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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? no If not please comment: The Law on Intellectual and Artistic Works provides limitations and exceptions in relation to copyrights. However, such limitations have not been regulated directly in relation to the use of libraries or archives. There are no specific exceptions, stipulated by the Law on Intellectual and Artistic Works, in relation to copyrights for libraries or archives. Only exception with regards to libraries and archives is the provision that is regulated by Article 46 of the Law on Intellectual and Artistic Works: "Right of Use by the State": <i>Art. 46. (Amendment: 1.11.1983 - 2936/10)</i> The works, which are not published or publicized yet, the duplication and publication of which are not expressly prohibited by the owner of the work and which are kept in public libraries, museums or similar organizations, belong to the public institutions or organizations they are kept by, provided that the term of protection of financial rights has expired. The authority that the public organizations and institutions and the persons and organizations who want to benefit from these for scientific and similar purposes will receive permission from and the fees to be charged from these, the cultural purposes that such fees will be spent for and the other matters are determined by the regulations to be prepared by the Ministry of Culture after receiving the opinion of
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the relevant organizations.”

- a. reproduction and/or distribution for the purpose of preservation or replacement;

The right to duplicate the original of a work belongs exclusively to the owner of the work (Art. 22 of the Law on Intellectual and Artistic Works). Duplication is making an exact copy of the original. Article 22/2 of the Law on Intellectual and Artistic Works exemplifies types of duplication. Accordingly, making of a second copy of the original of the work as well as recording the work on all kinds of media, now known or to be developed in the future, used for transfer or replay of signs, sounds and images are considered as duplication. According to said provision, all kinds of sound and music recordings as well as the implementation of the plans, projects and sketches of the works of architecture are considered as duplication.

Right of Distribution

The exclusive right and authority to release the original or copies of a work on the market in any way belongs to the owner of the work. Distribution can be made by various ways such as sale, lease or lending. When a work is physically released on the market, act of distribution is deemed materialized. Actions such as displaying or performing are not regarded as distribution. Distribution, in general, takes place in pursuit of duplication. Nevertheless, there is no obligation to duplicate before distribution. Distribution may be applicable to one single copy.

It is permitted to duplicate the works of others for personal use without pursuing profit and intending to distribute the same (Art. 38/1 of the Law on Intellectual and Artistic Works).

This issue has been regulated by Articles 7, 8 and 9^[41] of the Regulations for the Libraries of Ankara University, Articles 7, 12 and 13^[42] of the Regulations for the Library and Documentation Department of Bosphorus University, Article 22^[43] of the Regulations of National Libraries, Article 16^[44] of the School Libraries Regulation of the Ministry of Education, Article 10^[45] of the Principles and Procedures to be Implemented in Making Use of the National Library Services.

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

There are regulations published by various libraries on this issue. Some of these include Regulations for the Library and Documentation Department of Bosphorus University, Regulations for the Library and Documentation Department of Galatasaray University and Regulations for the National Libraries.

Pursuant to said regulations, materials can only be borrowed through libraries. Since there is no particular provision about duplication and distribution thereof, general provisions of the Law on Intellectual and Artistic Works applies to the lending procedures between libraries.

- 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

Duplication manually or by a machine does not affect the outcome. For instance, painting a picture by hand, printing it out from a printer (from a machine) or making a photocopy are all regarded as types of duplication. Making an analogue work digital is also regarded as a type of duplication. Recording a work on a carrier material such as CD, DVD and hard disk is also a type of duplication.

Since the Law on Intellectual and Artistic Works does not particularly regulate copyright protection for libraries and archives, general practice is also applicable here.

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

Although there is no specific rule in this respect stated in the legislation or in the regulations, according to the Law on Intellectual and Artistic Works, partial copies of books as hard copies or in digital format may be shared, taking into account the rights of the owner of the work.

