



Date: 7th June 2015

## Q246

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

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Date	19-05-2015

## 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:

1°/ *The exception for the purposes of conservation or consultation*

- Article L.122-5 8° of the French Intellectual Property Code (*Code de la Propriété Intellectuelle*, hereinafter the "CPI") establishes an exception to the author's monopoly for the benefit of libraries: "*The reproduction of a work and the representation thereof carried out for the purposes of conservation or intended to preserve the conditions for consultation thereof for the purposes of research or private study by private individuals, on the premises of the establishment and on dedicated terminals by publicly accessible libraries, by museums or by archive services, provided that they do not pursue any economic or commercial advantage*".

This exception was introduced into French law by law No 2006-961 of 1 August 2006 on copyright and related rights in the information society. It transposes Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Article 5.2 c of which provides that:

*"2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 [reproduction right] in the following cases: [...]*

*c) in respect of specific acts of reproduction made by publicly accessible libraries, educational institutions or museums, or by archives, which are not for any direct or indirect economic or commercial advantage [...]"*.

- This exception, which applies to libraries and archive services, is strictly defined:
  - Only publicly accessible libraries not pursuing any economic or commercial advantage may benefit from this exception.
  - The exception may only be implemented for two reasons:
    - The conservation of documents;
    - The preservation of the conditions for consultation of documents in situ. A similar exception applies to related rights. Article L. 211-3, 7° of the CPI authorizes: *"Acts of reproduction and representation of an interpretation, phonogram, video or programme carried out for the purposes of conservation or intended to preserve the conditions for consultation thereof for the purposes of research or private study by private individuals, on the premises of the establishment and on dedicated devices by publicly accessible libraries, by museums or by archive services, provided that they do not pursue any economic or commercial advantage"*.

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

no

Please comment:

2°/ *The limitation of copyright for library lending*

Law No 2003-517 of 18 June 2003 relating to remuneration for library loans and strengthening the societal copyright protection establishes a limitation of the copyright monopoly in the case of the lending, by libraries, of books that are the subject of a publishing contract.

Article L. 133-1 paragraph 1 of the CPI provides that:

*"If a work was the subject of a publishing contract for the publication and distribution thereof in the form of a book, the author may not object to the lending of copies of that publication by a library open to the public."*

Therefore, an author may not object to lending by libraries.

However, acts of lending by libraries are not free of charge, because the second paragraph of Article L. 133-1 CPI provides that:

*"This lending confers a right to remuneration on the author in accordance with the arrangements provided for in Article L. 133-4".*

This is therefore a statutory licence.

There are no similar exceptions for related rights. The exception is therefore not applicable to audiovisual works and to phonograms.

Article L.122-5, 8° of the CPI only expressly refers to the reproduction and representation of a work with a view to conserving or preserving the conditions for its consultation. Now, by virtue of the principle of strict interpretation of exceptions, any reproduction or representation for a different purpose would fall outside the exception's scope of application, and would therefore fall within the monopoly of the rights holder.

Thus, the exception only applies to conservation or preservation; it does not cover interlibrary lending of copies of works. The law on library lending does not contain any provisions regarding interlibrary lending.

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:

1°/ The exception under Article L. 122-5 8° of the CPI only authorises a reproduction and representation of works for the purpose of preservation by libraries or else for the purpose of consultation by the public *"on the premises of the establishment and on dedicated terminals"*. This exception does not authorise libraries to provide physical or digital copies of works.

2°/ The statutory licence for library lending no longer authorises libraries to make copies of works for their users.

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

no

Please comment:

Any other activities carried out by libraries in the context of their functioning but not provided for by

the law fall within the scope of the rights holders' monopoly and are therefore subject to the author's authorisation.

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?

1°/ Article L.122-5, 8° of the CPI expressly provides that the exception of conservation and preservation shall only benefit libraries and archive services not pursuing any economic or commercial advantage.

2°/ Article R.133-1 of the CPI lays down a restrictive list of libraries that may benefit from the lending exception:

*"Libraries open to the public for lending that are referred to in Articles L. 133-3*

*[[http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v\\_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279019&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279019&dateTexte=&categorieLien=cid)] and L.*

*133-4*

*[[http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v\\_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279020&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279020&dateTexte=&categorieLien=cid)] shall be:*

*1° libraries of local and regional authorities designated under Articles L. 310-1 to L. 310-6 [municipal libraries] and L. 320-1 to L. 320-4 of the Heritage Code [regional libraries];*

*2° libraries of public institutions of a scientific, cultural and professional nature and other public institutions of higher education operating under the Minister for Higher Education;*

*3° libraries of works councils;*

*4° any other library or organisation that makes a collection of documents available to the public, whereby over half of the copies of books acquired within the year are intended for organised lending activity for the benefit of individual or collective registered users."*

Moreover, French law must be interpreted in the light of Article 2 of Directive 2006/115 of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which defines the lending of books by a library as "*making [them] available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through institutions which are accessible to the public*".

Thus, although the condition that a direct or indirect economic advantage is not being pursued is not expressly referred to in French law, it is possible that this condition would be applied via the case-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.

1°/ As far as the exception of preservation and consultation provided for in Article L.122-5, 8° of the CPI for the benefit of libraries and archive services is concerned, the text does not specify the number of copies that can be made by the institutions concerned.

Therefore, there is nothing a priori to prevent libraries from making several copies, including in different formats (see, in this regard, C. Greiger, F. Macrez, A. Bouvel, S. Carre, T. Hassler and J. Schmidt, *“Quelles limites au droit d’auteur dans la société de l’information ? Réponse au livre vert sur « le droit d’auteur dans l’économie de la connaissance”*: Propr. Intellec., 2009, p. 231-244) [*What are the limits to copyright in the information society? Response to the Green Paper on “Copyright in the Knowledge Economy”*: Intellectual Property, 2009, p. 231-244]).

