

## PROGRAM ON INFORMATION JUSTICE AND INTELLECTUAL PROPERTY

## Global Network on Flexible Copyright Limitations and Exceptions: Model Flexible Copyright Exception and Appendices

Global Network on Flexible Copyright L&E Website: http://infojustice.org/flexible-use

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## Introduction

The enclosed model flexible copyright exception and appendices were drafted through a year-long consultative process among a group of copyright scholars from around the world, assembled as the Global Network on Flexible Copyright Limitations and Exceptions (L&E Network). The draft is being released to the public for further input on the occasion of

the 2<sup>nd</sup> Global Congress on Intellectual Property and the Public Interest, Rio De Janeiro, Brazil, December 15-17, 2012.

The L&E Network was launched in December 2011 at the Institute for Information Law (IVIR), University of Amsterdam, co-hosted by the American University Washington College of Law Program on Information Justice and Intellectual Property (PIJIP). The purpose of the Network was to generate policy options and expert guidance on enhancing the flexibility of limitations and exceptions to copyright, particularly in countries that confine such exceptions to a "closed list." In closed list systems, for a use to be exempted from copyright's control it must serve a purpose explicitly included in the statute, for example – quotations of a work *for criticism or review of the work*. All copyright systems include specific exceptions, which are helpful in increasing the certainty with which users can determine lawful uses. But the problem with having only specific exceptions is that new technologies and uses, particular in today's digital age, often evolve more rapidly than legislation. This may leave a many new and beneficial uses presumptively subject to copyright prohibitions. Most copyright laws in the world today have no specific exceptions to enable search and indexing on the internet, for example, or the creation of "mashups" and other user-generated transformations of copyrighted material into new works.

To promote and enable new technologies and uses over time, there is an increasing recognition that copyright laws should include, in addition to specific limitations and exceptions, a flexible balancing test that can apply to new uses on a case by case basis. This theme was sounded in the Washington Declaration on Intellectual Property and the Public Interest, drafted at the inaugural Global Congress at American University in August 2011, which called for "discussion of employing 'open-ended' limitations in national copyright legislation, in addition to specific exceptions." The L&E Network was created to answer that call.

Over the course of the last year, the L&E Network met repeatedly, both in person and through web and phone conferencing, and created a number of resources highlighting options for adding flexibility to any copyright law. The resources included below are the first public releases from the project, and are released in draft form for further comment.

The releases include three primary documents. First, the Network has released a Model Flexible Copyright Exception that is designed to reflect the input from as broad range of scholars and experts from multiple legal systems. As such, the intent of the proposal is to be adaptable in general form to most copyright laws – including those in common and civil law systems. But being general, it cannot reflect the nuances and circumstances of particular laws in particular countries. The Network thus envisions that the model can be a starting point for policy makers to consider in formulating their own specific formulation.

The Network is also releasing drafts of several other resources. Appendix I identifies a long list of Presumptively Lawful Uses found in many copyright laws around the world. It is

noteworthy that no copyright laws with closed lists of limitations and exceptions that we have reviewed include protection for every one of the purposes listed – an argument in itself for including a flexible exception in every copyright law.

Appendix II provides examples of flexible exceptions from existing copyright laws or proposals from around the world. These examples influenced the Network in its work and give policy-makers another starting point for considering the crafting of their own flexible exception clause.

Appendix III provides some short responses to frequently asked questions about flexible copyright exceptions. We encourage comments on other questions this document should respond to.

Other releases will be forthcoming over the next year, and will be posted on the project's web hub: <a href="www.infojustice.org/flexible-use">www.infojustice.org/flexible-use</a>. We invite your comments on the products and your participation in the project as it goes forward.