

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

Country: *Hungary*

by

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Part I: General

1. 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?

X Specific

Open

Mixed

Others, please describe: _____

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

X Yes

No

Partially,

Please describe: *Article 33 (2)-(3) of Act No. LXXVI of 1999 on Copyright (hereinafter referred as CA): (2) The use under the provisions relating to free use is permitted and not subject to the payment of remuneration only so far as it does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, and it is in compliance with the requirements of fairness and is compatible with the purposes of free use.*

(3) The provisions relating to free use shall not be interpreted in an extensive manner.

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

X Yes

No

If yes, please describe: *Article 33 (1) of CA: Uses falling within the scope of the free use shall not be subject to the payment of remuneration and to any authorization of the author. Only works made available to the public may be used freely in accordance with the provisions of this Act.*

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

Yes

No

If yes, please describe: (i) *Levies on blank media (Article 20 of CA)*; (ii) *levies on reprography (Article 21 of CA)*; (iii) *free lending of individual copy of a work by national special libraries (Article 39 of CA)*.

5. 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)?

Yes

No

6. 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?

Yes

No

Please describe: *Article 35 (1) –(3) of CA: (1) A copy of the work may be made by a natural person for private purposes if it is not intended for earning or increasing income even in an indirect way. This provision shall not apply to architectural works, to engineering structures, to software and to databases operated by a computer device, as well as to the fixation of the public performance of a work on audiovisual or sound carrier. It shall not be allowed to reproduce sheet music by means of reprography [Article 21(1)] even for private purposes or in the cases mentioned in paragraph (4) b) to d).*

(2) A complete book as well as the whole of a periodical or daily may be copied even for private purpose only by handwriting or typing.

(3) It shall not be considered as free use to have a work copied by someone else by means of a computer and/or on an electronic data carrier, even if it is done for private purposes.

Article 84/C. (1) and (4) of CA: (1) The extraction of a substantial part of the contents of a database for private purposes is allowed to anyone to the extent justified by the non-commercial purpose to be achieved. This provision shall not apply to electronic databases.

(4) Article 33 shall apply mutatis mutandis to the exceptions to the rights of the producer of a database as stipulated in paragraphs (1) to (3).

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

Yes

No

If yes, please describe: *Article 21 (1)-(8) of CA: (1) The authors of the works and publishers which are reproduced by photocopying or in like manner on paper or on like carrier (jointly referred to hereinafter as reprography) shall be due to be paid fair and equitable remuneration on private-purpose copying. The remuneration shall be paid, within the deadline indicated in the third sentence of Article 20(2), by the manufacturer of the device for the purposes of reprography, by the person obliged under the law to pay customs duties, or – in the absence of obligation to pay customs duties – by the person who imports the device and its first distributor under joint obligation. For the payment of the remuneration all domestic distributors shall be jointly responsible. In addition, the person operating the reprographic device for a consideration is also obliged to pay remuneration. In both cases the remuneration shall be paid to the organisation performing the collective management of rights.*

(2) The specification of the devices that may be used for reprography shall be determined by a special regulation.

(3) The remuneration referred to in paragraph (1) shall be set by the organisation performing the collective management of rights. When determining the said remuneration, it shall take due account of, in particular, the manner of the use of the device and its output characteristics, as well as the place of the operation in the case of its use for a consideration.

(4) The amount of remuneration referred to in paragraph (1) shall be not more than 2% of the manufacturer's issue price for the device for the purposes of reprography or, in the case of a device manufactured abroad, not more than 2% of the basis of customs duties prescribed by law.

(5) The obligation to pay remuneration shall not apply to the case where the device is put into circulation for export purposes.

(6) Of the amount of the collected remuneration that remains after the deduction of the expenses, 40% shall be due to the publishers. Of the remaining 60%, 25% shall be due to the authors of non-fiction and scholarly works, 25% to the authors of other literary works and 10% to the authors of works of art and photographic works. These shares of the remuneration shall be transferred to the collective management organizations of the interested rightholders.

(7) The distribution proportions determined in paragraph (6) shall be applied unless otherwise agreed between the affected organisations performing the collective management of rights and the trade organisations of the rightholders concerned before March 31 of every year.

(8) The authors and publishers may only claim their remuneration through their collective management organizations, and they may only renounce their remuneration with effect following the date of distribution and to the extent of the amount due to them.

Article 22 (1) and (2) of CA: (1) The commercial manufacturers of blank audiovisual and audio carriers mentioned in Article 20 and of equipment mentioned in Article 21, as well as the importers of such carriers and equipment, irrespective of whether or not they are obliged to pay customs duties for such imports, and those who first put into circulation, in the territory of the country, such carriers and equipment, are obliged, before the tenth day of

every calendar month, but not later than within the time limit referred to in Article 20(2), to inform the collective management organisation about the quantity of the carriers and equipment imported or put into circulation, as well as about the types of such carriers and equipment. The organisation performing the collective management of rights may request further information on the figures relating to the putting into circulation and on the sources of procurement; and it may request those operating reprographic devices for a consideration to provide further particulars necessary for determining the fair amount of remuneration.

(2) The failure to meet, and even the incomplete meeting of, the obligation to provide information or particulars and to supply data as required by the provision of Paragraph (1) a lump sum for covering the expenses of the organisation performing the collective management of rights is to be paid in addition to the remuneration due, which lump sum shall be of the same amount as the remuneration due to be paid.

8. 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?

Yes
 No

If yes, please describe: _____

9. 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)?

Yes
 No

If yes, please describe: *Article 35 (6) and (7) of CA: (6) A temporary act of reproduction that is transient or incidental - and is an integral and essential part of a technological process with no independent economic significance – shall be free if its sole purpose is to enable*
a) a transmission in a network between third parties by an intermediary, or
b) a use of the work authorized by the author or permitted pursuant to the provisions of this Act.

(7) Ephemeral recording of a work if it is made by a broadcasting organization that may lawfully use the work for its broadcast by means of their own facilities shall be free. Unless otherwise provided by the contract authorizing the broadcasting of the work, such a recording shall be destroyed or erased within three months counted from its making. Those of such recordings which are determined in separate legislation may, however, be preserved in official sound or audiovisual archives on the ground of their exceptional documentary character.

Article 95/A (1) of CA: In the case of reprographic reproduction [Article 21(1)] for private purposes [Article 35(1)], and of the free uses provided for in Articles 34(2), 35(4) and (7) and 41, a beneficiary of such a free use may demand that the rightholder, in spite of the protection granted under Article 95 against the circumvention of technological measures, make the free

use possible for him, provided that the beneficiary of the free use has got access to the work lawfully. If no agreement is reached between the parties on the conditions of the making the free use possible, either of the parties may initiate a procedure under Article 105/A (see answer 13 of the questionnaire).

In the opinion of the Body of Copyright Experts N^o SzJSzT 17/06 of May 11, 2006, on the copyright status of private copying from illegal sources, the panel was of the view that it may be deduced from the analyzed international, community and national norms on copyright that private copying from illegal sources is not permissible neither as a free use nor on the basis of the limitation of the exclusive right of reproduction to a mere right to remuneration.

