

 Respondent 101811
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**Single response:** Questionnaire on Limitations and Exceptions  
**Respondent id:** 101811  
**Start date:** 5/7/10 10:52 PM  
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**Response language:** Spanish (Spain) [es\_ES]

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

Country	Colombia
Name of contact person	DIRECCIÓN NACIONAL DE DERECHO DE AUTOR
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**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?**

1. Yes

**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

\_\_\_\_\_  
 Todas las limitaciones y excepciones establecidas en la Decisión Andina 351 de 1993 (art. 22) y en la Ley 23 de 1982 (art. 31 a 44), son de libre utilización sin necesidad de remuneración o autorización.

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

2. No

**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

\_\_\_\_\_  
 - Ley 23 de 1982, artículo 37. - Ley 23 de 1982, artículo 44. - Ley 23 de 1982, artículo 178, literal a.

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

2. No

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)?

1. Yes

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Se presume que el uso de las limitaciones y excepciones debe acerse de ejemplares lícitamente adquiridos, sin embargo expresamente solo lo señala el artículo 22, literal b, de la Decisión Andina 351 de 1993.

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?

2. No

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?

\_\_\_\_\_

El Consejo Superior de la Judicatura ha establecido que estos procesos tiene una duración promedio de 2 años.

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

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El artículo 272 del Código Penal Colombiano establece que es delito violar una medida tecnológica, siempre y cuando se haga para un uso no autorizado. Así mismo, el artículo 271 del Código Penal Colombiano establece que salvo las excepciones señaladas en la ley una utilización de la obra sin autorización puede constituir delito. En este sentido aludir una medida tecnológica para un uso autorizado es aceptable. Expresamente no esta estipulado pero por la redacción de los artículos anteriormente señalados se presume.

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?

\_\_\_\_\_

El Consejo Superior de la Judicatura ha establecido que estos procesos tiene una duración promedio de 2 años.

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

1. Yes

\_\_\_\_\_

- Decisión Andina 351 de 1993, artículo 24. - Decisión Andina 351 de 1993, artículo 27.

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

2. No

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?

2. No

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?

\_\_\_\_\_

El Consejo Superior de la Judicatura ha establecido que estos procesos tiene una duración promedio de 2 años.

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)<sup>1</sup>, 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

\_\_\_\_\_

- Decisión Andina 351 de 1993, artículo 22, literales b y j. - Ley 23 de 1982 artículos 32, 36, 40 y 178 literal c.

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

1. Face-to-face activities

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- Decisión Andina 351 de 1993, artículo 22 literales b y j. - Ley 23 de 1982, artículos 32, 36, 40 y 178 literal c.

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

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- Decisión Andina 351 de 1993, artículo 22 literal j. - Ley 23 de 1982, artículo 164. - Ley 23 de 1982, artículo 178, literal c.

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?

2. No

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
3. Educational institutions

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)

2. Not-for-profit

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

1. Yes

\_\_\_\_\_

- Decisión Andina 351 de 1993, artículo 22 literal b. - Ley 23 de 1982, artículo 32.

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

1. Reprography

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

2. No

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

2. No

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

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- Decisión Andina 351 de 1993, artículo 22, literales a y b. - Ley 23 de 1982, artículo 31 y 178 literal c.

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
3. Educational institutions

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)

2. Not-for-profit

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)

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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)

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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?

2. No

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?

2. No

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?

2. No

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)

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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)

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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?

1. Yes

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)<sup>3</sup>, do you consider that the analysis is correct?

1. Yes

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

\_\_\_\_\_

- Decisión Andina 351 de 1993, artículo 22, literal c. - Ley 23 de 1982, artículo 38.

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

\_\_\_\_\_

Las obras que pertenecen a la colección permanente de las bibliotecas o archivos que se encuentren agotadas en el mercado.

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

1. Yes

\_\_\_\_\_

- Ley 23 de 1982, artículo 38.

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

\_\_\_\_\_

Una sola copia para fines de conservación o de préstamo a otra biblioteca o archivo siempre y cuando dicha obra se encuentre en su colección y se encuentre agotada en el mercado local. No puede tener fines de lucro.

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

2. No

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

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

1. Yes

\_\_\_\_\_

- Ley 23 de 1982, artículos 25 y 60.

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?

\_\_\_\_\_

- En lo relacionado con la ejecución de obras e interpretaciones dentro de las bibliotecas o archivos. - En lo relacionado con el funcionamiento de las bibliotecas o archivos en el entorno digital.

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?

1. Yes

\_\_\_\_\_

- Ley 23 de 1982, artículo 38.

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

\_\_\_\_\_

- Decisión Andina 351 de 1993, artículo 22, literal c. - Ley 23 de 1982, artículo 38.

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?

1. Yes

\_\_\_\_\_

- Decisión Andina 351 de 1993, artículo 22, literal c. - Ley 23 de 1982, artículo 38. Dichos artículos hacen relación a la reproducción más no al préstamo de dichas obras.

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

\_\_\_\_\_

- Decisión Andina 351 de 1993, artículo 22, literal c.

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)<sup>4</sup>, do you consider that the analysis is correct?

3. The national statute was not included in the analysis

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 disabilities<sup>5</sup> or visually impaired persons, including the reading impaired?

2. No

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?

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?

2. No

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?

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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?

2. No

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?

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?

1. Yes

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Actualmente no existe un proyecto de ley que haga relación a esta temática. Sin embargo, si se estan



preparando iniciativas legislativas que pueda regular el tema de limitaciones y excepciones para discapacitados. Además Colombia continua participando activamente en el Comité de la OMPI para el efecto.

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?

2. Cultural Activities

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?

2. No

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?

2. No

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?

1. Yes

\_\_\_\_\_

- Ley 23 de 1982, artículo 36.

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

\_\_\_\_\_

- Ley 23 de 1982, artículo 36.

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

2. No

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?

2. No

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

Expresamente no existen disposiciones que atribuyan responsabilidad civil o penal a terceros por infracciones al derecho de autor. Sin embargo, a través de otras áreas del derecho como la Responsabilidad Civil Extracontractual si se podría considerar que un tercero es responsable por las infracciones al derecho de autor.

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?

2. No

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?

-

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
4. incidental uses

- Decisión Andina 351 de 1993, artículo 22. - Ley 23 de 1982, artículos 31 a 44.

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

1. Yes

- Decisión Andina 351 de 1993, artículo 22, literales d, e, f, g, h, i y k. - Ley 23 de 1982, artículos 33, 34, 35, 36, 39, 40, 41, 42 y 43.

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?

1. Yes

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- Tratado de Libre Comercio ente Colombia y los Estados Unidos de América. - Acuerdo de Asociación entre Colombia y la Unión Europea.

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

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- Con los Estados Unidos de América. - Con los Países miembros de la Comunidad Europea.

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