

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

Country: Ireland

By Florence Kelly

Name and contact information (including telephone and e-mail): _____

Florence_Kelly@entemp.ie

Phone: 00353 1 6312587

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?

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?

Yes

No

Partially, please describe: Whilst the three-step test is not specifically mentioned in the Copyright and Related Rights Act 2000, all exceptions and limitations in the Act have been benchmarked against the test in preparing the legislation.

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

Yes

No

If yes, please describe: Chapter 6 of Part 11 of the Copyright and Related Rights Act 2000 provides for exceptions for Fair Dealing in respect of research, private study, criticism or review, for incidental inclusion of copyright works, for certain free use exceptions in relation to Education, Libraries and Archives, Public Administration, Designs, Computer programs, Original database, typefaces, works in electronic form and various miscellaneous exceptions. Chapter 3 of Part 11 of the Act provides for exceptions in relation to performances.

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: The Copyright and Related Rights Act 2000, Section 38 provides that where a person proposes to—

- (a) play a sound recording in public, or
- (b) include a sound recording in a broadcast or a cable programme service, he or she may do so as of right where he or she—
 - (i) agrees to make payments in respect of such playing or inclusion in a broadcast or cable programme service to a licensing body, and
 - (ii) complies with the requirements of this section.

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

However, collective licensing schemes are permitted e.g. in relation to reprographic copying in educational establishments.

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: Section 50 of the Act provides for Fair Dealing for the purposes of research or private study and Section 101 allows the recording of broadcasts for purposes to time shifting. (Sections 221 and 250 relate to broadly similar exceptions to performers' rights). Certain Library exceptions may also apply in this instance.

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

- Yes
 No

If yes, please describe: _____

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: Such undertakings would be considered irrelevant in view of Section 2(10) of the Copyright and Related Rights Act 2000 - Where an act which would otherwise infringe any of the rights conferred by this Act is permitted under this Act it is irrelevant

whether or not there exists any term or condition in an agreement which purports to prohibit or restrict that act.

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: For example, inter alia, fair dealing in section 50 of the Copyright and Related Rights Act 2000, quotations in section 52 and reprographic copying in section 57 refer to works which have been lawfully made available to the public.

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:

Section 374 of the Copyright and Related Rights Act 2000 (as amended):

Non-interference of Rights Protection Measures with Permitted Acts

“(1) Nothing in this Chapter shall be construed as operating to prevent any person from undertaking the acts permitted—

- (a) in relation to works protected by copyright under Chapter 6 of Part II,
- (b) in relation to performances, by Chapter 4 of Part III, or
- (c) in relation to databases, by Chapter 8 of Part V.

(2) Where the beneficiary is legally entitled to access the protected work or subject-matter concerned, the rightsholder shall make available to the beneficiary the means of benefitting from the permitted act, save where such work or other subject-matter has been made available to the public on agreed contractual terms in such a way that members of the public may access the work or other subject-matter from a place and at a time individually chosen by them.

(3) In the event of a dispute arising, the beneficiary may apply to the High Court for an order requiring a person to do or to refrain from doing anything the doing or refraining from doing of which is necessary to ensure compliance by that person with the provisions of this section.”.

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: We are not aware of any such case. Section 374 (3), as mentioned in the response to Q 12, provides that in the event of a dispute arising, the beneficiary may apply to the High Court for an order requiring a person to do or to refrain from doing anything the doing or refraining from doing of which is necessary to ensure compliance by that person with the provisions of this section.

Any proceedings instituted, application made or appeal lodged under the Copyright and Related Rights Act 2000 may be heard in the Commercial Court of the High Court. This is a fast-track court and the time- frame from entry to completion would be a matter of months.

In addition the party affected may be able to seek an immediate injunction/order nature from the appropriate court depending on circumstances.

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:

Please see response to No 12 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: Please see response to No 13.

