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Q246

Exceptions and limitations to copyright protection for libraries, archives and education and research institutions

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I. Current law and practice

1) Does your law provide for exceptions or limitations to copyright protection for libraries and archives?

no

If not please comment:

The Argentine Intellectual Property Act No. 11.723, (approved on 1933), contains only specific exceptions or limitations to copyright:

- a. **Right of Citation** ("droit de courte citation"), it means the possibility to use certain parts of a third party's work with an absolute maximum length of thousand words (for literary works) or eight bars (for musical compositions). In these cases, it must be taken into account the extension of the original work and the didactical, scientific and illustrative (explanative) purposes. In all cases, only the necessary parts of the text can be used for that purpose.
- b. **General Interest Information:** News of general interest may be used (including Political addresses and conferences) transmitted or retransmitted but the source (of the original version) shall be mentioned (articles 27 and 28, Law No. 11.723 and the Berne Convention, article 2.8, Act of Paris 1971).
- c. **Uses for Educational Purposes:** It's allowed the representation, execution, and recitation of literary and artistic (published) works in public and free performances organized by educational institutions.
- d. **Public Execution by certain National Government Institutions:** The right to perform musical works by Orchestras, Choirs, Bands pertaining to the National State, provinces or municipalities.
- e. **Personal Image:** Publication of a portrait of a person is allowed and free only if it is [strictly] related with scientific, didactical or cultural purposes, or related with public interest facts or with those facts occurred in public scene. This exception shall be interpreted in a restrictive way and all publications

under it shall be seriously justified, otherwise would be considered a multiple violation of rights (copyright, right of privacy, right of honour, etc).

- f. **Software Backup Copies:** The right to backup, in a single copy, a software work duly licensed for replacement purposes, to be used in case when the original and licensed support is broken or lost. That backup copy shall be identified with the licensee name and the date of original purchase. This exemption is only applicable to software works.

These exceptions and limitations although they can be exercised by libraries, archives, museums, etc, in certain cases, are not particularly aimed to or created for their own purposes.

“Fair Use” and “Private Copy” doctrines are not covered by the law and are not applicable in Argentina

- a) reproduction and/or distribution for the purpose of preservation or replacement;

- 2) Do any of these exceptions or limitations apply to libraries, archives or other organizations (e.g. museums) generally, or only to certain organizations (e.g. public and/or commercial libraries and archives)? If so, which organizations?

No. These exceptions are not specifically aimed to or created for libraries, archives, museums, etc.

- The General Interest use and Educational Use exceptions are aimed only to journalism and educational activities.
- The Right of Citation is not aimed to a particular activity or profession.
- The exception of Public Execution by certain National Government Institutions is only aimed to Orchestras, Choirs and Bands of governmental institutions.
- The Backup Copy is only aimed to software purposes and only one copy is allowed.

- 3) Are there any conditions as to the type or scope of any permitted activities (e.g. number of copies that may be created, whether only a portion of a work may be used, whether certain forms of reproduction (e.g. digital reproduction) are excluded)? If so, please explain the conditions.

N/A

- 4) Are there any conditions as to the type of copyrighted work that may be used (e.g. lawfully created copies, copies existing in the library's or archive's collection, published works)? If so, please explain the conditions.

N/A

- 5) Does your law provide for exceptions or limitations to copyright protection for education and research institutions?

no

If not please comment:

Limitation of copyright in Uses of Educational Purposes (Educational Use Exception), allows the representation, execution, and recitation of literary and artistic (published) works [only] in public and free performances organized by educational institutions. This limitation was originally inserted in the

law for cases of public performances made by educational institutions, like drama representations by students (theatre), musical performances by the students at the school, etc.

As all above mentioned exceptions shall be restrictively interpreted, the rights of reproduction, distribution and transformation of a work, (whether are digital or physical), even for educational purposes, shall not be permitted without the consent of the author or owner of the work.

Regarding the research institutions, Argentinean law does not offer any provision that include them as educational institutions. In this regard, it shall be interpreted that are not covered by the Educational Use Exception.

6) Do any of these exceptions or limitations apply to educational and research institutions generally (e.g. non-profit institutions), or only to certain institutions? If so, which institutions?

The law does not provide any element which differences between educational and research institutions or different types of them.

7) Are there any conditions as to the type or scope of the activities and the persons who may engage in such activities (e.g. number of copies that may be created, whether only a portion of a work may be used, whether both a teacher's and student's performance is covered, or only one or the other)? If so, please explain the conditions.

N/A

8) Are there any conditions as to the type of copyrighted work that may be used (e.g. only lawfully created copies, only certain kinds of copyrighted works)? If so, please explain the conditions.

N/A

For the questions below, please provide an answer for each exception or limitation mentioned above.

