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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:

Art. 22 of Law No. 2121/1993 allows the reproduction of one additional copy - further to the original one- for preservation or replacement reasons, under the condition that acquiring such copy from the market quickly and with reasonable conditions is impossible.

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

yes

Please comment:

Art. 22 of Law No. 2121/1993 allows the reproduction of one additional copy - further to the original one- for the purpose of interlibrary lending, under the condition that acquiring such copy from the market quickly and with reasonable conditions is impossible.

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:

Reproduction or distribution by a library or archive for the purpose of providing copies to users of libraries or archives is not permissible under Greek law. Library or archive users may only make themselves copies of parts of protected works under the exception of the reproduction for private use that is foreseen in Article 18 of Law No. 2121/1993.

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

no

Please comment:

Greek law does not foresee any further permitted activities for libraries and archives. The exceptions and limitations foreseen in law are interpreted restrictively.

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?

The exceptions and limitations are applied to all non-profit libraries and archives. There is no distinction between public and private libraries and archives under Greek 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.

Greek law only allows the creation of one additional copy further to the original one. According to the prevailing opinion, it is possible for libraries and archives to create a digitalized copy for reasons of preservation or interlibrary lending, as Greek law does not define the term "reproduction".

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.

Only lawfully created works and published works may be used by libraries and archives under the conditions explained above. In additions, orphan works may be also used (in the form of reproduction and making available to the public) by libraries and archives after the incorporation of Directive 2012/28/EU into Greek law (Art. 27B of law No. 2121/1993).

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;
	no
	Please comment:
	Greek law does not allow the performance or display for educational purposes, as the Greek legislator has not made use of this possibility provided by the Bern Convention under Article 10 par. 2. Article 27 of law No. 2121/1993 on copyright also allows the use of copyright works in celebrations of school and education institutes, if the public comprises of students and/or parents.
b)	reproduction and/or distribution for educational purposes (e.g. preparation of course packs, compilations or anthologies, exams);
	yes
	Please comment:
	Greek law allows the reproduction and distribution for educational or exams purposes in education institutions, provided that the reproduction a) is justified by the education/exam purpose, b) is fair and c) does not place obstacles to the normal exploitation of the work. The reproduction must refer to the source and the name of the author and the publisher. The reproduction of parts of literary works only (not an entire book) is allowed under Greek law.
c)	making translations;
	no
	Please comment:
	Making translations (without having obtained a license with respect to a copyrighted work) is not allowed under Greek law.
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 is no reference on this possibility in the exceptions introduced by Greek law and the exceptions and limitations at issue are interpreted restrictively. According to the prevailing opinion in theory and the courts, making available in digital networks for educational purposes is not permitted under Greek law, as it is not mentioned in the exceptions of the protection, and it further infringes the author's exclusive right to communicate the work to the public.
e)	reproduction and/or distribution for research purposes; or
	no
	Please comment:
	Greek law does not explicitly refer to an exception of copyright for the reproduction and/or distribution for research purposes. However, according to the prevailing opinion in theory and practice, at least the reproduction (not necessarily the distribution) for research purposes is allowed as a permitted form of private use under Article 18 of law No. 2121/1993 on copyright. However, the reproduction should not be made by commercial entities and organizations and it should not be made within the scope of a professional activity, even of a natural person.

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

no

If not please comment:

No further activities are allowed to education and research institutions.

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 exceptions and limitations at issue apply to educational institutions in general (without distinguishing between public and private institutions, or between profit and non-profit 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.

There is no explicit limit as per the number of copies allowed, but the reproduction must be justified by the education/exam purpose, be fair and not place obstacles to the normal exploitation of the work. In addition, the reproduction must refer to the source and the name of the author and the publisher. In view of the above, the use must be restricted only to the portion of the work that is necessary for the educational purpose.

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.

Only lawfully created works and published works may be used by education institutes under the conditions explained above. In addition, orphan works may be also used (in the form of reproduction and making available to the public) by libraries and archives after the incorporation of Directive 2012/28/EU into Greek law (Art. 27B of law No. 2121/1993).

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 provided for libraries, archives and education institutes and allow the reproduction of a work without the license of its author are foreseen in Articles 21 and 22 of law No. 2121/1993 on copyright. In addition, Article 20 of law No. 2121/1993 foresees explicitly the use of a work in schoolbooks that are used in the primary and secondary education (not in Universities). Further exceptions mentioned above, such as the reproductions of copies by library users and the reproduction for research purposes is recognized by courts and the theory and practice as a result of the interpretation of Article 18 of law 2121/1993 on private use.

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

Greek law has adopted the three-step test in Article 28C of Law No. 2121 after the implementation of Article 5 par. 5 of the Directive 2001/29/EC.

- 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 exceptions discussed above are permitted automatically, namely without seeking a compulsory license or other procedure.

- 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?

No remuneration is payable for use under the exceptions discussed above for libraries, archives and education institutes.

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

The treatment of orphan works is foreseen explicitly and separately in Article 27A of law No. 2121/1993, that has implemented the Directive 2012/29/EU by law No. 4212/2013. The provisions at issue allow the use of orphan works by libraries, archives, education institutions, museums etc. The uses allowed are broader than the use of reproduction allowed by the general provisions about libraries, archives and education institutes, as they also include making the orphan works available to the public.