Only the purpose of the copy is governed by law (preservation or consultation).

2°/ As far as the exception of library lending is concerned, no reproduction of works is authorised.

Moreover, the question arises as to whether the statutory licence regarding the lending right of libraries also applies to the lending of digital books.

- In France, the Law of 18 June 2003 provides that: *“If a work was the subject of a publishing contract for the publication and distribution thereof in the form of a book, the author may not object to the lending of copies of this publication by a library open to the public”* (Article L. 133-1 of the CPI). Therefore, French law does not explicitly exclude intangible media from the scope of application of the statutory licence. A “book” or a “copy” may be physical or digital.
- Moreover, where the legislature does intend to restrict the notion of copies to a physical object, the notion of *“physical copies of a work”* is used in the law (see Directive 2001/29 of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society – Recital 28 *“once the first sale of a physical copy or copies of a work has been authorised by the author or his right holder in the territory of a Member State of the European Community (...), the sale of those copies of that work may no longer be prohibited (...)”* (Art. L. 122-3-1 of the CPI, which also uses the expression *“physical copies of a work”*). Similarly, in the context of the WIPO Copyright Treaty of 20 December 1996, Articles 6 (right of distribution) and 7 (right of rental) also use the word *“copies”*. In order to restrict the expression *“copies”* to physical copies, the parties had to add an agreed statement, which provides that *“the expressions “copies” and “original and copies,” being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects”*.
- However, Directive No 2006/115 of 12 December 2006 on rental right and lending right could be interpreted to the effect that only the lending of paper books falls within the exception, because it specifies that *“‘lending’ [objects] means making [them] available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through institutions which are accessible to the public”* (Article 2.1). Now, French law must be interpreted in the light of

the Directive. Moreover, as the statutory licence is a restriction of the exclusive right of the author, it must also be interpreted having regard to the principle of strict interpretation of exceptions. Thus, although some academics consider the statutory licence relating to library lending to be applicable to digital books (C. Alleaume, *Le prêt des œuvres de l'esprit [Lending Intellectual Works]*, thesis, 1997. See also S. Carrié, *Les bibliothèques à l'heure du numérique [Libraries in the Digital Age]*, CCE, 2006, study 15), other authors take the opposite stance (A. and H.J. Lucas and A. Lucas-Schloetter, *op. cit.*, No 283, 287, 288; Report of Pierre Lescure of 13 May 2013, *Contribution aux politiques culturelles à l'ère numérique [Contribution to Cultural Politics in the Digital Era]*, Annex A13: *l'offre numérique en bibliothèque [the digital offering in libraries]*). The case-law has not taken a position on the issue, however, as far as we are aware.

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.

**1°**/ Article L.122-5, 8° of the CPI on the exception of conservation and consultation is general and does not lay down any restriction with regard to the type of works concerned, such that any type of work benefits from the exception; graphic, artistic, literary and audiovisual works, etc.

The only condition that arises is that the reproduced work initially appears in the catalogue of the library or archive service concerned.

**2°**/ As far as Article L.133-1 is concerned, the CPI expressly provides that it only relates to works that were the subject of a publishing contract for the publication and distribution thereof in the form of a book.

The exception is restricted to literary works published in the form of a book.

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:

French law provides for an exception to copyright for education and research, which is referred to as the "*pedagogical exception*" in Article L.122-5, 3°, e) CPI, according to which:

*“The representation or reproduction of extracts from works, provided that they are works intended for pedagogical purposes and music scores, for the sole purpose of illustration in the context of education and research, including for the development and transmission of subjects for exams or contests organised in the continuation of education, to the exclusion of any leisure or recreational activity, provided that this representation or reproduction is intended, particularly by means of a digital working space, for a public predominantly composed of pupils, students, teachers or researchers directly concerned by the act of education, the act of training, or the research activity requiring this representation or reproduction, that it is not the subject of any publication or dissemination to a party outside the thus constituted public, that the use of this representation or reproduction does not give rise to any commercial exploitation and that it is compensated via remuneration negotiated on a flat-rate basis, without prejudice to the assignment of the right of reproduction by means of reprography, as referred to in Article L. 122-10”.*

This exception can be found in almost identical form in relation to the matter of related rights in Article L.211-3 CPI.

*“ [...] the communication to the public or reproduction of extracts of objects protected by a related right, provided that they are objects intended for pedagogical purposes, for the sole purpose of illustration in the context of education and research, to the exclusion of any leisure or recreational activity, provided that the public for which this representation or reproduction is intended is predominantly composed of directly concerned pupils, students, teachers or researchers, that the use of this representation or reproduction goes not give rise to any commercial exploitation and that it is compensated via remuneration negotiated on a flat-rate basis [...]”*

In Article L.122-5, 3°), a), the CPI also provides for an exception relating to analyses or short quotations justified by the pedagogical nature of the work in which they are incorporated. Provision is also made for the short quotation exception for the related rights to copyright in Article L. 211-3 of the CPI. As the short quotation exception is not restricted to education or research, it shall only be addressed in this study where it makes a specific contribution.

Several agreements concluded between the Ministry of National Education, Higher Education and Research (hereinafter “MENESR”) and various collecting societies have just been added to the legal texts. The agreements in force relate to:

- Audiovisual and cinematographic works: an agreement was concluded between the MENESR and the *Société des Producteurs de Cinéma et de Télévision* (Society of Cinema and Television Producers – PROCIREP) on 4 December 2009 (hereinafter referred to as the PROCIREP agreement);
- Musical works, audio recordings of musical works, and music videos: an agreement was concluded between the MENESR and the *Société des Auteurs, Compositeurs et Editeurs de musique* (Society of Authors, Composers and Publishers of Music – SACEM) on 4 December 2009 (hereinafter referred to as the SACEM agreement);

- Books, published musical works, periodicals and works of visual art: an agreement was concluded between the MENESR and the *Centre français d'exploitation du droit de copie* (French Centre for Copyright Exploitation - CFC), the *Société des éditeurs et auteurs de musique* (Society of Publishers and Authors of Music - SEAM) and the *Société des arts visuels* (Society of Visual Arts - AVA) on 6 November 2014 (hereinafter referred to as the CFC agreement).