9) Is there any statutory provision that specifically provides for such exception or limitation? Is it alternatively or additionally recognized in case law? If neither, does your jurisdiction have a more general or broad exception or limitation that is interpreted as covering such specific exception or limitation?

The Argentine Intellectual Property Act No. 11.723, (approved on 1933), contains specific exceptions or limitations to copyright in the following articles:

- Article 9 (**Software Backup Copies**)
- Article 10 (**Right of Citation**)
- Articles 27 and 28 (**General Interest Information**)
- Article 31 *in fine* (**Personal Image**)
- Article 36 (**Uses for Educational Purposes**)
- Article 36 *in fine* (**Public Execution by certain National Government Institutions**)

None of them are specifically for libraries, research institutions or archives.

10) Does your law adopt the Three-Step Test (or equivalent wording) in relation to such exception or

limitation?
The three-Step Test is not incorporated within the Argentinean Law and was not applied by case law in the country.

11)	Is use under the exception or limitation permitted automatically (without any further action), or must certain criteria be fulfilled/procedure(s) followed (e.g. seeking a compulsory licence)? If it is the latter, please explain the criteria/procedure(s).
	All exceptions may be exercised without any procedure. Nevertheless all exceptions shall be interpreted and exercised in a restrictive way taking into account its own nature (as an exception).

12)	Is remuneration payable for use under such exception or limitation? If so, how is the amount of remuneration determined or calculated? Who is liable for making such payment, and to whom must such payment be made?
	N/A

13)	Is there any special treatment for orphan works for use within such exception or limitation? If so please explain.
	No.

14)	Does the law of your jurisdiction allow the exception or limitation to be overridden by contract?
	No.

15)	Other than what is provided in the law of your jurisdiction, are there any efforts by private organizations (such as a private licensing organizations) to address use by libraries, archives and educational and research institutions?
	<p>yes</p> <p>If so, please explain those efforts.:</p> <p>Yes, for example in Libraries. The Subcommittee on Intellectual Property, Access to Information and Freedom of Expression of ABGRA (Graduate Librarians Association of Argentina) drafted and submitted in 2010 a Draft Law on exception for libraries which modifies the Law 11,723. The aforementioned draft entered the National Congress, but failed to make it to the Committee of Culture for treatment approval. Until these days there aren't law projects or drafts in this sense.</p>

II. Policy considerations and proposals for improvements of the current law

16)	Should there be any exceptions or limitations to copyright protection for libraries and archives?
	<p>yes</p> <p>If yes, in relation to what activities?:</p> <p>The ABGRA Subcommittee says that a common case in the academic and university libraries are</p>

requests for journal articles by users, distant or foreign libraries. In many cases, libraries have a single copy of each issue of a journal after payment of expensive subscriptions and scientific research work would be highly difficult if not possible to consult these articles. In that cases, it would be advisable that local regulations allow libraries to make copies of those issues in order to preserve the work and maintain the constitutional right of access to information.

Another example given by ABGRA, is the collections of digital books saved on CD ROMS. That CD ROMS have a limited life and if backup copies are not made maybe the works contained in the CD ROMS should be lost permanently. Another case is when the software used to read those CD ROMS becomes obsolete by the pass of time, the formatting changes are necessary to read these works by new versions of software.

All tasks to preserve the works by libraries in these cases are under the actual law, subject to permissions and payments of management societies of collective rights.

An specific exception to [at least Public] libraries and archives would be advisable in order to allow them to preserve and custody the literary, scientific, artistic and cultural assets of the country without any interference.

17) Should there be any exceptions or limitations to copyright protection for education and research institutions?

yes

If yes, in relation to what activities? :

Yes. Limitation of copyright in Uses of Educational Purposes (Educational Use Exception), allows the representation, execution, and recitation of literary and artistic (published) works [only] in public and free performances organized by educational institutions. This limitation was originally inserted in the law for cases of public performances made by educational institutions, like drama representations by students (theatre), musical performances by the students, all of them within the structure of the school building, etc.

As all permitted exceptions shall be restrictively interpreted, the rights of reproduction, distribution and transformation of a work, (whether are digital or physical), even for educational purposes, shall not be permitted without the consent of the author or owner of the work.

In that sense, a broader Educational Use Exception would be advisable in order to permit any student to access to literary, scientific, artistic and cultural works at the educational stage.

Regarding the research institutions, Argentinean law does not offer any provision that consider them as educational institutions. In this regard, it shall be interpreted that are not covered by the Educational Use Exception. In this regard, it would be advisable to allow public research institutions to have limited exceptions for some copyright law provisions in order to facilitate it labor and beneficiate the entire society with less costs and better results.

18) Is the Three-Step Test a useful test for determining any exceptions or limitations to copyright protection?

yes

Why?:

It could be an excellent tool in case our country decides to modify the actual legislation and include more exceptions and limitations. (i.e. Libraries, Archives and research institutions).