The panel has found furthermore that

- (i) in view of private copying from illegal sources, it is not justified to decrease the remuneration levied, by virtue of Article 20 of CA, on audio and audiovisual carriers for the possibility of private copying (and the abolition of the right to such remuneration is particularly not justified);*
- (ii) for the calculation of damages to be paid for the infringement committed by private copying from illegal resources, it should be taken into account if the infringer has paid a levy as part of the price of the audio or audiovisual carrier used by him for such copying.*

As regards the petitioner's last remark quoted above – according to which “the legal nature of a free use is not that it is a right of users, but that it is a restriction of the exclusive rights of copyright owners” – as it turns out from the results of the analysis, of the relevant international, community and national norms, the panel completely agreed with it.

10. Does your national statute protect technological measures?

- Yes
 No

11. Does your national statute protect rights management information?

- Yes
 No

12. 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?

- Yes
 No

If yes, please describe: Article 95/A (1) of CA: In the case of reprographic reproduction [Article 21(1)] for private purposes [Article 35(1)], and of the free uses provided for in Articles 34(2), 35(4) and (7) and 41, a beneficiary of such a free use may demand that the rightholder, in spite of the protection granted under Article 95 against the circumvention of technological measures, make the free use possible for him, provided that the beneficiary of

the free use has got access to the work lawfully. If no agreement is reached between the parties on the conditions of the making the free use possible, either of the parties may initiate a procedure under Article 105/A.

According to the second sentence of Article 99 of CA for the purposes of Chapter XI/A [The Protection of Producers of Databases], free uses mentioned in Article 95/A (1) shall be construed as meaning the reprographic reproduction [Article 21(1)] for private purposes and the free uses provided for in Article 84/C(2) and (3).

13. 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?

Please describe: Article 105/A (1) of CA: If no agreement is reached between the beneficiary of a free use and the rightholder about the conditions of making the free use possible (Article 95/A) in spite of the protection against the circumvention of technological measures (Article 95), any of the parties may turn to the Mediation Board.

Article 103 (2) of CA: The Mediation Board shall operate within the Body of Experts in Copyright. According to Article 101 (1) of CA the Body of Experts in Copyright operates next to the Hungarian Patent Office and separately from the official judicial expert system.

According to the Procedure regulation of the Mediation Board (hereinafter: Regulation) 5.2.: In case no agreement is established between the parties concerning the members of the Mediation Board within 8 days from the beginning of the procedure, the President of the Body of Experts in Copyright designates the members.

Article 105/A (5) of CA: The parties may accept the agreement proposed by the Mediation Board either explicitly or implicitly. It shall be regarded as an implicit acceptance if none of the parties oppose the proposed agreement at the Mediation Body within 30 days from its delivery.

Regulation 11. Where the Mediation Board has proceeded by violating the provisions of Article 105 any of the Party can oppose the agreement based on the decision in a lawsuit at the court within 3 months of its entering into force.

Article 105/A (6) of CA: Where the Mediation Board has proceeded by violating the provisions of Article 105, the injured party may oppose the award of the Mediation Board in a lawsuit at the court within 30 days of its adoption.

Nevertheless, no information is available on the average time needed for the legal procedure.

14. 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?

Yes

No

If yes, please describe: *In case of circumventing technological protection measures Article 105/A (1) of CA provides certain provisions (see above).*

15. 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?

Please describe: *See answer 13 of the questionnaire, however there is no case law.*

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

Yes

No

Please describe: *Article 59 of CA: (1) Unless otherwise agreed, the author's exclusive right shall not cover reproduction, alteration, adaptation, translation and any other modification of the software – including the correction of mistakes – as well as the reproduction of the product of these acts in so far as these acts of use are carried out by the person authorized to acquire the software in compliance with the intended purpose of the software.*

(2) No provision in the licensing agreement shall prohibit the user from making a back-up copy of the software if it is necessary for the use.

Article 60 of CA: (1) No authorization of the author shall be required for the reproduction or translation of the code which is indispensable for the acquisition of the information necessary to know for the combined operation of the independently created software with another software supposing that

a) these acts of use are performed by the authorized user or another person entitled to use the copy of the software or a person put in charge of performing these acts by the persons referred to in this Item;

b) the information necessary to know for the combined operation has not been easy of access to the persons referred to in Item a);

c) these acts of use are limited to those parts of the software which are necessary for permitting combined operation.

(2) The information obtained through application of the provision of paragraph (1) shall not be

a) used for a purpose other than the combined operation of the independently created software;

b) communicated to another person unless this is required for the combined operation with the independently created software;

c) used for the development, production and putting into circulation of another software essentially similar as regards its form of expression or for other acts resulting in the infringement of the copyright.

(3) The provision of Article 33(2)[the three-step test provision], shall apply mutatis mutandis to the operations falling under the provisions of paragraphs (1) and (2).

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

Yes

No

Please describe: *Article 35 of CA: (6) A temporary act of reproduction that is transient or incidental - and is an integral and essential part of a technological process with no independent economic significance – shall be free if its sole purpose is to enable*
a) *a transmission in a network between third parties by an intermediary, or*
b) *a use of the work authorized by the author or permitted pursuant to the provisions of this Act.*

(7) Ephemeral recording of a work if it is made by a broadcasting organization that may lawfully use the work for its broadcast by means of their own facilities shall be free. Unless otherwise provided by the contract authorizing the broadcasting of the work, such a recording shall be destroyed or erased within three months counted from its making. Those of such recordings which are determined in separate legislation may, however, be preserved in official sound or audiovisual archives on the ground of their exceptional documentary character.

(8) The free uses mentioned in paragraphs (1), (4), (5) and (7) shall be without prejudice to the application of Articles 20 to 22.

18. 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?

Please describe: *Act CVIII of 2001 on certain issues of electronic commerce services and information society services (E-Commerce Act) lays down the following provisions:*

Article 7

(1) The service provider shall be liable for any infringement and damage caused by making available unlawful information.

(2) The intermediary service provider shall not be liable for infringement and damage caused to a third party by information originating from an external source and transmitted, stored or made accessible in the course of provision of an information society service, provided that the intermediary service provider fulfils the requirements set forth in Articles 8 to 11 and acts with due diligence.

(3) Besides the cases mentioned in paragraph (2) above, with regard to the violation of law under Article 13(1), the intermediary service provider specified in Article 2 lb) to ld), shall not be liable for the violation of law and damage caused to a third party by unlawful information originating from an external source and transmitted, stored or made accessible in the course of the provision of an information society service, if it follows the procedure stipulated in Article 13 and acts with due diligence.

(4) The exemption from liability of the intermediary service provider under paragraphs (2) and (3) above shall not prejudice the right of the party aggrieved by the receipt of unlawful information, to apply to a court or authority for the enforcement of his claim – having arisen due to the violation of law – regarding the prevention or cessation of the illegal conduct not only against the party having violated the law but also against the intermediary service provider. Should the intermediary service provider lose the suit, it may not be obliged to bear the court costs of the prevailing party, while the court costs of the defeated intermediary service provider shall be borne by the defeated party having violated the law.

(5) The intermediary service provider shall not be obliged to verify the content of the information that it only transmits, stores and makes available and, further, it is not obliged to seek facts or circumstances implying the conduct of unlawful activity..

(6) The intermediary service provider shall not be held liable for damage caused by the removal of information or disabling access to information, provided that it has acted in compliance with Articles 7 to 11 and 13.

