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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?

yes

If so, please provide details of such exceptions or limitations, including in relation to the following activities::

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

yes

Please comment:

Yes, without consent of the owner of the copyright and without payment of compensation the libraries and archives are allowed to reproduce already published works for the purposes of preservation of the work, however, under the condition such reproduction not to be for commercial purposes.

Distribution for the purpose of preservation or replacement is not applicable.

b) reproduction and/or distribution for the purpose of interlibrary lending;

no

Please comment:

No specific provisions in the Law on Copyright and Neighboring Rights (LCNR).

However, according to the Bulgarian Law for Compulsory Deposit of Printed and Other Works in a term of two weeks of the printing of the first batch of the circulation, the publishers and producers of the printed works are obliged to present copies of these printed works in the Bulgarian National Library.

The number of the copies of the printed works that should be presented depends on the volume of the circulation (three copies for circulation up to 100 numbers and twelve copies for circulation over 300 numbers). The National Library divided part of the received copies between other libraries in the country, in order, determined by a regulation.

As seen from the above, for the purposes of interlibrary lending, the libraries are not allowed to reproduce copyrighted works by themselves, as they may use and interlibrary lending only the legally acquired original copies.

c) reproduction and/or distribution for the purpose of providing copies (either in a physical or a digital form) to users of libraries or archives; or

no

Please comment:

No specific provisions in the LCNR.

However pursuant to specific legislation the Council of Ministers and the Municipality Councils adopt tariffs of administrative fees containing a specific position for lending photo or digital copies of literary works to members of libraries or registered users of archives which imply that in practice exceptions or limitations to copyright protection for libraries and archives are applicable as regards reproduction and/or distribution for the purpose of providing copies to users. These exceptions and limitations are grounded on the presumption that such use is for educational purposes which falls in the scope of the abovementioned Article 24, item 9 of the LCNR.

The administrative fees here above are not considered a copyright remuneration or compensation.

d) any other activities, and if so, what activities?

no

Please comment:

N/A

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?

Pursuant to Article 24, item 9 of the LCNR the said exceptions or limitation apply to publicly accessible libraries, educational or other learning establishments, museums and archive institutions only.

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.

No specific provisions in the LCNR.

The type and scope of the permitted activities, such as number of copies, or whether only part of the

work may be used, the form of reproduction, etc., are determined by the Rules for the activity of the respective library or archive.

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.

According to the imperative provision of the LCNR the copyrighted works that might be used by publicly accessible libraries, educational or other learning establishments, museums and archive institutions should be **legal** and already **published works**.

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

yes

If so, please provide details of such exceptions or limitations, including in relation to the following activities::

a) performance and/or display for educational purposes;

yes

Please comment:

The Bulgarian copyright law recognizes the exceptions or limitation to copyright protection for education and research institutions. The respective provision is stipulated in Article 24, item 8 and item 9 of the LCNR, according to which:

“Without consent of the owner of the copyright and without payment of compensation shall be permissible:

8. public presentation and public performance of published works **in educational or other learning establishments**, provided that no pecuniary revenues are received and no compensation is paid to the participants in the preparation and realization of the presentation or the performance;

9. reproduction of already published works by publicly accessible libraries, **educational or other learning establishments**, museums and archive institutions, with educational purposes or with the purpose of preservation of the works, unless serving for commercial purposes;

Yes, the Bulgarian law provides for public presentation and public performance of published works in educational or other learning establishments provided that no pecuniary revenues are received and no compensation is paid to the participants in the preparation and realization of the presentation or the performance.

b) reproduction and/or distribution for educational purposes (e.g. preparation of course packs, compilations or anthologies, exams);

yes

Please comment:

Yes, pursuant to the provisions of the LCNR without consent of the owner of the copyright and

without payment of compensation it is permissible the use of parts of published works or of not big number of works in other works when such use is only for **scientific and educational purposes** and under the condition the source and the name of the author are indicated, unless impossible.

c) making translations;

no

Please comment:

There are no explicit provisions regarding the translation of a copyrighted work for the purposed of education and research institutions.

However, since the definition for "use" according to the Bulgarian law includes "translation of a copyrighted work", it might be accepted that the exceptions or limitations to copyright protection are applicable for making translation of a copyrighted work for the purposes of education and research institutions.

d) making available in digital networks for educational purposes (e.g. uploading course packs onto on-line platforms, compilations or anthologies, providing distance education);

no

Please comment:

There are no explicit provisions regarding exceptions or limitations to copyright protection for making available in digital networks for educational purposes, such as uploading course packs onto on-line platforms, compilations or anthologies, providing distance education.

e) reproduction and/or distribution for research purposes; or

yes

Please comment:

Article 24, item 9 of the LCNR provides for reproduction of copyrighted works without consent of the owner of the copyright and without payment of compensation for educational and preservation purposes only, **hence free reproduction for research purposes is not permissible;**

f) any other activities, and if so, what activities?

no

If not please comment:

N/A

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 said exception applies only to public accessible educational institutions and does not apply to research institutions no matter their nature.

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.

No specific provisions in the LCNR.

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.

Yes, the Bulgarian law requires the copyrighted works which shall be used without the consent of the author and without payment of compensation to be legally acquired and published works.

