

Exceptions and limitations to copyright protection, AIPPI, Question Q246

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Exceptions and limitations to copyright protection for libraries, archives and educational and research institutions (Q 246)

REPORT OF SWISS GROUP*

Questions

I. Current law and practice

1. Does your law provide for exceptions or limitations to copyright protection for libraries and archives? If so, please provide details of such exceptions or limitations, including in relation to the following activities:

Yes: An archive copy of a work may be stored in an archive not accessible to the public (art. 24 para. 1 CA). Libraries and archives accessible to the public may create as many copies as necessary for the safeguarding and conserving their collections, but not for any economic or commercial purposes (art. 24 para. 1^{bis} CA). Libraries may copy works or make available devices to their users for copying works (art. 19 para.1 i.c.w. para. 2 CA). Archives and libraries may make copies for internal purposes (not for the public) subject to paying a levy to the collective rights management organization (CRMO) (art. 19 para. 1 let. c CA). If libraries rent out a copyrighted work against a fee, they owe a remuneration according to a tariff, but not if they lend it without a fee. Broadcasting organisations may re-broadcast productions stored in their archives by paying a levy to the CRMO, but without consent of the rightholders, and may also make them available to the public (art. 22a CA). The right to use orphan works by paying a levy to the CRMO is limited to works contained in publicly accessible archives or archives of broadcasting organisations (art. 22b CA).

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

To ensure preservation of work, archives may produce one copy which has to be designated as "archive copy" and to be stored in a non-publicly accessible part of the archive (art. 24 para.1 CA). Furthermore, publicly accessible libraries and archives may reproduce as many (no fixed number) of copies as necessary for the preservation of their stock, and with the exemption that such copying has no commercial purpose (art.24 para. 1^{bis} CA).

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

No specific provision regarding interlibrary lending. Libraries, which may copy works for their users (art. 19 para. 1 i.c.w. para. 2 CA) may delegate such copying to other 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;

Libraries are allowed under art. 19 para. 2 CA to make copies (either in digital or physical form) for and on behalf of their users. They are even allowed to send them to their users in electronic format through the internet. The copy has to be made after receipt of a specific request of the user and only from the original copy of the work acquired by the library (book, journal etc.). There is no specific provision limiting the right for the libraries to freely disseminate published works available from their stock. Swiss law does not provide for a comparable regulation to § 52b of the German Copyright Act, providing that publicly accessible libraries, museums or archives may only make available there published

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works exclusively on the premises at especial terminals dedicated for the purpose of research and for private study ("electronic workspaces").

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

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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?

The exceptions and limitations as provided in art. 19 para. 1, 22a, 22b and 24 para. 1 CA do not differentiate between commercial or non-commercial purposes. Only the limitation according to art. 24 para. 1 CA is applicable only for non-commercial use. The tariffs of the collective rights management organizations normally differentiate between public entities, like for example research institutions, and private companies.

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.

Art.19 para. 3 let. a CA provides that the complete or substantive copying of a copyrighted work available in commerce (e.g. books or journals) is not permitted. Therefore, only the copying of a portion of a so called work copy (Werkexemplar) is exempted. The only exception to this rule is provided in art. 19 para. 1 let. a CA, if the copy is made for personal use by the user himself. The CA does not provide for any limitation as to the type of copy (reproduction may take place on analogue or digital basis, BGE 133 III 473 E. 4.3). Various conditions apply for the use of archived works of broadcasting organizations (art. 22a CA), use of orphan works (art. 22b CA), and archive and backup copies (art. 24 CA).

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.

Any copying, including copies made for school purposes (art. 19 para. 1 let. b) and for enterprises or institutions of internal information and documentation (Art. 19 para. 1 let. 10), and copies created with the involvement of a third person (art. 19 para. 2 CA) must be made from a legally obtained and lawfully created copy. The only exception to this rule is, according to prevailing doctrine and legislative history, a copy for personal use or within a circle of persons closely connected to each other (art. 19 para. 1 let. a CA). In a recent Federal Court decision re ETH documentary services from November 2014 the court has confirmed the principle that the copyrighted work has to be made from a legally obtained and lawfully created copy. However, these exceptions and limitations do not apply for computer programs (art. 19 para. 4 CA).

