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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:

According to our legislation, numbered 1328 of 1998 about Copyright and neighboring rights establishes: Limitation of Exploitation Rights

Article 39: With respect to works already made public, the following [acts] may be performed without authorization from the author and without paying remuneration to same:

- Individual reproduction of a work by public libraries or archives that do not pursue lucrative ends, when the copy of the work is part of permanent collections [of said institutions], and [the reproduction] is done in order to preserve said copy or to substitute it in case it is lost, destroyed or rendered useless, or to be used as a substitute copy when a work has been lost, destroyed or rendered useless in some other library or archives, provided that the acquisition of [an additional] copy is not possible within reasonable terms and conditions.

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

yes

Please comment:

With respect to 39 article: our legislation permits: loan to the public of copies of a written work, by libraries or archives whose activities, directly or indirectly, do not pursue lucrative ends.

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:

With respect to 39 article: our legislation permits: loan to the public of copies of a written work, by libraries or archives whose activities, directly or indirectly, do not pursue lucrative ends. In other words, it also applies to the purpose of providing copies.

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

no

Please comment:

Limitations and exceptions are restrictive.

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?

This legislation establishes that apply only to libraries and archives.

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.

The previously mentioned legislation, in its 39 article continues as it follows: the following [acts] may be performed without authorization from the author and without paying remuneration to same:

- reproduction by reprographic means [of materials to be used] for examinations in educational institutions, provided that it is not done for profit and in a measure appropriate to the objective pursued; [the materials] shall be comprised [only] of articles or brief excerpts of works legally published, and their utilization shall be for honest purposes.

It does not establish quantity whatsoever.

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.

It shall be required a legally published work.

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:
	According to our legislation, with respect to 39 article: the following [acts] may be performed without authorization from the author and without paying remuneration to same:
	<ul style="list-style-type: none"><li>• reproduction by reprographic means [of materials to be used] for examinations in educational institutions, provided that it is not done for profit and in a measure appropriate to the objective pursued; [the materials] shall be comprised [only] of articles or brief excerpts of works legally published, and their utilization shall be for honest purposes.</li></ul>
	With respect to Article 38: The works of [human] ingenuity protected by the present law may be communicated lawfully, without authorization by the author nor payment of remuneration, in the following cases: ... when [works] in the form of personal and single copies are used by teachers exclusively for didactic purposes in [learning] institutions.

b)	reproduction and/or distribution for educational purposes (e.g. preparation of course packs, compilations or anthologies, exams);
	yes
	Please comment:
	With respect to Article 38: The works of [human] ingenuity protected by the present law may be communicated lawfully, without authorization by the neither author nor payment of remuneration, in the following cases: ... when [works] in the form of personal and single copies are used by teachers exclusively for didactic purposes in [learning] institutions.

c)	making translations;
	yes
	Please comment:
	In order to make translations, it shall be required the author´s authorization.

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:
	This legislation does not establish any provisions about this topic, so we consider that the published work and exhibited for its use by several people or its distribution to public, it shall be required the author´s express authorization.

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

no

Please comment:

This legislation does not refer to reproduction and distribution with research purposes.

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

yes

if so, what activities?:

- Reproduction a work for [use in] judicial or administrative proceedings, in a measure appropriate to the ends pursued;
- individual reproduction of a work by public libraries or archives that do not pursue lucrative ends, when the copy of the work is part of permanent collections [of said institutions], and [the reproduction] is done in order to preserve said copy or to substitute it in case it is lost, destroyed or rendered useless, or to be used as a substitute copy when a work has been lost, destroyed or rendered useless in some other library or archives, provided that the acquisition of [an additional] copy is not possible within reasonable terms and conditions;
- Loan to the public of copies of a written work, by libraries or archives whose activities, directly or indirectly, do not pursue lucrative ends;
- reproduction of works by means of the Braille system or other specific system designed for the exclusive use of sightless persons, provided that no lucrative ends are pursued or that a fee is not involved in the use of the copies.

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?