All of these agreements have the aim of more precisely defining the scope of the pedagogical exception. For some works, and under very specific circumstances, these agreements broaden the scope of this exception.

Exceptions and limitations for the following activities can be gathered from the legal text and the aforementioned agreements

This use falls within the scope of the exception provided that the representation or displaying complies with the conditions set out in the CPI and, as the case may be, the agreements concerned. By way of example, the representation of an entire piece of music by students in class or the displaying of a work of visual art in its entirety are regarded as falling within the scope of the exception.

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

yes

Please comment:

Reproduction is covered by the pedagogical exception and the agreements on condition that the conditions set out in the CPI and the agreements concerned are complied with, but distribution (to a class, for example) is expressly prohibited by the PROCIREP and SACEM agreements (Article 2.2 of the PROCIREP and SACEM agreements).

As regards books, periodicals, published musical works and works of visual art, the statutory exception and the agreements do not apply insofar as the distribution involves making photocopies.

The right to make photocopies falls within the scope of a different regime from that of the pedagogical exception. Each establishment enters into an agreement with the CFC and pays a certain amount, which depends on the number of students and the approximate number of copies made per year, in exchange for authorisation to photocopy protected works.

c) making translations;

no

Please comment:

Translation is not explicitly provided for, either in the legal text or in the agreements.

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:

This use is explicitly provided for in the legal text and in the agreements (Article 2.3.4 of the PROCIREP and SACEM agreements)

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

yes

Please comment:

Reproduction falls within the scope of the statutory exception and the agreements, provided that the conditions set out in the legal text and, as the case may be, the agreements are met. Distribution is expressly prohibited by the PROCIREP and SACEM agreements.

As regards books, periodicals, published musical works and works of visual art, the statutory exception and the agreements do not play a role insofar as the distribution involves making photocopies. This is because the right to make photocopies falls within the scope of a different regime. Each establishment enters into an agreement with the CFC and pays a certain amount, which depends on the number of students and the approximate number of copies made per year, in exchange for authorisation to photocopy protected works

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

no

If not please comment:

The law does not confer the benefit of the pedagogical exception or short quotation on any other activities.

Moreover, Article L.122-5, 3°, e) of the CPI expressly provides that leisure or recreational activities are excluded from the exception. Article L.211-3, 3°) of the CPI regarding related rights provides for the same exclusion. The pedagogical exception is strictly restricted to reproductions or representations of works for educational or research purposes. By way of example, the representation of a theatre play does not fall within the scope of the exception given that it does not constitute a representation carried out for the exclusive purpose of illustration in a pedagogical context. Consequently, authorisation should be obtained from the copyright holder or the collecting society responsible for those rights, such as the SACD, for example.

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 text is silent on this subject.

However, the agreements only apply to the following institutions: nursery and primary schools, colleges and state schools and private schools under contract, apprentice training centres, the *Centre national d'enseignement à distance* [National Centre of Distance Learning], public institutions of higher education and science and technology institutions. These institutions have to rely on the MENESR. A detailed list of the institutions concerned is annexed to the agreements.

The agreements do not apply to other private institutions.

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.

*a. In relation to the number of copies tolerated*

The text is silent on this subject.

However, the number of copies is restricted *de facto* because the works may only be used for the purposes of illustration and may not be distributed as photocopies unless they are reproduced in exam subjects.

For photocopies of works, which follow a different regime from that of the exception of Article L.122-5, 3°), e) of the CPI, managed by the CFC, the number of copies is restricted to approximately 150/200 pages per year and per student (source: CFC).

*b. In relation to the size of the extracts that may be used*

Article L.122-5, 3°), e) of the CPI provides that the exception solely applies to extracts of works. Article L.211-3, 3°) of the CPI regarding related rights provides for the same condition.

• The PROCIREP SACEM agreements give the following definition for extracts:

An extract is understood to mean a partial use of the work, which may not exceed one tenth of its total length. In the case of use of several extracts from one and the same work, the total length of those extracts may not exceed 15% of the total length of the work.

However, the PROCIREP and SACEM agreements also provide that the following are authorised:

- The representation of entire works disseminated to pupils or students in class by an audiovisual communication service that is free of charge, as well as temporary reproductions of such works solely for pedagogical purposes (Article 2.3.1 of the PROCIREP agreement);
- The representation, in class, to pupils or students of entire musical recordings, as well as the

representation in the class of musical works by the pupils or students. For this purpose, musical works and recordings may also be temporarily reproduced (Article 2.3.1 of the SACEM agreement).

- The CFC agreement gives the following definition for an extract:

An extract is a part of or excerpt from a work, which is of reasonable size and is not substitutable for the work in its entirety.

For works of visual art, the notion of extract is inapplicable. The uses provided for are restricted to 20 works for each piece of pedagogical or research work.

