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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:

*Pursuant to the provisions of „three step test“, each library, archive or museum is entitled to make one copy of a work or object of neighbouring rights existing in their permanent collection by means of reproduction, without a direct or indirect commercial purpose, **in order to preserve it or to replace** a work from the permanent collection of the relevant or any other library, archive or museum if such work has been damaged or has become unusable on the condition that it is not possible to obtain a copy in some other acceptable manner, and the reproduction is repeated in separate and mutually unrelated cases. Only works or object of neighbouring rights that have been published in Latvia and are not available commercially are permitted to be reproduced in a digital format, unless an agreement with the author determines otherwise (Art.23 Part 1; Art. 54 Part 3 Point 3).*

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

no

Please comment:

No such provisions.

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:

*Libraries, archives and museums are entitled to make available the works and objects of neighbouring rights in their permanent collection and copies thereof (which are made in accordance with the provisions explained above) for the use for **scientific research or for self-education purposes**, to natural persons who have authorised access to computers specifically set up in the premises of the library, archive or museum by using exclusively the intranet that has special protection. (Art.23 Part 2; Art. 54 Part 3 Point 3).*

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

yes

Please comment:

*Copyright shall not be deemed to be infringed if without the consent of the author, but with the payment of just remuneration, the published work is used for **public lending**. (Art. 19.¹ Part 1; Art. 54 Part 4).*

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?

*Exceptions or limitations apply to the all libraries, archives and museums generally. Registered libraries of state or municipality, or other derived public persons are entitled to make available the works and objects of neighbouring rights (from their permanent collection for the use for scientific research or for self-education purposes) only if they have access in a **closed network to the Latvian Digital Library** and are included in the joint state library information system. (Art.23 Part 3; Art. 54 Part 4).
Organisations for the visually or hearing impaired, as well as libraries which provide services to visually or hearing impaired, are permitted to reproduce and distribute works and objects of neighbouring rights, without remuneration, for non-commercial purposes, in a form perceivable by such impaired insofar as is necessary in the case of the relevant impairment. (Art.22; Art. 54 Part 3 Point 3).*

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.

*Only one copy of a work or object of neighbouring rights existing in their permanent collection may be made by means of reproduction and only **in order to preserve it or to replace** a work from the permanent collection of the relevant or any other library, archive or museum if such work has been damaged or has become unusable on the condition that it is not possible to obtain a copy in some other acceptable manner. Only works and objects of neighbouring that have been **published in Latvia** and are **not available commercially** are permitted to be reproduced in a **digital format**, unless an agreement with the author determines otherwise. (Art.23 Part 1; Art. 54 Part 3 Point 3).*

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.

*Each library, archive or museum is entitled to make a copy only from a work or object of neighbouring rights **existing in its permanent collection** (Art.23 Part 1; Art. 54 Part 4).*

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:

*A work or object of neighbouring rights may be **performed in public** without the consent of the author or other right holder and without the payment of royalties within the framework of the **implementation of an educational programme**, to an extent that corresponds to the teaching process and for non-commercial purposes, with a mandatory indication of the title and the name of the author of the work being used, and in compliance with the condition that the work is performed in public **to an audience consisting of only the teachers, students or persons directly associated with the implementation of the relevant educational programme** (Art.26 Part 2; Art. 54 Part 3 Point 2).*

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

yes

Please comment:

*It being mandatory that the title and name of the author of the work are indicated and that the provisions of „three step test“ are observed, it is permitted to use communicated or published works, objects of neighbouring rights or fragments of them in **textbooks** which are in conformity with educational standards, in radio and television **broadcasts**, in **audio-visual** works, in **visual aids** and the like, which are specially **created and used** in the face-to-face teaching and research process **in educational institutions** for non-commercial purposes to the extent justified by the purpose of their activity (Art.21 Part 1; Art. 54 Part 3 Point 2).*

c) making translations;

yes

Please comment:

*Please see the above. It is allowed to **use** the works, therefore one might suggest that it is allowed to make translations of the works as well.*

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:

*It being mandatory that the title and name of the author of the work are indicated and that the provisions of „three step test“ are observed, it is permitted to use communicated or published works, objects of neighbouring rights or fragments of them in radio and television **broadcasts**, which are specially **created and used** in the face-to-face teaching and research process **in educational institutions** for non-commercial purposes to the extent justified by the purpose of their activity (Art.21 Part 1.) Libraries, archives and museums are entitled to make available the works in their permanent collection for the use for **scientific research or for self-education purposes**, to natural persons who have authorised access to computers specifically set up in the premises of the library, archive or museum by using exclusively the intranet that has special protection. (Art.23 Part 2; Art. 54 Part 3 Point 2).*

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

yes

Please comment:

*It being mandatory that the title and name of the author of the work are indicated and that the provisions of „three step test“ are observed, it is permitted to use communicated or published works, objects of neighbouring rights or fragments of them **in research institutions** for non-commercial purposes to the extent justified by the purpose of their activity (Art.21 Part 1; Art. 54 Part 3 Point 2).*

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?

