



Date: 7th June 2015

Q246

Exceptions and limitations to copyright protection for libraries, archives and education and research institutions

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Date	29-05-2015

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:

Uruguayan Copyright Law Nº 9.739 of December 17, 1937 amended by Law Nº 17.616 dated January 10, 2003 (hereinafter the "Copyright Law") does not provide any exceptions or limitations to copyright protection specifically for libraries and archives.

However, there is currently a new proposal of amendments to the Copyright Act, which is being discussed by the Uruguayan Parliament. These amendments provide for exceptions or limitations in favor of libraries and archives, for the reproduction of copyrighted works that are not available in the marketplace. The same also allows the making of copies of fragments of the works, in order to be consulted at the library premises. Translation of copyrighted works that are not available in Spanish is allowed to the libraries, when used for investigation or study purposes. The proposal also contemplates an exception for partial reproduction of copyrighted works with educational purposes and provided they are not for profit-making purposes.

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?

As expressed above, there are no specific exceptions or limitations for 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.

Please refer to our answer above.

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.

Please refer to our answer above.

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:

The last paragraph of article 44 of Uruguayan Copyright Law (as amended by article 14 of Law No. 17.616 dated January 10, 2003), provides that representations or performances (of theatrical, musical, poetic or cinematographic works) that take place in public or private educational institutions shall not be considered unlawful, provided they are not for profit-making purposes.

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

no

Please comment:

There is no specific exception or limitation regarding this subject.

c) making translations;

no

Please comment:

There is no specific exception or limitation regarding this subject.

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

no

Please comment:

There is no specific exception or limitation regarding this subject.

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

no

Please comment:

There is no specific exception or limitation regarding this subject.

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

no

If not please comment:

N/A.

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?

As expressed above, the existing exceptions and limitations apply only to educational institutions (with the scope already discussed). There are no exceptions or limitations foreseen for research institutions in the Copyright Law.

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.

Only conditions are those referred to in the statute discussed under a) above.

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.

Please refer to our answer above.

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?

Exceptions and limitations have been traditionally regarded in Uruguay as being interpreted with a narrow scope, and should arise from a statutory provision. Exceptions or limitations do not arise or are recognized in case law. Statutory provision applicable to education institutions is article 44 of the Copyright Law.

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

limitation?
Yes. As a general rule Uruguay adopted the Three-Step Test, since it ratified the Berne Convention and the WIPO 1996 Treaties.

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).
	There is no specific provision regarding this issue.

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 specific provision regarding this issue.

13)	Is there any special treatment for orphan works for use within such exception or limitation? If so please explain.
	There is no specific provision regarding this issue.

14)	Does the law of your jurisdiction allow the exception or limitation to be overridden by contract?
	There is no specific provision regarding this issue.

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.: Currently there is a new proposal to amend the Copyright Law, which is being discussed by the Uruguayan Parliament, providing for exceptions or limitations in favor of libraries and archives, for the reproduction of copyrighted works that are not available in the marketplace. As also mentioned, this proposal also allows the making of copies of fragments of the works, in order to be consulted at the library premises. Translation of copyrighted works that are not available in Spanish is allowed to the libraries, when used for investigation or study purposes. The proposal also contemplates an exception for partial reproduction of copyrighted works with educational purposes and provided they are not for profit-making purposes.

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?:

The Uruguayan Parliament is discussing a new proposal of amendments to the Copyright Law, which provide for exceptions or limitations in favor of libraries and archives, for the reproduction of copyrighted works that are not available in the marketplace. The same also allows the making of copies of fragments of the works, in order to be consulted at the library premises. Translation of copyrighted works that are not available in Spanish is allowed to the libraries, when used for investigation or study purposes. The proposal also contemplates an exception for partial reproduction of copyrighted works with educational purposes and provided they are not for profit-making purposes. Once approved those amendments, Copyright Law would be in better shape to adapt to the social reality of our country.

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

yes

If yes, in relation to what activities? :

Uruguayan Copyright Law already provides - with a limited scope - for exceptions or limitations to copyright protection for education institutions. There is no provision addressing exceptions or limitations for research institutions, but if these institutions pursue educational or cultural purposes they could benefit from the limitations already foreseen by the Law.

