

 Respondent 101356

[print]

Single response: Questionnaire on Limitations and Exceptions
Respondent id: 101356
Start date: 4/28/10 9:40 AM
Completed date: -
Response language: English [en]

1. The answers to this questionnaire have been provided on behalf of:

Country	Switzerland
Name of contact person	Emanuel Meyer
Email address:	emanuel.meyer@ipi.ch
Telephone Number:	4131377777

2. Does your national statute provide for a limited number of specific statutory limitations and exceptions, an open system of limitations and exceptions (such as fair use or fair dealing) or a mix of both systems?

1. Specific

3. Does your national statute include the three-step test as a general provision on copyright limitations and exceptions?

2. No

4. Does your national statute provide limitations and exceptions as free uses (there is no need for authorization or for payment of remuneration)?

1. Yes

The following limitations are free uses: - decryption of computerprogramms to ensure interoperability with other programs - archive copies - ephemeral reproductions, that are part of a technical process and have no independent economic value - quotations - twodimensional reproductions of works on public grounds - news reporting The following uses are free with the exception of reproductions (blank media levies and levies on photocopying): - private use - use for educational purposes

5. Does your national statute include limitations and exceptions based on statutory licenses (direct permission granted by the law against remuneration)?

1. Yes

remuneration (blank media levies, levies on photocopying, levies on intranet uses)in the following cases: - private use - use for educational purposes - information and documentation

6. Does your national statute include limitations and exceptions based on compulsory licenses (obligation of the rights owners under the law to grant licenses against remuneration)?

1. Yes

7. Does your national statute include specific limitations or exceptions permitting the use of copyrighted works for private or personal purposes, without previous authorization of the copyright or related rights owner?

1. Yes

Art. 19 Private use 1 Published works may be used for private purposes. Private use shall mean: a. any personal use of a work or use within a group of persons closely connected to each other, such as relatives or friends; b. any use of a work by a teacher for teaching in class; c. the reproduction of copies of a work in enterprises, public administrations, institutes, commissions and similar bodies for internal information or documentation.

8. Does your national statute provide remuneration for private or personal uses (for instance, copyright levies)?

1. Yes

- blank media levies - levies on photocopying - levies on intranet uses - levies on intranet uses

9. Does your national statute allow parties to agree in licensing agreements or other binding contracts not to engage in conduct that would otherwise be permitted under the national statute's exceptions and limitations?

2. No

10. Does your national statute subject the exercise of limitations and exceptions to the condition of a lawful or authorized source requirement (for instance, that copies are made from a lawful source)?

2. No

11. Does your national statute protect technological measures?

1. Yes

12. Does your national statute protect rights management information?

1. Yes

13. Does your national statute provide specific mechanisms to ensure that limitations or exceptions continue to apply despite the existence of any technological measures implemented by the copyright or related rights owners?

1. Yes

Art. 39b Monitoring office for technological measures 1 The Federal Council shall establish an advisory office which shall: a. monitor and report on the effects of the technological measures in accordance with Article 39a paragraph 2 on the exceptions and limitations regulated under Articles 19 - 28; b. act as liaison between user and consumer groups and the users of technological measures, and encourage partnership solutions. 2 The Federal Council shall regulate the particulars of the tasks and organisation of the advisory office. If the public interests protected by the restrictions and limitations of copyright so require, it may provide measures for the advisory office. Moreover the ban on circumvention cannot be enforced against those persons who undertake the circumvention exclusively for legally permitted uses.

14. If recourse to legal proceedings is needed, what is the average time to ensure the exercise of limitations

and exceptions if some type of technological measures of protection is applied by copyright and related rights owners?

15. Does your national statute provide that certain limitations or exceptions prevail over the prohibitions on the act of circumventing technological protection measures or rights management information?

1. Yes

The ban on circumvention cannot be enforced against those persons who undertake the circumvention exclusively for legally permitted uses.

16. If recourse to legal proceedings is needed regarding limitations and exceptions, what is the average time needed to resolve a dispute regarding the prohibition of circumventing the technological measures of protection and digital rights management?

17. Does your national statute include limitations and exceptions especially for the use of computer programs?

1. Yes

- decoding to ensure interoperability - making of a single archive copy - lawful owner may run the program

18. Does your national statute provide limitations and exceptions for the temporary use of digital works?

1. Yes

Art. 24a Ephemeral copies The making of ephemeral copies of a work is permitted if: a. they are fleeting or accompanying; b. they represent an integral and significant part of a technical process; c. they serve exclusively for broadcasting over a network between third parties by a provider or for a legitimate use; and d. they have no independent economic significance.