*Exceptions or limitations apply to the **all educational and research institutions** generally. Though, the use shall be **for non-commercial purposes**.*

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.

*It is permitted to use works and objects of neighbouring rights to **the extent justified by the purpose of particular activity** (Art.21 Part 1; Art. 54 Part 3 Point 2). The works and objects of neighbouring rights shall be used in textbooks, which are in conformity with educational standards, in radio and television broadcasts, in audio-visual works, in visual aids and the like, which are specially **created and used** in the face-to-face teaching and research process in educational and research institutions (Art.21 Part 1; Art. 54 Part 3 Point 2). No other specific conditions. Accordingly, there is no restriction as to the number of copies and both teachers and students performance is covered.*

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.

*It is permitted to use only **communicated or published works or objects of neighbouring rights** (Art.21 Part 1; Art. 54 Part 3 Point 2).*

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?

Yes, exceptions and limitations are set in Copyright Law and further explained in Regulations of Cabinet of Ministers. It is not alternatively or additionally recognized in case law; only exceptions explicitly provided by law can be applied (Art. 18 Part 1). There is no more general or broad exception or limitation.

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

Yes, the economic rights of author or subject of neighbouring rights may be restricted:

- 1. only in cases specified by Copyright Law (Art.18 Part 1; Art. 54 Part 1);*
- 2. if restriction is not contrary to the provisions for normal use of the work; and*
- 3. if it not unjustifiably limit the lawful interests of the author or subject of neighbouring rights (Art.18 Part 2; Art. 54 Part 2).*

- 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).

*Use under the exception or limitation **for educational and research purposes** is permitted automatically. Use under the exception or limitation **for libraries, archives and museums** is permitted partly automatically, but there are special provisions regarding public lending of works. For public lending of works libraries shall **maintain records of the units** issued to the users in accordance with the provisions of Law on Libraries (Art.23 Part 4).*

- 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?

*Use under the exception or limitation **for educational and research purposes** is permitted without payment of any remuneration (Art. 19 Part 1; Art. 54 Part 3).*

*The procedures for the calculation of the **amount of remuneration** for public lending, as well as the procedures for the payment of the remuneration and the proportional distribution among authors, performers, phonograph producers and film producers shall be determined by the Cabinet of Ministers (Art. 19.¹ Part 2; Art. 54 Part 4). Cabinet Regulation "Procedures by which the remuneration regarding public lending shall be calculated, paid and distributed": The annual remuneration amount is **10%** of the amount that was allocated during the previous year for the supplementation collections of the libraries.*

Remuneration for the use of a published work for public lending in libraries of the State, local government or other derived public persons and in private libraries shall be paid into the account in a credit institution indicated by the organisation for collective management of economic rights. (Art. 19.¹ Part 3).

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

Libraries, educational institutions and museums, archives and public broadcasters may use the orphan works and objects of neighbouring rights without the copyright or neighbouring rights holders consent: 1) to reproduce for making copies in digital format, 2) to make available to the public by wire or by other means, so that it is accessible in an individually selected location and at an individually selected time (Art. 62.³ Part 1).

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

Exception or limitation may be overridden by contract only regarding software:

(1) If not specified otherwise by contract, and the right to use a computer program has been lawfully obtained, its reproduction, translation, adaptation or any other transformation and the reproduction of the results of such activities shall not require any special permission from the right holder, as long as such activities (including correction of errors) are necessary for the purpose of the intended use of the computer program. (Art. 29 Part 1).

(2) A contract entered into with a person who has lawfully acquired the right to use a computer program may not prohibit the making of a back-up copy, if such copy is necessary for the use of the computer program. (Art. 29 Part 2).

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. :

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?:

Taking into consideration the digital age and social habits, it would be advisable to include exception, which allows without permission of rights holders, but for a fair remuneration for limited period of time to make available online of the works and objects of neighbouring rights by libraries and archives to registered users, provided that the number of simultaneous users does not exceed the number of physical copies of works (if any, if not - one) or objects of neighbouring rights.