According to this agreement, extracts from works created for pedagogical purposes and music scores - both of which are excluded from the statutory exception - may be used within the following limits:

- For works intended for pedagogical purposes, published in the form of a book, the extract may not exceed 4 consecutive pages, within the limit of 10% of the total page count of the work, for each piece of pedagogical or research work;
- For works intended for pedagogical purposes, published in the form of a periodical, the extract may not exceed 2 articles from one and the same publication, within the limit of 10% of the publication in its entirety, for each piece of pedagogical or research work;
- For music scores, the extract may not exceed 3 consecutive pages, within the limit of 10% of the work concerned, for each piece of pedagogical or research work.c. *Persons concerned by the exception*

According to Article L.122-5, 3°) e) of the CPI, the exception concerns "*a public predominantly composed of pupils, students, teachers or researchers directly concerned by the act of education, the act of training, or the research activity requiring this representation or reproduction*". Article L.211-3, 3°) of the CPI regarding related rights contains the same provision.

Whereas the PROCIREP agreement only makes provision for representations carried out by a teacher (which seems logical as far as cinematographic and audiovisual works are concerned), the SACEM agreement, on the other hand, provides that musical works may be represented by the pupils or students as well as by the teacher (Article 2.3.1 of the SACEM agreement).

As for the CFC agreement, it gives a definition of the "*authorised user*" concerned by the exception, being "*pedagogical staff, students, researchers and any person contributing to an educational, training or research activity within the institutions*".

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.

1. *Type of work covered by the exception*

The text expressly excludes from the scope of the exception works intended for pedagogical purposes and music scores. However, the CFC agreement incorporates these works in the exception (see question 7.b.).

1. *Conditions of acquisition of the work*

All of the agreements specify that the works used must have been acquired contractually.

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 exception relating to the conservation and preservation of works and the restriction of the author's monopoly in relation to library lending as an exception for educational purposes are statutorily provided for.

Owing to the principle of strict interpretation of exceptions that exists in French law, the case law has not extended these exceptions.

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

1. *Exception of conservation/consultation and statutory licence for library lending*

As regards the exception of conservation and consultation, Article L.122-5 provides that: "*the exceptions listed in the present article may not conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the author*".

The three-step test is therefore applicable to all the exceptions under Article L. 122-5, including the exception of conservation and consultation. It is thus the responsibility of the courts to assess whether the exception applied satisfies the three-step test.

With regard to library lending, French law does not expressly provide that this limitation of the author's

monopoly is subject to the three-step test.

However, Article 9.2 of the Berne Convention, which is directly applicable in national law, provides that *"It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author"*.

In particular, Article 13 *"limitations and exceptions"* of the ADPIC agreements, which are also applicable in national law, provide, in a general manner, that *"The Members shall restrict the limitations to exclusive rights or exceptions to those rights in certain special cases, which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder"*.

Thus, any limitation of the author's monopoly must be subjected to the three-step test. This is therefore the case for the statutory licence for library lending, as it constitutes a limitation of the exclusive right of the author.

#### 1. *Exception for the purposes of education*

The quotation right and the pedagogical exception enforce fundamental, economic, social and cultural rights, which include the right to information, the right to culture, the right to disseminate knowledge, the right to education and freedom of expression (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights, recital 14).

The negotiated remuneration provided for in respect of the pedagogical exception aims to compensate conflict with a normal exploitation of the work. This compensation is not provided for in respect of the short quotation exception, for which no remuneration whatsoever is provided for as consideration.

In the context of the short quotation exception, the French Supreme Court (Court of Cassation) excluded conflict with a normal exploitation of the work (photographs) on the ground that *"this reproduction, over two years after the disclosure of the report in the magazine NEWLOOK, does not conflict with a normal exploitation of the photograph"* (Court of Cassation, Civil Chamber 1, 22 January 2009, No 07-21063).

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).

#### 1. *Exception of conservation/consultation and statutory licence for library lending*

The exceptions are acquired automatically and no prior conditions are imposed on libraries or archives.

1. *Exception for the purposes of education*

Under French law, both under copyright law and with regard to the rights related to copyright, the beneficiaries of the pedagogical and short quotation exception may use the works, under the conditions provided for by the law and the sectoral agreements, without the need for a procedure or prior request.

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?

1. *Exception of conservation/consultation and statutory licence for library lending*

For the exception of conservation and preservation of works that appear in the catalogue of a library or an archive service, no remuneration or compensation is legally provided for by the French legislature.

As regards the exception of lending to the public in libraries, Articles L. 133-1 et seq. provide for remuneration to the benefit of the author and publisher. This remuneration is collected and apportioned by a collecting society (Article L.133-2 of the CPI). In practice, it is the *Société Française des Intérêts de Auteurs de l'Écrit* (French Society for the Interests of Authors of the Written Word - SOFIA) that plays this role.

Collection

The remuneration amount is not imposed on the user of the library.

This remuneration, which is fixed by ordinance, is partly paid by the State (1) and partly by the booksellers (2).

1. The amount paid by the State consists of a flat-rate annual contribution per user registered with the libraries.

Art. R 133-2 paragraph 1 of the CPI provides that:

*"The amount of the first part of the remuneration provided for in the second paragraph of Article L. 133-3*

*[[http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v\\_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279019&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279019&dateTexte=&categorieLien=cid)] is calculated on the basis of a flat-rate contribution per user registered with libraries open to the public for lending, such as referred to in Article R. 133-1*

*[[http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v\\_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279912&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=877462942F7BE8BAB14F05572DB92DC1.tpdila14v_1?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279912&dateTexte=&categorieLien=cid)] ".*

This contribution is fixed:

- at 1 euro per user and per year for *"libraries of public institutions of a scientific, cultural and professional nature and other public institutions of higher education operating under the Minister for Higher Education* Article R 133-2 paragraph 2 of the CPI);
- at 1.5 euros for other libraries (Article R 133-2 paragraph 2 of the CPI: *"It is fixed at 1.5 euros per user registered with other libraries open to the public for lending and is paid by the Ministry of Culture"*).

The contribution of the State amounts to approximately 11 million euros per year.

The ordinance also determines the method for calculating the number of users registered with libraries: this number is determined by means of statistics.