Article 8

(1) The intermediary service provider defined in Article 2 la) shall not be liable for the damage caused by the content of the transmitted information, if it was not the service provider
a) to initiate the transmission of the information;
b) to select the receiver of the transmission, and
c) to select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in paragraph (1) include the automatic, intermediate and transient storage of the information transmitted where this takes place for the sole purpose of carrying out the transmission, and the information is not stored for any period longer than is reasonably necessary for the transmission

Article 9

The intermediary service provider defined in Article 2 la) shall not be liable for damage caused by the intermediate and temporary storage of information, where:

- a) the service provider does not modify the information;*
- b) the service provider complies with conditions of access to the information;*
- c) the service provider complies with any rules regarding the updating of the information in its temporary storage, specified in a manner widely recognised and used by industry;*
- d) the intermediate storage does not interfere with the lawful use of technology, widely recognised and used by the industry, to obtain data on the use of the information; and*
- e) the service provider acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement of access.*

Article 10

The intermediary service provider defined in Article 2 lc) shall not be liable for the damage caused by the content of information originating from the recipient of the service, if

- a) it does not have actual knowledge of unlawful activity related to the information and is not aware of the fact that the information infringes the right or legitimate interest of any party; and
- b) upon obtaining such knowledge or awareness of the facts specified in subparagraph a), it acts expeditiously to remove or to disable access to the information.

Article 11

The intermediary service provider defined in Article 2 ld) shall not be liable for the damage caused by ensuring access to information, as specified in Article 2 ld), if

- a) it does not have actual knowledge of unlawful activity related to the information and is not aware of the fact that the information infringes the right or legitimate interest of any party; and;
- b) upon obtaining such knowledge or awareness of the facts specified in subparagraph a), it acts expeditiously to remove or to disable access to the information.

Article 12

Under the provisions of Articles 10 and 11, a service provider shall not be exempted from liability if the recipient of the service has been acting under the authority or the control of the service provider.

19. 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?

- Yes
 No

If yes, please describe: _____

20. 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?

Please describe: *There is no available data.*

Part II: Limitations and Exceptions related to Educational Activities

21. 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?

Yes

No

The national statute was not included in the analysis

If you do not consider that the analysis is correct, please describe why:

See the description as attached document.

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

Yes

No

Please list them: *Article 34 of CA: (2) Portions of a literary, musical or film work, or such entire works of minor volume further images of visual art works, architectural, applied art and industrial design creations as well as artistic photographs disclosed to the public may be borrowed for the purposes of illustration for teaching and scientific research, with the indication of the source and the author named therein, to the extent justified by the purpose on condition that the borrowing work is not used for commercial purposes. Borrowing shall mean the use of a work in another work to an extent that goes beyond citation.*

(3) The reproduction and distribution of the borrowing work mentioned in paragraph (2) shall not be subject to the author's authorization where the borrowing work is, pursuant to the relevant legislation, qualified as a textbook or a reference book and this quality is indicated on its front page.

¹ For Latin American and the Caribbean countries, document SCCR/19/4. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130303

For African countries, document SCCR/19/5. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130241

For Arab countries, document SCCR/19/6. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130302

For Asian and the Pacific countries, document SCCR/19/7. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130249

For countries in North America, Europe, Caucasus, Central Asia and Israel, document SCCR/19/8. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130393

(4) The work may be altered for the purpose of school education within the scope of school lessons. The original work's author's approval is necessary for the use of the altered work.

Article 35 (5) of CA: Specific parts of a work published as a book as well as newspaper and periodical articles may be reproduced for educational purposes in a number corresponding to the number of pupils in a class or for purposes of exam in public and higher education in a number necessary for the said purpose.

Article 38 (1) and (3) of CA: If the performance is not designed to earn or increase income even in an indirect manner and the participants do not receive remuneration, the works may be performed in the following cases: [...]

b) for purposes of school education or at celebrations held at school, [...]

(3) A dancing party held at a school shall not be taken to mean performance for purposes of school education.

Article 68 (2) of CA: For purposes of scientific or educational lectures [Article 33(4)] as well as instruction, the picture of a fine art, architectural, applied art and industrial creation, furthermore artistic photographs may be used without the authorization of the author and paying remuneration to him.

Article 84/C (2) of CA: For the purposes of illustration for teaching or scientific research, extraction of a substantial part of a database is allowed, in a manner and to the extent consistent with such purposes, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved.

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

Face-to-face activities

Distance education

Both

Please list them: *Limitations and exceptions concerning quotations and teaching compilations laid down in Article 34 (2) and (3)² of CA relate to face-to-face activities, however the provisions concerning alteration of works for the purpose of school education within the scope of school lessons [Article 34 (4) of CA], furthermore the extraction of a substantial part of a database for the purposes of illustration for teaching [Article 84/C (2) of CA] becomes great importance in the development of new educational methods, tools (i.e. distance education).*

² Article 34 (3) of CA: The reproduction and distribution of the borrowing work mentioned in paragraph (2) shall not be subject to the author's authorization where the borrowing work is, pursuant to the relevant legislation, *qualified* as a textbook or a reference book and this quality is indicated on its front page.

*On performances*³

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

Yes

No

If yes, please describe: *In line with Article 34 (2) of CA part of a literary or musical work, film or a work of a minor volume disclosed to the public may be borrowed for the purposes of illustration for teaching and scientific research, with the indication of the source and the author, to the extent justified by the non-commercial purpose to be achieved.*

Article 38 (1) of CA: If the performance is not designed to earn or increase income even in an indirect manner and the participants do not receive remuneration, the works may be performed in the following cases: [...]

b) for purposes of school education or at celebrations held at school, [...]

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

Yes

No

If yes, please describe: _____

26. 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?

Yes

No

If yes, please describe: *Works performed in celebrations held at school is lawful if the performance is not designed to earn or increase income even in an indirect manner and the participants do not receive remuneration.*

³ Performance is used here *lato sensu*. It is a broadly applied practice in national legislation to use terms other than those appearing in the international norms on copyright and related rights; that is, to characterize the acts and rights concerned in a way different from the way they are characterized legally in the said international norms. As in the current case, for example, several countries may grant a “right of public performance” in a way that it covers more or less all non-copy-related rights (not only the performance *stricto sensu*, but also and in particular, the right of broadcasting and the right of communication to the public by cable (wire), which, in the Berne Convention are construed as separate rights), or it is also frequent in national laws that a broader right of broadcasting is provided which also covers the right of communication to the public by cable (wire), a separate right under the Berne Convention.

If the use is suitable for increasing the number of customers (e.g., that of a shop or a place of amusement) or for entertaining the customers of a shop or other types of consumers, it shall be taken to serve the purpose of increasing income. The collection of entrance fees, even if a different name is used for these, shall be taken to mean earning income. Payments exceeding the incurring and justified costs in connection with the performance shall be taken to mean remuneration. A dancing party held at a school shall not be taken to mean performance for purposes of school education [Article 38 (1)-(3) of CA].

Borrowing a part of musical work, film or a work of a minor volume disclosed to the public for the purposes of illustration for teaching [Article 34 (2) of CA], is lawful to the extent justified by the non-commercial purpose to be achieved with the indication of the source and the author.

