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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. Article 44.4 of the Venezuelan Copyright Act establishes limitations to copyright protection for nonprofit use in libraries and archives.

This provision allows the reproduction for the purpose of preservation or replacement, when the copy is in its permanent collection pursuing to preserve the work, and replace it if needed, in the permanent collection or another library or archive. It also applies for a specimen that has been lost, destroyed or disabled, and that is not possible to acquire such copy in a reasonable time and conditions.

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

yes

Please comment:

Among other exceptions that can be related to libraries and archives established in Article 44 of the Venezuelan Copyright Act are:

- i. The reproduction for nonprofit teaching and educational purposes, in accordance to the fair use,
- ii. The reproduction for personal and exclusive use of a person, carried out by this person with its own resources, in accordance to the fair use, and
- iii. The reproduction of works of art made for the single purpose of a study.

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:

Among other exceptions that can be related to libraries and archives established in Article 44 of the Venezuelan Copyright Act are:

- i. The reproduction for nonprofit teaching and educational purposes, in accordance to the fair use,
- ii. The reproduction for personal and exclusive use of a person, carried out by this person with its own resources, in accordance to the fair use, and
- iii. The reproduction of works of art made for the single purpose of a study.

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

yes

Please comment:

Among other exceptions that can be related to libraries and archives established in Article 44 of the Venezuelan Copyright Act are:

- i. The reproduction for nonprofit teaching and educational purposes, in accordance to the fair use,
- ii. The reproduction for personal and exclusive use of a person, carried out by this person with its own resources, in accordance to the fair use, and
- iii. The reproduction of works of art made for the single purpose of a study.

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?

These exceptions are extended to all kind of libraries or archives, as long as the reproduction is for nonprofit purposes and carried out in accordance to the fair use rules.

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.

There are no specific types or scopes permitted for reproduction of works. Accordingly, libraries and archives can reproduce works as long as it complies with Article 44.4 of the Venezuelan Copyright Act. This reproduction can be in different formats, including digital reproductions.

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.

There are no conditions regarding the type of copyrighted work that may be used, besides computer programs, which can be done exclusively for protection and security purposes (Article 44.5 of the Venezuelan Copyright Act).

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:

Yes. Article 44.3 of the Venezuelan Copyright Act establishes exceptions to copyright protection for nonprofit teaching and educational purposes, related to brief extracts from works or short works lawfully published, as long as such use is justified for the pursued matter.

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

yes

Please comment:

The Venezuelan Copyright Act does not explicitly establish limitations to the works with respect to the performance, display, reproduction, distribution of digital networks or any other activity

c) making translations;

yes

Please comment:

The Venezuelan Copyright Act does not explicitly establish limitations for 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);

yes

Please comment:

The Venezuelan Copyright Act does not explicitly establish limitations to the works with respect to digital networks or any other activity

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

yes

Please comment:

The Venezuelan Copyright Act does not explicitly establish limitations to the works with respect to the performance, display, reproduction, distribution of digital networks or any other activity

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

yes

if so, what activities?:

The Venezuelan Copyright Act does not explicitly establish limitations to the works with respect to the performance, display, reproduction, distribution of digital networks or any other activity

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?

These exceptions specify the nonprofit nature of the reproduction. Therefore, although the institutions may be interpreted in broad scope, the reproduction must be for nonprofit purposes and it is not limited to certain institutions.

7) Are there any conditions as to the type or scope of the activities and the persons who may engage in such activities (e.g. number of copies that may be created, whether only a portion of a work may be used, whether both a teacher's and student's performance is covered, or only one or the other)? If so, please explain the conditions.

There are no conditions as to the type or scope of the activities and the persons who may engage in such activities explicitly established by the Venezuelan Copyright Act. However, Article 44.3 emphasized the justified purposes of the reproduction in connection to the subject matter, as well as the reproduction of brief extracts from works or short works lawfully published.

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.

There are no conditions explicitly established by the Venezuelan Copyright Act, as to the type of copyrighted work that may be used for this purposes. Nevertheless, as explained in previous questions, the Act establishes the justified purposes of the reproduction in connection to the subject matter, as well as the reproduction of brief extracts from works or short works lawfully published.

In addition, computer programs can be reproduce exclusively for protection and security purposes (Article 44.5 of the Venezuelan Copyright Act).

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?
The statutory provisions explained above established in the Venezuelan Copyright Act. Please refer to Question 1.