Article R 133-2 paragraph 4 of the CPI provides that:

*"The number of users registered is specified each year by order under the following conditions:*

*1° The number of users registered with public libraries is calculated each year on the basis of the statistical data supplied by the communes and départements (...);*

*2° The number of users registered with libraries of public institutions of a scientific, cultural and professional nature and other public institutions of higher education operating under the Minister for Higher Education is calculated each year on the basis of the statistical data drawn up by the Minister for Higher Education;*

*3° In order to take account of users registered in other libraries open to the public for lending, the number of users registered with public libraries is increased by a rate expressed as a percentage. This rate is fixed at 4% and may be revised every three years on the basis of quantitative estimates in*

*relation to the development of the activity of these libraries”.*

1. The other part of the remuneration amount is paid by the booksellers, which must deduct 6% of the retail price of each book. Article L.133-3 paragraph 2 of the CPI provides that:

*“The second part is based on the pre-tax public retail price of the books purchased” by the libraries; “it is paid by the suppliers that carry out these sales. The rate of this remuneration is 6% of the public retail price”.*

Failure to pay this remuneration is punishable by a fine of 300,000 euros (Article L.335-4 of the CPI).

#### The apportionment

The collecting society (the SOFIA) distributes the collected sums that are to be apportioned. This apportionment is divided into two parts:

1. A first part, which may not be less than 50% of the sums to be apportioned, is apportioned as follows:

The sum is firstly apportioned per publication. Each publication is attributed a sum depending on the number of copies bought by libraries. In order to do this, the collecting society uses the information provided by the libraries and booksellers.

After this, the sum allocated to each publication is distributed equally between the authors and publishers of the publication.

Article L.133-4, 1° of the CPI provides that:

*“The remuneration for library lending is apportioned under the following conditions:*

*1° A first part shall be distributed equally between the authors and their publishers on the basis of the number of copies of books purchased each year, [...] [by libraries], determined on the basis of the information communicated by those persons and their suppliers” to the collecting society.*



1. A second part, which may not exceed 50% of the collected sums to be apportioned, “[...] is allocated to cover a proportion of the contributions due under the pension plan [...]” from the authors (Article L. 133-4, 2° of the CPI).

1. *Exception for the purposes of education*

French law does provide for remuneration for the pedagogical exception but not for remuneration for the short quotation exception.

The remuneration for the pedagogical exception is negotiated.

Article L.122-5, 3°), e) of the CPI on copyright provides that use is “*compensated by remuneration on a flat-rate basis without prejudice to the assignment of the right of reproduction by means of reprography, as referred to in Article L. 122-10*”. For the related rights to copyright, Article L.211-3 of the CPI specifies that the use concerned must: “*be compensated by remuneration negotiated on a flat-rate basis*”.

#### Collection

The remuneration is collected by collecting societies and paid by the State, namely by the ministries concerned (Ministry of Higher Education and National Education). The Court of Justice specified that the right to compensation in the context of exceptions must be guaranteed by the State, which ensures a certain result with regard to the collection of the compensation by the authors (*ECJ, 16 June 2011; Stichting de Thuiskopie v Opus Supplies, Case C-462/09, paras 39-41*).

The amount and the arrangements for the remuneration collected are provided, depending on the works concerned and the uses applied, by three sectoral agreements concluded between the Ministry of National Education, Higher Education and Research and the collecting societies.

- Cinematographic and audiovisual works (PROCIREP agreement)

Remuneration in an amount of 150,000 euros is paid by the MENESR and collected by the PROCIREP.

- Audio recordings of musical works, uses of music videos and the live interpretation of musical works (SACEM agreement)

Remuneration in an amount of 150,000 euros is paid by the MENESR and collected by the SACEM.

- Books, published musical works, periodicals and works of visual art (CFC agreement)

Remuneration in an amount of 1,700,000 euros in total is paid by the MENESR and collected by the CFC (1,437,000 euros) and the AVA (263,000 euros).

All of these sums are indexed on the basis of a salary variation index in the arts sector for the year n-1.

#### *Apportionment*

The three sectoral agreements specify that it is incumbent on the collecting societies to distribute the sums among their clients (authors, artists and producers).

The apportionment is carried out proportionally to the duties already collected in accordance with similar modes of operation and is fixed in the statutes or rules of the collecting societies or by means of a contract that is renegotiated annually. Therefore, the management of the apportionment of the sums collected for the pedagogical exception has not been the subject of specific negotiations.

By way of example, the CFC agreement specifies in Article 5 that "*the ministry undertakes to ask the institutions to declare the uses of works or extracts of works referred to in the protocol*". In practice, however, the CFC carries out the apportionment of the royalties on the basis of the declarations made by the institutions solely in respect of paper copies. In order to reduce the management costs associated with the apportionment, the CFC pays the publishers and authors back the royalties paid by the Ministries for these uses accumulated over several years, after deducting the sums that go to the other collecting societies and fees.

To give another example, the SACEM uses its standard apportionment rules because the apportionment of the sums collected is carried out after deduction of management fees and funds committed to social and cultural action. It is carried out in two stages: the sums are allocated, for each work in accordance with the distribution (using the following distribution key: equally between the author of the words, the composer and the publisher) or the reproduction (using the distribution key defined by the contract between the rights holders) carried out in respect of the work, then between the various rights holders.

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

#### *1. Exception of conservation/consultation and statutory licence for library lending*

Under French law, two devices that are distinct and may be cumulative are applicable, being orphan works (1) on the one hand, and unavailable books (2) on the other.

## 1. Orphan works

Law No 2015-195 of 20 February 2015 on various provisions for adapting to the law of the European Union in the areas of literary and artistic property and cultural heritage transposed into French law Directive 2012/28 of 25 October 2012 on certain permitted uses of orphan works.