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

Yes
 No

Please describe: These are contained in Sections 80, 81 and 82 of the Copyright and Related Rights Act 2000 in relation to back-up copies of computer programs, lawful copies and exceptions to infringement of copyright. (These are set out in the response to question 94)

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

Yes
 No

Please describe: Sections 87 and 244 of the Copyright and Related Rights Act 2000 (as amended) provide for temporary acts of reproduction as follows:

“(1) It is not an infringement of the rights conferred by this Part to undertake or conduct temporary acts of reproduction which acts are transient or incidental and which are an integral and essential part of a technological process and whose sole purpose is to enable—

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use,

of the subject-matter to be made, and which acts have no independent economic significance.

(2) Where a copy, which would otherwise be an illicit recording, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.”.

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?

Yes
 No

Please describe: Section 40 (3) of the Copyright and Related Rights Act 2000 provides: Subject to subsection (4), the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.

(4) Without prejudice to subsection (3), where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.

For mere conduit, caching and hosting please see the provisions of S.I. No 68/2003 – European Communities (Directive 2000/31/EC) Regulations 2003 under which these activities are allowed on certain condition.

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: Section 374 of the Copyright and Related Rights Act 2000 (as amended):

Non-interference of Rights Protection Measures with Permitted Acts

“(1) Nothing in this Chapter shall be construed as operating to prevent any person from undertaking the acts permitted—

- (a) in relation to works protected by copyright under Chapter 6 of Part II,
- (b) in relation to performances, by Chapter 4 of Part III, or
- (c) in relation to databases, by Chapter 8 of Part V.

(2) Where the beneficiary is legally entitled to access the protected work or subject-matter concerned, the rightsholder shall make available to the beneficiary the means of benefitting from the permitted act, save where such work or other subject-matter has been made available to the public on agreed contractual terms in such a way that members of the public may access the work or other subject-matter from a place and at a time individually chosen by them.

(3) In the event of a dispute arising, the beneficiary may apply to the High Court for an order requiring a person to do or to refrain from doing anything the doing or refraining from doing of which is necessary to ensure compliance by that person with the provisions of this section.”.

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: Please see the response to No 13.

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:

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

- Yes
 No

Please list them: The Copyright and Related Rights Act 2000 Sec 53: Copying (non-reprography) for the purposes of instruction or examination. Sec 54: Inclusion in anthologies for educational use. Sec 55: Performing, playing or showing work in the course of activities of an educational establishment: Sec 56: Recording by educational establishments of broadcasts and cable programmes for educational purposes. Sec 57: Reprographic copying under conditions. Sec 58: Lending. In relation to performers' rights - Sec 223: Copying of a performance for the purpose of instruction or examination. Sec 224: Playing of a sound recording etc at an educational establishment. Sec 225: Recording by educational establishments of broadcasts and cable programmes for educational purposes. Sec 226: Lending.

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

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

- Face-to-face activities
- Distance education
- x Both

Please list them: _____

*On performances*²

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: Copyright and Related Rights Act 2000 Section 223: Copying for purpose of instruction and examination. Sec 224: Playing of sound recordings etc at an educational establishment. Sec 225: Recording of a broadcast etc. on behalf of an educational establishment. Sec 226: Lending by an educational establishment.

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: _____

² 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.

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: _____

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: _____

Section 2 of the Copyright and Related Rights Act 2000 defines an “educational establishment” as —

(a) any school,

(b) any university to which the Universities Act, 1997 , applies, and

(c) any other educational establishment prescribed by the Minister under section 55 ;

S.I . No 410 of 2000 – Copyright and Related Rights (Educational Establishments) Order 2000 – provides that all establishments to the extent that they operate as educational establishments, which receive payments from the Exchequer in respect of their operational expenditure, are specified educational establishments for the purposes of the Act.

On reproduction

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

- Yes
 No

If yes, please describe: We are unsure of the exact meaning of “targeted” limitations. Reprographic copying is permitted as an exception only in the absence of a voluntary licence granted by rightholders. Such a licensing scheme is in operation in Ireland.

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: “reprographic process” is defined in the Copyright and Related Rights Act 2000 as means a process—
(a) for making facsimile copies, or
(b) involving the use of an appliance for making multiple copies,
and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording;

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

- Yes
 No

If yes, please describe: Reprographic copying is permitted for the educational purposes of an educational establishment.

