An ‘open norm’ is a general flexible exception to copyright’s exclusive rights. The most well-known is “fair use”, often associated with the US. However, an open norm can come about in many forms, and not necessarily as fair use. Different norms exist across the world, illustrating the benefits and challenges of a flexible norm that can adapt to changing circumstances without needing constant legislative time-consuming changes.

INTRODUCING AN OPEN NORM ALLOWS A COUNTRY’S CREATIVE, TECHNOLOGICAL, AND EDUCATIONAL SECTORS TO PROGRESS EFFECTIVELY

This Report recommends the adoption of open norms in other countries around the world, including in Europe

There are many benefits to be gained as well as lessons that can be learned from the countries explored in this project.

The flexibility of open norms allows copyright laws to remain balanced while moving with the times and without abandoning the principles of the Berne Convention Three-Step Test.

The adaptability of open norms is beneficial. It allows countries to easily adapt to rapid technological change and progress innovation to become more economically competitive.

New laws can take a significant amount of time to enact or amend, leading to copyright users having to wait long periods of time without the tools they need to do research, innovate, and contribute fully to the economy. Open norms can solve this issue.

There is much to gain, and little to lose, by adopting open norms in copyright law as highlighted in our report.

OPEN NORMS IN 7 JURISDICTIONS

Not just a US fair-use model

Many different flexible exceptions exist. These include the quotation qualification in the Berne Convention which offers high levels of flexibility; broad exceptions in the InfoSoc Directive 2001/29/EC and subject-specific open norms (e.g. Japan)

Not only for big tech

Anyone can make use of flexible exceptions – artists, creators, innovators, businesses of any size, students, teachers, libraries, researchers, museums etc. And the guaranteed rights mean more for smaller players without deep pockets

Compliant with international treaties

The US was not required to amend fair use when adopting other Berne Convention or TRIPS 1994. Furthermore, retaining fair use was an explicit requirement of the US for accession to Berne

Predictable and certain

Stability/predictability can be enhanced by 1. Issuing government opinions (e.g. Israel) 2. Introducing supplementary provisions for ‘fast track’ regulations to further define fair use (e.g. Israel and South Korea) 3. Training of judges (e.g. Canada); and 4. Taking inspiration from US case law

Works in civil law countries

South Korea and Taiwan are civil law jurisdictions and have adopted fair use. Similarly, Japan which introduced two subject-specific open norms in 2018 is a civil law jurisdiction

Courts can cope with it

In Israel, although judges were comparatively conservative, they referred to US rulings and developed their own ‘fair use plus’ interpretations pursuant to Israeli legal traditions

6 FACTS ABOUT OPEN NORMS

FUTURE-PROOF COPYRIGHT
OPEN NORMS IN 7 JURISDICTIONS

Benefits, Challenges and Policy Recommendations

Reality

Fact

1. Issuing government opinions (e.g. Israel)
2. Introducing supplementary provisions for ‘fast track’ regulations to further define fair use (e.g. Israel and South Korea)
3. Training of judges (e.g. Canada); and
4. Taking inspiration from US case law

Not a closed / exhaustive list of ‘activities of fair use’
Provides more flexibility. Different approaches have led to it being undermined by a detailed open norm +

Not a closed / exhaustive list of ‘activities of fair use’
Provides more flexibility. Different approaches have led to it being undermined by a detailed open norm +

1. Issue of government opinions (e.g. South Korea and Taiwan)
2. Issuing an ‘open norm’ in conjunction with other guidelines and provisions (e.g. Japan)
3. Taking inspiration from US case law

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