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**Copyright, Education, Libraries, and Archives; a comparison of the copyright laws of France, Croatia, Japan, Taiwan, the United Kingdom, and the United States**

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**Introduction**

This paper presents a comparation of copyright law and how it has been adapted by the United States, France, Croatia, Japan, Taiwan, and the United Kingdom to enable libraries to collect, preserve, and provide public access to works that contribute to education, research, and cultural development. The study focuses on copyright exemptions for libraries regarding reproduction rights, access to orphan works, adaptation of copyright works for use by the visually impaired, and public lending rights. It links these areas to pertinent international treaties and European Directives, cultural philosophies regarding copyright exemptions/limitations and renumeration to authors, and philosophical differences regarding exemptions as expressed in the three-step test, fair dealing, and fair use. The study concludes by suggesting ways these differences may be resolved.

Since its first codification in the early 18th century, copyright has provided legal protection to the creator of an intellectual property, giving them exclusive rights to copy, display, perform, transmit, and rent their creations. By codifying such rights, governments hoped to encourage the continued creation of works beneficial to educating citizens and cultural development. The codified copyright laws also recognize that society’s educational, research, and preservation needs often necessitate exemptions to those exclusive rights. As community, culture, and education centers, libraries have been important centers for addressing these needs, by providing access to works in print and online, education on conducting better research, and preserving material important to cultural development for the historic analog age and the current digital era.

This paper focuses on how six countries, Croatia, France, Japan, Taiwan, the United Kingdom and the United States, have dealt with copyright issues related to libraries. The selected countries consist of two common law nations and four civil law nations. Three of the countries are members of the European Union. The sample also has a diverse mix of philosophical approaches to copyright exceptions. Two civil law countries, Croatia and France, support a strict interpretation of the 3-step test model. The United Kingdom has blended the 3-step test with its common law principle of “fair dealing.” Japan has adopted a less strict version of the 3-step test. The United States, though influenced by the common law/fair dealing philosophy of the United Kingdom, has adopted a system based on the concept of “fair use.” Taiwan has adopted a fair use system based on the United States’ concept.

The six countries also have different relations to international copyright treaties. France and the United Kingdom had leading roles in the creation and proliferation of the 1886 Berne Convention and its 20th century revisions. Japan was the first Asian nation to become a member of that Treaty, signing it in 1899 as part of its 1894 treaty with the United Kingdom concerning trade and legal jurisdiction over its territories. The United States, not agreeing with the moral rights of the author philosophy and other provisions of the treaty, did not become a Berne signee until 1989. Croatia came into being in 1991 and has signed both Berne and the WITO treaty of 1996. Taiwan, due to its ongoing dispute with China, has signed only the 1994 TRIPS agreement, rather than the Berne Convention or any of its successors. The other five countries of this study have also signed the TRIPS treaty.

**Theoretical Framework**

Modern copyright laws are based on a variety of factors: national culture, legal philosophies, political compromises, and conformity to international agreements. The 1886 Berne Convention for the Protection of Literary and Artistic Rights began the ongoing process of coordinating copyright law between nations and established minimum standards of international copyright protection through multi-nation treaties. Over the years, the Convention has been revised several times to meet the changing needs of copyright. The treaties recognized two important aspects of copyright: the moral rights of the author and the need to have certain free uses of works for criticism, education and news. In 1967, the treaty’s Article 10 was revised to include a proviso which has become known as the three-step-test, the basis for most copyright exemptions, including libraries. The Convention was last revised in 1979.

In 1970 the World Intellectual Property Organization (WIPO) assumed primary responsible for revising international copyright agreements. Its efforts have produced the 1996 World Intellectual Property Organization Copyright Treaty (WIPOCT), the 1996 World Intellectual Property Organization Performances and Phonograms Treaty (WIPOPPT), the 1996 WIPO Copyright Treaty, the 2012 Beijing Treaty on Audiovisual Performances, and the 2013 Marrakesh Treaty which addressed the accessibility needs of the visually and physically impaired. The 1996 WIPO treaties were the first to begin addressing digital media, clarifying that reproduction rights, exceptions regarding computer programs, performances, and recordings in all modes or formats were covered within the articles of the Berne Convention. It also extended the three-step-test to the evolving digital network environment.

The World Trade Organization’s 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) broadened permitted copyright exceptions beyond Berne’s reproduction rights while making the 3-step test a mandatory requirement for any exemption. It also included enforcement mechanisms to deal with copyright infringements.

The 1967 Stockholm revision of Berne, the 1994 TRIPS Treaty, the 1996 WITO Copyright Treaty, and the 2013 Marrakesh Treaty have had significant influence regarding copyright law and libraries for reproduction rights, access to orphan works, adaptation of copyright works for use by the visually impaired, and European public lending rights.

In addition to international treaties, European countries must align their copyright laws with several European Directives that attempt to harmonize European copyright laws, including library services.

Rather than specify explicit copyright limitations, each international treaty allowed its members to choose what exemptions to include in their national legal codes. As a result, while each nation has adopted similar exemptions regarding libraries their copyright codes also contain differences that distinguish their different approaches to copyright. This is exemplified in the use of the United States’ concept of fair use to broad the library exemptions explicitly listed in its copyright law versus European nations’ use of the three-step test to narrow their exemptions. Another example is the remuneration requirement linked to the loaning of material by European libraries under the concept of public loaning rights, versus no remuneration requirements or public loaning rights in Japan, Taiwan, and the United States.

**Research Question**

What similarities and differences exist in copyright exemptions regarding libraries in Europe. Asia, and North America?

**Methodology**

This paper will review, analyze and compare the copyright laws of each nation, focusing on the statutes related to education, libraries, and archives. It will examine cultural influences, international treaty and European Directive related to those provisions.

**Discussion**

Previous studies by Congleton and Yang (2011 and 2017) found a distinction regarding copyright exemptions between common law countries such as the United States and the United Kingdom and civil law nations such as France. Common law countries generally viewed copyright as a means of improving society through encouraging intellectual endeavors and limited the scope of their copyright protection. In contrast, civil law countries view the moral rights of the author as fundamental and adopted legal codes that strongly recognize an author’s exploitation rights, while narrowly defining and restricting exceptions. This distinction is also found in copyright laws regarding education. However, there was also a great contrast between the civil law nations of continental Europe and those of Asia. Continental European nations tended to have a more restrictive interpretation of the three-step test compared to Japanese copyright law, while Taiwan and the United States had adopted the less restricted concept of fair use. Japan’s copyright law has more in common with the concept of fair use than Europe’s interpretation of the three-step test.

**Conclusion**

The paper suggests revising the three-step rule’s concept of “special cases” by refocusing it on the general purpose and character of using a copyrighted work as found in fair use. Such melding of fair use and the three-step-test would encourage a more open-ended approach to copyright exemptions and expand access to important educational resources. Incorporating general guidelines, rather than specific cases, would preserve the desired flexibility for applying the test and achieving greater consistency in the exemptions needed for accessing educational resources. The paper argue against the required remuneration payments under a public lending policy, viewing it as counter to the role of public libraries as cultural and learning centers.

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