27. 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)

Teachers

Students

Educational institutions

Others. Please describe: *Publicly accessible libraries, museums and audiovisual or sound archives qualified as public collection. They can provide this performance through the National Audiovisual Archive.*

28. 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)

For-profit

Not-for-profit

Public

Private

Others. Please describe: *There is no specific provision regarding the nature of the educational institutions, as it is the educational purpose that is relevant in the system of the Hungarian copyright act. Following Article 33 (4) of CA [...] the use shall be taken to serve the purposes of illustration of teaching if it is implemented in accordance with the requirements of education and with the curriculum used in kindergarten, primary and secondary school, industrial school, vocational school education, the primary education of arts, as well as in higher education falling within the scope of the act on higher education.*

On reproduction

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

Yes

No

If yes, please describe: *Article 34 (2) of CA: Portions of a literary, musical or film work, or such entire works of minor volume further images of visual art works, architectural, applied art and industrial design creations as well as artistic photographs disclosed to the public may be borrowed for the purposes of illustration for teaching and scientific research, with the indication of the source and the author named therein, to the extent justified by the purpose on condition that the borrowing work is not used for commercial purposes. Borrowing shall mean the use of a work in another work to an extent that goes beyond citation.*

Article 35 (5) of CA: Specific parts of a work published as a book as well as newspaper and periodical articles may be reproduced for educational purposes in a number corresponding to the number of pupils in a class or for purposes of exam in public and higher education in a number necessary for the said purpose.

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

Reprography

Digital copying

Others. Please describe: _____

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

Yes

No

If yes, please describe: *In accordance with Article 35 (5) of CA only specific parts of a work published as a book as well as newspaper and periodical articles may be reproduced for educational purposes (course packs, compilations, anthologies), if it is not subject to payment of remuneration [see Article 33(2) of CA]. A complete book as well as the whole of a periodical or daily may be copied even for private purpose only by handwriting or typing [Article 35 (2) of CA].*

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

Yes

No

If yes, please describe: _____

33. 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?

Yes

No

If yes, please describe: *Article 35 (5) of CA: Specific parts of a work published as a book as well as newspaper and periodical articles may be reproduced for educational purposes in a number corresponding to the number of pupils in a class or for purposes of exam in public and higher education in a number necessary for the said purpose.*

34. 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)

Teachers

Students

Educational institutions

Others. Please describe: -

35. 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)

For-profit

Not-for-profit

Public

Private

Others. Please describe: *There is no specific provision regarding the nature of the educational institutions, as it is the educational purpose that is relevant in the system of the Hungarian copyright act. Following Article 33 (4) of CA [...] the use shall be taken to serve the purposes of illustration of teaching if it is implemented in accordance with the requirements of education and with the curriculum used in kindergarten, primary and secondary school, industrial school, vocational school education, the primary education of arts, as well as in higher education falling within the scope of the act on higher education.*

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

Yes

No

If yes, please describe: _____

On translations

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

- Yes
 No

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

- Yes
 No

If yes, please describe: _____

39. 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?

- Yes
 No

If yes, please describe: _____

40. 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)

- Teachers
 Students
 Educational institutions
 Others. Please describe: _____

41. 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)

- For-profit
 Not-for-profit
 Public
 Private
 Others. Please describe: -

On making available in digital networks

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

Yes

No

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

Yes

No

If yes, please describe: _____

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

Yes

No

If yes, please describe: _____

45. 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?

Yes

No

If yes, please describe: -

46. 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)

Teachers

Students

Educational institutions

Others. Please describe: *Publicly accessible libraries, museums and audiovisual or sound archives qualified as public collection. They can provide this performance through the National Audiovisual Archive.*

47. 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)

- For-profit
- Not-for-profit
- Public
- Private

X Others. Please describe: *There is no specific provision regarding the nature of the educational institutions, as it is the educational purpose that is relevant in the system of the Hungarian copyright act. Following Article 33 (4) of CA [...] the use shall be taken to serve the purposes of illustration of teaching if it is implemented in accordance with the requirements of education and with the curriculum used in kindergarten, primary and secondary school, industrial school, vocational school education, the primary education of arts, as well as in higher education falling within the scope of the act on higher education.*

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

- Yes
- X No

If yes, please describe: _____

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

- X Yes
- No

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

Please describe: _____

51. 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.)?

- Yes
- X No

If yes, please describe: _____

Part III: Limitations and Exceptions related to Libraries and Archives

52. 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)⁴, do you consider that the analysis is correct?

Yes

No

The national statute was not included in the analysis

If you do not consider that the analysis is correct, please describe why: (i) *Article 35 (4) of CA, mentioned in the appendix of the document SCCR/17/2 (page 210), was amended as of February 1, 2009 (see the provision cited under answers 53, 56, 66 of the questionnaire).*

(ii) *The official recent and consolidated version of the CA in English (Appendix, page 212) is available on the Hungarian Patent Office website at http://www.mszh.hu/English/jogforras/Copyright_Act_LXXVI_1999_EN.pdf*

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

Yes

No

Please describe: *Article 35 (4) of CA: Publicly accessible libraries, educational establishments [Article 33 (4)] museum, archives as well as audiovisual or sound archives qualified as a public collection shall be allowed to make a copy of a work if it is not intended for earning or increasing income even in an indirect way and*

a) it is required for scientific research or archiving;

b) it is made for public library supply or for the use laid down in the Article 38 (5);

c) it is made of a minor part of a published work or of an article of a newspaper or a periodical for internal purposes; or

d) it is allowed by a separate law under certain conditions, in exceptional cases.

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

Please describe: *All types of literary, scientific and art creations may be reproduced.*

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

Yes

No

⁴ Document SCCR/17/2, page 72. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

Please describe: *The reproduction is limited to „a copy”, whatever can be used for purposes of preservation or replacement.*

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

Please describe: *Article 35 (4) of CA: Publicly accessible libraries, educational establishments [Article 33 (4)] museum, archives as well as audiovisual or sound archives qualified as a public collection shall be allowed to make a copy of a work if it is not intended for earning or increasing income even in an indirect way and*

a) it is required for scientific research or archiving;

b) it is made for public library supply or for the use laid down in the Article 38 (5);

c) it is made of a minor part of a published work or of an article of a newspaper or a periodical for internal purposes; or

d) it is allowed by a separate law under certain conditions, in exceptional cases.

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

Yes

No

Please describe: *Copying by libraries or archives for patron may be only purpose for public library supply.*

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

Please describe: *Only works disclosed to the public may be reproduced.*

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

Yes

No

If yes, please describe: *See these provisions attached to this questionnaire.*

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

Yes

No

If yes, please describe: _____

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

Please describe: -

62. 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.)?

Yes

No

If yes, please describe: *If the copyright owner is allowed, publicly accessible libraries should permit for affiliated patrons the access to the digital material by own computer (as a kind of lending to the public), however there is no financial aid from the state available for this purpose.*

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

Yes

No

Please describe: *Only works disclosed to the public which forming part of the collection of publicly accessible libraries, educational establishments [Article 33(4)], museums and audiovisual or sound archives qualified as public collection.*

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

Please describe: _____

65. 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?

Yes

No

Please describe: *Article 40 of CA: The copies reproduced within the scope of free uses shall not be distributed without the author's authorization, except for lending between libraries.*

66. 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?