5. Does your law provide for exceptions or limitations to copyright protection for education and research institutions? If so, please provide details of such exceptions or limitations, including in relation to the following activities:

Art. 19 para. 1 let. b CA provides for exceptions and limitations for teachers and their pupils for educational purposes. Research institutions may benefit from exceptions and limitations according to art. 19 para. 1 let. c CA limited to internal information and documentation only.

a) *performance and/or display for educational purposes;*

Art. 19 para. 1 let. b CA allows the use for educational purposes of the work for any type of use, including reproduction (art. 10 para. 2 let. a CA), performance (art. 10 para. 2 let. c CA), and editing right (art. 11 para. 1 CA), provided the work is not being distorted, which would constitute a violation of the moral rights of the author art. 11 para. 2 CA).

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

Art. 19 para. 1 let. b CA permits any use of a copyrighted work for educational purposes, however, always subject to the limitations of art. 19 para. 3 CA, which, inter alia, specifically prohibits the reproduction of entire works, the reproduction of works of fine art, and the graphic representation of musical works (copying of sheet music), and the recording of a performance of a work on phonograms or videograms.

c) making translations;

Personal use (art. 19 para. 1 let. a) and use for educational purposes (art. 19 para. 1 let. b CA) allow the making of translations.

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

The provisions of the Swiss CA, including those regulating the limitations of copyright (art. 19 et seqq. CA), are technology-neutral. Therefore, making available copies for educational purposes does include the right to make them available via online-facilities (e.g. intranet in a school or university, as long as access to the documents is limited to the teacher and his class) and for distance education purposes as long as access is restricted to teachers and students within the course program.

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

There is no (general) limitation benefiting research organisations beyond the exemption for reproductions and distribution for internal information and documentation purposes (art. 19 para. 1 let. c CA). For example, the exchange of copies in the course of collaboration with an external science institute is not privileged.

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

Art. 24c CA permits the making available of copyrighted works in a form accessible to people with a disability (e.g. conversion of written text in Braille letters or into an audio book) and distribution of works in such format to persons with disabilities, provided however, that distribution is strictly non-profit orientated. A levy to the CRMO is due except for single copies.

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?

The exceptions or limitations provided in art. 19 para. 1 let. b CA apply to all educational institutions, regardless whether public or private, for profit or not-for-profit. The exceptions or limitations provided in art. 19 para. 1 let. c CA benefit all institutions, including research institutions, regardless whether public or private, for profit or non-profit. However, public (non-profit) entities may benefit from lower tariffs.

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.

Subject to the educational purposes there are no further conditions as to the type or scope of the activities. With respect to persons, according to art. 19 para. 1 CA only teachers and students may enjoy such privileges. Furthermore, any exceptions and limitations are subject to art. 19 para. 3 CA. For instance, the recording or representation of a teacher's and student's performance beyond personal use is not permitted (art. 19 para. 3 let. d CA). With respect to archives: Only reproduction for

preservation purposes is permitted according to art. 24 para. 1. In addition, institutions may use reproductions only for “internal information and documentation” according to art. 19 para. 1 let. c CA.

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

Any copying, including copies made for school purposes (art. 19 para. 1 let. b) and for enterprises or institutions limited to internal information and documentation purposes (art. 19 para. 1 let. c) and copies created with the involvement of a third person (art. 19 para. 2 CA) must be made from a legally obtained and lawfully created copy. In a recent federal court decision re ETH documentary services from November 2014 the court has confirmed the principle that the copyrighted work has to be made from a legally obtained and lawfully created copy. However, these exceptions and limitations do not apply for computer programs (art. 19 para. 4 CA).

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?

