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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:

Yes, it provides such exceptions or limitations. According to the Article 37 of the consolidated text of the Intellectual Property Act, as last amended by Law no. 21/2014 (hereafter "IPA"), the copyright holders may not object to reproductions of works where they are non-profit made by museums, libraries, record libraries, newspaper libraries or archives which are publicly owned or form part of institutions of a cultural or scientific character, provided the reproduction is effected solely for research or conservation purposes.

Likewise, museums, archives, libraries, newspaper libraries, record libraries or film libraries which are publicly owned or pertaining to non-profit institutions of general interest with cultural, scientific or educational character, or to teaching institutions integrated in the Spanish educational system, shall not require the license of the copyright holders for the loans that they make (37.2 IPA)

With regard to the concrete proposed activities:

1. reproduction and/or distribution for the purpose of preservation or replacement:

Reproduction is the only exploitation right for the purpose of preservation laid down in Article 37.1 IPA. The acts of distribution, communication to the public and transformation of the work require authorization by the author. In addition, with respect to the orphan works, Article 37bis of the IPA allows publicly accessible educational establishments, libraries and newspapers libraries, as well as public-service broadcasting organizations, archives, record libraries and film libraries, to reproduce and make available to the public certain types of works under particular conditions. Specifically, the following acts are permitted: digitalization, indexing, making available to the public and cataloging, with purposes of conservation and restoring; and providing access to the works for cultural and educational purposes.

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

yes

Please comment:

The Spanish law does not make explicit reference to interlibrary lending purpose, therefore the limitation is not applied to reproduction or distribution to that end.

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:

The Spanish law does not make explicit reference to the purpose of providing copies (either in a physical or a digital form) to users, therefore the limitation does not apply to reproduction or distribution to that end.

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

yes

Please comment:

Reproduction for research purposes; and communication of a work or making available to specific persons of the public for research purposes provided that such acts are carried out through a closed and internal network via specialized terminals installed for such purposes in the mentioned institutions and provided that such works appear in the collection of said institutions and are not subject to licensing or purchase conditions.

Regarding orphan works, reference is made in the answer given in the paragraph 1.a).

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?

Only some of them. Each exception applies with regard to specific institutions:

1. Reproduction for research and conservation purposes apply to: museums, libraries, record libraries, film libraries, newspaper libraries or archives which are publicly owned or form part of cultural or scientific institutions (Article 37.1 IPA).
2. Lending (in general); and making available to specific persons for research purposes in closed networks applies to: museums, archives, libraries, newspaper libraries, record libraries or film libraries which are publicly owned or pertaining to non-profit institutions of general interest with cultural, scientific or educational character, or to teaching institutions integrated in the Spanish educational system (Article 37(2) and (3) of IPA).

Reproduction of orphan works and making them available to the public apply to: educational establishment, libraries and newspaper libraries accessible to the general public, as well as public-service broadcasting organizations, archives, record libraries and film libraries (Article 37bis of IPA).

- 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.

Yes, reproduction established in the Article 37.1 IPA is permitted only for conservation and research purposes and must not be for profit (Article 37.1 IPA). The ratio is to allow research activities with respect to works with a format that would not admit a direct or close contact with the work, but also with the maintenance, custody of the work or its digitization. The number of reproductions and its scope is determined by the purposes of conservation and research.

Loans permitted by the Article 37.2 IPA are subject to some requirements: (i) shall be made by the mentioned institutions; (ii) owners of these institutions shall remunerate equitably the authors via the copyright collecting societies, with the exception of publicly owned institutions providing their services in municipalities with less than 5,000 inhabitants and libraries of teaching institutions forming part of the Spanish educational system; (iii) the establishment shall not get direct or indirect economic or commercial advantage, and (iv) shall be made in establishments accessible to the general public.

Communication of a work to the public or making it available shall also be done in compliance with some requirements: (i) shall be made to specific persons; (ii) for research purposes; (iii) shall be carried out through a closed and internal network via specialized terminals installed for such purposes in the mentioned institutions; (iv) such works shall appear in the own collection of the institutions and shall not be subject to licensing or purchase conditions. The rights-holder has the right to obtain an equitable remuneration for such acts (Article 37.3 IPA).

