

Resolution

Question Q246

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

Background:

- 1) This Resolution concerns the issue of what, if any, specific exceptions and limitations to copyright protection should be recognized for the benefit of libraries, archives and educational and research institutions. Other possible exceptions and limitations to copyright protection (e.g. for private/personal use or for orphan works) are outside the scope of this Resolution, unless they relate to libraries, archives and educational and research institutions.
- 2) Various international treaties generally address the topic of this Resolution, stipulating however that the issue of whether to create such exceptions and limitations is left to the relevant member states. One example is Article 10(2) of the Berne Convention, which deals with utilization of literary or artistic works for teaching. Currently, at WIPO in its Standing Committee on Copyright and Related Rights (SCCR), “limitations and exceptions for libraries and archives” and “limitations and exceptions for educational and research institutions” are discussed separately, trying to develop instruments to foster harmonization on the international level. In the EU, a certain degree of harmonization is provided by Directives 2001/29/EU (Copyright Directive) and 2012/28/EU (Orphan Works Directive).
- 3) Almost all national/regional legislation provides for some exceptions or limitations to copyright protection for the benefit of libraries, archives, educational and research institutions. However, apart from this very basic consensus, there are very different approaches as to the requirements, preconditions, scope and financial consequences of any such exceptions and limitations.
- 4) As the collections of libraries and archives become more digitally accessible, their geographical availability increases. As part of a “global knowledge base”, purely national/regional limitations and exceptions assume less relevance. Likewise, education and research activities are no longer limited to a physical campus; classrooms and research laboratories are becoming increasingly virtual, involving and relying on electronic exchange of and access to copyrighted works.
- 5) Against this background, at least some degree of international harmonization is desirable.
- 6) The term **Three-Step Test** as used in this Resolution means the test provided in Article 9(2) of the Berne Convention, under which the reproduction of a copyrighted work is permissible: (a) in certain special cases; (b) when the reproduction does not conflict with

a normal exploitation of the work; and (c) when the reproduction does not unreasonably prejudice the legitimate interests of the author.

- 7) 40 Reports were received from AIPPI's National and Regional Groups providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General of AIPPI and distilled into a Summary Report. These individual Reports and the Summary Report are available on the AIPPI website www.aippi.org. At the AIPPI World Congress in Rio de Janeiro, the subject matter of this Resolution was further discussed within a Working Committee and again in a full Plenary Session, which led to adoption of the present Resolution by the Executive Committee of AIPPI.

AIPPI resolves that:

- 1) There should be some exceptions or limitations to copyright protection for libraries and archives, and educational and research institutions. These exceptions and limitations should be adapted to the digital network environment to achieve a fair balance between the legitimate interests of the copyright holders and the public, and should be consistent with the Three-Step Test.
- 2) With reference to libraries and archives, the exceptions and limitations should apply to both public and private libraries and archives, but only to libraries or archives that are not-for-profit and publicly accessible. With regard to educational and research institutions, the exceptions and limitations should apply to both public and private institutions, for non-commercial activities.
- 3) The exceptions and limitations with regard to libraries and archives should allow, inter alia:
 - a. reproduction including making back-up copies, large scale digitization and format shifting, provided that they own the original or a lawfully acquired copy, in each case the reproduction being solely for the purposes of preservation, restoration or repair of said original or lawfully acquired copy;
 - b. the reprographic and digital copying of originals or lawfully acquired copies existing in their collections for uses which are private and non-commercial;
 - c. the making available on dedicated terminals on their premises of works or other materials contained in their collections; and
 - d. the inter-library lending of copies, including digital copies provided that a lawfully acquired copy of the work lent is held by the lending library and does not substitute for the potential purchase of such materials.

In connection with points 3b and 3c above, equitable remuneration should be paid to the copyright holder by the institution using the work, such remuneration either to be set by private agreement or through collective agreements between representatives of the respective interest groups or, failing such an agreement, to be determined by a court or relevant authority.

- 4) With reference to educational and research institutions, the exceptions and limitations should allow the reproduction and communication to teachers, pupils, students and researchers of reasonable and limited portions of works, for the sole purposes of giving

or receiving instruction, and preparing therefor, within their premises and/or by making them available online in a restricted manner.

In connection with the above activities, equitable remuneration should be paid to the copyright holder by the institution using the work, such remuneration either to be set by private agreement or through collective agreements between representatives of the respective interest groups or, failing such an agreement, to be determined by a court or relevant authority. In determining the level of any such remuneration, account should be taken of the particular circumstances of each case. There may be cases where no obligation for payment may arise.

- 5) Libraries and archives and educational and research institutions should have adequate safeguards in place to ensure the lawful and legitimate exercise of exceptions and limitations, so as to avoid undue prejudice to the exclusive rights of the copyright holders. Further, effective technological protection measures against unauthorized reproduction of digital content should be adopted.
- 6) All the above activities should be permitted automatically, without the need to apply for prior permission by a court or relevant authority.
- 7) Orphan works should only be used by libraries, archives and educational and research institutions for purposes connected with their mission in the public interest. Libraries, archives and educational and research institutions should make a diligent search for any copyright holders before using an orphan work. To the extent such research does not lead to a positive result, such institutions should be allowed to use the work, subject to remuneration in case any copyright holder is subsequently found, and in which case attribution of authorship shall also be required.
- 8) The above exceptions or limitations should in principle not be capable of being overridden by contract, in view of the public interest underlying them. They may be overridden by contract only and to the extent that the fundamental rights protected by the exceptions or limitations, such as the right of access to information, the right to education, and the freedom of quotation, are not unduly restricted.
- 9) Efforts by private organizations, such as licensing organizations representing copyright owners, to facilitate the use of works through contractual arrangements and payment of royalties and other compensation to right owners should be encouraged.

Links:

- Working Guidelines
<http://aippi.org/wp-content/uploads/committees/246/WG246English.pdf>
- Summary Report
<http://aippi.org/wp-content/uploads/2015/10/SR246English.pdf>
- Group Reports page
<http://aippi.org/event/2015-aippi-world-congress/#group-reports>