19)	Should the exception or limitation be capable of being overridden by contract? Why? Why not?
No. The nature of the exception is conceived in cases in which the author or the owner of the work is not aware of the use of any right [nor affected in] by a third party. In that sense, it would be unreasonable to permit that the exceptions may be overridden by a private document between parties that are different from the author or owner of the work.	

20)	Should remuneration be payable for any of the activities described in 16) and 17) above? Why? Why not?
N/A	

21)	How can your current law as it applies to exceptions and limitations to copyright protection for libraries, archives and educational and research institutions be improved?
N/A . The Argentine Intellectual Property Act No. 11.723, (approved on 1933), contains specific exceptions or limitations to copyright. None of them are specifically for libraries, research institutions or archives.	

III. Proposals for harmonisation

22)	Is harmonisation in this area desirable?
yes	
Please comment:	
Is desirable.	

If yes, please respond to the following questions without regard to your national or regional laws. Even if no, please address the following questions to the extent you consider your national or regional laws could be improved.

23)	If your answer to question 16) or 17) is no, should this be explicitly set out in any international treaty/convention?
no	
Please comment:	
N/A	

24)	If yes to question 16):
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a)	to what libraries, archives and other organizations should these exceptions or limitations apply;
Public Libraries and Archives.	

b)	to what activities should these exceptions or limitations apply;

All necessary activities to preserve the access to scientific, literary, artistic and cultural assets. In this regard, according to ABGRA fundamentals the following activities should be taken into account:

- Reproduction of material for end users of the library for research or education, according to criteria of "fair use" ("fair use"). This doctrine allows limited reproduction of material protected by copyright without the need to request permission from the holders of such right and restricted to educational or review material.
- Backup for high-value documents and possible replacement for prevention in hypothetical cases of loss, theft or catastrophe.
- Backup copies [for temporary moving purposes] of documents, for instance when those documents are moved from libraries for an exhibition or fair.
- An Access Copy in order to avoid the manipulation of a single original, fragile or damaged, or which its replacement is impossible and in cases that it should be removed from public exhibition for preservation purposes.
- Chance of make copies and/or to migrate the works in order to prevent loss of data or inability to access documents in the digital environment for format or media obsolescence issues.
- Reproduction of sold out works in the publishing market for research purposes or for educational and cultural activities.
- Right of Private Copy, which means the reproduction of a work for strictly personal purposes, for a non-profit use in the private sphere.

c) under what conditions should the activities be undertaken or the copyrighted work used?

All activities should be exercised as an exception and strictly focused on the accomplishment of their own specific purposes of every institution.

25) If yes to question 17):

a) to what educational and research institutions should these exceptions or limitations apply;

- Educational Institutions: Public and Private.
- Research Institutions: Public only.

b) to what activities should these exceptions or limitations apply;

All necessary activities to improve the research results and general education. In this regard, the following activities should be taken into account:

- Allow educational institutions to access the rights of reproduction, distribution and transformation of a work for free only in connection with educational activities and within the scope of a certain educational non-profit criteria.
- Private Copy for students only in connection with educational purposes and within the Educational Institution structure.

c) under what conditions should the activities be undertaken or the copyrighted work be used?

All activities should be exercised as an exception and strictly focused on the accomplishment of their own specific purposes of every institution.

For the questions below, please provide an answer for each exception or limitation mentioned above (as applicable).

26)	Should use under the exception or limitation be permitted automatically (without any further action), or should certain criteria or procedure(s) be required? If so, what criteria/procedure(s)?
	N/A

27)	How should any remuneration for use that falls under such exception or limitation be determined or calculated? Who should be liable for making such payment, and to whom should such payment be made?
	N/A

28)	What special treatment, if any, should there be for use of orphan works within such exception or limitation?
	N/A

29)	In what circumstances should the exception or limitation be capable of being overridden by contract?
	N/A

30)	How should any efforts by private organisations to address use by libraries, archives and educational and research institutions, be reconciled with any exception or limitation provided by law?
	N/A

Summary
<p>The Argentine Intellectual Property Act No. 11.723, (approved on 1933), contains only specific exceptions or limitations to copyright (Right of Citation (“droit de courte citation”), General Interest Information, Uses for Educational Purposes, Public Execution by certain National Government Institutions, Personal Image and Software Backup Copies) . These exceptions and limitations although they can be exercised in certain cases by libraries, archives, museums, etc, are not particularly aimed to or created for their own purposes. “Fair Use” and “Private Copy” doctrines are not covered by the law and are not applicable in Argentina</p>

Please comment on any additional issues concerning exceptions and limitations to copyright protection for libraries, archives and educational and research institutions you consider relevant to this Working Question.