19. Does your national statute include limitations and exceptions, or statutory safe harbors (statutory safe harbor refers to any statutory enactment which provides that a person will not be liable upon taking certain measures), for the activities of the service providers of digital transmission of works?

1. Yes

Art. 24a Ephemeral copies The making of ephemeral copies of a work is permitted if: a. they are fleeting or accompanying; b. they represent an integral and significant part of a technical process; c. they serve exclusively for broadcasting over a network between third parties by a provider or for a legitimate use; and d. they have no independent economic significance.

20. Does your national statute provide that certain limitations or exceptions prevail over the prohibition on the acts of trafficking with devices or providing services that allow the circumvention of technological protection measures or rights management information?

2. No

21. If recourse to legal proceedings is needed regarding exceptions and limitations, what is the average time needed to resolve a dispute regarding the prohibition of dealing with devices or providing services to circumvent the technological protection measures and rights management information?

22. If your national statute is included in the analysis of specific exceptions contained in any of the studies on limitations and exceptions for educational or research activities (documents SCCR/19/4, SCCR/19/5, SCCR/19/6, SCCR/19/7, SCCR/19/8)¹, do you consider that the analysis is correct?

1. Yes

23. Does your national statute provide specific limitations and exceptions for educational purposes?

1. Yes

Published works may be used for private purposes. Private use shall mean [...] any use of a work by a teacher for teaching in class

24. In case of affirmative answer to the previous question, what kind of activities are those limitations and exceptions related to?

-

25. Does your national statute provide specific limitations and exceptions allowing performances for educational purposes, such as performances by teachers in classrooms or school concerts?

1. Yes

Published works may be used for private purposes. Private use shall mean [...] any use of a work by a teacher for teaching in class

26. Does your national statute provide remuneration against the exercise of the specific limitations and exceptions that permit performances for educational purposes?

2. No

27. Does your national statute provide for any specific requirement regarding the qualitative or quantitative limits and nature of the works or objects of related rights covered by the specific limitations and exceptions allowing performances for educational purposes?

1. Yes

Not permitted are: a. the complete or nearly complete reproduction of copies obtainable commercially; b. the reproduction of works of fine art; c. the reproduction of graphic representations of musical works; d. the recording of the presentations, performances or demonstrations of a work on phonograms, videograms or data carriers.

28. Who is eligible to engage in activity covered by the specific limitations and exceptions allowing performances for educational purposes? (more than one option can be selected)

1. Teachers
2. Students

29. In case educational institutions are eligible to engage in activities covered by specific limitations and exceptions allowing performances for educational purposes, does your national statute establish conditions regarding their nature? (more than one option can be selected)

-

30. Does your national statute provide targeted limitations and exceptions allowing reproduction for educational purposes?

2. No

31. What kind of reproduction is covered by those limitations and exceptions? (more than one option can be selected)

-

32. Do the limitations or exceptions allowing reproduction include the preparation of course packs, compilations or anthologies?

1. Yes

general permission. As long as the use does not cover a. the complete or nearly complete reproduction of copies obtainable commercially; b. the reproduction of works of fine art; c. the reproduction of graphic representations of musical works; d. the recording of the presentations, performances or demonstrations of a work on phonograms, videograms or data carriers, any use is permitted

33. Does your national statute provide remuneration for the exercise of the specific limitations and exceptions allowing reproduction for educational purposes?

1. Yes

photocopy levies, blank media levies, levies on intranet uses

34. Does your national statute provide for any specific requirement regarding the qualitative or quantitative limits and nature of the works or objects of related rights covered by the specific limitations and exceptions allowing reproduction for educational purposes?

1. Yes

Not permitted are: a. the complete or nearly complete reproduction of copies obtainable commercially; b. the reproduction of works of fine art; c. the reproduction of graphic representations of musical works; d. the recording of the presentations, performances or demonstrations of a work on phonograms, videograms or data carriers.

35. Who is eligible to engage in activities covered by the specific limitations and exceptions allowing reproduction for educational purposes? (more than one option can be selected)

1. Teachers
2. Students

36. In case educational institutions are eligible to engage in activities covered by the enumerated limitations and exceptions allowing reproduction for educational purposes, does your national statute establish conditions regarding their nature? (more than one option can be selected)

-

37. Does your national statute subject the limitations and exceptions on reproduction for educational purposes to the use of technological measures?