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

There is no explicit reference of this possibility in law No. 2121/1993. Both opinions have been supported. We believe that the exceptions discussed cannot be overridden by contract, as their purposes refer to the public interest.

- 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 have been some internal discussions within collecting societies to address further (currently not allowed) uses (such as the distribution of course packs, within online courses etc.) to libraries and educational institutions. However, there has not been any known initiative yet for the implementation of such thoughts.

## 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?:

Definitely. There should be exceptions and limitations to copyright protection for libraries and archives due to the importance of the users' access to this knowledge. The exceptions should include the right of reproduction for replacement and interlibrary lending purposes, and the digitalization of the work for reasons of making it available to the public within the library's establishment. In addition, an exception regarding the reproduction and distribution of part of works - under certain conditions and for research purposes- might be thinkable.

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

yes

If yes, in relation to what activities? :

Definitely. There should be exceptions and limitations to copyright protection for education and research institutions. The exceptions should concern the right of reproduction and distribution, as well as the digitalization of the work for the purpose of making it available to the students and researchers within the educational or research institutions, under the conditions and principles of necessity and proportionality. The use in research institutions should not be made within the scope of a commercial or professional activity.

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

yes

Why?:

It is indeed a useful test, because it is a fair and efficient mechanism of checking the correctness of the exceptions and limitations, regulating them and being flexible in case of future and still unknown uses of the work.

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

The exceptions discussed have been placed in order to safeguard the access to basic information and educational material for all users, and especially students, as well as the viability of libraries, archives and educational institutes. For this reason we do not deem it appropriate that the exceptions discussed be able to be overridden by contract.

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

There should be no remuneration payable for the activities of reproduction for replacement and interlibrary lending purposes, the digitalization of the work for reasons of making it available to the public within the library's establishment, or to the students and researchers within the educational or research institutions. A remuneration should be foreseen for further uses of the copyrighted works.

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?

A clearer scope of protection and a clearer view on the exceptions and limitation should be given, especially with respect to the digitalization of the works and their use in the online environment (for example with regard to online education schemes or interlibrary lending and use of digital copies of copyright-protected works).

### III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

yes

Please comment:

In general, harmonization in this area is desirable due to the much desired effective cooperation between libraries and educational institutions. A common regime would provide both the library and educational institutions and users with more safety as to permitted uses of copyrighted works.

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:

Not applicable (the reply in questions 16 and 17 was yes!)

24) If yes to question 16):

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

The exceptions should apply to non-profit libraries and archives.

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

The exceptions should apply to the right of reproduction for replacement and interlibrary lending purposes, and the digitalization of the work for reasons of making it available to the public within the library's establishment. In addition, an exception regarding the reproduction and distribution of part of works - under certain conditions and for research purposes- might be thinkable.

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

The three-step-test should apply in these exceptions and limitations.

25) If yes to question 17):

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

The exceptions should apply to both public and private educational institutions and to non-profit research institutions.

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

The exceptions should apply to the right of reproduction and distribution, as well as to the digitalization of the work for the purpose of making it available to the students and researchers within the educational or research institutions.

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

The conditions and principles of necessity and proportionality, as well as the three-steps-test should apply. The use in research institutions should not be made within the scope of a commercial or professional activity.

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 uses described above should be permitted automatically, without any further action or procedure, that might jeopardize the application of the exceptions. A remuneration should be considered for further uses.

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 remuneration to be considered for further (permitted) uses should be determined according to the use concerned. The libraries and archives and the educational and research institutions should be liable to make such payment to collecting societies.

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

We believe that the current statute regarding orphan works is sufficient.

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

We believe that the exceptions should be capable of being overridden by contract only in the activities that are described above as "further uses", such as the use in online educational courses. The exceptions concerning the reproduction for reasons of replacement and interlibrary lending and the reproduction and distribution, as well as the digitalization of the work for the purpose of making it available to the students and researchers within the educational or research institutions, 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?

Private organizations, including collecting societies, should cooperate closely with the legislators, both on the national and the European/international level, in order to promote their efforts within the current legislative initiatives.

#### Summary

There should be exceptions and limitations to copyright protection for libraries and archives. These should include the right of reproduction for replacement and interlibrary lending purposes, and the digitalization of the work for reasons of making it available to the public within the library's establishment. An exception regarding the reproduction and distribution of part of works - under certain conditions and for research purposes- might be thinkable.

There should be exceptions and limitations to copyright protection for education and research institutions, including reproduction and distribution, as well as the digitalization of the work for the purpose of making it available to the students and researchers within the educational or research institutions. The three-step-test should apply in all cases.

The above exceptions should not be able to be overridden by contract and no remuneration should be payable for the above activities. A remuneration should be foreseen for further uses of the copyrighted works.

A clearer scope of protection and a clearer view on the exceptions and limitation should be given, especially with respect to the digitalization of the works and their use in the online environment.

In general, harmonization in this area is desirable. The uses that are included in the exceptions should be permitted automatically, without any further action or procedure. In cases where a remuneration is considered, its height should be determined according to the use concerned. The libraries and archives and the educational and research institutions should be liable to make such payment to collecting societies.

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.

Not applicable.