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 exceptions and limitations to copyright protection works are imperatively stipulated in the Bulgarian LCNR

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

Yes, the Bulgarian legislation recognizes the Three-Step Test (in equivalent wording) in relation to the said exceptions and limitation to copyright protected works, and namely:

According to Article 23 of the LCNR "the free use of works shall be permissible:

- only in the cases, pointed out in the law;
- under the condition, that the normal use of the work is not hampered; and
- the legitimate interests of the owner of the copyright are not impaired."

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).

The use of copyrighted works under the exception or limitation is permitted automatically, provided that requirements of the law and certain internal regulations are fulfilled (such as the user in a library or in an archive institution to fill in a register form).

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?

The free use of already published literary works or parts thereof by libraries or educational institutions is permissible without payment of remuneration to the authors.

13) Is there any special treatment for orphan works for use within such exception or limitation? If so please explain.

Pursuant to the latest amendments in the Bulgarian LCNR adopted in February 2015, all provisions related to the special rules for use of orphan works and sound recordings shall be applicable also for the publicly accessible libraries, educational or other learning establishments and museums, as well as by archives, institutions which preserve film and sound recording heritage and public radio- and television organizations with headquarter in the Republic of Bulgaria, solely for the achievement of the goals related to their social purposes.

14) Does the law of your jurisdiction allow the exception or limitation to be overridden by contract?

No, the Bulgarian legislation does not provided for contractual weaver of the exception or limitation for use of the copyrighted protected works.

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?

no

If not please comment. :

There are no information for such efforts by private organizations.

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?

yes

If yes, in relation to what activities?:

Yes, there should be exceptions or limitations to copyright protection for libraries and archives.

The exceptions or limitation to copyright protection for libraries and archives should be applicable for educational and preservation purposes.

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

yes

If yes, in relation to what activities? :

There should be exceptions or limitation to copyright protection for education and research institutions.

Except for the purposes of analysis, commentary, science and education as provided in the current law, specific exceptions or limitation applicable also for course packs, compilations or anthologies, as well as

exams should also be considered, provided that such use is for educational purposes.

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

yes

Why?:

The Three-Step Test is useful test for determining any exceptions or limitations to copyright protection, as far as it determines the basic criteria which should be met in order a copyrighted work to be used without the consent of the author and without payment of compensation.

19) Should the exception or limitation be capable of being overridden by contract? Why? Why not?

Such an exception contradicts to the overall legal system in Bulgaria. Contractual waiver of imperative legal provisions is inapplicable.

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

No, there should be no remuneration payable for the activities described in items 16 and 17 above, except for the administrative fees, provided for the services rendered in the libraries, archive, educational and research institutions.

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?

Bulgarian legislation does not provide for any explicit provisions regarding digital libraries, preparation and free use of course packs, compilations or anthologies and exams for educational purposes and their uploading onto on-line platforms, as well as for provisions related to the distance education.

Such explicit provisions are needed in order the activity of the above organizations and type of copyrighted works to be clarified.

For example, our law might be improved by adoption of provisions for restriction the downloading of published copyrighted works by the users of on-line libraries, or for limitation of the access to the copyrighted work to unlimited number of users at the same time.

The scope of the exceptions and limitations should be expanded to cover reproduction of copyrighted works by research institutions for non commercial purposes

III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

yes

Please comment:

The Bulgarian LCNR is harmonized to a satisfactory extent as regards the exceptions and limitations.

However, further efforts for harmonization of the current law should be undertaken and in particular as regards the digital libraries, preparation and free use of course packs, compilations or anthologies and exams for educational purposes and their uploading onto on-line platforms, as well as such related to the distance education.

The scope of the exceptions and limitations should be expanded to cover reproduction of copyrighted works by research institutions for non commercial purposes.

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):

a) to what libraries, archives and other organizations should these exceptions or limitations apply;

These exception or limitation should apply for public accessible libraries and archives.

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

These exceptions or limitations should apply only for the purposes of education, research, science or preservation of the copyrighted works.

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

The activities should be undertaken and the copyrighted works used for noncommercial purposes only, and only with regard to cases explicitly provided for by the law, under the condition the normal use of the work is not hampered, and the legitimate interests of the owner of the copyright is not impaired.

25) If yes to question 17):

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

These exception or limitation should apply for public education and other learning and research institutions.

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

These exception or limitation should apply only to scientific and educational purposes.

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

The activities should be undertaken and the copyrighted works used for non commercial purposes only, and only with regard to cases explicitly provided for by the law, under the condition the normal use of the work is not hampered, and the legitimate interests of the owner of the copyright is not impaired.

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)?

The use under the exception or limitation should be permitted automatically.

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?

No remuneration to the authors should be paid.

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

Currently, the Bulgarian legislation provides for broad regulation of the orphan works, including the exceptions and limitations in question.

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

The exceptions or limitations should not be capable of being overridden by contract.

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

The Bulgarian copyright law recognizes the exceptions and limitation to copyright protection for libraries and archives within the meaning of Article 9 (2) of the Berne Convention of 1886. The respective provision is stipulated in Article 24, item 9 of the Law on Copyright and Neighboring Rights (LCNR), according to which:

“Without consent of the owner of the copyright and without payment of compensation shall be permissible:

9. reproduction of already published works by publicly accessible libraries, educational or other learning establishments, museums and archive institutions, with educational purposes or with the purpose of

preservation of the works, unless serving for commercial purposes;

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.

N/A

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