

Model Flexible Copyright Exception

Version 4.0

An Act to recognize the importance of flexible limitations and exceptions as an integral part of copyright law in an era of rapid technological change.

X.1. Special Cases: Rights in Relation to Use of Copyrighted Works

In addition to uses specifically authorized by law, any use that promotes general economic, social and cultural objectives is not infringing if its character and extent is appropriate to its purposes and does not unduly prejudice the legitimate interests of the copyright owner, taking account of the legitimate interests of creators, users, third parties and the public.

X.2 Application

- A. Art. X.1 must not be interpreted strictly or narrowly, but rather must be interpreted purposefully to enable its effectiveness and fulfill its objectives.
- B. The objectives of X.1 include but are not limited to promoting innovation and creativity, contributing to criticism and public discourse, promoting education, research and public archiving, expanding access for underserved populations, enabling and taking advantage of new technologies, safeguarding personal or private uses of works, and ensuring proper performance of public administration.¹
- C. Determinations that a use is non-infringing pursuant to Art. X.1 shall be based on an overall assessment of all relevant considerations, including but not limited to the following:
 1. The purpose, character and substantiality of the use, including considerations such as whether, and the extent to which, the copyrighted material is:
 - (a) subjected to analysis or used for illustration;
 - (b) transformed by the addition of significant new content, by recontextualization, , or otherwise;

¹ For further clarification of these purposes as reflected in national copyright laws around the world, see Appendix I: Presumptively Lawful Purposes.

(c) used to promote learning or to support access by underserved communities, including activities that advance such purposes indirectly;

(d) used to enable or implement new communications and information technologies;

(e) used for private, governmental or other non-commercial purposes, rather than for profit or other economic advantage.;

Provided that no weight shall be given to the fact, in itself, that a particular use does not conform to one or more of the foregoing examples

2. The nature of the copyrighted work used in relation to the interests of both the copyright owner and the public, including considerations such as whether, and to what extent:

(a) the use will unduly interfere with actual or reasonably foreseeable opportunities for practically or economically significant exploitation of the work;

(b) the public otherwise can obtain access to the work within a reasonable time, at a reasonable cost, and on reasonable terms, considering the nature of the work.