The aim of this law is to permit the exploitation of orphan works under certain conditions.

Article L.113-10 of the CPI defines orphan works as: "*An orphan work is a protected and disseminated work whose rights holder cannot be identified or located despite diligent and serious searches having been carried out and recorded.*"

Libraries open to the public and archive services may exploit the following orphan works:

- < > < > Libraries and archive services are authorised to exploit orphan works under the following conditions:
  - < > *the reproduction of an orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation and restoration*" (Article L. 135-2 of the CPI).
- It is specified, however, that libraries and archive services may only exploit orphan works "*in the context of their cultural, educational and research missions*" and on the condition that no profit-making aim is pursued and that, where applicable and for a period that may not exceed seven years, only the revenue covering the fees directly resulting from the digitisation and making available to the public of orphan works are collected (Article L. 135-2 of the CPI). Moreover, before any exploitation, the library or the archive service must have carried out and recorded diligent and serious searches for the right holders (consultation of the appropriate sources for each category of work). The results of this search must be communicated to the Ministry of Culture, which, in turn, sends them to OHIM (Office for Harmonization in the Internal Market) (Article L. 135-3 of the CPI). Finally, if a right holder does appear, the exploitation by the library or archive service must cease and equitable compensation must be paid to the rights holder in order to compensate the harm it suffered as a result of the exploitation of his work (Article L. 135-6 of the CPI).
  1. Unavailable books
- Furthermore, French law established arrangements for exploiting unavailable books, which could be applicable to library lending. An unavailable book is defined in Article L.134-1 of the CPI: *An unavailable book is understood within the meaning of the present chapter to be a book published in France prior to 1 January 2001, which is no longer the subject of commercial distribution by a publisher and not currently the subject of publication in printed or digital form.*" The *Bibliothèque Nationale de France* [French National Library] maintains a database in which unavailable books are entered (Article L. 134-2 of the CPI). If a book has been entered in the database for over six months, and if there is no opposition from the author and the publisher, a copyright collecting society (in practice, the SOFIA), proposes that the unavailable book be authorised for reproduction and representation in digital form (Articles L. 134-3 and L. 134-5 paragraph 1 of the CPI). This authorisation is granted "*in exchange for remuneration on a non-exclusive basis and for a renewable period restricted to 5 years*" (Article L. 134-3, I of the CPI). This proposal is firstly made to the initial publisher of the book (Articles L. 134-5 paragraphs 2 to 4 of the CPI). In the event that the initial publisher does not accept the proposal, the collecting society may authorise third parties to reproduce and represent

the book in digital form (Article L. 134-5, paragraph 5 of the CPI). This third-party "user [...] is regarded as the publisher of the digital book" (Article L. 134-5, paragraph 6 of the CPI). The question arises as to whether a library or archive service can obtain authorisation to exploit an unavailable book in digital format. It is true that the law on unavailable books only refers to authorisation to *reproduce* and *represent* the book. However, French law takes an overarching approach to the right of reproduction and representation, such that all the property-related prerogatives that are given to authors necessarily fall under one or the other (A. and H.J. Lucas and A. Lucas-Schloetter, *Traité de la propriété littéraire et artistique*, Lexis-Nexis, 4<sup>th</sup> edition, 2012, No 254). Thus, the lending right necessarily falls under the right of reproduction and/or representation (ibid, No 281). It can therefore be concluded that the provisions regarding the digital exploitation of unavailable books are applicable to the lending right. The collecting societies must provide for apportionment scales between the right holders, following the principles below:

- < > the amount of the sums collected by the author(s) of the book may not be lower than the amount of the sums collected by the publisher (Article L. 134-3, II, 5° of the CPI).
- Finally, the sums collected that could not be apportioned because their recipients could not be identified or located shall be allocated to subsidies for creation or else for training or for promoting public reading (Article L. 134-9 of the CPI).
  1. *Exception for the purposes of education*
- The pedagogical exception can be put in the same category as regards the situation for orphan works. Educational establishments may exploit the following orphan works:
  - < > "audiovisual works and phonograms contained in these collections or which have been produced by public-service broadcasting organisations prior to 1 January 2003 and contained in their archives" (Article L. 135-1 of the CPI). Educational establishments are authorised to exploit orphan works under the following conditions:
    - < > *the reproduction of an orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation and restoration*" (Article L. 135-2 of the CPI).
- It is specified, however, that educational establishments may only exploit orphan works "in the context of their cultural, educational and research missions" and on the condition that no profit-making aim is pursued and that, where applicable and for a period that may not exceed seven years, only the revenue covering the fees directly resulting from the digitisation and making available to the public of orphan works are collected (Article L. 135-2 of the CPI). Moreover, before any exploitation, the educational establishment must have carried out and recorded diligent and serious searches for the right holders (consultation of the appropriate sources for each category of work). The results of this search must be communicated to the Ministry of Culture, which, in turn, sends them to OHIM (Office for Harmonization in the Internal Market) (Article L. 135-3 of the CPI). Finally, if a right holder does appear, the exploitation by the educational establishment must cease and equitable compensation must be paid to the rights holder in order to compensate the harm it suffered as a result of the exploitation of his work (Article L. 135-6 of the CPI).

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

1. *Exception of conservation/consultation and statutory licence for library lending*

According to the principle of freedom of contract, the parties are free to adjust or even disable the scope of the statutory exceptions, especially given that the French view on copyright is centred around protecting the author.

However, no judicial decision has confirmed this either in relation to the exceptions of conservation and preservation for the benefit of libraries and archives or with regard to the limitation of the author's

monopoly in respect of lending.

1. *Exception for the purposes of education*

The law does not explicitly forbid the pedagogical exception or the quotation exception from forming the subject of contractual clauses to the contrary.