2. No

38. Does your national statute provide specific limitations and exceptions allowing translations for educational purposes?

2. No

39. Does your national statute provide remuneration against the exercise of specific limitations and exceptions allowing translations for educational purposes?

2. No

40. Does your national statute provide for any specific requirement regarding the extent and nature of the works or objects of related rights covered by the enumerated limitations and exceptions allowing translations for educational purposes?

2. No

41. Who is eligible to engage in activities covered by the specific limitations and exceptions allowing translations for educational purposes? (more than one option can be selected)

-

42. In case educational institutions are eligible to engage in activities covered by any of the enumerated limitations and exceptions allowing translations for educational purposes, does your national statute establish conditions regarding their nature? (more than one option can be selected)

-

43. Does your national statute provide specific limitations and exceptions for making available in digital networks for educational purposes?

2. No

44. Do the specific limitations or exceptions for making available in digital networks include coursepacks, compilations or anthologies?

-

45. Does your national statute provide remuneration against the exercise of the specific limitations and exceptions for making available in digital networks for educational purposes?

-

46. Does your national statute include any specific requirement regarding the qualitative or quantitative limits extent and nature of the works or objects of related rights covered by the specific limitations and exceptions for making available in digital networks for educational purposes?

-

47. Who is eligible to engage in activities covered by the specific limitations and exceptions for making available in digital networks for educational purposes? (more than one option can be selected)

-

48. In case educational institutions are eligible to engage in activities covered by the specific limitations and exceptions for making available in digital networks for educational purposes, does your national statute establish conditions regarding their nature? (more than one option can be selected)

-

49. Does your national statute subject the limitations and exceptions on making available in digital networks for educational purposes to the use of technological measures?

2. No

50. Does your national statute include any other specific limitations or exceptions related to educational purposes that have not been covered above?

2. No

51. If not, what other limitations and exceptions for educational purposes would be necessary?

52. Are there impediments to the use of limitations and exceptions for educational purposes (international constraints, capacity building, lack of information about the limitations and exceptions, etc.)?

2. No

53. [If your national statute is included in the analysis of specific exceptions contained in the Annex of the WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives \(document SCCR/17/2\)³](#), do you consider that the analysis is correct?

3. The national statute was not included in the analysis

54. Does your national statute contain any limitations or exceptions that permit copying by libraries and/or archives for purposes of preservation or replacement?

1. Yes

Art. 24 Archive and backup copies 1 A copy may be made of a work in order to preserve it. The original or a copy must be stored in an archive not accessible to the general public and be marked as an archive copy. 1bis Public libraries, educational institutions, museums and archives may produce the copies of works required to secure and preserve their holdings in so far as these copies are not made for financial or commercial gain. 2 Any person entitled to use a computer program may make a backup copy thereof; this right may not be waived by contract.

55. What types of works may be reproduced for these purposes?

Any

56. Does your national statute establish qualitative or quantitative limits for these purposes?

2. No

57. What other conditions must be met in order for such reproduction to be authorized?

- the original or a copy must be stored in an archive not accessible to the general public and be marked as an archive copy - required to secure and preserve their holdings - not made for financial or commercial gain.

58. Does your national statute contain any limitations or exceptions that permit copying by libraries or archives for patron use?

1. Yes

Persons entitled to make copies of a work for use for private purposes may also have them reproduced by other persons, libraries, other public institutions and businesses that make copying devices available to their users shall also be deemed other persons within the meaning of this paragraph.

59. What types of works may be reproduced for these purposes?

Any, except: - the complete or nearly complete reproduction of copies obtainable commercially; - the reproduction of works of fine art; - the reproduction of graphic representations of musical works

60. Does your national statute include specific provisions regarding orphan works?

1. Yes

The rights required to exploit phonograms or videograms may only be exercised through the authorised collecting societies if: a. exploitation relates to the holdings of publicly accessible archives or broadcaster archives; b. the holders of the rights are unknown or cannot be found; and c. the phonogram or videogram to be exploited was produced or reproduced in Switzerland at least ten years previously. 2 The users shall be required to report the phonogram or videogram containing the abandoned works with the collecting societies.

61. Does your country have plans to include or modify the specific exceptions and limitations related to the activities of libraries and archives?

