



Date: 8th June 2015

Q246

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

Responsible Reporters: by Sarah MATHESON, Reporter General John OSHA and Anne Marie VERSCHUUR, Deputy Reporters General Yusuke INUI, Ari LAAKKONEN and Ralph NACK Assistants to the Reporter General

National/Regional Group	Czech Republic
Contributors name(s)	Petr HOLY
e-Mail contact	pholy@rrg.cz
Date	08-06-2015

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:

In general The Czech Republic is a member party of Berne Convention, Paris Convention and WIPO Copyright Treaty. As EU country also directives 2012/28/EU and 2001/29/EC are applicable there.

Copyright act, Article 37

Library Licence

(1) Copyright is not infringed by a library, archive, museum, gallery, school, university and other non-profit school-related and educational establishment¹¹:

a) if it makes a reproduction of a work for its own archiving and conservation purposes, and if such a reproduction does not serve any direct or indirect economic or commercial purpose;

b) if it makes a reproduction of a work whose reproduction has been damaged or lost, provided that it is possible to verify with the exertion of reasonable effort that it is not being offered for sale,

or a print reproduction of a minor part of the work, if such part has been damaged or lost; it may also lend such a lawfully made reproduction in accordance with Paragraph (2) below;

Footnotes

1. [^](#) Act No. 257/2001 on Libraries and on the Conditions of the Provision of Library and Information Services (the Library Act), as amended; Act No. 122/2000 on the Protection of Collections of Museum Nature and on Amendment to Certain Other Acts, as amended; Act No. 499/2004 on Archives and the Filing Service and on Amendment to Certain Other Acts, as amended; Act No. 561/2004 on Pre-school, Elementary, Secondary, Higher-level Professional and Other Education (the School Act), as amended; Act No. 111/1998 on Universities and on Amendment to Certain Other Acts (the University Act), as amended.

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

yes

Please comment:

Copyright act, Article 37

(2) Copyright is not infringed by a person referred to in Paragraph (1) above where such a person lends the originals or reproductions of published works, if the remuneration that is due to the authors from the person indicated in the Annex to this Act is paid in the amount also indicated in that Annex. The author shall not be entitled to the remuneration if the published works are lent hereunder to on-the -spot reference user if the originals or reproductions of the published works are lent by school and university libraries, the National Library of the Czech Republic, the Moravian Land Library in Brno, the State Technical Library, National Medical Library, the Comenius National Pedagogical Library, Library of the Institute of Agricultural and Food Information, Library of the National Film Archive and the Library of the Parliament of the Czech Republic

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

yes

Please comment:

Copyright act

Article 37 sec 2

(2) Copyright is not infringed by a person referred to in Paragraph (1) above where such a person lends the originals or reproductions of published works, if the remuneration that is due to the authors from the person indicated in the Annex to this Act is paid in the amount also indicated in that Annex. The author shall not be entitled to the remuneration if the published works are lent hereunder to on-the -spot reference user if the originals or reproductions of the published works are lent by school and university libraries, the National Library of the Czech Republic, the Moravian Land Library in Brno, the State Technical Library, National Medical Library, the Comenius National Pedagogical Library, Library of the Institute of Agricultural and Food Information, Library of the National Film Archive and the Library of the Parliament of the Czech Republic

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

yes

Please comment:

Copyright act, article 37

d) if it lends the originals or reproductions of defended degree theses, dissertations, doctoral and post-doctoral theses to on -the-spot reference use, provided that it shall do so exclusively for the purposes of research or private study, and also provided that the author did not exclude such use.

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?

These limitations apply to libraries, archives, museums, galleries, schools, universities and other non-profit school and education organizations according law No. 257/2001 About libraries and conditions of its operations, law No. 122/2000 About museums, law no. 499/2004 Sb about archive services, law no. 561/2004. School law, law no. 111/1998. University law.

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.

Archive and preservation purposes – non-commercial purpose

Replacement of lost or damaged copy – non-commercial purpose and cannot be purchased on the market

Communication to the users – non-commercial purpose, for research or private study only

Communication of originals of high school thesis, dissertations and similar works – only in the respective premises, for research and private study only

Copy may be used on the cover, thematic summary, catalogue in a way, that cannot be used for commercial purpose by the third party, while name of the author has to be noted together.

In any case the adequate fee has to be paid to the copyright owner, with exception of school libraries, university libraries and several other state or public libraries named explicitly by the law.

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.

- always published works only
- only in the case original is not available on the market for replacement
- for adequate fee

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:
	Copyright is not infringed by school or education institution when for strictly non-commercial purpose is for purpose of the education or for internal use artwork created by the student.

b)	reproduction and/or distribution for educational purposes (e.g. preparation of course packs, compilations or anthologies, exams);
	yes
	Please comment:
	Copyright is not infringed if not for direct or indirect commercial purpose the artwork is used in the school performance, where participate only the students and/or teachers of the school .

c)	making translations;
	yes
	Please comment:
	= usage

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

e)	reproduction and/or distribution for research purposes; or
	yes
	Please comment:

f)	any other activities, and if so, what activities?
	no
	If not please comment:

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?
	Strictly for non-profit institutions only.
	With exceptions of named state and public libraries, a compensation fee has to be paid to the authors by such non-profit institutions.
	School libraries, university libraries, Národní knihovna Āeské republiky, Moravská zemská knihovna v BrnĀ, Státní technická knihovna, Národní lékařská knihovna, Národní pedagogická knihovna Komenského, Knihovna Ústavu zemědělských a potravinářských informací, Knihovna Národního filmového archivu a Parlamentní knihovna Āeské republiky.

