptions).

RCEP

[AU propose:

3. Each party **shall endeavour to provide** an appropriate balance in its copyright and related rights system **by providing limitations and exceptions,** consistent with paragraph 1, for legitimate purposes **including** education, research, criticism, comment, news reporting, libraries and archives and facilitating access for persons with disability.

4. For greater certainty, each Party **may adopt** or maintain limitations or exceptions to the rights described in paragraph 1 for **fair use,** as long as any such limitation or exception is confined as stated in paragraph 3]

Convention on the Rights of Persons with Disabilities

ART 30. 3.

States Parties **shall take all appropriate steps**, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

Requiring Exceptions

Proposal on Obligations Concerning Technological Protection Measures

() Contracting Parties **shall** take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent third parties from enjoying content that is unprotected or no longer protected, as well as the limitations and exceptions provided for in this Treaty.

EU Infosoc Directive

1. Temporary acts of reproduction referred to in Article 2, which are transient or incidental [and] an integral and essential part of a technological process and whose sole purpose is to enable:

(a) a transmission in a network between third parties by an intermediary, or

(b) a lawful use

of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.

EU-Mercosur FTA

The Parties shall provide that temporary acts of reproduction which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable (a) a transmission in a network between third parties by an intermediary, or (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right.

CIVIL SOCIETY PROPOSED TREATY ON COPYRIGHT EXCEPTIONS AND LIMITATION FOR EDUCATIONAL AND RESEARCH ACTIVITIES

Article 5

Permitted Uses

1. It shall be permissible to use a work for educational or research purposes to the extent justified by the purpose and provided such utilization is compatible with fair practice.

A Possible Model for L&Es for Broadcast Signal Protection

<https://tinyurl.com/BroadcastExceptL-E>