Footnotes

1. [△] *Reader services: Article 7- Restoring, preparing and putting manuscripts and rare works of art that are present in the University libraries into use of readers are regulated by the principles determined by the Board of Directors of the University. Article 8- All measures are taken to prevent users to take out materials from the Library without permission. Library users are responsible for using the lent materials in good condition and returning the same on the specified dates. Article 9- Use of Library resources: a) Library does not lend the reference books such as encyclopedia, dictionary, atlas and the like, the bound periodicals and latest issues of the same, manuscripts and rare printed works as well as other works determined by the relevant units outside the library. Research on manuscripts and rare printed works are subject to the permission of the library manager. b) Academic dissertations are not lent outside the library. However, it is permitted make a copy of an entire academic dissertation within the unit, provided that prior approval of the thesis supervisor or the author. Article 10- Members of the University may borrow materials under the following rules: Instructors are allowed to borrow two "bound periodicals" at the latest for one week. b) Conditions of lending reference books to instructors, students, administrative personnel and other users are determined by the unit manager upon the advice of unit libraries. c) Persons who hold unreturned due books and periodicals will not be lent any new ones.*
2. [△] *Article 7- Technical services include the following: c) Bookbinding and restoration: this includes the bookbinding and restoration of periodicals and worn-out books. This service is provided by the bookbinding workshop. Article 12- Reference books such as encyclopedia, dictionary, atlas, etc., latest issues of periodicals, non-printed master degree dissertations and manuscripts and rare printed works are not lent outside the library. Research on manuscripts and rare printed works are subject to permission. Article 13- Quantities of books and duration allowed to be borrowed by the university members are determined by the rector.*
3. [△] *Article 22- (1) The following rules apply in lending procedures: ç) Library materials, other than manuscripts and rare works, reference books, materials often sought for by the users and latest issues of periodicals, are lent free of charge. d) Users may borrow six materials at any one time, being three books and three non-book materials. Duration of lending is limited to five days for books and seven days for non-book materials. These quantities and duration may be increased by the library management upon the application of users, but cannot be reduced.*
4. [△] *Article 16- Libraries provide "lending services" in order to enable students, teachers, other personnel and local people to make use of school libraries as intended and to enable students to make use of their spare times. At certain days and times of the week, libraries lend books to students, teachers, other personnel and local people to be read outside the library. Lending dates and times are determined and announced by the school headmasters upon consulting with the librarian or teacher librarian. Opening and closing times of the library for use after school hours and at weekends for boarding students shall be determined according to the planning of the school management. However, the following are exempted from lending: a) reference books, b) books that*

are not available in the market, c) latest issues of periodicals.

5. [^](#) Article 10- Procedures for making use of library services (4) Copying and similar duplication for commercial purposes is not permitted, except for the circumstances stipulated by Article 38 of the Law on Intellectual and Artistic Works No. 5846 of 5/12/1951. Microfilm requests of local and foreign researchers, universities and other scientific institutions are met by the microfilm department. Microfilm requests are met in accordance with the provisions of the By-Law Regarding the Procedures and Principles For Making Use of the Works Owned by Public Institutions and Organizations.

a) reproduction and/or distribution for the purpose of preservation or replacement;

- 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?

Since the Law on Intellectual and Artistic Works does not particularly regulate copyright protection for libraries and archives, general practice is also applicable here.

- 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.

In terms of duplication for personal use, place and means of duplication does not impose any significance. For instance, duplication can be made in a photocopy shop or internet café, by making a hard copy or copying on a CD. Technology of the recorded unit is of no importance either; duplication can be made as analogue or digital, on carrier materials such as tape and CD or on the computer's hard drive.

On the other hand, it is accepted that quantity of duplication for personal use should not exceed a certain number of copies. In the doctrine, this number is set forth not to exceed one. In German law, the upper limit is seven copies. Quantity of duplication to be made for the purpose of education in educational institutions such as schools and universities is limited to physical demand. However, such duplication may not damage the legal interests of right-holders without a justified reason or may not be contradictory to the normal use of the work.

In our legal system, the scope and limitations of duplication for personal use is not determined definitively by law or court rulings. Provision of Article 38/1 of the Law on Intellectual and Artistic Works in terms of personal use is insufficient. For instance, Article 53 of the German Copyrights Law stipulates the matter in detail in seven paragraphs. In our legal system, only duplication and process of computer programs is regulated in detail (Article 38/2-7 of the Law on Intellectual and Artistic Works). Therefore, provisions of Article 38/1 of the Law on Intellectual and Artistic Works do not apply to computer programs.

