

To:

The Minister of Education and Culture, María Julia Muñoz;

The President of the Parliamentary Education and Culture Commission, Mario García;

The Director of the Copyright Council Dr Silvia Pérez Díaz

Ref: Uruguay — Draft law ‘Limitations and exceptions to copyright law and related rights’

Dear Minister / Dear Sir

The International Publishers Association (IPA) is the international federation of national publishers associations, representing all aspects of book and journal publishing from around the world. Established in 1896, our more than 60 members are publishers associations representing book and journal, paper and digital publishers from over 50 countries. We are an industry association, but with an important human rights mandate: IPA’s mission is to promote and protect publishing and freedom to publish, and to raise awareness for publishing as a force for economic, cultural and political development.

We are interested in the recently announced project on legislation to introduce additional exceptions and limitations into the copyright law, proposed by la Federación de Estudiantes Universitarios del Uruguay (FEUU) and are interested in participating in the deliberations. On behalf of publishers, especially those that serve educational and academic institutions, we wish to express our concern that overbroad limitations and exceptions will detrimentally impact on the market for educational and academic works, the end result of which would be to discourage both such works being written and produced and investment in innovation in the uses and accessibility of such works in Uruguay.

Article 27.2 of the Universal Declaration of Human Rights states that *‘Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author’*¹. Coupled with this protection of the rights in authors’ creations, the market for academic and educational works is a legitimate market for publishers and other suppliers from industry.

It is for these reasons that exceptions to the exclusive rights conferred by copyright should remain exceptions, and not become a rule. This principle is enunciated by the three-step test of the Berne Convention in Article 9.2, *‘It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.’*² and restated in the TRIPS Agreement On Trade-Related Aspects Of Intellectual Property Rights, Article 13, *‘Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.’*³ Uruguay is a party to both treaties.

¹ <http://www.un.org/es/universal-declaration-human-rights/index.html>

² http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283700#P149_28191

³ https://www.wto.org/spanish/tratop_s/trips_s/t_agm3_s.htm#1

Publishers are at the cutting edge of intelligent innovation, embracing the opportunities and disruption that digital has brought. Like the authors they serve, publishers want their works to be universally accessible, globally available and readable across all platforms.

Publishers invest considerable sums of money in both technology and employment of people who have the necessary skills, and therefore add considerable value to the initial creative input and its dissemination. Publishers add value to the finished article containing the creative work, and in the education sector especially it is their creativity that drives most textbooks.⁴ In addition, they bear the market-related risks attached to publishing, such as the misjudging the size of the readership for a work.

Exceptions for educational purposes, which would allow uses of copyright works which would be unauthorised and unremunerated, need to be very clearly limited in order not to interfere with the market for educational and academic works, for instance by substituting purchases. We note that the proposed Articles 45(14) for copies from libraries and 45(15) for private copies will precisely have the effect of substituting purchases or other remunerated uses of copyright works. The IPA would therefore object to such wide-ranging exceptions and question whether passing them into law would be in compliance with Uruguay's commitment under the Berne Convention and TRIPS.

Whereas the new Articles 45(14) and (15) are the ones of greatest concern to publishers for the reasons set out above, we also have some concerns with a number of the other exceptions being proposed. We would welcome the opportunity to deal with all of the proposed exceptions in greater detail at the earliest opportunity.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'R. Charkin', with a long horizontal flourish extending to the right.

Richard Charkin

President, IPA

cc: Cámara Uruguaya del Libro

⁴ The IPA is ready to provide examples of innovative educational solutions made by publishers and other service providers in the industry internationally.