Art. 19 para. 1 let. b CA for educational purposes and let. c CA for internal information and documentation purposes, both subject to limitations according to art. 19 para. 3 let. a–d CA. Exceptions and limitations are furthermore recognized by the courts in Switzerland. All exemptions or limitations with respect to the copyright protection for libraries and archives and including library search institutions are exclusively provided for in the statutory law, the Swiss copyright act e.g. (in particular article 19, 22 a) case law created by the courts does only serve the lawful interpretation of the statutory law, but does not create itself any exemptions or limitations.

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

As member state of the Berne Convention, the TRIPS, the WCT and the WPPT, which all provide for the Three-Step Test, Switzerland recognizes the Three-Step Test and applies it in its legislation. Furthermore, the Swiss courts apply it for the interpretation of statutory provisions, the Three-Step Test, if applicable.

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).

Personal use by the individual or within a circle of persons closely connected to each other is permitted without any formal requirements or obligation to pay a remuneration. Virtually all other forms of permitted use are subject to a levy to a CRMO (see question 12), but no other formalities or procedures have to be followed.

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?

The reproduction and use of works for educational purposes (art. 19 para. 1 let. b CA) as well as the reproduction and use of works for internal information and documentation purposes (art. 19 para. 1 let. c CA) is subject to the obligation to pay a levy to a CRMO (art. 20 para. 2 CA). Use for educational purposes or within an institution (art. 19 para. 1 let. b and c CA) and copies by a third person or using the devices of a third person (art. 19 para. 2 CA) trigger the obligation to pay a levy to a CRMO. The same is true with regard to broadcasting organizations re-broadcasting productions stored in their archives and making them available to the public (art. 22a CA), the use of orphan works contained in publicly accessible archives or archives of broadcasting organizations (art. 22b CA) or the making and storage of an archive copy of a work in an archive not accessible to the public (art. 24 para. 1 CA), or

libraries and archives accessible to the public creating copies necessary for the safeguarding and conservation of their collections (art. 24 para. 1bis CA). Claims for such remuneration may only be asserted by authorized CRMOs. CRMOs are private entities licensed by the Swiss Federal Institute of Intellectual Property who can assert specific rights under the Copyright Act for the benefit of the rightholders.

The amount of remuneration is set forth in tariffs edited by CRMOs. Such tariffs are negotiated between CRMOs and organizations representing users and must eventually be approved by a government agency, the Federal Copyright Arbitration Commission. The amount of remuneration depends on the volume of use (e.g. number of copies made) and the person of the user. That is to say, in most tariffs, the same use will trigger different amounts of remuneration depending on whether the user is (by way of example) a public administration, a library, a school or a services company. Libraries that are open to the general public (irrespective of whether they are privately or publicly held) must generally pay less than for-profit service companies for the same use.

The user (e.g. library or entity that runs the library) is often, but not in any case, liable to make these payments. Payments must be made exclusively to the relevant CRMO, which, in turn, distributes the remuneration to the individual authors. CRMOs have an exclusive right to claim such payments; as a result, payments cannot be made directly to the rightholders.

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

The EU Orphan Works Directive (2012/28/EC) is not applicable in Switzerland. Under Swiss copyright law (art. 22b para. 1 let. b CA), some specific uses of certain types of orphan works do not amount to copyright infringement, provided that the use has been licensed by a CRMO. However, the scope of this provision is very narrow and is only applicable if all of the following conditions are met:

- Art. 22b CA is only applicable to “phonograms or audiovisual fixations”.
- The phonograms or audiovisual fixations are either in publicly accessible archives or in archives of broadcasting organizations.
- The rightholders are unknown or impossible to locate. The law does not define any minimal standards of a diligent search.
- The phonograms or audiovisual fixations were produced or reproduced in Switzerland at least ten years prior to the intended use.

If all these conditions are met, the prospective user must pay the remuneration provided for in the applicable tariffs, what implies the implicit authorization to use the orphan works from the relevant CRMO.