The permitted uses of orphan works shall not be for profit, must be exclusively targeting for conservation, restoration and providing access to the works for the cultural and educational purposes and shall make mention of the names of the authors and owners of intellectual property rights identified. Furthermore, the first publication of the works must have been made in a Member State or, in the absence of publication, initially broadcasted in a Member State (or if the works have neither been published nor broadcasted, when it is reasonable to assume that their owners would not oppose the authorized uses) (Article 37bis IPA).

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.

Yes, for the communication of a work to the public or making it available in closed and internal networks of the institutions (Article 37.3 IPA), it is necessary that the works are included in the own collection of the institutions and that they are not the object of licensing or purchase conditions.

Also, despite the legislative silence, it is understood that any of the exceptions mentioned above only applies to work legally acquired and, in line with the rest of limitations provided, divulged beforehand.

In addition, according to Article 37bis IPA, in the terms and conditions set forth (see answer 3), reproduction of orphan works and making them available to the public only applies to the following types of works:

a. Cinematographic or audiovisual works, phonograms and works published in format of books, newspapers, magazines or other printed materials contained in the collections of publicly accessible educational establishments, museums, libraries, newspaper libraries, as well as in the collections of archives or of film and record libraries;

b. Cinematographic or audiovisual works and phonograms produced by public-service broadcasting organizations up to and including 31 December 2002 and contained in their archives;

c.- Protected works and performances that are inserted or incorporated in the works cited in paragraphs a) and b).

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;

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

c) making translations;

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

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

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

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?

Yes, our law provides such exceptions or limitations. According to Article 32.3 IPA, teachers of formal education of centers integrated in the Spanish educational system and the staff of universities and public research institutions in their scientific research roles do not need permission from the author or the publisher to perform acts of reproduction, distribution and public communication of excerpts of works and isolated works of plastic arts or photo-figurative nature, provided that it does not serve for commercial purposes and the following requirements are simultaneously met:

1. The purpose of such exploitation acts must be the illustration of education activities (both face-t-face education and distance education), or for scientific research and to the extent justified by the non-commercial purpose;
2. It shall involve work already made public;
3. The works may not be textbooks, university handbooks or similar publications (except that (i) the public communication is carried out in closed and the internal networks and (ii) the copies are distributed exclusively between the research staff for a specific project);
4. The name of the author and the provenance are included, unless it is impossible to do it. At the same time, Article 32.4 IPA allows partial reproduction, distribution and communication to the public of works or publications, printed, or printable, provided all the following requirements are simultaneously met:
5. These acts are conducted solely for teaching or scientific research purposes;
6. These acts are confined to a chapter of a book, a magazine article or an equivalent extension of a similar publication, or extension equivalent to 10% of the work, regardless of whether copying is carried out through one or more acts of reproduction;
7. These acts are performed in universities or public research centers by their staff and using their own resources and instruments;

1. Either the distribution of copies takes place between students and teaching staff of the center, or that they have access through a public communication to take place through closed and internal networks or as part of a distance education program offered by the center. Musical scores, single-use works or compilations or groupings of excerpts of works or of isolated works of plastic arts or photo-figurative nature do not fall under any of the above exceptions (Article 32.5 IPA). These answers have been given based on the new wording of paragraphs 3, 4 and 5 of Article 32 IPA, which was recently introduced by Law 21/2014 of 4 November, although it should be noted that this new wording will only come into force on 5 November 2015. On the other hand, in relation to the orphan works, as we have indicated above, the Article 37bis IPA allows the educational centers to reproduce and make available to the public certain types of works under certain conditions, with the aim of providing access to the works for educational purposes. Regarding communication to the public, we cannot forget that, as we have indicated above, Article 37.3 IPA allows teaching institutions integrated in the Spanish educational system to make available to the public works included in the institution's own catalogue in closed and internal network. With regard to the concrete proposed activities: Final del