10) Does your law adopt the Three-Step Test (or equivalent wording) in relation to such exception or limitation?
Yes. The Venezuelan Copyright Act complies the Three-Step Test.

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).
Yes. The use of a work under the exceptions of the Venezuelan Copyright is automatic. There is no need to comply with other requirements or carry out any other activities.

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?
No. There is no remuneration for the use of a work under these exceptions for libraries, archives and educational and research institutions.

13) Is there any special treatment for orphan works for use within such exception or limitation? If so please explain.
No. There is no special treatment for the use of orphan works under these exceptions.

14) Does the law of your jurisdiction allow the exception or limitation to be overridden by contract?
The Venezuelan Copyright Law does not explicitly determine that an exception or limitation can be overridden by contract. However, as long as it not contrary to public order matters, libraries and archives, and educational/research institutions, can executed contracts to override these exceptions or limitations.

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.:
There has been efforts by private organizations in the past regarding the use of libraries, archives and educational and research institutions. However, there are no new developments besides what is established in the Venezuelan Copyright Act.

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?: As stated in the Venezuelan Copyright Act, there should be exceptions and limitations to the copyright protection for libraries and archives seeking the preservation and physical protection of works. In addition, it will be important to determine what other exceptions would apply in order to satisfy libraries and archives user's necessities and the dissemination of knowledge.
17)	Should there be any exceptions or limitations to copyright protection for education and research institutions?
	yes If yes, in relation to what activities? : There should be exceptions and limitations to the copyright protection for education and research institutions, when it comes to nonprofit activities and for a justified purpose.
18)	Is the Three-Step Test a useful test for determining any exceptions or limitations to copyright protection?
	yes Why?: The Three-Step Test is a useful instrument that allows the responsible use of copyrighted works under specific circumstances.
19)	Should the exception or limitation be capable of being overridden by contract? Why? Why not?
	Yes. As long as it does not interfere with public order matters, the exception should be capable of being overridden by contract.
20)	Should remuneration be payable for any of the activities described in 16) and 17) above? Why? Why not?
	No. There should not be remuneration for the activities described in questions 16) and 17), particularly, considering the nonprofit use of the work.
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 exceptions and limitations of the current Venezuelan Copyright Act can be improved by including explicitly digital works and by being more specific in the proper use of the copyrighted work that falls under these exceptions.

III. Proposals for harmonisation

22)	Is harmonisation in this area desirable?
	yes
	Please comment:
	Harmonization on this matter might be desirable as it will provide an international standard for nonprofit use of copyrighted material for libraries, archives and educational and research institutions.

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?
	no
	Please comment:
	does not apply

24)	If yes to question 16):
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a)	to what libraries, archives and other organizations should these exceptions or limitations apply;
	It should apply to all libraries and archives for nonprofit activities, seeking the preservation and physical protection of works.

b)	to what activities should these exceptions or limitations apply;
	It should apply to all libraries and archives for nonprofit activities, seeking the preservation and physical protection of works.

c)	under what conditions should the activities be undertaken or the copyrighted work used?
	It should apply to all libraries and archives for nonprofit activities, seeking the preservation and physical protection of works.

25)	If yes to question 17):
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a)	to what educational and research institutions should these exceptions or limitations apply;
	It should apply to all educational and research institutions for nonprofit activities and for a justified purpose.

b)	to what activities should these exceptions or limitations apply;
	It should apply to all educational and research institutions for nonprofit activities and for a justified

purpose.

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

It should apply to all educational and research institutions for nonprofit activities and for a justified purpose.

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. The use under these exceptions or limitations 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?

Remuneration should only apply in cases that does not fall under these exception or limitation.

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

Orphan works should have the same treatment as any other work with respect to the exception or limitation of copyright.

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

The parties executing the contract should be capable of overridden the exceptions or limitations.

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?

The efforts by private organizations should aim the nonprofit dissemination of knowledge, taking into account the Three-Step Test established in the Berne Convention.

Summary

The Venezuelan Copyright Act complies with the Three-Step Test that allows the responsible use of copyrighted works under specific circumstances, namely, the reproduction for nonprofit teaching and educational purposes, the reproduction for personal and exclusive use of a person, and the reproduction of works of art made for the single purpose of a study. Therefore, as the Venezuelan Copyright Act does not specifically establish other conditions, these exceptions are extended to all kind of libraries or archives, as long as the reproduction is for nonprofit purposes and carried out in accordance to the fair use rules.

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.

None

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