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

This issue has not been clearly settled in Switzerland. On one hand, Swiss law does not provide specific rules for copyright law contracts (contrats de droit d’auteur; Urhebervertragsrecht) and Swiss CA does not specify if the exceptions and limitations (art. 19–28 CA) are mandatory or may be overruled by contract. Consequently, the principle of freedom of contract applies to contractual copyright law and should allow for overriding the exception or limitation by contract. On the other hand, the Supreme Court held in its decision ATF 127 III 26 that exceptions and limitations are imperative and that a contractual clause between the Musée d’art et d’histoire de Genève and the collective rights management organization ProLitteris overriding the catalogue exception (art. 26 CA) shall be void. The particular facts of the case (contract between museum and CRMO), however, prohibits any general conclusions.

- Certain authors argue that exceptions or limitations may be overridden by contract, due to the principle of freedom of contract and to the dispositive nature of the exceptions and limitations.
- Other authors advance the view that exceptions and limitations are imperative and may not be overridden by contract. In particular art. 24 CA provides that the archive and backup copies exception “may not be waived by contract”.

Consequently, the nature of exceptions and limitations cannot be answered generally and each provision requires a specific analysis, in particular a balance of interest (private interest of author on one hand and private interest of users or public interest on the other hand). However, the legislator (with new provisions such as art. 39a para. 4 CA) and the jurisprudence (with its decision ATF 127 III 26) have the tendency to consider the exceptions and limitations as imperative and that they may be not overridden by contract.

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? If so, please explain those efforts.

There are several efforts by private organizations to address use by libraries, archives and educational and research institutions. Some of the requirements aren't detailed and stay vague, others are already more concise. The efforts are either based on existing limitations and exceptions to copyright protection or demand the creation of new exceptions and limitations. Hereinafter a few examples of such efforts and requirements:

- A couple of organizations ask to extend the limitations and exceptions to copyright protection explicitly in favour of scientific libraries (vague requirement).
- Also required is the permission to digitize and for the online publishing of works for so called “cultural memory institutions” like libraries, archives, museums etc. and – related to that – the creation of exceptions and limitations for collection and inventory catalogues held by memory institutions in the online domain. Libraries and museums for instance shall thereby get the possibility to digitize short parts of a work to include those parts into a catalogue.
- One effort is also to broaden art. 26 CA to libraries and other “cultural memory institutions”.
- There are also efforts made to broaden art. 22b CA. The regulation of the use of orphan works shall not only apply to phonograms or videograms, but also to other categories of works such as pictures and texts.
- Some organizations ask to delete the restriction to copy music notes (art. 19 para. 3 let. c CA).

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? If yes, in relation to what activities? If no, why not?

There should be general limitations allowing to make and use electronic copies of works for (1) storage of copyrighted works by libraries or archives for securing of works, (2) use of abstracts and excerpts of works in digital catalogues, (3) field research, and in general for accessing on library or archive terminals only (including the possibility to print or copy small parts or thumbnails of the work but not the whole work), but without increasing the number of copies accessible at one moment in time and (4) for making and sending copies of parts of commercially available work copies irrespective of whether the same part is otherwise independently commercially available.

17. Should there be any exceptions or limitations to copyright protection for education and research institutions? If yes, in relation to what activities? If no, why not?

For the purpose of education, there should be a copyright which permits any use of copyrighted works (following art. 19 para. 1 let. b CA) for educational purposes, including continuing education and online education (intranet), by any institution devoted to education, also private institutions, their teachers and students. Research institutions should be allowed to copy entire works for making them available within the research institution in a searchable format for research purposes, but not for making additional copies in whatever format. Research institutions should be defined according to functional criteria, not legal form.

18. Is the Three-Step Test a useful test for determining any exceptions or limitations to copyright protection? Why/why not?

The Three-Step Test is valuable as an internationally accepted standard for determining limitations of copyright. It is useful for the legislator in evaluating existing and introducing new exceptions and limitations of copyright law, and for courts and CRMOs in interpreting existing statutory limitations.

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

As the limitations are regularly the result of a weighted and conscious decision of the legislator in order to find a fair balance between two or more constitutional rights, it should generally not be possible to override copyright limitations by way of contract.

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

Remuneration should in general be payable, except in the case of copies for the purpose of securing works and for strictly private use. This follows also from the Three-Step Test.