The duplication through illustrations, graphics, photographs, etc., publication, demonstration by projection at public places and broadcasting through radio-TV and similar media of the works of fine arts stationarily placed on the public roads, streets and avenues are allowed. This authority is exclusive only to the outer shape in the works of architecture (Article 40/1 of the Law on Intellectual and Artistic Works).

Unless a prohibitory record is clearly placed on them by their owners, the works of fine arts can be demonstrated at public places by their possessors or by others upon their approval (Article 40/2 of the Law on Intellectual and Artistic Works).

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.
	<p>Provision which stipulates that duplication for personal use may not damage the legal interests of right-holders without a justified reason or may not be contradictory to the normal use of the work is a definitive rule (Article 38/1 of the Law on Intellectual and Artistic Works). In this context, the following types of duplication cannot be deemed as personal use:</p> <ul style="list-style-type: none"> -Copying an entire book or a large part of a book. - Using an illegal copy when duplicating. This is quite common in the internet, particularly in peer to peer systems. However, duplication by a user for personal use, in circumstances where the server does not clearly comply with the law, is not deemed legal. For instance, exceptions for personal use do not apply when a work, which has not been publicized yet, is downloaded through the internet, since illegality is obvious. - Copying of the contents of a carrier material by way of removing or changing the password and similar codes on the carrier materials such as CDs and DVDs.

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;
	<p>yes</p> <p>Please comment:</p> <p>It is allowed to perform, directly and indirectly, the works that are publicized or published, in all education institutions for face-to-face education and training purposes, without aiming for profit (Article 33 of the Law on Intellectual and Artistic Works). For instance, a literary work may be read in literature classes, a video clip may be viewed in music classes. In order to benefit this freedom, the name of the owner of the work and the title of the work should be cited as usual. Such freedom may apply not only to schools but pre-school classes and the courses organized by the Municipalities. This is regardless whether the school is private or public. In our legal system, education institutions known as foundation universities are education channels organized by non-profit foundations, although they are fee-paying schools. Therefore, libraries of foundation universities should be considered just like any other libraries.</p> <p>“Freedom to Perform”:</p> <p>Art. 33 - Published works may be freely performed in all education and training institutions for the purpose of face-to-face education and without directly or indirectly aiming for profit, provided that the names of the owner of the work and the work are announced in the customary manner.”</p>

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

For the selected or collected works, which are dedicated to education and training purposes, it is free to make quotations from other works (Art. 34/1 of the Law on Intellectual and Artistic Works). This freedom is limited to published musical, literary works and works of fine arts that are publicized. Quotations should be made in an amount justified by the purpose. For instance, 90% or all poems in a poetry book may not be used (11. Civil Chamber, 18.11.200, Case No. 7065(Decision No. 9425 - Suluk / Orhan, C. 2 536). This limitation is even narrower for technical and scientific works as cited in Article 2/1 b.3 of the Law on Intellectual and Artistic Works, works of fine arts as cited in Article 4/1 b.1 and photographic works and slides as cited in Article 4/1 b.5 (Art. 34/1 of the Law on Intellectual and Artistic Works). Quotations in such works may only be made in order to explain the contents of the selected and collected works.

This freedom also applies to (school radio) broadcasts made exclusively for schools and approved by the Ministry of Education (Art. 34/2 of the Law on Intellectual and Artistic Works).

c) making translations;

yes

Please comment:

Art. 6 of the Law on Intellectual and Artistic Works; since translation, one of the main types of derivative work, requires creative efforts mainly as ability for empathy and style, they are protected as derivative works. On the other hand, routine translation works such as menus and theatre programs and translations made through electronic translation tools are not protected since they do not bear any individuality.

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:

Since Art. 33 of the Law on Intellectual and Artistic Works stipulates face-to-face condition, the participants of a class need to assemble in one location. When this article is considered in terms of providing access to or broadcasting of a work through internet or a closed computer network accessible only by students or using a work for purposes such as open learning, the intended effect with the "face-to-face" statement by the law-maker should be kept in mind.