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2. **performance and/or display for educational purposes:** it is permitted in the terms explained above.
3. **reproduction and/or distribution for educational purposes (e.g. preparation of course packs, compilations or anthologies, exams);** it is permitted in the terms explained above.
4. **making translations:** it is not permitted. The translation of a work is not specifically provided for in the limit or exception and, therefore, it is excluded.
5. **making available in digital networks for educational purposes (e.g. uploading course packs onto on-line platforms, compilations or anthologies, providing distance education):** it is permitted in the terms explained above.
6. **reproduction and/or distribution for research purposes;** it is permitted in the terms explained above.
7. **any other activities, and if so, what activities?** Acts of reproduction, distribution and communication to the public of a another person's work in one's own work (a class, a manual, etc.) are allowed, as long as it is done for educational or research purposes, the previous works have already been published and are included by way of quotation or for its analysis, commentary or critical assessment and the source and the name of the author of the work used shall be indicated (Article 32.1 IPA). Moreover, as mentioned above, Article 37.2 IPA states that teaching institutions integrated in the Spanish educational system, do not require the authorization of the right holders for the loans they make in their establishments.

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.

The requirements applicable to these activities have been indicated in the answer to question 5 and the requirements applicable to the people who may participate in the same have been indicated in the answer to question 6.

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.

These exceptions or limitations contained in Article 32(3) and (4) IPA apply to all types of legally acquired and already published works, with the exception of musical scores, single-use works or compilations or groupings of excerpts of works or isolated works of plastic arts or photo-figurative nature. The conditions applicable to each type of work, including the permitted scope have already been identified and explained in the answer to question 5.

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, as already indicated in the replies above, the IPA provides for three different kinds of exceptions:

a The limitations established for the benefit of archives, museums, libraries, record libraries, film libraries, etc. are contained in Article 37, paragraphs 1 (reproduction for preservation and research), 2 (lending of works) and 3 (communication through internal and closed network for research purposes) IPA;

b. The limitations concerning teaching and research activities carried out in selected institutions are regulated in Article 32, paragraphs 3 and 4, IPA;

c.- The uses of orphan works permitted to certain entities is regulated in Article 37 bis IPA.

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

Yes, the three-step test is regulated in Article 40 bis IPA and applies to all exceptions and limitations to copyrights provided for in this statute. According to its literal wording: *"The articles of this chapter shall not be construed so as to allow its application in a way that causes unjustified harm to the legitimate interests of the author or undermine the normal exploitation of the work to which they relate"*.

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).

Both the exceptions relating to research and teaching (Article 32, paragraphs 3 and 4, IPA), and the one established in favor of libraries, museums, archives and similar institutions for conservation and research (Article 37 IPA) are applied automatically, i.e. without any further action either before or after, as long as the requirements and conditions established by law are met. For avoidance of doubt, we must clarify that the Spanish law on copyrights does not provide for compulsory licensing.

With regard to the exception for orphan works (Article 37 bis IPA), it is required that the work that is going to be used can be defined as such, that is, that the rights holders are not identified or, if identified, their location is not known. Therefore, prior to using the exception of orphan works, it is necessary that authorized institutions (schools, museums, libraries, newspaper libraries, public broadcasting, archives, record and film libraries) have carried out a process of diligent search for right holders and have forwarded this information to the competent body

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?

a) Regarding the exceptions relating to research and teaching (Article 32, paragraphs 3 and 4, IPA):

1. In general the acts of reproduction, distribution and public communication of small fragments of works and isolated works of plastic or photographic figurative character is not subject to the payment of any remuneration (Article 32.3 IPA);
2. However, for acts of partial reproduction, distribution and public communication of works or publications, printed or printable limited to a chapter of a book, a magazine article or equivalent extension in respect of an assimilated publication, or an extension equivalent to 10 percent of the whole work, the users centers will be required to pay an equitable remuneration to authors and publishers of the works thus used, which will be effective through the entities of management of intellectual property rights (for printed publications that will be CEDRO) (Article 32.4 IPA). The Law does not specify how the compensation should be calculated, it only says that it will be "fair".