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 existing exceptions should be broadened to allow more than just one copy for safety purposes in article 24 para. 1, i.e. multiple backup copies should be allowed.
- Libraries and archives: Introducing a new limitation allowing libraries the use of copyrighted works (abstracts, excerpts) for the purpose of establishing a library catalogue. Introducing a limitation to make available searchable electronic copies for use on library terminals.
- Educational and research institutions: The limitation as provided in article 19 para. 1 let. b CA shall be expanded to cover the needs of all types of education institutions. With regard to research institutions, the exception in article 19 para. 1 let. c CA should be expanded to copies for field research purposes and interorganizational research (commercial and non-profit research).

III. Proposals for harmonization

22. Is harmonization in this area desirable? 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.

International harmonization is desirable. International harmonization with respect to exceptions and limitations to copyright protection for libraries, archives, and for research and education purposes is desirable to facilitate international exchange and to create a levelled playing field for rightholders and users.

Where warranted by the Three-Step Test, such exceptions and limitations should be complemented by a right to remuneration.

23. If your answer to question 16. or 17. is no, should this be explicitly set out in any international treaty/convention?

Not applicable.

24. If yes to question 16.:

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

The exceptions and limitations shall apply to all libraries, archives and institutions, regardless whether public or private, for profit or not for profit. Publicly accessible libraries and archives shall benefit from lower rates. See answer to question 6. above.

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

See answer to question 16. above.

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

The copies should not be made from a copy that was obviously not legally made or made available. Otherwise see answer to question 16. above. For remuneration, see answer to question 20. above.

25. If yes to question 17.:

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

b) *See answer to question 17. above.*

c) *to what activities should these exceptions or limitations apply;*

d) *See answer to question 17.. above.*

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

The copies should not be made from a copy that was obviously not legally made or made available. Otherwise see answer to question 16. above. For remuneration, see answer to question 20 above.

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 applicable provisions of the copyright statute define the criteria which would have to be met to use the exceptions or limitations. Otherwise, anyone benefitting from such exceptions and limitations may benefit from them automatically without having to undertake any procedures. Libraries, archives and institutions shall inform CRMOs of such use.

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?

The remuneration should be determined in negotiations between representatives of the rightholders and of the users and periodically re-negotiated. Remuneration should depend on the specific use, e.g., a higher remuneration may be due for commercial use than for non-commercial use. The archive, library or institution should be liable for the payments and may then shift the cost to the end-users (e.g., borrowers in libraries, students, renters of work copies, etc.). Payments should be made to CRMOs set up by the authors or the rightholders directly, making sure that the authors or interpreters receive an adequate share.

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

- The Working Group would welcome broad and internationally harmonized rules that enable certain uses of orphan works by paying a remuneration either to collecting societies (if such societies exist in the relevant jurisdiction) or into a trust fund set up for the benefit of the rightholders. In the view of the Working Group, Rules governing the permitted use of orphan works should have the following features:
- The rules should apply to all kinds of works equally (graphic, text, audiovisual, etc.).

- The rules should apply to all kinds of users equally (and e.g., not only privilege broadcasting societies or the like).
- The rules should be harmonized, in order to enable cross-border use of orphan works.
- The rules should set out the minimal degree of diligence required in searching for the author before the work can be deemed “orphan”.
- The permitted uses should not include the infringement of the author’s moral rights (e.g. modifications of the work or use in a context which harm the author’s personality rights).

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

See answer to question 19 above.

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 made by private organizations should be taken into account when creating new exceptions and limitations to copyright protection. The legislative process is complex and divided in several stages. In Switzerland the whole legislative process results from a collaboration between government and parliament with a participation of non-state stakeholders. It’s therefore not an exclusive task of parliament and government to establish law. The legal matters requiring regulatory action are furthermore highly specialised. Private organisations often have this specialized practical knowledge at their disposal, but pursue interests of specific groups, that may conflict with the interests of other groups. The requests and the proposals of private organisations mirror therefore the current copyright trends in society. Consequently taking into account the efforts of private organisations in the legislative process makes it possible to include a wide spectrum of specialized knowledge and interests, but does not relieve the legislator from the task of balancing these interests in finding a just equilibrium. Accordingly, the debate surrounding the current revision of the CA reflects mostly the requests of private organizations and associations representing different interests.