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.

For the purpose of a school performance where only students and/or teachers participate.

For the purpose of education, if the school artwork (created by the student) is concerned.

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.

For the school performance - any artwork.

For the education purpose, for fee any, for free the school artwork only.

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?

Articles 35, 37 and 37a of the Law no 121/2000 About copyright law. The law is obligatory.

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

In by the law specified cases (e.g. school performance, replacement of lost copy in library etc.)

For Non-commercial purpose.

For adequate compensation.

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).

For allowed scope of education purpose it is permitted automatically.

Regarding the libraries license - subsequent annual reports have to be sent to the collective manager of copyright rights and summary of the compensation fee to be paid.

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?

For usage within the school performance, no fee is required.

For other library usages a compensation fee has to be paid (with exception of in the law explicitly named state or public institutions)

The report is made by the state (as manager of the libraries and public schools) to the collective manager of the copyright.

The fee for making a copy is identical with fee for private use copy paid by the other subjects

- black&white copy - CZK 0,20 per page
- color copy - CZK 0,40 per page

It is set that in libraries, museums, schools and other education institutions 70% of all copies and in archives, state offices and other copy services providers 20% of all copies involves copyrighted works.

The fee for lending is fixed (CZK 0,5 cca 2 EU cents) per lending.

The adequate compensation has to be paid for the library license (with exception of certain state institutions explicitly named in the law).

Annual report has to be sent by the institutions to the collective manager of the copyright law appointed by the law together with list/summary of the fee to be paid.

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

The regime is completely harmonized with 2012/28/EU.

Libraries, archives, museums, galleries, schools, universities and other non-profit school and education organizations and broadcaster according to the law (limited for artworks created before 31.12.2002) do not infringe copyright if they use orphan works solely for fulfilment of their purpose in the public interest.

Adequate prior research in named information resources is required before a work can be considered for orphan.

Opt out by the author to terminate the orphan status is possible

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

Naturally author can always render broader "license".

Contract between institutions and author that would limit the legal "library" license would be most probably invalid.

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. :

No. Only the law appointed collective managers. Institutions do not have the duty to notify private managers/licensing organisations.

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?:

Where eventual disagreement of the author would interfere with the public function of the library and archive, the exception is reasonable, limited for fulfilment of the public interest function of the institution.

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

yes

If yes, in relation to what activities? :

Where eventual disagreement of the author would interfere with the public function of the education the exception is reasonable, limited for fulfilment of the public interest function of the institution.

With regards to the research, if it is non-profit research, it is in the public interest to support any attempts to develop the overall scientific knowledge status, therefore eventually overcome the disagreement of the author for such purpose.

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

yes

Why?:

It is.

The exception should reflect such situations, where full contractual freedom of the author should be limited in the public interest.

Therefore it should be only in such certain cases, where the public interest is present

Only when standard usage of the artwork is not interfered (public interest is present and standard contractual consent is not available or would be hard or difficult to achieve from important reasons)

And the author is not unreasonably damaged, therefore usually a compensation is required unless a special circumstances (special public interest) would justify for free exception.

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

No. Public interest resp. fulfilment of the public service duties of these institutions can't be limited by contract.

But the conditions can be contractually modified if it will not interfere with the public interest.

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

Usually it would be preferred, unless special public interest would justify to interfere with the copyright for free.

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?

The regulation is casuistic. It explicitly enumerates and describes some specific situations, where the exception is acceptable, while a common public interest should be pointed as the reason for exceptions. It leads to omission of some situations (subjects, reasons, circumstances) where exception would be useful too when no general rule is made.

The EU directive for orphan works contains more general rules that should be followed also in this area.

III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

yes

Please comment:

Czech Copyright law is already harmonized with the Berne and Paris convention as well as WTO and EU copyright regime.

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?

yes

Please comment:

Answer was yes.

24) If yes to question 16):

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

To non-profit organizations having public interest duties.

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

To such activities that serves to the non-profit public interest, namely preservation, education, private research

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

Fair, non-profit, not damaging author's legitimate interests

25) If yes to question 17):

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

To non-profit organizations having public interest duties.

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

To such activities that serves to the non-profit public interest, namely preservation, education, private research

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

Fair, non-profit, not damaging author's legitimate interests

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)?

If the required conditions are met, the exception should be automatic.

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?

Non-profit public organization should report to the state, where the state makes summary and pays to the collective copyright management agency having the license from the state for that.

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

Viz 2012/28/ES, this regime seems to be sufficient.

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

Those should not be.

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?

The legal regulation with minimalistic exceptions set explicitly by law in public interest and with royalty payment management of collective copyright manager seems to work well.

Summary

The Czech Republic is a member party of Berne Convention, Paris Convention and WIPO Copyright Treaty. As EU country also directives 2012/28/EU and 2001/29/EC are applicable there. The regime seems to be fully harmonized and meeting all the international standards. It seems to work well, there are no visible problems with this part of regulation.

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.