b) Regarding exceptions for libraries, museums, archives and similar institutions for conservation and research (Article 37 IPA), only the following acts are subject to remuneration for the authors:

1. < > made by the aforementioned centers, in the amount determined by Royal Decree. This remuneration shall be effective through the entities of management of intellectual property rights. However, the following institutions are exempt from paying this compensation (i) publicly owned establishments serving in municipalities with fewer than 5,000 inhabitants and (ii) libraries of educational institutions integrated in the Spanish educational system (37.2 IPA). The act of making available to individual users for research purposes in closed and internal networks works forming part of the collection of the center will also be subject to a fair compensation for authors (37.3 IPA). It is not specified, in this case, neither the amount nor the way it is calculated, nor the entity responsible for its management.

c) The use of orphan works by authorized centers is subject to an equitable compensation only for uses made when, having appeared their right holders, the competent body declares that such works are not orphans anymore (37 bis.7 IPA).

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

Yes, and its peculiarities are specified in Article 37 bis IPA, as already specified in the answers to the questions above.

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

No. according to the Law, the only aspect that can be negotiated by the author with the user centers is the equitable remuneration to be received by the acts of partial reproduction, distribution and public

communication or publications, printed or printable, of their works for teaching or research purposes (Article 32.4 IPA).

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.:

When exceptions or limitations are subject to the payment of remuneration for authors, it is managed by CEDRO (Spanish Centre for Reproduction Rights). CEDRO is a non-profit association authorized by the Ministry of Culture to collectively manage the rights over literary works. This entity is the national reference in all matters relating to the use of literary works (scope and applicability conditions of the exceptions) and the management of licenses amongst users.

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?:

Yes. The exceptions or limitations should enable acts of reproduction, both for preservation (including scanning of printed works) and research purposes. They should also cover the loan and the act of making available to the public, provided it is done without profit. In the case of making available, consultation should be possible both through dedicated terminals located in the library or archive itself, or through an internal network. This exception should not cover, in any case, the acts of transformation, distribution or making available over the Internet for people not tied to the centers beneficiaries of the exception.

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

yes

If yes, in relation to what activities? :

Yes. The exceptions or limitations should allow reproduction, distribution, public communication, making available and transformation (e.g. translation), provided that the moral rights to the integrity of the work is not affected, and, in any case, when such use is justified by the teaching or research purposes and recipients have a direct relationship with the institution beneficiary of the exception.

The Spanish legislator has been too restrictive when it comes to defining the scope of exceptions and limitations for educational and research purposes, introducing numerous obstacles and conditions that did not come imposed by the Directive and are not in line with current educational and social realities. The exception for educational purposes should not be restricted to universities, nor to the studies leading to the grant of official titles. Excluding the students of the schools from the circle of beneficiaries of this exception is not justified. On the other hand, it would be desirable to widen the

objective scope of the exception, not limiting it to certain categories of works or fragments thereof. On the contrary, whenever necessary, those categories of works, whose normal commercial exploitation could be affected by the exception or limitation, could be excluded from the scope of said limitation.

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

yes

Why?:

The three-step test can be a useful tool for the legislator when setting the limitations or exceptions to copyrights and its real extent. For example, when the Spanish legislator incorporated the Directive, he excluded textbooks and university textbooks from the limits for education, because otherwise it could cause significant damage to the authors of such works designed to serve as an instrument of study and learning of the subjects included in the various levels of education.

However, from the moment the three-step test has become a corrective also addressed to the national courts when applying the exceptions provided by law (art. 5.5 Directive 2001/29/CE), it is necessary to do a balanced reading of the aforementioned rule to avoid becoming an instrument to tip the balance between exclusive rights and legitimate uses permitted by law in favor of the right holders.