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

yes

Please comment:

Quotations from a work are permitted, as a rule, in an independent work other than selected and collected works for education and training purposes (Art. 35 of the Law on Intellectual and Artistic Works). The law-maker introduced freedom of quotation for public interest, and scientific and cultural needs in order to express opinions. Freedom of quotation does not apply if quotation fails to serve any purpose and on the contrary, works or parts of works of others are quoted incoherently, or if they are of no relevance with the central theme of the quoted work.

Systematic of Article 35/1 of the Law on Intellectual and Artistic Works regarding quotation is as follows:

· It is permitted to quote a few sentences or passages of a work that is publicized, but not published or published, in an independent literary or scientific work. This is called minor quotation.

- Minor quotation is also permitted in compositions. It is free to incorporate certain elements of a published composition, at the most such as themes, patterns, passages or ideas, into an independent musical work.
- Major quotation is quoting some or all parts of a work. Such quotations are allowed in terms of scientific works for the purpose of contributing to scientific development and explaining differences of opinion (Schricker / Schricker, Art.52 No: 31). However it is required to use quotations prominently and to the extent justified by such purpose.
- It is free to display works of fine arts that have been publicized by projection or similar means in order to explain a subject at scientific conferences or lectures
- In minor or major quotations, the source of the quotation must be mentioned (Art. 35/2 of the Law on Intellectual and Artistic Works. However, an unjustified major quotation violates the rights of the owner of the work even if the owner is mentioned.

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

yes

if so, what activities?:

Some libraries transfer hard copies into digital media and provide their members with access to works through their data bases (see Library of Istanbul Bilgi University). Pursuant to Art. 6 and Additional Art. 8 of the Law on Intellectual and Artistic Works, data bases are protected as derivative works.

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?

Said exceptions and limitations only cover the right to perform without pursuing profit and to duplicate for personal use.

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.

According to Art. 38 of the Law on Intellectual and Artistic Works, it is possible to duplicate intellectual and artistic works for personal use without pursuing profit. There is no other exception and limitation stipulated by law. In this context, personal use of works for education purpose has not been specifically regulated by legislation.

However, in practice, it is seen that institutions apply special limitations and rules about the use of works for this purpose within the framework of their own regulations. For instance, works may be duplicated in the number of students for education purposes in educational institutions or only 10% of the works in libraries may be duplicated for education purposes. In this respect, detailed examples on the matter are given in answer 1.

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.

In our legislation, exceptions and limitations have not been regulated according to the type of 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?

Within the scope of Article 34 of the Law on Intellectual and Artistic Works, it is free to create selected and collected works, made exclusively for schools and approved by the Ministry of Education, from previously published works for educational purposes.

In addition to this, Turkish legislation also includes education institutions for disabled people in the scope of this exception. According to Article 11 of the Law on Intellectual and Artistic Works, "It is permitted to duplicate or lend scientific and literary works in writing, including school books, which are publicized or published, without obtaining the permissions prescribed by this Law and without any commercial purpose in the form of cassettes, CDs, Braille alphabet, and similar formats by a person with disability for his/her own use or by another person acting on behalf of him in a single copy, or by educational institutions, foundations, associations, and the like providing services for the benefit of the people with disability in the quantity required, provided that no such copies have already been produced for the use of people with disability."

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

Even though Three Stage Testing is not regulated in the Turkish Law, the Courts sometimes refer to said three stage testing in their justified decisions. The late Turkish Draft Law on Intellectual and Artistic Works which will take effect soon is expected to expressly ensure three stage testing.

- 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).

Within the framework of Article 33 of the Law No. 5846, it is free to perform a published work in all education and training institutions, without pursuing any profit.

Furthermore, within the scope of Article 34 of the Law on Intellectual and Artistic Works, it is free to create selected and collected works from previously published works for education and training purposes and this freedom also applies to broadcasts made exclusively for schools and approved by the Ministry of Education.

Article 35 of the same prescribes that "quotations from a published works are permitted for education purposes". Said freedom of quotation stands for "quoting".

Lastly, according to Article 11 of the Law on Intellectual and Artistic Works, "It is permitted to duplicate or lend scientific and literary works in writing, including school books, which are publicized or published, without obtaining the permissions prescribed by this Law and without any commercial purpose in the form of cassettes, CDs, Braille alphabet, and similar formats by a person with disability for his/her own use or by another person acting on behalf of him in a single copy, or by educational institutions, foundations, associations, and the like providing services for the benefit of the people with disability in

the quantity required, provided that no such copies have already been produced for the use of people with disability.”

