

British-Israeli Workshop on Fair Copyright Law: Limitations & Exceptions

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In our digital age, the gap between copyright law in the books and copyright law in action seems broader than ever before: the law protects copyright owners' rights and limits users' freedom to use works of authorship, and at the same time, users seem not to care too much about the law, and continue to download, upload, and share copyrighted material, without permission. The law is less relevant than ever before, yet legislatures around the world continuously expand the scope of protection, with few notable exceptions, the Israeli experience being one.

The content industries advocate more enforcement so as to bridge this gap. A different approach is to delve into the source of the problem, and evaluate how the current law limits users in unnecessary ways. Here is where limitations and exceptions (L&E) enter the picture. Copyright law contains various such (L&E), sometimes conceptualized as users' defences or users' rights.

There is much discussion about these users' freedoms. Despite their shared copyright history, the UK and Israel now represent two different approaches to such freedoms. Israeli copyright law was based on—and was in fact—British law, with some Israeli amendments, until 2008, when it broke away. The main exception within British law is the fair dealing defence, with a limited set of defined purposes subject to certain conditions. The new Israeli law adopted the American approach of an open-ended fair use defence, accompanied by various 'fairness' considerations or factors (rather than conditions). The UK, bound by the European directives on copyright law, is currently considering expanding the list of exceptions, following the Hargreaves Report (2011). Israeli courts are making their first steps in applying the new concept of 'fair use.'

Although the topic of exceptions is much discussed, we see substantial gaps in the literature, with many challenges that need to be addressed. The workshop on Fair Copyright will be devoted to explore these gaps from various perspectives, including, but not limited, to:

- Theoretical discussion of the justifications of L&E: what are the justifications of limiting the scope of copyright protection?
- Historical development of L&E in the UK, Israel and other countries;
- Soft law approaches to supplement (or perhaps supplant, in some cases) the formal, "hard" law: can codes of best-practices designed for institutional users such as libraries, universities, and museums, bridge the gap? Can codes addressed to participants in specific industries, such as documentary film makers solve address needs? How do bottom-up initiatives such as Creative Commons interact with (L&E)? What is the relationship between hard and soft law in this field?

- Locating the L&E discourse within the on-going globalization of copyright law: what are the mechanisms of diffusion of L&E? Why did Israel desert the British fair dealing approach in favour of the American fair use one? What are the official and non-official channels of diffusion?
- Should the L&E discourse be internal to copyright law, perhaps be reconsidering the scope of copyright protection, or should we look also at external sources, such as freedom of expression? Does antitrust law play a role here?
- What is and what should be the framework for L&E as to moral rights?
- Can we measure the benefits and costs of L&E in an empirical way?
- What are the implications of L&E on technological innovation?
- Can L&E survive in the face of contract law and licensing practices?