

## **Five Common Untruths About Exceptions to Copyright**

### **1) Exceptions to Copyright Harm Markets**

Well-designed copyright exceptions correct the market failures that copyright can create. For example, the Marrakesh Treaty (in which the LAC region played such a central role) was needed to respond to the lack of exceptions which could ensure public goods were taken delivered. Moreover, where fair exceptions are introduced, there is no evidence of harm. Two comprehensive reviews of the economic impact of flexible exceptions in Canada (by [a] the Parliamentary Committee) and Australia (by the Productivity Commission) dismissed claims of harm. Instead, they underlined the misrepresentation of the evidence by those arguing for more restricted exceptions to copyright.

### **2) Exceptions to Copyright Damage Local Content Production in Developing Countries**

It is not possible to apply copyright rules differently to local and foreign content – under the Berne Convention's national treatment principle, both rights and exceptions apply to local and foreign authors in the same way. It is clear that multinational firms are usually better at exploiting their rights and licencing their works than local producers, and then send their revenues abroad.

What is clear is that the benefits of exceptions fall to a country's nationals, who have greater possibilities to learn, research, and access culture. Given that artists only receive a small share of revenues from exploitation of their works, more focused cultural policies provide a more effective way of supporting creators.

### **3) The Berne Three-Step Test is All You Need**

International law sets out a broad test for exceptions to copyright – the Three-Step Test. However, it does not provide sufficient guidance to governments in how to design provisions which promote innovation, learning and creativity. It also fails to allow for cross-border uses, for example to re-unite collections associated with diaspora populations. As Marrakesh and several EU directives have [has] shown, international exceptions not only give clear cover for the passage of public interest exceptions, but also allow for cross-border exchange of works.

### **4) Exceptions to Copyright are Secondary to Rights**

Those industries and actors whose primary objective is to maximise revenues from copyright, regardless of the impact on wider society, will of course focus on the importance of rights. However, as the Supreme Court of Canada has noted, 'the fair dealing exception, like other exceptions in the Copyright Act, is a user's right.'

Exceptions also are essential to new creativity. all works are based on the works that came before, and exceptions permit the quotations and references that enable new creations.

Moreover, the most innovative countries have embraced broad and modern exceptions which both protect the interests of creators and support public interest goals. Suggestions that developing countries should not have modern exceptions risks condemning them to slower growth in the long run, and implies a lack of respect for their governments' ability to legislate in the interests of their people.

### **5) Exceptions Support Piracy**

This is a particularly absurd claim which implies that non-commercial uses of works in support of public interest goals that do not conflict with normal market uses are the same as stealing. Arguing against exceptions indeed prevents legitimate, regulated actors such as libraries, archives, museums, educational and research institutions from doing their jobs, delegitimising the copyright system as a whole.