In the above-mentioned circumstance, the permission of the owner of the work is not required. However, use of such works for the purposes other than education is subjected to the permission of the owner of the work.

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?

There is no regulation provided in legislation regarding the tariff to be paid in terms of limitations and exceptions for the rights of work in the libraries, archives and education/research institutions, stated under the legislation. Then again, in terms of such exceptions within the framework of education and training purposes, the permission of the owner of the work is not required.

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

There is no specific regulation within the scope of limitations and exceptions regarding Orphan Works.

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

Financial rights regarding the relevant exceptions and limitations may be arranged by a contract. If financial rights are to be transferred by a contract, the rights to be transferred should be in writing individually and clearly. Unless the rights to be transferred are shown separately, the transfer shall not be valid.

Moral rights, on the other hand, are deemed as being strictly exclusive to a person; they may not be subject to transfer by contractual relation in any way.

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.:

Article 42 of the Law on Intellectual and Artistic Works sets out regulations regarding the establishment of professional unions. Professional union is an institution that bears the qualification of a civil law legal person engaging in activities, on behalf of its members who are right holders, such as monitoring the use of works in various ways, looking after the right owners' rights on the work, issuing permission contracts on behalf of its members, collect receivable charges, to distribute such revenues to the owners of the rights, taking legal actions to prevent unfair use, maintaining social solidarity between its members. In Turkey, organization structure of professional unions is determined according to the type of the owners of the artistic work. In this context, there are already 27 professional unions engaging in cinema, music, science and literature, radio and television, fine arts and theatre, including professional unions for musical works.

Additionally, new draft law also includes regulations regarding Joint Licensing Union.

However, structures such as private licensing organizations except for professional unions do not exist in our country.

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?

no

If no, why not?:

The Law on Intellectual and Artistic Works does not provide any regulations regarding the limitations and exceptions in relation to protection of the rights of artistic works for libraries and archives.

Interpreting and practicing access to information in a broader sense, in particular, in publicly available places such as education research centers, universities, libraries, and archives, compared to copyrights which is subject to contractual relations, fits for the purpose of establishing the right of access to information and also looking after public interests.

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

no

If no, why not?:

Even though there is no explicit provision in the Law on Intellectual and Artistic Works regarding limitations and exceptions on the protection of rights of work for the education and training institutions; there are four types of limitations for use for education purposes. These limitations and exceptions are explained in Article 11. In this context, although it is not required to introduce any additional specific regulations to the current limitations and exceptions, an explicit provision stating that these limitations and exceptions may be applicable to education and training institutions will eliminate any uncertainties.

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

yes

Why?:

When limitations and exceptions for the protection of the rights of work are considered in terms of use by the Libraries, Archives and Education / Training Institutions, evaluation within the framework of Three Stage Testing is applicable. However, when inclusion in legislation in addition to current practice is brought to agenda, new legislation should be set forth in a flexible structure so as to enable the regulation to cover all work types and to be enforceable in terms of possibly new work types to emerge in future.

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

Current regulations protect the rights of the owner of a work in compliance with the law. Therefore, no new regulations are required on the issue.

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

Since there is no regulation in Turkish Law regarding the limitations and exceptions for the rights of work at the Libraries, Archives and Education / Training Institutions, there is no regulation on the tariffs to be paid either. It should be shaped according to the particulars of each present case.

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?

Directive suggests all member states to make amendments in their national laws for the relevant issues regulated. Turkey is not a member state to the EU, and yet it became a party to the Bern Convention with the Law No. 5777 in 1951, to WIPO in 1974 and to the TRIPS Agreement in 1995 with the Law No. 4067. Turkey has amended the Law on Intellectual and Artistic Works in 1995, 2001 and 2004 within the transposition of the *acquis communautaire*. Similarly, it is possible to work on the harmonization with said Directive and Three Stage Testing and enable the Law on Intellectual and Artistic Works to comply with these regulations.

III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

yes

Please comment:

Studies to introduce the same rights in Turkey, in comparison with the practice in the European countries, and studies for harmonization to achieve uniformity are welcomed.