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: S.I. No. 514/2002 — Copyright and Related Rights (Certification of Licensing Scheme For Reprographic Copying by Educational Establishments) (The Irish Copyright Licensing Agency Limited) Order 2002 provides for the following charges:
(a) Primary schools-€2 per student per annum (plus VAT)
(b) Post-primary schools-€2 per student per annum (plus VAT)
(c) Third-level Institutions-€6 per student per annum (plus VAT)
(d) Other educational establishments designated from time to time by the Minister-a tariff or fee related to the above by type.

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: The number of copies of any one item taken at any one time shall not exceed the number of students in a class plus two copies for each teacher and no copy shall exceed five percent or one chapter (whichever is the greater), except,

(a) in the case of an article in a periodical publication, the whole article may be copied, but not more than one article in any one issue of the publication.

(b) in the case of a short story or poem of not more than ten pages in length, the whole of the short story or poem may be copied.

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: Reprographic copies may be made by or on behalf of an educational establishment for the educational purposes of that establishment.

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: Please see response to Q 28.

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: Section 374 of the Copyright and Related Rights Act 2000 (as amended):

Non-interference of Rights Protection Measures with Permitted Acts

“(1) Nothing in this Chapter shall be construed as operating to prevent any person from undertaking the acts permitted—

(a) in relation to works protected by copyright under Chapter 6 of Part II,

- (b) in relation to performances, by Chapter 4 of Part III, or
- (c) in relation to databases, by Chapter 8 of Part V.

(2) Where the beneficiary is legally entitled to access the protected work or subject-matter concerned, the rightsholder shall make available to the beneficiary the means of benefitting from the permitted act, save where such work or other subject-matter has been made available to the public on agreed contractual terms in such a way that members of the public may access the work or other subject-matter from a place and at a time individually chosen by them.

(3) In the event of a dispute arising, the beneficiary may apply to the High Court for an order requiring a person to do or to refrain from doing anything the doing or refraining from doing of which is necessary to ensure compliance by that person with the provisions of this section.”.

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 In general, the provisions of the Copyright and Related Rights Act 2000 in relation to copying in educational establishments do not distinguish between analogue and digital copying.

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: _____

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
- Others. Please describe: _____

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
- 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?

- Yes
- No

The copyright in a work is not infringed by anything done for the purposes of an examination by way of setting questions, communicating questions to the candidates or answering questions.

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
- No

If yes, please describe: We are not aware of any such impediments.

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)³, 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: *Section 69 of the Copyright and Related Rights Act of 2000 was repealed in 2007. This was the section mentioned in the “Miscellaneous / Public Lending” part of the analysis. Otherwise, the analysis is correct.*

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:

Section 65 of the Copyright and Related Rights Act 2000 provides:

65.—(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a work in the permanent collection of the library or archive in order—

(a) to preserve or replace that work by placing the copy in the permanent collection of that library or archive in addition to or in place of that work, or

(b) to replace in the permanent collection of another prescribed library or prescribed archive a work which has been lost, destroyed or damaged, without infringing the copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

(2) This section shall only apply where it is not reasonably practicable to purchase a copy of the work concerned for the purposes of subsection (1).

Section 232 makes a similar provision in relation to a performance.

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

Please describe:

Section 2 (1) of the Copyright and Related Rights Act 2000: “work” means a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, typographical arrangement of a published edition or an original database and includes a computer program.

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

³ Document SCCR/17/2, page 72. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

Yes
 No

Please describe: The library or archive receiving the copy may not be furnished with more than one copy (S.I. No 427/2000).

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

Please describe: This exception is only applicable where it is not reasonably practicable to purchase a copy of the work concerned for the purposes of preservation or replacement.