Specifically, the three-step test should not necessarily entail a restrictive interpretation of the exceptions and limitations enshrined in law, but these should be interpreted in accordance with the objective pursued by the rule. It is also necessary to make a joint reading of the three criteria that make it up, so that not every use of a work that is capable of being exploited commercially is to be excluded from the set of exceptions and limitations, particularly where adequate compensation is ensured to the holders of exclusive economic rights.

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

No. Those exceptions or limitations to copyright that find their justification in the promotion of education and culture, among which are included those established in favor of schools, teaching or research centers, libraries, archives, museums and similar institutions, should be considered mandatory and, therefore, they should not be overridden by contract. Otherwise, the delicate balance that the law has sought to establish between the interests of rights holders and those of society as a whole could be altered by the will of the parties, defining the specific uses and conditions in which apply the exception to the monopoly of those. In the case of adhesion contracts it also means leaving it in the hands of the holders of the exploitation right the chance of imposing their own rules by extending the monopoly on the exploitation of the work without taking into account the interests underlying the laws governing the matter.

20)	Should remuneration be payable for any of the activities described in 16) and 17) above? Why? Why not?
<p>Yes. When an exception or limitation to the exclusive economic rights is justified by the need to promote access to culture, fostering education and research development, its legal recognition is not opposed to the payment of equitable remuneration addressed to compensate the talent, the effort and/or the investment behind all intellectual creation.</p>	

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?
<p>In order to improve the existing law applicable to such exceptions or limitations the first step ought to be the simplification of law and the elimination of some requirements that make the scope of these limits too restrictive and difficult to reconcile with the requirements of the information society.</p> <p>It would also be advisable to clarify certain legal provisions as follows:</p> <ol style="list-style-type: none">1. With regard to the exceptions to the use of works by centers and institutions (Article 32, paragraphs 3 and 2), it would be useful a clarifying and systematizing effort by the legislator. Certainly the application of paragraphs 3 and 4 of this provision raises many doubts about their extent, scope and application requirements. Among others: are the rules of paragraph 4 applicable to textbooks, university handbooks and publications assimilated? In other words, is the partial reproduction (a chapter of a book, for example) of a textbook allowed or only "small fragments"? Should we understand that the public communication of fragments of works established on paragraph 3 also generally includes the making available to the public on the Internet? What is the meaning of the expression "<i>works for single use</i>" mentioned in paragraph 5 of Article 32?2. With respect to uses by libraries, museums, archives, etc., the term "equitable remuneration" associated with public communication through internal and closed networks is not very accurate; especially considering that in case of loans the compensation amount is fixed under specific parameters contained in a Royal Decree.3. In general, institutions and centers covered by the exceptions should be subject to a more precise definition. Why paragraph 1 of Article 37 refers to "<i>museums, libraries, record libraries, film libraries, newspaper libraries or archives that are public or integrated into cultural or scientific institutions</i>" whereas 2nd paragraph refers to "<i>museums, archives, libraries, newspaper libraries, record and film libraries that are public or belonging to non-profit cultural, scientific or to educational institutions integrated in the Spanish educational system</i>"? Are they the same entities?	

III. Proposals for harmonisation

22)	Is harmonisation in this area desirable?
<p>yes</p> <p>Please comment:</p> <p>Yes, harmonization is desirable. Copyright works enjoy protection virtually world-wide (with a few</p>	

exceptions); thus, the extent and scope of protection should be the same or substantially the same. For this reason, the exceptions or limitations to copyright protection for libraries and archives should not differ from one country to another. Very often, the same literary works (e.g. a book), which are the copyright works mainly kept in libraries and archives, are kept in libraries in different countries. It is desirable that the same work be subject to the same limitations or exceptions. For instance, in some countries the use of up to 10% of a copyright work may qualify for fair use (e.g. Spain & US -subject to other conditions-).

The ultimate beneficiaries are mainly students and researchers; their access to copyright works should not depend on the country in which they study or conduct a research. In the respect, harmonization may also prevent lack of educational opportunities for persons from countries where copyright law restricts access to knowledge to a greater extent.

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?

