



The Flexibilities of the Copyright System at the International Level

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Miyuki MONROIG
Copyright Law Division

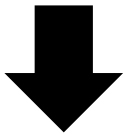
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Introduction

Principles of copyright system

- Good balance between rights and public interests
- Fundamental (constitutional) rights/public interests (e.g. freedom of speech, education and research, freedom of information)



Interest of
users
public interest



Interest of
copyright
holder

Flexibilities of copyright system

■ Types

- Limitations and exceptions

- Public domain

- “Open” or “free” licensing schemes (e.g. Creative Commons license)

Flexibilities of copyright system

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Limitations and exceptions in international copyright treaties

Types of limitations and exceptions

- Limits to the object of copyright protection
e.g. ideas, theories, simple data, fixation requirements
- Exclusion of some categories of works
e.g. laws, administrative acts
- Permitted uses without authorization and remuneration:
“Free uses”
- Permitted uses by law with remuneration: “non-voluntary licensing system”

Free uses

■ Provisions addressing specific utilizations

(e.g. civil law countries)

■ Provisions establishing general criteria, to be used by courts to determine permitted utilizations

(e.g. common law countries; US fair use, UK fair dealing)

- Substantiality of use (quantity, ratio of use)
- Purpose/character of use (non-commercial use)
- Impact of use on market
- Nature of work to be used

International framework

- Berne Convention includes several provisions related to exceptions and limitations.
 - Only one (arguably) mandatory: Article 10(1) on quotations.
 - Three-step test (Article 9(2)): “outer limit”, setting a framework for drafting of copyright limitations and exceptions in the national laws.

Three-step test in Berne

- *“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.**”*
- Three-step test extended to all exclusive rights and found in TRIPs, WCT, WPPT, Beijing and Marrakesh treaties.