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

Yes
 No

Please describe: Where the librarian or archivist is satisfied that a copy is for use for the purposes of research or private study, a single copy may be made and supplied of an article or the contents page in a periodical or part of a work which has been lawfully made available to the public. (Sections 61, 62 and 229 of the Copyright and Related Rights Act 2000). Section 67 (and section 234) permits the making and supply of a copy of a work or part of a work which has not been lawfully made available to the public, from any work in the permanent collection of the library or archive for the same purpose.

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

Please describe:

Section 2 (1): “work” means a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, typographical arrangement of a published edition or an original database and includes a computer program .

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

Yes
 No

If yes, please describe: The only specific provision arises in relation to performers’ rights and permits the Controller (of Designs, Patents and Trademarks) to consent to the making of a copy of a recording of a performance in a case where the identity or location of the person entitled to the production right cannot be ascertained by reasonable enquiry. (Section 254 of the Copyright and Related Rights Act 2000).

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: *It is not clear to us what “necessary” is meant to cover.*

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: *We are not aware of any such impediments.*

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

Yes
 No

Please describe: *Only one copy of an article may be furnished under Section 61 and Section 229 of the Copyright and Related Rights Act 2000 and the person receiving it may not be furnished with more articles from a volume of a periodical than the number of issues that comprise that volume or 10 per cent of the volume, whichever is the greater. Section 62 provides that only one copy of part of a work shall be furnished and that copy should comprise not more than a reasonable proportion of any work. Further, a copy supplied under these Sections shall not be supplied to more than 3 persons whose requirements are related to any similar requirement of any other person. (Section 63 and Section 230).*

Only one copy is to be given in cases of supply to other libraries and archives and also in relation to preservation and replacement. A cost is imposed in relation to the other library receiving this copy.

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

Please describe: *The person requesting the material shall supply the librarian or archivist with a declaration in writing in relation to the material concerned, substantially in accordance with Form A in Schedule 2 to the Copyright and Related Rights (Librarians and Archivists) (Copying of Protected Material) Regulations, 2000, S.I. No 427 of 2000, and signed in the manner therein indicated, and*

(b) such person is required to pay for the copy a sum not less than the cost (including contribution to the general expenses of the library) of its production

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: Section 64 of the Copyright and Related Rights Act 2000 provides
(1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply to another prescribed library or prescribed archive a copy of—
(a) a periodical or articles or the contents page contained therein, or
(b) the whole or part of a work,
which has been lawfully made available to the public, without infringing any copyright in the periodical, in the article, in the contents page or in the work, in any illustrations accompanying the periodical, the article, the contents page or the work or in the typographical arrangement.
(2) Subsection (1) shall not apply where, at the time the copy is made, the librarian or archivist making it could, by reasonable enquiry, obtain the consent of a person entitled to authorise the making of the copy.

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: _____

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)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:

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 disabilities⁵ or visually impaired persons, including the reading impaired?

Yes

No

Please describe:

Section 104 of the Copyright and Related Rights Act 2000—(1) A designated body may—
(a) make a copy of a work for the purpose of modifying that copy to meet the special needs of a person who has a physical or mental disability, and
(b) supply that modified copy to that person, without infringing the copyright in that work.

(2) Where a copy which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.

(3) In this section, “designated body” means a body designated for the purposes of this section by order of the Minister who shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

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

Yes

No

⁴ Document SCCR/15/7, page 138. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696

⁵ A person with print disability is a person who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability.

Please describe:

However, the formats used must meet the special needs of a person who has a physical or mental disability

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

Please describe:

The “designated body” which may modify and supply a work means a body designated for the purposes of the section by order of the Minister of Enterprise, Trade and Innovation who shall not designate a body unless he or she is satisfied that the body is not established or conducted for profit.

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: _____

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: Please see response at Question No 68 which applies also to deaf persons.

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

Yes
 No

Please describe: However, the formats used must meet the special needs of a person who has a physical or mental disability.

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

Please describe: The Minister for Enterprise, Trade and Innovation must designate the body which may make such uses.

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: _____

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:

The works may be modified to meet the special needs of a person who has a physical or mental disability.

