



Exceptions and Limitations to Copyright



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Types of Exceptions and Limitations

1. Subject matter exclusions
2. Exceptions
3. Statutory licenses



International Context



Berne: Subject Matter Exclusions

✿ Excluded

- Art. 2(8): News of the day

✿ Excludable

- Art. 2(2): Oral works – fixation can be required
- Art. 2(4): Official texts (legislative, judicial, administrative)
- Art. 2*bis* (1): Political speeches
- Art. 2*bis* (1): Speeches in legal proceedings
- Art. 2*bis* (2): Certain uses of public lectures



Berne: Optional Exceptions

- Art. 9(2): The “3-step test” for reproductions
 1. Certain special cases, where the reproduction
 2. does not conflict with a normal exploitation of the work, and
 3. does not unreasonably prejudice the legitimate interests of the author.
- Certain “minor” public performances of music
- Art. 10(1): Certain quotations
- Art. 10(2): Certain educational uses
- Art. 17: Censorship



Berne: Optional Exceptions

- Art. 10*bis* (1): Reproduction of certain articles published in newspapers or periodicals
- Art. 10*bis* (2): Reproduction and making available to the public works seen or heard in the course of reporting on current events
- Art. 11*bis* (3): Ephemeral recordings made by a broadcaster with its own facilities and for use in the broadcasts
- Art. 14*bis* (2)(b): Certain cinematographic authors cannot object to reproduction, distribution, public performances, subtitling etc.



Berne: Optional Equitable Remuneration

- Art. 11 *bis* (2):
 - Broadcasting or other wireless communication to the public of works
 - Communication to the public by wire, or rebroadcasting, of broadcasts of works
 - Public communication by loudspeaker of broadcasts of works
- Art. 13(1): Making a sound recording of certain musical works with certain words



TRIPS (1994)

- Art. 9(2): subject matter exclusions
 - “Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.”
- Art. 13: the 3-step test, expanded
 - “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.”



WCT (1996)

- ❁ Arts. 2 & 5: Subject matter exclusions
 - ❑ Ideas, procedures, methods of operation, mathematical concepts, and data.
- ❁ Art. 7: Exceptions to the new rental right:
 - ❑ For rentals of computer programs, where the program is not the essential object of the rental.
 - ❑ For cinematographic works, if rental has not led to widespread copying.



WCT (1996)

- Art. 10(1): Parties will apply the 3-step test to the rights granted in the WCT.
- Art. 10(2): When Parties apply the Berne Convention, they will confine any limitations or exceptions according to the 3-step test.



WPPT (1996)

- Art. 16(1): Parties may provide the same kinds of exceptions that they provide for authors.
- Art. 16(2): Parties will confine any limitations or exceptions to the rights granted in the WPPT according to the 3-step test.



Examples from U.S. Law



Subject Matter Exclusions

● Section 102(b)

- “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”



“*Fair Use*”

- Section 107: Fair use is a full exception.
 - For example, use “for purposes such as criticism, comment, news reporting, teaching ... , scholarship, or research.”
- The factors are:
 1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 2. The nature of the copyrighted work;
 3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. The effect of the use upon the potential market for or value of the copyrighted work.



Statutory Licenses

- Sections 112, 114 and 115 deal with musical works and sound recordings.
- Sections 111, 119 and 122 deal with cable and satellite retransmission.



Insufficient Authorship

- Titles, names, short phrases, and slogans
- Familiar symbols or designs
- Mere variations of typographic ornamentation, lettering, or coloring
- Mere listings of ingredients or contents
- Works consisting entirely of information that is common property and containing no original authorship



Questions?



Thank you!



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