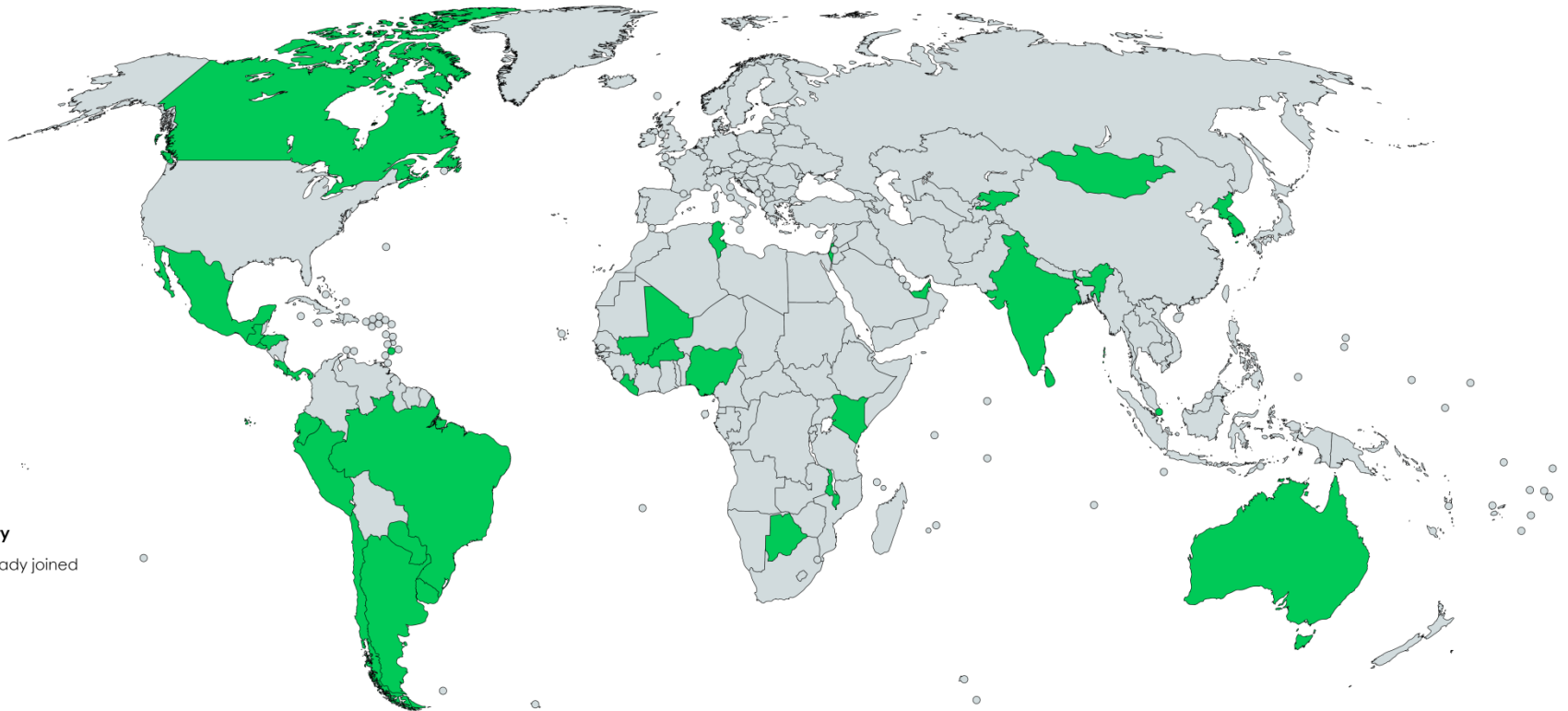
Marrakesh Treaty

Marrakesh Treaty

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled

■ Adopted in 2013 and entered into force in 2016

■ 33 Member States



Marrakesh Treaty
■ Countries already joined

“Book famine”

- 285 million people worldwide are visually impaired
- Over 90% of all published materials are inaccessible
- In developing areas, fewer than 10% of blind people are employed

Marrakesh Treaty

- Two main obligations to establish limitations and exceptions on:
 - Creation and distribution of accessible format works
 - Cross-border transfer of works created under exception
- Authorized Entities
 - (a) an entity that is authorized or recognized by the government** to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis.
 - (b) a government institution or non-profit organization** that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.

Marrakesh Treaty benefits

- Greater access to education for visually handicapped
- Enhanced social integration and cultural participation of visually handicapped
- Opportunity to fully participate in cultural developments as consumers or as creators by visually handicapped.
- Poverty alleviation of and increased contributions to the national economy by visually handicapped
- Improved awareness of the challenges faced by persons with disabilities at large

Marrakesh Treaty implementation

■ ABC (Accessible Books Consortium)

Major activities:

- ABC Global Book Service – a free, online, global catalogue of books in accessible formats for libraries (about 400,000 books as of now)
- Capacity building – helping developing countries to develop accessible works (especially textbooks)
- Inclusive publishing – to have more works “born accessible”

Marrakesh Treaty implementation

- By using ABC Global Book Service, libraries can:
 - add accessible digital books to their collections free of cost;
 - provide a wider range of accessible digital books in different languages to users;
 - go to one source for the international exchange of accessible books;
 - review only one exchange contract – no need to have separate agreements with individual libraries for the blind or other organizations.

Marrakesh Treaty implementation

- To participate in ABC Global Book Consortium, a library should be an “authorized entity” :
 - not for profit;
 - only serves persons who are blind, visually impaired or otherwise print disabled;
 - discourages the reproduction, distribution and making available of unauthorized copies of books; and
 - maintains due care in, and records of, its handling of books.

WIPO SCCR agenda item on
limitations and exceptions for libraries

Topics at SCCR

- SCCR: **S**tanding **C**ommittee on **C**opyright and **R**elated Rights
 - Current agenda items
 - Protection of broadcasting organizations
 - **Limitations and exceptions for libraries and archives, museums, education and research, and persons with disabilities other than visually handicapped**
 - Copyright in digital environment
 - Resale right
 - Theater directors' right

Discussions at SCCR

- Libraries and archives

■ Why?

- Preservation
- Replacement
- Document supply
- Interlibrary lending
- Reproduction for research or education
- Etc.

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- Right of reproduction
 - Right of distribution
 - Right of communication to the public
 - Right of making available to the public
 - Rental rights

Etc.