Yes

No

Please describe: *Article 35 (4) of CA: Publicly accessible libraries, educational establishments [Article 33 (4)] museum, archives as well as audiovisual or sound archives qualified as a public collection shall be allowed to make a copy of a work if it is not intended for earning or increasing income even in an indirect way and
a) it is required for scientific research or archiving;*

- b) it is made for public library supply or for the use laid down in the Article 38 (5).*
- c) it is made of a minor part of a published work or of an article of a newspaper or a periodical for internal purposes ; or*
- d) it is allowed by a separate law under certain conditions, in exceptional cases.*

Article 35 (7) of CA: Ephemeral recording of a work if it is made by a broadcasting organization that may lawfully use the work for its broadcast by means of their own facilities shall be free. Unless otherwise provided by the contract authorizing the broadcasting of the work, such a recording shall be destroyed or erased within three months counted from its making. Those of such recordings which are determined in separate legislation may, however, be preserved in official sound or audiovisual archives on the ground of their exceptional documentary character.

Article 38 (5) of CA: In the absence of a contractual provision to the contrary, works forming part of the collection of publicly accessible libraries, educational establishments [Article 33(4)], museums and audiovisual or sound archives qualified as public collection, may be, for the purpose of research or private study, freely displayed to individual members of the public on the screens of dedicated terminals on the premises of such establishments, and, in the interest of this, they may be communicated, including their making available, to such members of the public, provided that this is not for direct or indirect earning or increasing income.

Part IV: Limitations and Exceptions for Persons with Disabilities

67. 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)⁵, do you consider that the analysis is correct?

Yes

No

The national statute was not included in the analysis

If you do not consider that the analysis is correct, please describe why:

68. 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 disabilities⁶ or visually impaired persons, including the reading impaired?

Yes

No

Please describe: *Article 41(1) of CA: Any use, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability, shall be free.*

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

Yes

No

Please describe: *Exclusively designed to satisfy the needs of disabled persons.*

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

Please describe: *The use must have direct relation to the disability to the extent required by the specific disability (Article 41 of CA).*

⁵ Document SCCR/15/7, page 138. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696

⁶ A person with print disability is a person who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability.

71. 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?

Yes

No

Please describe: *See answer 68 of the questionnaire.*

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

Yes

No

Please describe: *See answer 68 of the questionnaire.*

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

Yes

No

Please describe: *Exclusively designed to satisfy the needs of disabled persons.*

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

Please describe: *The use must have direct relation to the disability to the extent required by the specific disability (Article 41 of CA).*

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

Yes

No

Please describe: *See answer 68 of the questionnaire.*

76. 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?

- Yes
 No

Please describe: *See answer 68 of the questionnaire.*

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

- Yes
 No

Please describe: *Exclusively designed to satisfy the needs of disabled persons.*

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

Please describe: *The use must have direct relation to the disability to the extent required by the specific disability (Article 41 of CA).*

79. 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?

- Yes
 No

Please describe: *See answer 68 of the questionnaire.*

80. 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?

- Yes
 No

If yes, please describe: _____

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

Please describe: *There seems to be a need to solve the controversy over the access to the digital learning material of visually impaired students (see answer 82 of the questionnaire).*

82. 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.)?

Yes

No

Please describe: *The use of the limitations and exceptions for the visually impaired persons is difficult to deduce and interpret from Article 41 (1) of CA (cited above, see answer 68 of the questionnaire), despite the fact that this provision is in line with the provision with the European Copyright Directive 2001/29/EC. There is another controversy over the access to the digital learning material of visually impaired pupils and students. The Act on Textbook Market Order from 2001 lays down detailed rules on the distribution of the textbooks for pupils and students in electronic form through the national blind organization. Any other way of distribution is unlawful which is an impediment for the visually impaired students in higher education concerning access to the digital learning material. The ombudsman' report, dealing with this issue, also pointed out this obstacle.*

Part V: Religious, social and cultural exceptions

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

- Yes
 No

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

- Religious activities
 Cultural Activities
 Social Activities

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

- Yes
 No

If yes, please describe: *Article 38 (1) of CA: If the performance is not designed to earn or increase income even in an indirect manner and the participants do not receive remuneration, the works may be performed in the following cases: [...] e) at religious ceremonies or on religious celebrations.*

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

- Yes
 No

87. 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?

- Yes
 No

If yes, please describe: *This exception applies only works that can be perform.*

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

Yes

No

If yes, please describe: *Article 38 (1) of CA: If the performance is not designed to earn or increase income even in an indirect manner and the participants do not receive remuneration, the works may be performed in the following cases: [...] d) at celebrations held on national holidays.*

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

Yes

No

90. 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?

Yes

No

If yes, please describe: _____

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

Yes

No

If yes, please describe: *Free use of performance must be within the framework of the care of those at social disadvantage and of aged people [Article 38 (1) c) of CA].*

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

Yes

No

93. 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?

Yes

No

If yes, please describe: *This exception applies only works that can be perform.*

Part VI: Other questions on digital technology

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

Yes

No

If yes, please describe: *Article 60 of CA: (1) No authorization of the author shall be required for the reproduction or translation of the code which is indispensable for the acquisition of the information necessary to know for the combined operation of the independently created software with another software supposing that*

- a) these acts of use are performed by the authorized user or another person entitled to use the copy of the software or a person put in charge of performing these acts by the persons referred to in this Item;*
- b) the information necessary to know for the combined operation has not been easy of access to the persons referred to in Item a);*
- c) these acts of use are limited to those parts of the software which are necessary for permitting combined operation.*

(2) The information obtained through application of the provision of paragraph (1) shall not be

- a) used for a purpose other than the combined operation of the independently created software;*
- b) communicated to another person unless this is required for the combined operation with the independently created software;*
- c) used for the development, production and putting into circulation of another software essentially similar as regards its form of expression or for other acts resulting in the infringement of the copyright.*

(3) The provision of Article 33(2), shall apply mutatis mutandis to the operations falling under the provisions of paragraphs (1) and (2).

(4) Article 34(2) and Article 38(1) shall be inapplicable to the software. The term defined in Article 49(1), shall be four months in the case of software.

(5) In case copies of the software are procured through commercial distribution, it is not obligatory to lay down in writing a contract relating to the use of the software.

95. 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)?

Yes

No

If yes, please describe: *In case of the intermediary service provider (defined in E-Commerce Act) Article 94 (1) b) (objective sanction) and (3) of CA are applicable. Article 94 (1) b) of CA: With his rights infringed, the author may, according to the circumstances of the case,*

have recourse to the following civil remedies: [...] (b) request an injunction that the infringer cease his infringement or any acts directly threatening with it

Article 94 (3) of CA: The author may put in the claim referred to in paragraph (1)(b) also against any person whose services were used in the infringing activities.

96. 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?

Yes

No

If yes, please describe: *Act CVIII of 2001 on certain issues of electronic commerce services and information society services (E-Commerce Act) lay down the following provisions:*

Article 7

(1) The service provider shall be liable for any infringement and damage caused by making available unlawful information.

(2) The intermediary service provider shall not be liable for infringement and damage caused to a third party by information originating from an external source and transmitted, stored or made accessible in the course of provision of an information society service, provided that the intermediary service provider fulfils the requirements set forth in Articles 8 to 11 and acts with due diligence.

(3) Besides the cases mentioned in paragraph (2) above, with regard to the violation of law under Article 13(1), the intermediary service provider specified in Article 2 (b) to (d), shall not be liable for the violation of law and damage caused to a third party by unlawful information originating from an external source and transmitted, stored or made accessible in the course of the provision of an information society service, if it follows the procedure stipulated in Article 13 and acts with due diligence.