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

- Yes
 No

Please describe:

However, the formats used must meet the special needs of a person who has a physical or mental disability

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

Please describe:

The Minister for Enterprise, Trade and Innovation must designate the body which may make such uses.

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: _____

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: **We are not clear what is meant by “required”**

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: **We are not aware of any such impediments within the context of the exceptions in the Copyright and Related Rights Act 2000 in Ireland.**

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: _____

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: _____

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: _____

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: _____

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: _____

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:

While “reverse engineering” has different meanings in different contexts we are assuming that in this case it is connected with computer programs and set out the full text of the exception.

Section 80 of the Copyright and Related Rights Act 2000 states:—(1) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a back-up copy of it which it is necessary for him or her to have for the purposes of his or her lawful use.

(2) For the purposes of this section and sections 81 and 82, a person is a “lawful user” of a computer program where, whether under a licence to undertake any act restricted by the copyright in the program or otherwise, he or she has a right to use the program, and “lawful use” shall be construed accordingly.

Section 81.—(1) It is not an infringement of the copyright in a computer program for a lawful user—

(a) to make a permanent or temporary copy of the whole or a part of the computer program by any means or in any form, or

(b) to make a translation, adaptation, arrangement or any other alteration of the computer program and to copy the results thereof,

to achieve the interoperability of an independently created computer program with other programs where the following conditions are complied with:

(i) those acts are performed by the lawful user or on his or her behalf by a person authorised to do so;

(ii) the information necessary to achieve interoperability has not previously been available to the person referred to in subparagraph (i); and

(iii) those acts are confined to the parts of the original program which are necessary to achieve interoperability.

(2) Subsection (1) shall not permit the information obtained through its application—

(a) to be used other than to achieve the interoperability of the independently created computer program,

(b) to be given to persons other than those referred to in that subsection, except where necessary for the interoperability of the independently created computer program, or

(c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

Section 82.—(1) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a permanent or temporary copy of the whole or a part of the program by any means and in any form or to translate, adapt or arrange or in any other way alter the computer program where such actions are necessary for the use of the program by the lawful user in accordance with its intended purpose, including error correction.

(2) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to observe, study or test the functioning of the program in

order to determine the ideas and principles which underlie any element of the program, where he or she does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he or she is authorised to do.

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

Section 40 of the Copyright and Related Rights Act 2000 provides

(3) Subject to subsection (4), the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.

(4) Without prejudice to subsection (3), where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.

Section 45:—A person infringes the copyright in a work where he or she without the licence of the copyright owner—

(a) sells, rents or lends, or offers or exposes for sale, rental or loan,

(b) imports into the State, otherwise than for his or her private and domestic use,

(c) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(d) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the owner of the copyright,

a copy of the work which is, and which he or she knows or has reason to believe is, an infringing copy of the work.

46.—(1) A person infringes the copyright in a work where he or she, without the licence of the copyright owner—

(a) makes,

(b) sells, rents or lends, or offers or exposes for sale, rental or loan,

(c) imports into the State, or

(d) has in his or her possession, custody or control,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it has been or is to be used to make infringing copies.

(2) A person infringes the copyright in a work where he or she, without the licence of the copyright owner, transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service) knowing or having reason to believe that infringing copies of the work may be made by means of the reception of the transmission in the State or elsewhere.

47.—(1) Where the copyright in a work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance shall also be liable for the infringement unless, when that person gave permission, he or she had reason to believe that the performance would not infringe copyright.

(2) In this section, “place of public entertainment” includes premises which are occupied mainly for other purposes and which are from time to time made available for hire for the purpose of public entertainment.

48.—Where the copyright in a work is infringed by a public performance of the work, or by playing or showing the work in public, by means of apparatus for—

(a) playing sound recordings,

(b) showing films, or

(c) receiving sounds or images or any combination of sounds or images, or the representations thereof, conveyed by any means,

the following persons shall also be liable for the infringement:

(i) a person who supplied the apparatus, or any substantial part thereof if, when he or she supplied the apparatus or part thereof—

(I) he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright, or

(II) in the case of apparatus the normal use of which involves a public performance, playing or showing, he or she had reason to believe that it would be used to infringe copyright;

(ii) an owner or occupier of premises who gave permission for the apparatus to be brought onto the premises if, when the owner or occupier gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright; and

(iii) a person who supplied a copy of a sound recording or film used to infringe copyright if, when the person supplied it, he or she knew or had reason to believe that what was supplied, or a copy made directly or indirectly therefrom, was likely to be used to infringe copyright.