2. No

62. If not, what other limitations and exceptions for libraries and archives would be necessary?

63. Are there impediments to the use of limitations and exceptions related to the activities of libraries and archives (international constraints, capacity building, lack of information about the limitations and exceptions, etc.)?

2. No

64. Does your national statute establish qualitative or quantitative limits for these purposes?

2. No

65. What other conditions must be met in order for such reproduction to be authorized?

- the original or a copy must be stored in an archive not accessible to the general public and be marked as an archive copy; - the copies are required to secure and preserve their holdings; - the copies are not made for financial or commercial gain.

66. Does your national statute contain any limitations or exceptions that permit libraries to reproduce and/or distribute works (either reprographic and/or digital) for the purposes of interlibrary lending?

2. No

No specific limitation but the limitation re reproduction in libraries does not exclude interlibrary activities.

67. Does your national statute contain any limitations or exceptions that permit any other organizations (such as museums or educational institutions) to reproduce or distribute works for archival, preservation, or replacement purposes?

1. Yes

Public libraries, educational institutions, museums and archives may produce the copies of works required to secure and preserve their holdings in so far as these copies are not made for financial or commercial gain.

68. If your national statute is included in the analysis of specific exceptions contained in Annexes 2 and 3 of the Study on Limitations and Exceptions for the Visually Impaired (document SCCR/15/7)⁴, do you consider that the analysis is correct?

2. No

69. Does your national statute contain any limitations or exceptions that permit reproduction, distribution, and/or other form of utilization of works for persons with print disabilities⁵ or visually impaired persons, including the reading impaired?

1. Yes

Art. 24c Use of works by people with disabilities 1 A work may be reproduced in a form which is accessible for people with disabilities insofar as the work cannot be perceived, or can only be perceived with difficulty, in its already published form. 2 Such copies of the work may only be produced and placed on the market for non-commercial purposes, and only for the use of people with disabilities. 3 The author shall have the right to remuneration for the reproduction and distribution of his work in a form accessible to people with disabilities other than in the case of the production of individual copies of the work. 4 Claims for remuneration may only be asserted through the authorised collecting societies.

70. Does your national statute specify the formats (for instance, Braille or large print) that fall under this exception?

2. No

71. What other conditions must be met in order for such uses to be authorized?

- the work cannot be perceived, or can only be perceived with difficulty, in its already published form; - copies of the work may only be produced and placed on the market for non-commercial purposes, and only for the use of people with disabilities; - the author shall have the right to remuneration for the reproduction and distribution of his work in a form accessible to people with disabilities other than in the case of the

production of individual copies of the work.

72. Does your national statute contain any limitations or exceptions that permit the importation and/or exportation of material accessible to persons with print disabilities or visually impaired persons, including the reading impaired?

2. No

73. Does your national statute contain any limitations or exceptions that permit reproduction, distribution, and/or other form of utilization of works for deaf persons?

1. Yes

Limitation is not limited to people with print disabilities

74. Does your national statute specify the formats that fall under this exception?

2. No

75. What other conditions must be met in order for such uses to be authorized?

1. Yes

- the work cannot be perceived, or can only be perceived with difficulty, in its already published form; - copies of the work may only be produced and placed on the market for non-commercial purposes, and only for the use of people with disabilities; - the author shall have the right to remuneration for the reproduction and distribution of his work in a form accessible to people with disabilities other than in the case of the production of individual copies of the work.

76. Does your national statute contain any limitations or exceptions that permit the importation and/or exportation of material accessible to the deaf persons?

2. No

77. Does your national statute contain any limitations or exceptions that permit reproduction, distribution, and/or other form of utilization of works for persons with any other disabilities?

1. Yes

Limitation is not limited to people with print disabilities

78. Does your national statute specify the formats that fall under this exception?

2. No

79. What other conditions must be met in order for such uses to be authorized?

- the work cannot be perceived, or can only be perceived with difficulty, in its already published form; - copies of the work may only be produced and placed on the market for non-commercial purposes, and only for the use of people with disabilities; - the author shall have the right to remuneration for the reproduction and distribution of his work in a form accessible to people with disabilities other than in the case of the production of individual copies of the work.

80. Does your national statute contain any limitations or exceptions that permit the importation and/or exportation of material accessible to persons with any other disabilities?