97. 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?

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

Caching infringing material

Storing infringing material at the direction of a user

Providing access by means of information search tools such as indices, references, hyperlinks and directories to infringing materials that users post

Others. Please specify: _____

98. 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?

Please specify: *Following the Articles 8-11 of E-Commerce Act*

(i) The intermediary service provider which forwards the information supplied by the recipient of the service via the telecommunications network or ensures access to the telecommunications network (simple data transmission and provision of access) shall not be liable for the damage caused by the content of the transmitted information, if it was not the service provider

- a) to initiate the transmission of the information;*
- b) to select the receiver of the transmission, and*
- c) to select or modify the information contained in the transmission.*

The acts of transmission and of provision of access include the automatic, intermediate and transient storage of the information transmitted where this takes place for the sole purpose of carrying out the transmission, and the information is not stored for any period longer than is reasonably necessary for the transmission

(ii) The intermediary service provider which forwards the information supplied by the recipient of the service via the telecommunications network, which principally serves to enhance the efficiency of information transmission originated by other recipient of the services (caching) shall not be liable for damage caused by the intermediate and temporary storage of information, where:

- a) the service provider does not modify the information;*
- b) the service provider complies with conditions of access to the information;*
- c) the service provider complies with any rules regarding the updating of the information in its temporary storage, specified in a manner widely recognised and used by industry;*
- d) the intermediate storage does not interfere with the lawful use of technology, widely recognised and used by the industry, to obtain data on the use of the information; and*
- e) the service provider acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement of access.*

(iii) The intermediary service provider which stores information supplied by the recipient of the service (hosting) shall not be liable for the damage caused by the content of information originating from the recipient of the service, if

- a) it does not have actual knowledge of unlawful activity related to the information and is not aware of the fact that the information infringes the right or legitimate interest of any party; and*
- b) upon obtaining such knowledge or awareness of the facts specified in subparagraph a), it acts expeditiously to remove or to disable access to the information.*

(iv) The intermediary service provider which provides tools to the recipient of the services facilitating the search for information (search functions) shall not be liable for the damage caused by ensuring access to information, as specified in Article 2 ld), if

- a) it does not have actual knowledge of unlawful activity related to the information and is not aware of the fact that the information infringes the right or legitimate interest of any party; and;*
- b) upon obtaining such knowledge or awareness of the facts specified in subparagraph a), it acts expeditiously to remove or to disable access to the information.*

Part VII: General questions to cover areas left out in Part I to VI

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

right of quotation

news reporting

ephemeral copies

incidental uses

government uses

non-voluntary license for broadcasting

non-voluntary license for mechanical reproduction of musical works

Please describe: _____

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

Yes

No

If yes, please describe: _____

101. 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?

Yes

No

Please describe: *Hungary does not conduct any FTA negotiations directly with other countries, however, as a member state of the European Union, it takes part in the consultations regarding FTAs between the EU and third countries. This negotiating process is led by the European Commission (e.g. EU-CARIFORUM EPA from 2008; ongoing negotiations to finalize the agreements with Korea and the Andean Community).*

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

Please describe: _____

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

Supplement to question 21 - Correction description to the study on limitations and exceptions for educational or research activities for countries in North America, Europe, Caucasus, Central Asia and Israel, document SCCR/19/8.

Hungary would like to suggest certain corrections to the mentioned document:

(i) page 67 – it can be added the following text:

” in *Hungary*, there are different terminologies, i.e. copies are permitted “for *educational purposes* and for *purposes of exams*” and performances “for purposes of *school education*, however the extraction of a substantial part of a database is allowed for the *purposes of illustration for teaching*, in a manner and to the extent consistent with such purposes;”

(ii) page 75 – Hungary should be deleted from the list:

c) Scope: Face-to-face teaching

Austria, Bulgaria, Greece,, Lithuania, Slovenia and Spain exempt teaching uses by means of a combination of several exceptions mainly envisioned for face-to-face teaching; their application to digital and online education is less than evident.

(iii) page 77 – it can be added the following text:

In *Hungary*, schools and universities are entitled to:

- (i) *reproduce works*⁷ “for *educational purposes* and for *purposes of exams*” in a number corresponding to the number of pupils in a class or in a number necessary for the purposes of exams (Art.35.5) and
- (ii) to *perform* “for purposes of *school education or at celebrations held at school*” (Art.38.1b).
- (iii) *alter works for the purpose of school education within the scope of school lessons* (Art. 34.4).

None of these exceptions is remunerated, and since the making available (or communication to the public)⁸ is not mentioned, the latter point would be benefit to online teaching.

(iv) pages 99 and 100: Hungary suggests the use of the terminology 'distribution' instead 'dissemination', in accordance with the provisions of CA.

(v) Appendix, page139:

The official recent and consolidated version of Copyright Act available in English at

http://www.mszh.hu/English/jogforras/Copyright_Act_LXXVI_1999_EN.pdf

⁷ Reproduction may be in any means and formats (analog or digital). The exempted reproduction is limited to “specific parts of a work published as a book, as well as newspaper and periodical articles.” The reproduction of work of fine art, an illustration or a photograph that is published “in” or “as part of” a book may be deemed exempted –but these works can only be displayed for purposes of instruction to the extent that the use qualifies as a quotation (Art.34.1).

⁸ The making available is envisioned within the right communication to the public under Art.26.8.

TEACHING PURPOSES	TEACHING COMPILATIONS	QUOTATIONS
HUNGARY (art.35.4 and .5, art.38.1b, art 68.2., art 84/C.2.)	HUNGARY (art.34.2-4)	HUNGARY (art.34.1)
(35.4 and 5) reproduce (38.1b) perform (68.2.) all kind of uses (84/C.2) extraction of substantial part of a database	(2) may be borrowed (beyond the scope of quotation), (3) the borrowing in (2) includes reproduction and distribution (4) alteration	Quote
(35.4) For internal purposes (35.5) for educational purposes or for purposes of exams (perform) for purposes of school education or at celebrations held at school (68.2) For purposes of scientific or educational lectures as well as instruction (84/C.2) for purposes of illustration for teaching or scientific research	(2) for purposes of education in school and universities and scientific research	
(35.4) in a publicly accesible library, audiovisual and sound archive, museum or educational institution (35.5., 68.2., 84/C.2.) in public and higher education (schools and universities)		

<p>(reproduce) Specific parts of a work published as a book, as well as newspaper and periodical articles</p> <p>(reproduce) in a number corresponding to the number of pupils in a class ... in a number necessary for the said purpose</p> <p>68.2) the picture of a fine art, architectural, applied art and industrial creation, furthermore artistic photographs</p> <p>(84/C.2.) database</p>	<p>(2) Part of a disclosed literary or musical work or a work of minor size</p>	<p>disclosed works</p>
<p>(35.4) For non-commercial purposes - not for direct or indirect economic advantage</p> <p>(perform) provided that the performance is not designed for direct or indirect economic gain and performers are not remunerated</p>	<p>(2) Provided it is not used on a commercial scale</p>	<p>true to the original</p> <p>its scope justified by the nature and purpose of the borrowing</p>
<p>No remuneration (35.4) Subject to compensation (equipment and operator levies)</p>	<p>No remuneration</p>	<p>No remuneration</p>

Supplement to question 59

(Szjt. 57/A-57/C.§) The licensing of the use of works in case of unknown author, or in case the residence of the author is unknown (orphan works)

Article 57/A

(1) The Hungarian Patent Office – beside the determination of a remuneration following to the method and extent of use, its scope - provides a license for request for those, who for the conclusion of the licensing agreement with regard to the quest of the author and the concerned type of work, mode of use, taken the appropriate measures in a manner that are deemed reasonable under the given circumstances, and the quest of the author is unsuccessful. The license is valid for 5 years, and in the territory of Hungary, it is not exclusive, not transferable, not entitle to issue further license or to adapt the work (Article 29).