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:

As mentioned above, Turkey became a party to the Bern Convention with the Law No. 5777 in 1951, to WIPO in 1974 and to the TRIPS Agreement in 1995 with the Law No. 4067. However, these agreements do not include any regulations on the limitations and exceptions for the rights of work at Libraries, Archives and Education/Training Institutions. If an agreement or a convention is prepared regarding such limitations, it is considered that it will be beneficial to join in such agreements or to adopt the agreement in the national law, provided that they adopt terms and conditions which comply with the Turkish law and the public order.

24) If yes to question 16):

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

N/A

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

N/A

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

N/A

25) If yes to question 17):

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

N/A

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

N/A

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

N/A

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)?

These freedoms, regulated by law, may not be exercised in a way so as to damage the legal interests of the owner of the right without a justified reason or be contradictory to the normal use of the work. Use of the work for any other purposes except for education and training purposes is subject to permission of the owner of a work. In all such circumstances, name of the work and of the owner of the work should be stated.

In this framework, no special permission is required for the limitations and exceptions regarding the rights of work in terms of Libraries, Archives and Education / Research Institutions and such limitations and exceptions can be directly implemented as long as the legal regulations allow. There is no need to make any amendments or to add any special criteria.

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?

There is no specific regulation regarding the tariffs to be paid for the limitations and exceptions regarding the rights of work in Libraries, Archives and Education / Research Institutions; the parties decide and agree on the amount of tariffs, mode of payment, receiver of the payment, etc. in accordance with the particulars of the present case.

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

limitation?

There is no specific exception in the Turkish Law for the use of orphan works at Libraries, Archives and Education/Training Institutions. One of the problems for orphan works is that different institutions and authorities approach orphan works with different ways and methods and, consequently, there is no standardization.

The European Union has prepared the directive number 2012/25/EU for the purposes of protecting Europe's cultural heritage and providing access in digital media. It is suggested to harmonize a similar regulation in the Turkish Law. Any kind of measures which provide harmonization will increase the effectiveness of the system in terms of orphan works.

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

Within the framework as explained in detail in question 14, even though the financial rights are handled within the scope of contractual relations, moral rights may not be subject to contractual relations. Current regulations also serve the purpose of protection of the personal rights of the owners of the work; therefore, current regulations and practice are to the point.

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?

Although limitations and exceptions made for Libraries, Archives and Education/Training Institutions are not regulated by law, group is not aware of any special studies conducted by private institutions and cannot reach any such studies in this respect. Having said that, Article 42 of the Law on Intellectual and Artistic Works sets out regulations regarding establishment of professional unions. Professional union is an institution that bears the qualification of a civil law legal person engaging in activities, on behalf of its members who are right holders, such as monitoring the use of works in various ways, looking after the right owners' rights on the work, issuing permission contracts on behalf of its members, collect receivable charges, to distribute such revenues to the owners of the rights, taking legal actions to prevent unfair use, maintaining social solidarity between its members. In Turkey, organization structure of professional unions is determined according to the type of the owners of the artistic work. Since the required regulations regarding the establishment and the conditions of operation of the professional unions are set out by law, it is considered that studies to be made by such unions will be approved in practice. And additionally, "Spotify" may be considered in Turkey to establish a precedent in terms of infrastructure for a "collecting society" which is projected to be actually established.

Summary

The Revised Berne Convention (RBC) and the WIPO Copyright Treaty (WCT) have been ratified by Turkey and the minimal obligations imposed by the above-mentioned international instruments have already been implemented. In addition, the Ministry of Culture and Tourism is currently undertaking a comprehensive amendment of the current legislation and drafted a bill.

However, it has to be noted that the exceptions and limitations regarding the copyright issues are currently governed in a general sense in Turkish legislation. Therefore, it is only possible to discuss the exceptions and limitations to be applied for libraries, archives and educational and research institutions through interpretation.

The Turkish National Group considers that these exceptions and limitations are suitable to hold the balance between the interest of the public and copyright owners in the digital industry. These

exceptions and limitations shall not be extended or differentiated except in very limited circumstances. However, it would be beneficial to define the frame and components of these industries in order to facilitate the interpretation regarding their unique nature and characteristics.

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.

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