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

yes

Why?:

The Three- Steps Test is generally considered an effective way of preventing the excessive application of limitations and exceptions. Uruguay adopted the Three-Step Test, since it ratified the Berne Convention and the WIPO 1996 Treaties.

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

It would not be appropriate, taking into account the existence of others who might not know the terms of the contract

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

The limitations are intended precisely to avoid paying for the use of the copyright

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?

The currently proposal to amend the Copyright Law, which is being discussed by the Uruguayan Parliament, could be deemed as an improvement to the current regime.

III. Proposals for harmonisation

22) Is harmonisation in this area desirable?

yes

Please comment:

As expressed above, currently there is a new proposal to amend the Copyright Law.

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;

They should apply to public or non-profit ones.

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

They should apply to investigation or study activities.

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

In line with the current proposal to amend the Copyright Law, a condition for the reproduction of copyrighted works should be that were not available in the marketplace.

25) If yes to question 17):

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

They should apply to public or non-profit ones.

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

They should apply to investigation or study activities.

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

According to the current proposal to amend the Copyright Law, a condition for the reproduction of copyrighted works should be that such works were not available in the marketplace.

For the questions below, please provide an answer for each exception or limitation mentioned above (as applicable).

26) Should use under the exception or limitation be permitted automatically (without any further action), or should certain criteria or procedure(s) be required? If so, what criteria/procedure(s)?

The exception or limitation should be permitted automatically.

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?

N/A.

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

N/A.

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

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?

Since the exceptions or limitations are provided by law in a restrictive manner, and are aimed to be used in the benefit of public interest, such exceptions should not be deemed as to be prejudicial to private organizations interest.

Summary

EN - Uruguayan Copyright Law provides - with a limited scope - for exceptions or limitations to copyright protection for education institutions. There is no provision addressing exceptions or limitations for research institutions. It is worth noting, however, that Uruguay has recently ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, by Law N° 19.262 dated August 29, 2014. In addition, in 2013, the Copyright Law was amended to include for exceptions and limitations in the benefit of blind or visually impaired persons. Currently there is a new proposal to amend the Copyright Law, which is being discussed by the Uruguayan Parliament, providing for exceptions or limitations in favor of libraries and archives, for the reproduction of copyrighted works that are not available in the marketplace. This proposal also allows the making of copies of fragments of the works, in order to be consulted at the library premises. Translation of copyrighted works that are not available in Spanish is allowed to the libraries, when used for investigation or study purposes. The proposal also contemplates an exception for partial reproduction of copyrighted works with educational purposes and provided they are not for profit-making purposes.

FR - La Loi uruguayenne de droit d'auteur prévoit - avec une portée limitée - des exceptions ou limitations au droit d'auteur pour les établissements d'enseignement. Il n'y a aucune disposition concernant les exceptions ou limitations pour les institutions de recherche. Il est à noter, cependant, que l'Uruguay a récemment ratifié le Traité de Marrakech pour faciliter l'accès aux œuvres publiées pour les personnes qui sont aveugles, malvoyants ou d'autre forme handicapés Imprimeé, par la loi N° 19,262 en date du 29 Août 2014. De plus, en 2013, le droit d'auteur a été modifiée afin d'inclure des exceptions et limitations dans l'intérêt des personnes aveugles ou malvoyantes. Actuellement, il est une

nouvelle proposition visant à modifier le droit d'auteur, qui est en cours de discussion par le Parlement uruguayen, prévoir des exceptions ou limitations en faveur des bibliothèques et des archives, pour la reproduction d'œuvres protégées qui ne sont pas disponibles sur le marché. Cette proposition permet également la réalisation de copies de fragments des œuvres, afin d'être consultés dans les locaux de la bibliothèque. Traduction d'œuvres protégées qui ne sont pas disponibles en espagnol est autorisé à les bibliothèques, lorsqu'il est utilisé à des fins d'enquête ou d'étude. La proposition prévoit également une exception pour la reproduction partielle d'œuvres protégées à des fins éducatives et à condition qu'ils n'ont pas des fins lucratives.

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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