Nonetheless, a rule may be a rule of public policy, even if this nature is not mentioned explicitly. According to a principle of interpretation provided for under French law, it is thus necessary to consider the interest which the provision aims to protect; depending on whether this interest is private or public, the provision will be mandatory or suppletive.

It is therefore necessary to consider the purpose of each exception in order to determine whether the *ratio legis* was the protection of a particular or higher interest and not to look into the wishes of the beneficiary of the exception on the basis of freedom of contract.

As regards the pedagogical exception, the purpose(s) of this exception is, in particular, access to education or the right to information, while simultaneously taking account of the interests of the author, as remuneration is provided for as consideration for the use. The purpose of the quotation exception is, in particular, the protection of freedom of expression for the quotation exception.

According to the interpretation of the scope of the pedagogical exception and short quotation exception, the beneficiaries of these two exceptions cannot find themselves forced to pay any remuneration other than that established by the law and negotiated by the sectoral agreements in the context of the use of the works concerned by the exception. Following this interpretation, any implementation of the pedagogical exception (particularly the negotiation of remuneration) may only seek to extend the rights of the beneficiaries.

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?

yes

If so, please explain those efforts.:

1. *Exception of conservation/consultation and statutory licence for library lending*

Aside from the cases provided for by law, the author's monopoly is a total monopoly; a licensee may not exercise the right of the author without his authorisation, which precludes any private initiatives.

Currently, the professionals of the sector (publishers, booksellers, libraries, platforms) have initiated a negotiation process in order to allow public libraries to provide users with lending services for digital books.

The aim of the public authorities is to encourage the development of experiments in this area.

One of the projects, supported by the Ministry of Culture and the *Syndicat National de l'Édition*, is entitled "*Prêt Numérique en Bibliothèque*" [Digital Library Lending] (PNB).

This project is not embedded in the statutory licence regarding library lending, as the parties believe that the current legislation regarding library lending (French law and the Community directive) do not apply to the digital book, meaning that this exploitation falls within the author's monopoly (on this debate, see question 3, 2°).

This project is based on the following principles:

- The publishers present booksellers with digital book offerings;
- The booksellers present the publishers' offerings to the libraries and send the libraries' orders to the distribution platforms;
- Depending on the offering proposed by the publisher, the user may:
  - Consult the digital catalogue of the library;
  - Download the book;
  - Read the book via streaming.
- The publishers' offerings are based on flexible criteria:
- The duration for which the book is made available;
- The number of authorised loans;
- The number of concurrent users;
- The maximum duration of the loan;
- Access in situ or ex situ;
- The number of terminals;
- The return expected by the user,
- *Exception for the purposes of education*

"Pedagogical resource platforms" and "pedagogical blog platforms" have been created in France, including:

- the project referred to as "*project Sésamath*" (<http://www.sesamath.net/>[<http://www.sesamath.net/>] ) aims to promote the exchange of academic textbooks and exercise books, free of charge, available online in digital format. These works come from exchanges between professionals who have complied with the charter of the project and they are offered to the public under a dual licence (GNU Free Documentation License and Creative Commons Paternité). The public can download and print them and make changes to the sources. For the use of other versions (paper edition, specimen copies, DVD edition or on iPad/Android) of the textbooks and exercise books, the public is redirected to the project's partner publishers (*pedagogical resource platforms*);
- thanks to the free software wordpress MU, the Académie of Poitiers created personal spaces (<http://www.cndp.fr/ecolenumerique/tous-les-numeros/boite-a-outices->

les-blogs/article/article/plateformes--  
e-  
blogs.html[<http://www.cndp.fr/ecolenumerique/tous-les-numeros/boite-a-outices/les-blogs/article/article/plateformes-de-blogs.html>] ) where academic staff and students can publish content (*pedagogical blog platforms*).

## 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?:

The French Group is satisfied with the abovementioned exceptions to the copyright monopoly, which constitute a good balance between the interests of the authors and access to knowledge by the public and the requirements of heritage conservation.

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

yes

If yes, in relation to what activities? :

The French Group is satisfied with the abovementioned exceptions to the copyright monopoly, which constitute a good balance between the interests of the authors and access to knowledge by the public and the requirements of research

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

yes

Why?:

The French Group believes that the Three-Step Test such as is implemented in France is an appropriate test for determining the legitimacy of an encroachment on the author's monopoly. This test makes it possible to guide the courts in their interpretation of the scope of the limitations and exceptions.

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

The French Group believes that the public interest must prevail over freedom of contract... except where the author waives, by contract, the remuneration provided for in respect of these limitations and exceptions

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

The French Group believes that the remuneration system that is in place for these exceptions and limitations is sufficient.

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 French Group recommends that the library lending exception as defined for books in Article L.133-3 CPI be extended to digital books, i.e. with financial compensation for the authors.

### III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

no

Please comment:

It seems unrealistic to advocate harmonisation in this matter while there are differences in the policies and priorities for education and research between countries.

The policies and priorities for education and research of each country must prevail and enable each country to develop its exceptions and limitations in line with public interest.

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:

The French Group believes that harmonisation provided for in a treaty or an international convention would be inappropriate.

24) If yes to question 16):

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

As the policies and priorities for education and research vary greatly from one country to the next, it is not possible to impose one model for exceptions and limitations over another. Each country must be able to adapt its exceptions and limitations to the author's monopoly in accordance with its requirements in relation to access to knowledge.

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

As the policies and priorities for education and research vary greatly from one country to the next, it is not possible to impose one model for exceptions and limitations over another. Each country must be able to adapt its exceptions and limitations to the author's monopoly in accordance with its requirements in relation to access to knowledge.