Summary

Swiss law does provide exceptions and limitations to copyright protection for libraries, archives and for educational and research purposes. Unless a copy is made for the personal use first by the user himself, Swiss law does only provide for very limited instances (e.g. for the preservation of the work) the copying of the complete work or a substantive part thereof if the work to be copied is still available in the market. The exceptions and limitations provided do benefit libraries, archives and other institutions, including research institutions, apply to all such institutions regardless whether they are public or private, aimed for profit or non-profit. Harmonisation on an international level in this area is desirable. The current law applicable in Switzerland should be reviewed with respect to broader access to orphan works, allowance of multiple backup copies and a revised provision regarding the right for libraries and archives to make available copies of copyrighted works to the users without having to undergo a test, whether the relevant work (e.g. an article) constitutes the entire work or constitutes just an excerpt from a copyrighted work (e.g. a magazine).

Zusammenfassung

Das Schweizer Recht sieht Ausnahmen und Beschränkungen im Urheberrechtsschutz für Bibliotheken, Archive sowie für erziehungs- und wissenschaftliche Zwecke vor. Soweit jedoch eine Kopie nicht für den Eigengebrauch des Nutzers vorgesehen ist, erlaubt das Schweizer Recht nur in wenigen, zusätzlichen Ausnahmefällen die Vervielfältigung des vollständigen Werkes oder eines erheblichen Teils davon, solange das Werk noch im Handel erhältlich ist. Die Beschränkungen und Ausnahmen zum Urheberrechtsschutz begünstigen Bibliotheken, Archive und andere Einrichtungen, einschliesslich Forschungseinrichtungen, unabhängig davon, ob diese öffentlich oder privat betrieben werden, profitorientiert arbeiten oder gemeinnützig sind. Nach Auffassung der Schweizer Gruppe ist die Harmonisierung in dem genannten Bereich wünschenswert. Die gegenwärtige Rechtslage in der

Schweiz sollte in Bezug auf einen leichteren Zugang zu verwaisten Werken, die Möglichkeit mehrfacher Kopien für Sicherungszwecke sowie bezüglich einer Überarbeitung der Berechtigung für Bibliotheken und Archive, für ihre Nutzer Kopien von urheberrechtlich geschützten Inhalten anzufertigen, überprüft werden. Insbesondere sollten diese Institutionen von der Verpflichtung befreit werden, vorgängig festzustellen, ob das zu kopierende Werk (zum Beispiel ein Fachartikel) zuvor separat publiziert worden ist oder nur einen Teil eines urheberrechtlichen Gesamtwerkes (zum Beispiel einer Fachzeitschrift) darstellt.

Résumé

Le droit suisse prévoit des exceptions et des limitations au droit d'auteur pour les bibliothèques, archives et à des fins pédagogiques et scientifiques. Si une copie n'est pas destinée à l'usage personnel de l'utilisateur, le droit suisse ne permet que dans peu de cas exceptionnels la copie de l'intégralité ou de l'essentiel d'une œuvre qui est encore disponible sur le marché. Les limitations et les exceptions au droit d'auteur privilégient les bibliothèques, archives et d'autres institutions, y compris des institutions de recherche, qu'elles soient en mains publiques ou privées, à but lucratif ou d'utilité publique. De l'avis du Groupe suisse, une harmonisation dans ce domaine serait souhaitable. Le droit suisse en vigueur devrait être révisé afin de faciliter l'accès aux œuvres orphelines et de permettre la confection de plusieurs copies à des fins de conservation. En outre, le droit pour les bibliothèques et les archives de confectionner des copies de contenus protégés par le droit d'auteur pour leurs usagers devrait être revu. En particulier, ces institutions devraient être libérées de l'obligation de s'assurer si l'œuvre à copier (par exemple un article) a déjà été publiée de manière individuelle ou si elle fait seulement partie d'une œuvre collective au sens du droit d'auteur (par exemple une revue ou un journal).