(2) The remuneration prescribed in paragraph (1) shall be paid after the identification of the author or his or her residence, if it does not serve to generate or increase income in any way or form; if it serves to generate or increase income in any way or form, the remuneration shall be deposited at the Hungarian Patent Office. The deposition of the remuneration is the condition of the commencement of use.

(3) If the personality or the residence of the author become identified, the Hungarian Patent Office at the request of the user or the author, withdraw with the effect commences on the date of identification of the author or residence, but the activity may be carried on to the extent of the identification of the personality and the residence of the author, until the remaining period based on the license, but maximum for one year form the date of the identification of the personality of the author or residence.

(4) The provisions laid down in the paragraph (3) must be applied appropriately, if considerable preparations have been made for the use until the identification of the personality of the author or residence, in this case the use shall be commenced and carried on to the extent of the preparation that exists at the time the identification of the personality of the author or residence.

(5) The author may claim the due payment of the remuneration from the user or –in case of deposition- from the Hungarian Patent Office the deposited remuneration until 5 years from the operative date of the termination of the license or reverse of this decision. After this 5-year period, the Hungarian Patent Office transfers the money to an organization performing collective management of right that entitles the other use of the unknown author or in case the resident of the author is unknown, lack of this organization, to the National Cultural Fund. If more organizations performing collective management of right entitle the other use of works of unknown author, or in case the resident of the author is unknown, the remuneration is distributed in equally. The National Cultural Fund uses the transferred remuneration for making available the cultural goods.

(6) If the author disputes the measure of the remuneration stipulated in paragraphs (3)-(5), the court is entitled to settle the dispute according the rules apply to copyright suits.

(7) The paragraphs (1)-(6) shall not be applied, if the licensing of use is under the scope of collective management of rights.

Article 57/B

(1) The Act CXL of 2004 on the General Rules of administrative proceedings⁵⁷ shall apply to the proceeding of the Hungarian Patent Office mentioned in the § 57/A. with the following differences:

a) 58 those dispositions of the Act on the general rules of administrative proceedings, which shall apply to the notice about the initiation of an ex officio or upon request procedure, shall not apply.

- b) the Hungarian Patent Office examines the facts within the limits of the application, on the basis of the client's information and statements.
 - c) 59 the dispositions of the Act on the general rules of administrative proceedings concerning the publication of the decision, the curator ad item, the exemption from costs, and the enforcement procedure shall not apply.
 - d) the decisions of the Hungarian Patent Office cannot be appealed, filed by a petition for special consideration, in oversight proceeding, objection by prosecution; the decisions of the Hungarian Patent Office shall be reviewed by the Metropolitan Court— according to the Article 57/C – in a non-litigious proceeding.
 - e) no public hearing can be held.
 - f) communication with the authority in form of short messages shall not be accepted, written communication by way of electronic means can only be accepted in the cases specified by the Article 57/C.
- (2) The supervision of the decision of the Hungarian Patent Office may be claimed also by the public prosecutor; the Metropolitan Prosecution Service has an exclusive competence for the initiation of the court proceeding. The Hungarian Patent Office informs the Metropolitan Prosecution Service about its decision.
- (3) The Administrative service fee defined in another regulation shall be paid after the request stipulated in Article 57/A paragraph (1).
- (4) The detailed rules related to the licensing of the use of orphan works, including the fee mentioned in the paragraph (3) laid down in a specific legal regulation.
- (5) Avoiding from subsection a) paragraph (1) upon request of the client requesting to initiate a proceeding, the Hungarian Patent Office shall - within 5 days, according to the rules specified in the Act on the general rules of administrative proceedings - send notice on
- a) the case number, the name of the assigned officer's, and the officer's official contact details;
 - b) the date of opening the proceeding, the administrative time limit, periods excluded from the administrative time limit, the procedure to be followed in case the Hungarian Patent Office fails to fulfill its obligations related to the proceeding;
 - c) information concerning the access to the documents of the proceeding and
 - d) that his application shall be qualified as a consent to manage his necessary data and use them for domestic legal aid

Article 57/C

- (1) The request for the initiation of the non-litigious proceeding defined in the Article 57/B (1) d) must be filed at the Hungarian Patent Office within thirty days from the notification of the decision, which transmits the files of the case to the court.
- (2) For the accessories of the request stipulated in the paragraph (1) the provisions concerning the motion of starting a legal action shall apply *mutatis mutandis*.
- (3) If this motion is filed late, the court makes the decision in connection with the application for excuse.
- (4) For the non-litigious proceeding stipulated in the subsection 1 (d) of the Article 57/B the general provisions of the civil procedure act shall apply –with the differences rooted in the characteristics of the non-litigious proceeding- *mutatis mutandis*.

Article 57/D

(1) The application for granting the licence of using the orphan work and the request for withdrawal of the licence can be submitted by way of electronic means in a standard form regularly used by the Hungarian Patent Office also.

(2) The Hungarian Patent Office send for the applicant – as it is prescribed in a specific regulation - an automatic notice containing an electronic file number about the receipt of application submitted by way of electronic means defined in paragraph (1).

(3) The application submitted by way of electronic means defined in paragraph (1) shall be verified without delay by the Hungarian Patent Office whether it complies with the requirements of the communication with the authority.

(4) In case of electronic submission the application defined in paragraph (1) shall be deemed to be submitted when the automatic confirmation about the receipt has been sent to the applicant, unless the Hungarian Patent Office finds that the document can not be interpreted, and it notifies the client about it in electronic mail.

(5) The client sending a document that can not be interpreted is obliged to confirm the notice defined in paragraph (4). If the client does not confirm the notice within fifteen days, the Hungarian Patent Office transmits the document via the postal service.

Decree 100/2009. (V. 8.) Korm. of the Government on the detailed rules related to the licensing of certain use of orphan works

By virtue of the authorization under Article 112 (4) of the Act LXXVI of 1999 on copyright, proceeding within its competence determined by Article 35 (1) (b), the Government orders as follows:

Article 1

(1) The provisions of this Decree shall be applied to the licensing of use of those works subject to the Act on copyright (hereinafter referred to as Copyright Act), where the person entitled to license the use (hereinafter referred to as author) is unknown or resides in an unknown place.

(2) Within the scope specified in paragraph (1) the provisions of this Decree shall be applied mutatis mutandis to the licensing of use of the performances of performers as well.

Article 2

(1) The application for granting the license of use shall include the information suitable to identify the work and – if possible – the author, in case of more authors to identify all authors, in addition the mode, the extent, the planned duration of use and any other circumstances which are necessary to determine the fee of the license of use. In the application for granting the license of use it shall be indicated whether the purpose of use is – directly or indirectly – to gain revenue or increase revenue.