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



As the policies and priorities for education and research vary greatly from one country to the next, it is not possible to impose one model for exceptions and limitations over another. Each country must be able to adapt its exceptions and limitations to the author's monopoly in accordance with its requirements in relation to access to knowledge.

25) If yes to question 17):

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

As the policies and priorities for education and research vary from one country to the next, it is not possible to impose one model for exceptions and limitations over another. Each country must be able to adapt its exceptions and limitations to the author's monopoly in accordance with its requirements in relation to access to knowledge

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

As the policies and priorities for education and research vary from one country to the next, it is not possible to impose one model for exceptions and limitations over another. Each country must be able to adapt its exceptions and limitations to the author's monopoly in accordance with its requirements in relation to access to knowledge

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

As the policies and priorities for education and research vary from one country to the next, it is not possible to impose one model for exceptions and limitations over another. Each country must be able to adapt its exceptions and limitations to the author's monopoly in accordance with its requirements in relation to access to knowledge

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 implementation of these exceptions and limits should be automatic, as recourse to the courts and the three-step test occur ex post

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?

The criteria implemented in France nowadays are satisfactory: as restrictions to the author's monopoly are justified, in particular, by access to knowledge, it does not seem unjust to use the statutory licence and to finance it via the public to the benefit of collecting societies

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

The criteria implemented in France nowadays are satisfactory.

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

These exceptions and limitations must remain within the public interest; it must not be possible to override them 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?

The French Group takes the view that the efforts of private organisations (authorised to use works) should not narrow the scope of the statutory exception. On the other hand, there is no reason why the efforts of private organisations should not be able to expand their scope (adapt the notion of extracts, persons concerned, etc.)

#### Summary

1. French law provides for exceptions and limitations to copyright protection for libraries, archives and educational and research institutions for the purpose of conservation or consultation, for library lending, and for education and research institutions, that are subject to the three step test, automatic, without compensation (conservation, consultation) or with compensation (library lending, education and research). The sources of these exceptions and limitations are statutory. In addition, some collective agreements are being negotiated and/or tested to expand the scope of the exceptions, for example to cover digital books and educational online platforms.

1. The French Group is satisfied with the abovementioned exceptions to the copyright monopoly, which constitute a good balance between the interests of the authors and access to knowledge by the people public and the requirements of research. The French Group further believes that the public interest must prevail over freedom of contract except where the author waives, by contract, the remuneration provided for in respect of these limitations and exceptions. It thus recommends that the library lending exception as defined for books in Article L.133-3 CPI be extended to digital books, i.e. with financial consideration compensation for the authors.

1. The French Group believes that as the policies and priorities for education and research vary greatly from one country to the next, it is not possible to impose one model for exceptions and limitations over another. Each country must be able to adapt its exceptions and limitations to the author's monopoly in accordance with its requirements in relation to access to knowledge. It therefore considers that harmonisation provided for in a treaty or an international convention would be

inappropriate. The criteria implemented in France nowadays are satisfactory: as restrictions to the author's monopoly are justified, in particular, by access to knowledge, it does not seem unjust to use the statutory licence and to finance it via the public to the benefit of collecting societies. The French Group takes the view that the efforts of private organisations (authorised to use works) should not narrow the scope of the statutory exception. On the other hand, there is no reason why the efforts of private organisations should not be able to expand their scope (adapt the notion of extracts, persons concerned, etc.).

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.

**Table summarising the exceptions for the benefit of archives, libraries and educational and research institutions**

	<b>EXCEPTION OF PRESERVATION AND CONSULTATION</b>	<b>LIBRARY LENDING</b>	<b>EXCEPTION OF EDUCATION AND RESEARCH</b>
<b>Basis</b>	Article L.122-5 8° of the CPI	Article L.133-1 of the CPI	- Article L. 122-5, 3°, e) of the CPI.  - Sectoral agreements concluded between the Ministry of National Education and the Collecting Societies.
<b>Beneficiary/beneficiaries</b>	- Libraries open to the public - Museums - Archive services	- Library open to the public: restrictive list set out under Article R.133-1 of the CPI	- No details contained in the law. - Restrictive list of establishments in each sectoral agreement.

<i>Conditions</i>	No economic or commercial advantage is sought	No direct or indirect economic or commercial advantage is sought -according to the Directive of 2006, but not expressly transposed into the CPI-	<p>Conditions provided for by the law:</p> <ul style="list-style-type: none"> <li>- Extract of a work;</li> <li>- Solely for the purposes of illustration in the context of education and research;</li> <li>- Public predominantly composed of pupils, students, teachers or researchers directly concerned by the act of teaching, the act of training or the research activity;</li> <li>- No publication or distribution to a party outside the public as defined above;</li> <li>- Use does not give rise to any commercial exploitation;</li> <li>- Flat-rate remuneration;</li> <li>- Respect of moral rights.</li> </ul> <p>These conditions are adapted in each sectoral agreement depending on the type of work concerned.</p>
<b>Works</b>	All intellectual works	Solely books that were the subject of a publishing contract	All intellectual works with the exception of works intended for pedagogical purposes and music scores.
<i>Digital books</i>	YES	Debated in the literature No judicial decision, however	YES
<i>Audiovisual</i>	YES	NO	YES
<i>Multimedia</i>	YES	NO	YES
<b>Orphan works</b>	YES Article L.135-2 of the CPI	YES Article L.135-2 of the CPI	YES Article L.135-2 of the CPI
<b>Unavailable books</b>	YES	YES	YES
<b>Rights concerned</b>	Right of representation and right of reproduction for the purpose of conservation or consultation by the public	Lending right	Right of representation and right of reproduction.

<b>Remuneration</b>	NO	YES Remuneration fixed by decree, paid by the State and by the booksellers (Article L.133-3)	YES Remuneration negotiated on a flat-rate basis.
<b>Three-step test</b>	YES	YES	YES