Discussions at SCCR

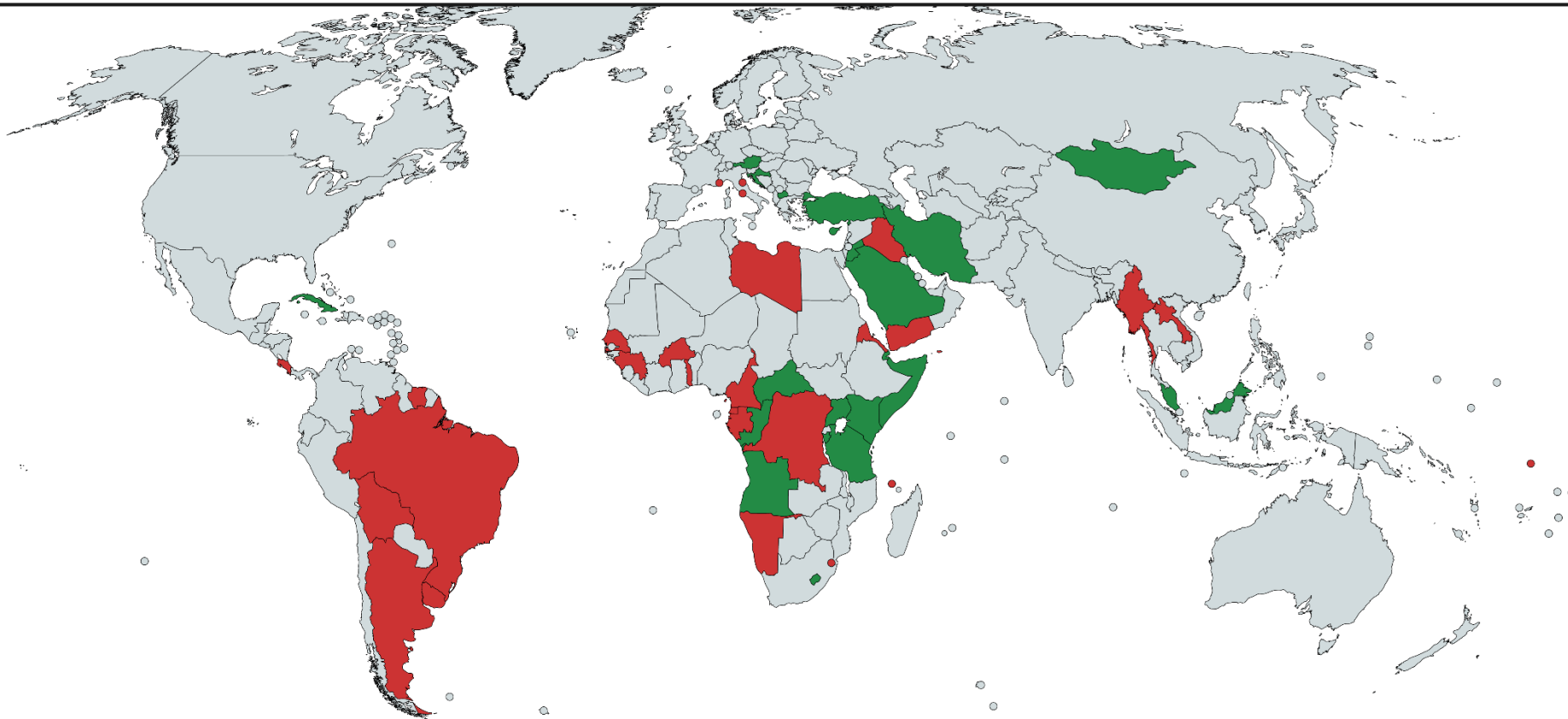
- Libraries and archives

- Kenneth Crews' study (2008, 2014, 2015 and 2017)
 - 2017 results:
 - No library exception: 28 countries
 - General exception only: 21 countries
 - Trends
 - Fewer countries with no exception
 - Fewer countries with only general exception
 - Influence of models: Countries tend to look to neighbors, trade partners, and multinational consortia for inspiration and guidance when drafting statutes.

Red: No Library Exception

Green: General Exception Only

All Others: Specialized Exceptions



Discussions at SCCR

- Libraries and archives

- Some numbers in Crews' study

Among 191 WIPO member states:

- Preservation: 102

- Replacement: 98

- Private Study and Research: 105

- Document Delivery and/or Inter-Library Loans: 28

- Making Available (Dedicated Terminals): 34

- Technological Protection Measures -Exemptions for Libraries: 53

Limitations and exceptions for libraries and archives in Vietnam

Law of Intellectual Property of Viet Nam, Law No. 50/2005/QH11 (29 November 2005), amended by Law No. 36/2009/QH12 (19 June 2009)

- Article 25 (1) Cases of use of published works in which permission and payment of royalties or remunerations are not required [...]
 - (e) Reprographic reproduction of works by libraries for archival and research purpose; [...]
- Digital reproduction is included. (Article 4(10): Definition of reproduction)
- Conditions: Three step test; credit the name of author and the source of work used. (Article 25 (2))
- Exception's exception: architectural works, plastic works and computer programs are excluded. (Article 25 (3))

Discussions at SCCR

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- Some numbers of member states in Crews' study
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Discussions at SCCR

- **Libraries and archives:** Kenneth Crews' study
 - **Education and research:** Daniel Seng's study (2016, 2017)
 - **Persons with other disabilities:** Scoping study (2017)
 - **Museum:** Progress report on study on museum limitations and exceptions. A study to be presented in 2018.
- ⇒ Next step: Draft Action Plans (Next SCCR: May 28 – June 1, 2018)



Thank you !

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MIYUKI.MONROIG@WIPO.INT