2. No

81. Does your country have plans to include or modify the specific exceptions related to persons with print disabilities, visually impaired persons or other persons with disabilities?

2. No

82. If not, what other the limitations and exceptions for persons with disabilities would be required?

83. Are there impediments to the use of the limitations and exceptions for persons with disabilities (international constraints, capacity building, lack of information about the limitations and exceptions, etc.)?

2. No

84. Does your national statute provide limitations and exceptions for religious, social and cultural purposes?

1. Yes

85. In case of affirmative answer to the previous question, what kind of activities are those limitations and exceptions related to?

-

86. Does your national statute subject the exercise of limitations and exceptions for religious purposes to the condition of the nature of the religious activities?

2. No

87. Does your national statute provide remuneration for the exercise of limitations and exceptions for religious purposes?

-

88. Does your national statute subject the exercise of limitations and exceptions for religious purposes to any specific requirement regarding the extent and nature of the works or objects of related rights?

-

89. Does your national statute subject the exercise of limitations and exceptions for cultural purposes to the condition of the nature of the cultural activities?

2. No

90. Does your national statute provide remuneration for the exercise of limitations and exceptions for cultural purposes?

2. No

91. Does your national statute provide for any specific requirement regarding the extent and nature of the works or objects of related rights covered by the limitations and exceptions for cultural purposes?

1. Yes

the extent of a quotation is justified for such a purpose

92. Does your national statute subject the exercise of limitations and exceptions for social purposes to the condition of the nature of social activities?

1. Yes

Art. 28 Reporting on current events 1 Where necessary for reporting on current events, works perceived in so doing may be recorded, reproduced, presented, broadcast, distributed or otherwise made perceivable. 2 For the purposes of information on current affairs, short extracts from press articles or from radio and television reports may be reproduced, distributed and broadcast or rebroadcast; the extract and the source must be designated. Where the source refers to the name of the author, that name must also be cited.

93. Does your national statute provide remuneration for the exercise of limitations and exceptions for social purposes?

2. No

94. Does your national statute subject the exercise of limitations and exceptions for social purposes to any specific requirement regarding the extent and nature of the works or objects of related rights?

2. No

95. Does your national statute provide any limitations or exceptions for reverse engineering?

1. Yes

Art. 21 Decoding of computer programs 1 Any person who has the right to use a computer program may obtain, either personally or through another person, the necessary information on interfaces with independently developed programs by decoding the program code. 2 The interface information obtained by decoding the program code may only be used for the development, maintenance and use of interactive computer programs insofar as neither the normal exploitation of the program nor the legitimate interests of the owner of the rights are unreasonably prejudiced.

96. Does your national statute impose any kind of liability (direct, indirect, or secondary) according to which a party can be held liable for the copyright infringement of third parties under certain circumstances (such as when that party has the ability to control an infringer's actions or contributes to a third party's infringing actions)?

1. Yes

material contribution to the infringement required

97. With respect to liability that arises from the infringing activities of third parties, does your national statute, for purposes such as to encourage online service providers to cooperate with rightsholders in deterring infringement, provide limitations or exceptions, or statutory safe harbors, to the liability of online service providers in any way?

1. Yes

Art. 24a Ephemeral copies The making of ephemeral copies of a work is permitted if: a. they are fleeting or accompanying; b. they represent an integral and significant part of a technical process; c. they serve exclusively for broadcasting over a network between third parties by a provider or for a legitimate use; and d. they have no independent economic significance.

98. With respect to liability that arises from the infringing activity of a third party, for which of the following activities, if any, does your national statute provide limitations or exceptions, or statutory safe harbors, to the liability of online service providers?

1. Acting as a conduit for infringing material (e.g., transmitting, routing, or supplying connections for material)
2. Caching infringing material

99. What conditions, if any, must be met in order for an online service provider to qualify for the limitation of liability, exception to liability, or statutory safe harbor?

100. Are the following limitations or exceptions included in your national statute? (more than one option can be selected)

1. right of quotation
2. news reporting
3. ephemeral copies
7. non-voluntary license for mechanical reproduction of musical works

101. Does your national statute include limitations and exceptions for any other activities that are not covered in the questionnaire so far?

2. No

102. Has your country signed, or is in the process of negotiating, a Free Trade Agreement (FTA) containing clauses on copyright and related rights exceptions and limitations?

-

103. If so, with which country or group of countries?

104. Please add any further comments and information you deem interesting for this questionnaire.