24) If yes to question 16):

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

The better view is that only public libraries, archives, museums and educational institutions should benefit from these exceptions or limitations. They are the non-profit or educational purposes institutions which ensure a fair access of the general public to knowledge. The majority of constitutions around the globe provide for a right to access information and culture, and these institutions play a pivotal role in the possibility of the public's exercising this right.

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

The exceptions should apply to activities that do not harm the interests of the copyright owners and are in line with fair uses, such as education and research. These could be (i) reproduction for the purposes of conservation and research, (ii) communication to the public on the premises of the beneficiary institutions and (iii) rental/lending to subscribed users.

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

The reproduction for the purposes of conservation should be allowed under the following conditions:

- Back-up copies in order to ensure that at least one copy is kept at the library/archive to prevent loss in case of natural disasters or theft;
- Copies for consultation in order to protect a valuable original; and
- Copies for easier consultation where the format of the original work makes it difficult (e.g. papyrus). The aforesaid should include the conversion of copyright work into digital format. Communication to the public should be allowed for display/broadcast of works on the premises of the beneficiary institutions (e.g. display/exhibition of a video clip or a photograph in a

museum or a library) provided that: (i) the author's name is properly indicated; and (ii) it is made for non-profit or educational purposes. Rental/lending to subscribed users should be allowed under the following conditions:

- it is non-commercial and available to all subscribed users; and
- the institution has at least one original work for which the copyright owner has been compensated (e.g. purchased on the market).

25) If yes to question 17):

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

The exceptions or limitations should apply to public universities and schools, as their purpose is non-commercial.

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

The exceptions or limitations should apply to the acts of reproduction and communication to the public for the benefit of the professors, researchers, academics and students.

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

Reproduction should be allowed under the following conditions:

- Copies for easier consultation where the format of the original work makes it difficult (e.g. papyrus);
- Research; and
- Criticism, review or parody. Communication to the public should be allowed under the following conditions:
 - Activities within the framework of an educational program;
 - Of a published copyright work;
 - The institution has at least one original work for which the copyright owner has been compensated (e.g. purchased on the market); and
 - It is restricted to professors, researchers and enrolled students or academics.

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, any exception or limitation may be permitted automatically by Law. And, where necessary, the legal requirements should be generally formulated (such as "private use", "fair use" or "not commercial purpose").

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 seems difficult to implement a remuneration in the case of the exceptions and limitations for libraries, educational and research institutions.

However, it seems reasonable to expect remuneration for uses that involve or may involve an impairment to the market value of the original work

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

The regulation of this subject in the in Directive 2012/28/EU (of the European Parliament and the Council of October 25, 2012 on certain permitted uses of orphan works) seems appropriate. This Directive has been recently transposed into Spanish legislation (Law 21/2014, of November 4; see articles 37.bis, 161 and 6th additional provision of the IPA).

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

Exceptions or limitations should not be subject to be overridden by contract, otherwise they would be meaningless.

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?

We must say there are technological protection measures already in place. In addition, the law could also provide criteria to determine when the use is "fair" [criteria such as: a) determining whether the use undermines the market value of the original work; b) to limit the percentage of the work that can be used].

Summary

The Spanish legislation provides for a number of exceptions or limitations to copyrights protection, including the exception for libraries, archives and similar institutions. Specifically, copyright holders may not oppose the reproduction, loan and communication and making available to the public of their works, as long as the requirements and conditions are met, such as a non-profit purpose.

The copyright law also provides for an exception for educational and research institutions. In particular, the exception applies to teachers of certain schools and personnel of universities and public research organizations, when performing acts of reproduction, distribution and communication of small fragments of works or isolated works of plastic or photographic figurative character, provided that the requirements and conditions are met, among which is the absence of a commercial purpose.

These exceptions apply to certain works including orphan works provided that the requirements and conditions specifically set for each type of work are met. In general, the use of the exceptions does not lead to the payment of any remuneration to the copyright holder, but in some cases, such as in book loans, the holders are entitled to an equitable remuneration. Both exceptions are automatically applied, subject to the filter of the rule of the three-step test and cannot be overridden by contract.

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.

AIPPI