Provisions relating to secondary infringement of performers’ rights are contained in Sections 212, 213 and 214 of the Act.

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:

Section 40 of the Copyright and Related Rights Act 2000 provides

(3) Subject to subsection (4), the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.

(4) Without prejudice to subsection (3), where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.

Limitations on mere conduit, caching and hosting are provided in S.I. No 68/2003 – European Communities (Directive 2000/31/EC) Regulations 2003.

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:

These are permitted on certain conditions under S.I. No 68/2003 – European Communities (Directive 2000/31/EC) Regulations 2003. These Regulations do not affect the power of any court to make an order against an intermediary service provider requiring the provider not to infringe, or to cease to infringe, any legal rights.

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: Section 40 of the Copyright and Related Rights Act 2000 provides (3) Subject to subsection (4), the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.

(4) Without prejudice to subsection (3), where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.

S.I. No 68/2003 – European Communities (Directive 2000/31/EC) Regulations 2003 provide:

15. A provision of Regulation 16, 17 or 18 providing that a relevant service provider shall not be liable for a particular act shall be construed as a provision to the effect that the provider shall not —

(a) be liable in damages or, unless otherwise provided, be liable to be the subject of an order providing for any other form of relief, for infringing, by reason of that act, the legal rights of any natural or legal person or, by reason of that act, for breaching any duty, or

(b) be liable to be subject to any proceedings (whether civil or criminal) by reason of that act constituting a contravention of any enactment or an infringement of any rule of law.

Liability of intermediary service providers - “mere conduit.”

16. (1) An intermediary service provider shall not be liable for information transmitted by him or her in a communication network if —

(a) the information has been provided to him or her by a recipient of a relevant service provided by him or her (being a service consisting of the transmission in a communication network of that information), or

(b) a relevant service provided by him or her consists of the provision of access to a communication network,

and, in either case, the following conditions are complied with —

(i) the intermediary service provider did not initiate the transmission,

(ii) the intermediary service provider did not select the receiver of the transmission, and

(iii) the intermediary service provider did not select or modify the information contained in the transmission.

(2) References in paragraph (1) to an act of transmission and of provision of access include references to the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communications network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

(3) This Regulation shall not affect the power of any court to make an order against an intermediary service provider requiring the provider not to infringe, or to cease to infringe, any legal rights.

Caching.

17. (1) An intermediary service provider shall not be liable for the automatic, intermediate and temporary storage of information which is performed for the sole purpose of making more efficient that information's onward transmission to other users of the service upon their request, if —

(a) that storage is done in the context of the provision of a relevant service by the relevant service provider consisting of the transmission in a communication network of information provided by a recipient of that service,

and

(b) the following conditions are complied with —

(i) the intermediary service provider does not modify the information,

(ii) the intermediary service provider complies with conditions relating to access to the information,

(iii) the intermediary service provider complies with any rules regarding the updating of the information that have been specified in a manner widely recognised and used by industry,

(iv) the intermediary service provider does not interfere with the lawful use of technology, widely recognised and used by industry to obtain data on the use of the information, and

(v) the intermediary service provider acts expeditiously to remove or disable access to the information it 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.

(2) This Regulation shall not affect the power of any court to make an order against an intermediary service provider requiring the provider not to infringe, or to cease to infringe, any legal rights.

Hosting.

18. (1) An intermediary service provider who provides a relevant service consisting of the storage of information provided by a recipient of the service shall not be liable for the information stored at the request of that recipient if —

(a) the intermediary service provider does not have actual knowledge of the unlawful activity concerned and, as regards claims for damages, is not aware of facts or circumstances from which that unlawful activity is apparent, or

(b) the intermediary service provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

(2) Paragraph (1) shall not apply where the recipient of the service is acting under the authority or the control of the intermediary service provider referred to in that paragraph.