This legislation in its 38 article refers to educational institutions which do not pursue lucrative ends and to places of business, exclusively for the purpose of performing demonstrations to clients.

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 are no specifications about this topic on the present legislation.

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.

This legislation establishes that the reproduction is possible only when it comes to legally published work.

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?

According to our legislation, numbered 1328 of 1998 about Copyright and neighboring rights clearly establishes: The Limitations of Exploitation Rights and Their Duration, inside its Fifth Title, on the First Chapter.

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

Actually, it includes such test but implicitly, because the same provisions of the Three-Step Test are already immersed on our legislation related to Copyright.

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 within the exception or limitation is automatically permitted.

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?

Expectations and limitations do not provide any remuneration. (38 Article).

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

There are no provisions in reference to this topic.

N/A.

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

Contracts cannot invalidate what it is established by law

15) Other than what is provided in the law of your jurisdiction, are there any efforts by private organizations (such as a private licensing organizations) to address use by libraries, archives and educational and research institutions?

no

If not please comment. :

There are no private organizations.

## II. Policy considerations and proposals for improvements of the current law

16)	Should there be any exceptions or limitations to copyright protection for libraries and archives?
	yes If yes, in relation to what activities?:  We consider necessary the existence of more specific provisions specially related to digital archives and digital libraries, which might allow free access to certain works.
17)	Should there be any exceptions or limitations to copyright protection for education and research institutions?
	yes If yes, in relation to what activities? :  Taking into account that the previously mentioned legislation establishes exceptions and limitations for educational institutions and libraries, it is also necessary to establish these conditions for research institutions.
18)	Is the Three-Step Test a useful test for determining any exceptions or limitations to copyright protection?
	yes Why?:  Actually, it ended up being useful because the test protects the legitimate interests of the author.  According to the legislation, the premise is that the allowed reproductions shall be permitted provided that such reproductions do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.
19)	Should the exception or limitation be capable of being overridden by contract? Why? Why not?
	These exceptions and limitations are meant to protect the general public; therefore they cannot be objects of single resignation in contracts.
20)	Should remuneration be payable for any of the activities described in 16) and 17) above? Why? Why not?
	No, it should not be payable because it is not imposed by law.
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?
	Our current law could be improved to the extent that may exist specific regulations that rule these exceptions and limitations.

### III. Proposals for harmonisation

22)	Is harmonisation in this area desirable?
	yes
	Please comment:
	Yes, it does.

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?
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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;
	These exceptions and limitations should apply to virtual libraries and digital archives, given that there are no express reference to them on our current legislation.

b)	to what activities should these exceptions or limitations apply;
	On the face of the absence of regulations on this matter, we consider that these exceptions and limitations should also be applied to research institutions.

c)	under what conditions should the activities be undertaken or the copyrighted work used?
	These activities should be accomplished under the following conditions: <ul style="list-style-type: none"><li>- With didactic purposes in learning and research institutions;</li><li>- Without seeking any lucrative interest at the expense of the copyrighted work.</li><li>- Without causing an unreasonably prejudice to the legitimate interests of the author</li></ul>

25)	If yes to question 17):
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a)	to what educational and research institutions should these exceptions or limitations apply;
	They should apply to those public educational institutions and also to public research institutions.

b)	to what activities should these exceptions or limitations apply;
	The Paraguayan legislation clearly establishes those activities described above on 38 and 39 articles.

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

These activities should be accomplished under the following conditions:

- With didactic purposes;
- Without seeking any lucrative interest at the expense of the copyrighted work;
- Without causing an unreasonably prejudice to the legitimate interests of the author

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)?

Yes, it should be permitted automatically, as long as it does not cause a prejudice to the author.

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?

It should be calculated according to the equipments and devices used to make such reproduction and distribution. The liability lays on a state entity, as the Local Copyright Office. (Dirección Nacional de Derecho de Autor).

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

It should there be a special treatment because our legislation only regulates anonymously works, excluding orphan works.

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

In none.

N/A.

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?

There are no private organizations that address such use.

Summary

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.