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

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| institutions? |
| yes If yes, in relation to what activities? : |
| <i>Limitation to copyright protection should be set up for creating of digital copies of textbooks and audio visual works necessary for execution of the teaching program of an educational institution and making them available in teaching process by use of safe access so that the protected objects cannot be further reproduced, communicated to the public or distributed.</i> |

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| 18) | Is the Three-Step Test a useful test for determining any exceptions or limitations to copyright protection? |
| | yes Why?: |
| | <i>Application of the Three-Step Test helps assess disputable situation, nevertheless it does not completely take away the legal uncertainty. Although the European Union Court already have developed some application standards, nevertheless more explicit guidelines would be useful.</i> |

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| 19) | Should the exception or limitation be capable of being overridden by contract? Why? Why not? |
| | <i>No. Exceptions and limitations are for the benefit of the general society and provide for an easier access and use of protected objects. It would impede achieving these perspectives if the exceptions or limitations would be overridden by contract. Besides, it would cause even more legal uncertainty.</i> |

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| 20) | Should remuneration be payable for any of the activities described in 16) and 17) above? Why? Why not? |
| | <i>Rights owners shall be subjects to fair remuneration for the activities described in 16) and 17). Public lending is subject to fair compensation, accordingly, making access to the objects of public lending more easy and up-to-date shall not deprive rights holders from well-deserved remuneration. Creation of digital copies of the textbooks and other protected objects would and making them available to the teachers and students would definitely impact the normal use of the protected objects and thus would not pass the Three-Step Test. Accordingly, such exception can only introduced provided that rights owners receive fair remuneration.</i> |

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| 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? |
| | <i>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 in the information society provides for exemption on certain acts of reprographic reproduction carried out by education and research institutions (Article 5 Part 2 Point C). Our current law does not clearly provide for such exemption (only for use of work or object of neighbouring rights in textbooks, in visual aids and the like, therefore making a simple one page copy from a protected work and distribution of such copy to the students can be argued as non-exempted). It would be advisable to include such exemption in our current law by providing the right owners fair remuneration.</i> |

III. Proposals for harmonisation

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| 22) | Is harmonisation in this area desirable? |
| | yes |
| | Please comment: |
| | <i>Harmonization provides for greater legal certainty.</i> |

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.

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| 23) | If your answer to question 16) or 17) is no, should this be explicitly set out in any international treaty/convention? |
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| 24) | If yes to question 16): |
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| a) | to what libraries, archives and other organizations should these exceptions or limitations apply; |
| | <i>It shall apply to all kind of libraries and archives.</i> |

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| b) | to what activities should these exceptions or limitations apply; |
| | <i>It shall apply to making available online for viewing, but not for further reproduction or distribution or other communication to the public.</i> |

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| c) | under what conditions should the activities be undertaken or the copyrighted work used? |
| | <i>The work or object of neighbouring rights shall be made available simultaneously only to the same number of users as the institutions have physical copies of the work or object of neighbouring rights. If the work or object of neighbouring rights is acquired only in a digital form, than such number shall be one, unless agreed otherwise. Right holders shall receive fair remuneration.</i> |

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| 25) | If yes to question 17): |
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| a) | to what educational and research institutions should these exceptions or limitations apply; |
| | <i>It shall apply to all kind of educational and research institutions.</i> |

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| b) | to what activities should these exceptions or limitations apply; |
| | <i>It shall apply to making available online for viewing, but not for further reproduction or distribution or other communication to the public.</i> |

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| c) | under what conditions should the activities be undertaken or the copyrighted work be used? |
| | <i>Each user shall have its account, where certain works and objects of neighbouring rights shall be</i> |

made available for certain period of time. Account information shall be registered by educational and research institutions and fair remuneration shall be paid to the right owners.

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)?

Such exceptions shall be provided automatically, provided that the users have procedures in place that allow the use of the objects of copyright or neighbouring rights strictly in accordance with the provisions of the exceptions.

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?

Payment shall be made by the institutions to which benefit the exception is provided.

Payment for making of digital copies of objects of copyright or neighbouring rights and making them available for certain period of time for registered users (in viewing regime) shall be made on the basis of the number of users and can be set up as a percentage from the price of purchase of the physical copy and/or digital copy (for example 20%). Such provisions can be included in the regulatory enactments of each country.

It shall be considered if there should be any change in the calculation of the remuneration for public lending, provided that the public lending is made available online for the limited period of time for limited number of users.

The calculation of remuneration for reprographic reproduction is already introduced and should not be specifically amended for acts of reprographic reproduction carried out by educational and research institutions.

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

No exceptions.

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

It shall be considered, whether implementation of the right owner's ability to prohibit digitalization and making available by educational and research institutions of the work or object of neighbouring rights would be advisable.

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?

Not applicable.

Summary

Latvia do provide for exceptions and limitations for educational and research institutions and libraries and archives. Further harmonization in this area is advisable. Taking into account the digital age and social habits additional exceptions (or broadening of existing in order for them to fit for the digital/online purposes) shall be introduced to provide easier access to content protected by copyright or neighbouring rights and thus enhance its usage, at the same time providing right owners with the fair remuneration and thus incentives to create.

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.