(3) This Regulation shall not affect the power of any court to make an order against an intermediary service provider requiring the provider not to infringe, or to cease to infringe, any legal rights

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:

Right of quotation: Section 52(4) The copyright in a work which has been lawfully made available to the public is not infringed by the use of quotations or extracts from the work, where such use does not prejudice the interests of the owner of the copyright in that work and such use is accompanied by a sufficient acknowledgement.

News Reporting: Section 89.—(1) Subject to compliance with the conditions specified in subsection (2), where a record of spoken words is made, in writing or otherwise, for the purpose of—

- (a) reporting current events, or
- (b) broadcasting or including in a cable programme service the work or part of the work, it is not an infringement of any copyright in the words as a literary or dramatic work, or in any literary or dramatic work or recording arising from the recording of the words, to use the record or material taken from it or to copy the record, or any such material, and to use the copy for the purposes referred to in paragraph (a) or (b).

Section 221 provides for reporting current affairs in relation to performers.

Ephemeral copies: Section 87 (as amended)

“Temporary acts of reproduction

(1) It is not an infringement of the rights conferred by this Part to undertake or conduct temporary acts of reproduction which acts are transient or incidental and which are an integral and essential part of a technological process and whose sole purpose is to enable—

- (a) a transmission in a network between third parties by an intermediary, or
 - (b) a lawful use,
- of a work or other subject-matter to be made, and which acts have no independent economic significance.

(2) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.”

Incidental uses: Section 52.—(1) The copyright in a work is not infringed by its inclusion in an incidental manner in another work.

(2) The copyright in a work is not infringed by the making available to the public of copies of anything the making of which was not, by virtue of subsection (1), an infringement of the copyright.

(3) A work shall not be regarded as included in an incidental manner in another work where it is included in a manner where the interests of the owner of the copyright are unreasonably prejudiced.

(4) The copyright in a work which has been lawfully made available to the public is not infringed by the use of quotations or extracts from the work, where such use does not prejudice the interests of the owner of the copyright in that work and such use is accompanied by a sufficient acknowledgement.

Section 222 relates to the incidental use of performances.

Government uses: This corresponds to the “Public Administration” exceptions set out in Sections 71-77 and 237 – 241 of the Copyright and Related Rights Act 2000. Matters covered: Parliamentary and judicial proceedings, Statutory Inquiries, Copying of material in public records, Material open to public inspection or on a statutory register, Works communicated to Government or Oireachtas, and Acts done under statutory authority.

Non-voluntary license for broadcasting

Non-voluntary license for mechanical reproduction of musical works:

Licences of right in relation to recordings are provided for in section 38 of the Copyright and Related Rights Act 2000.

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: The Copyright and Related Rights Act provides for certain exceptions in relation to typefaces (Section 84), certain exceptions in relation to anonymous or pseudonymous works (Section 88), public reading or recitation of works (Section 90), in relation to abstracts of scientific or technical articles (Section 91), in relation to fixations of performances of works of folklore (Section 92), concerning representations of certain artistic works on public display (Section 93), advertising sale of artistic work (Section 94), making of subsequent works by same artist (Section 95), Reconstruction of buildings (Section 96), playing or showing of sound recordings, broadcasts and cable programmes in certain premises where sleeping accommodation is provided (Section 97), copying for purpose of broadcast or cable programme (Section 99), recording for purposes of supervision and control of broadcasts and cable programmes (Section 100), recording for purposes of time-shifting (Section 101), photographs of television broadcasts or cable programmes (Section 102), reception and retransmission of broadcasts in cable programme services (Section 103). Exceptions in relation to performances are set out in Chapter 4 of Part 111 of the Act.

See also Q 103.

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: *As a Member State of the EU*

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.

We have not included the exceptions in our law relating to two EU Directives:

Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission and

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases

[End of questionnaire]