(2) In the application the applicant shall include and he shall attach all the proofs, which certify that for the conclusion of the licensing agreement the applicant has taken the appropriate measures in a manner that are deemed reasonable under the given circumstances and with regard to the concerned type of work and mode of use to quest the author and the quest of the author is unsuccessful.

(3) If the licenses of more authors are necessary for the use of the work and not all of them are unknown or reside in an unknown place the licensing agreement concluded with the known authors residing in a known place shall be attached to the application.

(4) If more authors of the work are unknown or known but reside in an unknown place the Hungarian Patent Office (hereinafter referred to as HPO) shall grant the license only if the application has been filed in respect of all such authors of the work and the license can be granted in respect of all such authors. The license agreement concluded with known authors

residing in an unknown place shall be attached to the application.

(5) The license may be requested for the use of only one work in the application. One application concerning more works may be filed in case the application is for the same mode of use of the same author's works belonging to the same type of works.

Article 3

(1) The measures determined in Article 2 (2) may be – under the circumstances of the matter – particularly as follows:

- (a) search in the database edited upon the voluntary register of works of the HPO, search in the databases of the concerned organizations registered in Hungary and performing collective management of rights, also in respect of the requested mode of use, search in databases available in the Internet, search in databases suitable to find the residence of the authors and search in databases of collections by the type of works, available for the public;
- (b) request for information from the organizations performing the usual publication by type of works, from persons performing an other use of the work, from other authors of the work who are known and can be found, as well as from the organizations performing official functions in connection with the type of work;
- (c) advertisement in national daily newspapers.

(2) In case of works, where it can be deemed that the first publication of the work was not in Hungary the measures under paragraph (1) shall be taken also in the country where the work was first published if it does not come up against disproportionate difficulties.

Article 4

(1) In proceedings before the HPO regulated by this Decree an administrative service fee shall be paid which constitutes the income of the HPO.

(2) A service fee of 102,500 HUF shall be paid for the application for the grant of the licensing of use.

(3) The extent of the fee of the application under paragraph (2) is 40,000 HUF if the application is for the licensing of a use the purpose of which is neither directly nor indirectly to gain revenue or to increase revenue.

(4) The extent of the fee of the application under paragraph (2) is 92,500 HUF if the application is filed in a form drawn up by the HPO for this purpose. The extent of this application is 30,000 HUF if the application is for the licensing of a use the purpose of which is neither directly nor indirectly to gain revenue or to increase revenue and it is filed in a form drawn up by the HPO for this purpose.

(5) The administrative service fee of the application for the withdrawal of the license of use is 10,500 HUF.

(6) No other allowance and exemption may be applied for the payment of the administrative service fee, the fee may not be reimbursed.

(7) The fees determined in paragraphs (2) to (5) shall be paid to the account No. 10032000-01731842-00000000 of the HPO kept with the Hungarian State Treasury by bank transfer or money order, with the indication of the identifying data (reference number or license number) and the purpose (entitlement) as well as with the indication "Treasury Transaction Code 310". The fee becomes due at the time of the filing of the application.

(8) The legal provisions on the specific characteristics of the requirement of producing financial statements and of book-keeping relating to budgetary organizations shall apply to the treatment, accounting, record-keeping of the fee determined in paragraphs (2) to (5).

Article 5

If the application does not meet the requirements laid down in this Decree or the administrative service fee has not been paid, the applicant shall be invited within thirty days

after the filing of the application – fixing a thirty-day time limit – to rectify the irregularities. The application shall be refused if the applicant – in spite of the invitation to rectify the irregularities – still fails to pay the administrative service fee.

Article 6

(1) If the application meets the requirements laid down in paragraph (2) and the applicant has paid the fee under Article (4) (2) to (4) the HPO shall grant the license of use.

(2) The HPO shall determine the extent of the license within the framework of the application. In the case defined in Article (2) (3) and (4) the license of use shall not extend beyond the effect of the license agreement concluded with other authors either.

(3) The earliest date when the use may commence is the day when the ruling enters into force. If the deposition of the remuneration is the condition of the commencement of use, the earliest date when the use may commence is the day after the day when the remuneration is deposited in the account No. 10032000-01731842-00000000 of the HPO kept with the Hungarian State Treasury by bank transfer or money order, with the indication of the identifying data (reference number or license number) and the purpose (entitlement) as well as with the indication "Treasury Transaction Code 310". The depositor shall not dispose over the deposited amount further on. The legal provisions on the specific characteristics of the requirement of producing financial statements and of book-keeping relating to budgetary organizations shall apply with the divergences specified by the Copyright Act to the treatment, accounting, record-keeping of the deposits.

(4) The time limit for administration in the proceedings before the HPO is sixty working days.

Article 7

(1) The provisions governing the decision on the application for the license of use shall apply to the decision on the application for the withdrawal of the license of use with the divergences laid down in paragraph (2).

(2) In the ruling on the withdrawal of the license of use the HPO shall decide on the proportionate fees of the use that may be performed in the period till the person or the residence of the author becomes known and till one year from this date but not later than the lapse of the license and – in case it is deposited – if it is necessary on the reimbursement of the difference between the fee deposited and determined in the license of use and the remuneration determined by the HPO in the ruling on the withdrawal.

Article 8

(1) The orphan work for which a license of use has been granted shall be kept by HPO in an administrative register inspectable by the public and electronically accessible.

(2) The register shall include registration number related to the orphan work, information suitable to identify the work, information related to the extent of use licensed in connection with the work, the extent of the remuneration and the day of deposit, the fact and effect of the withdrawal of the license of use. The register shall also include the fact and subject matter of the proceedings being in process in connection with the work.

(3) In case the holder of the license of use gives his written authorization the HPO may publish the information identifying the user and providing his contact details and may make them available to the public in its register.

(4) The HPO shall indicate any modification – referring to the date of the modification – in data under paragraph (2) related to the orphan works in the register without delay.

Article 9

No procedural acts related to the licensing of use of orphan works may be

administered electronically.

Article 10

- (1) This Decree shall enter into force – with the exception under paragraph (2) – on the eighth day after its promulgation.
- (2) Article 13 shall enter into force on 1 October 2009.

Article 11

The administration time limit being modified through the repeal of Article 6 (4) by Article 12 (3) of this Act shall apply to the application filed after 31 December 2009 provided that in respect of applications where more than forty working days are left till the administration time limit on 31 December 2009, the remaining period of the administration time limit shall be determined as if the application had been filed on 1 January 2010.

Article 12

- (1) Article 9 of this Decree shall be repealed on 30 September 2009.
- (2) Article 13 of this Decree shall be repealed on 2 October 2009.
- (3) Article 6 (4) of this Decree shall be repealed on 31 December 2009.
- (4) This Article shall be repealed on 1 January 2010.

Article 13

Article 4 (4) of this Decree shall be replaced by the following provision:

“(4) The extent of the fee regulated by paragraph (2) shall be 92,500 HUF if the application has been filed in a form drawn up by the HPO for this purpose or electronically. The extent of this application shall be 30,000 HUF if the application is for the licensing of a use the purpose of which is neither directly nor indirectly to gain revenue or to increase revenue and it is filed in a form drawn up by the HPO for this purpose.”

Article 14

This Decree serves the conformity with the Recommendation 2006/585/EC 6 (a) and (c) of 24 August 2006 of the European Council on the digitalization and on-line availability of cultural materials and cultural preserve.

[End of questionnaire]