

 Respondent 102155
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Single response: Questionnaire on Limitations and Exceptions
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1. The answers to this questionnaire have been provided on behalf of:

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

3. Mixed

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

2. No

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

1. Yes

The Copyright Act provides fair dealing for literary, dramatic, musical or artistic works and other activities under section 52 of the Act.

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

1. Yes

Statutory licence is provided for person making sound recording of cover labels under section 52(1)(j)of the Act.

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

1. Yes

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

1. Yes

Exceptions are provided for private use, study and research_under section 52(1) (a) (i) and section 52(1) (p) of the Act.

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

2. No

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

2. No

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

2. No

11. Does your national statute protect technological measures?

2. No

12. Does your national statute protect rights management information?

2. No

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

2. No

14. If recourse to legal proceedings is needed, what is the average time to ensure the exercise of limitations and exceptions if some type of technological measures of protection is applied by copyright and related rights owners?

Not applicable.

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

2. No

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

Not applicable.

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

1. Yes

Back up copies, reverse engineering, interoperability, personal non-commercial use etc. Section 52(1) (aa) to (ad) of the Act.

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

2. No

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

2. No

However, the proposed amendments to the Act is providing such exceptions.

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

2. No

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

: _____ Not applicable

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

1. Yes

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

1. Yes

Publication, teaching, and examination section 52(1) (g) and (h) of the Act.

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

3. Both

Publication, teaching, and examination section 52(1) (g) and (h) of the Act.

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

1. Yes

As a part of educational activities section 52(1) (i) and (h) of the Act.

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

2. No

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

2. No

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

1. Teachers
2. Students
3. Educational institutions

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

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No conditions have been prescribed.

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

1. Yes

As a part of teaching materials section 52(1) (h) of the Act.

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

1. Reprography
2. Digital copying

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

1. Yes

Implied exceptions.

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

2. No

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

2. No

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

1. Teachers
2. Students
3. Educational institutions

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

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No conditions have been prescribed.

37. Does your national statute subject the limitations and exceptions on reproduction for educational purposes

to the use of technological measures?

2. No

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

1. Yes

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

1. Yes

Compulsory licence issued by the Copyright Board after fixing royalty rates under section 31, 32 and 32 A of the Act.

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

2. No

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

3. Educational institutions

4. Others

Publishers

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

5. Others

No conditions have been prescribed.

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

2. No

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

2. No

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

2. No

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

2. No

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

4. Others

Infact, all categories teachers, students and educational institutions.

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

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

2. No

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

1. Yes

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

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

2. No

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

1. Yes

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

1. Yes

Not more than three copies of work if such work is not available for sale in India under section 52(1)(o) of the Act.

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

Books including pamphlet, sheet of music, maps, chart or plan under section 52(1)(o) of the Act.

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

1. Yes

Not more than three copies under section 52 (1) (o) of the Act..

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

Not applicable.

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

2. No

But it is a practice in Indian library to make copies for preservation. This may considered as an implied limitation and exception.

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

Not applicable. All types of works.

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

1. Yes

Section 31A of the Act provided compulsory licence only for orphaned unpublished works

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

1. Yes

Amendment pending before Parliament for its assent

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

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

2. No

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

2. No

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

Not applicable.

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

2. No

But it is a practice in India to make copies if necessary for interlibrary lending- implied exceptions.

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

2. No

But it is a practice in India to make copies if necessary for this purpose implied exceptions.

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

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There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent.

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

2. No

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

2. No

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

2. No

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

2. No

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

2. No

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

2. No

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

2. No

There is no national statute at present. But amendment proposed to include such provision is pending before parliament for its assent

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

2. No

There is no national statute at present. But amendment proposed to include all types of disabilities and such provision is pending before parliament for its assent

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

2. No

There is no national statute at present.

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

There is no national statute at present.

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

2. No

There is no national statute at present.

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

2. No

There is no national statute at present.

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

There is no national statute at present.

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

2. No

There is no national statute at present.

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

1. Yes

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

3. Social Activities

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

2. No

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

2. No

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

2. No

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

2. No

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

2. No

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

2. No

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

1. Yes

Exceptions are provided to Amateur club or society for non-paying audience under section 51 (1) (l), public performance for residential places in closed room or hall not being hotel or similar commercial establishment under section 52 (1) (k) of the Act.

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

2. No

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

1. Yes

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

1. Yes

The observation, study or test of computer programme in order to determine ideas and principles which underline the programme. Doing any act necessary to obtain information essential for inter-operability of independently created computer programme with another programme by lawful processor of computer programme under section 52 (1) (ab), (ac), (ad) of the Act.

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

2. No

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

2. No

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

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Not applicable.

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

Not applicable.

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

1. right of quotation
2. news reporting
3. ephemeral copies
4. incidental uses
5. government uses
6. non-voluntary license for broadcasting
7. non-voluntary license for mechanical reproduction of musical works

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

1. Yes

Section 52 (1) provides exceptions for use of works by judiciary (c), legislature(d), reading and recitation in public (f) reproduction in news papers of articles of current importance(a) (i)& (b), (m) & (n), public performance of works(k), translation of laws(r), use of work of architecture(s), use of work of sculpture (t),use of work in use of copyright expired films(y), and ephemeral recording (z)etc.

102. Has your country signed, or is in the process of negotiating, a Free Trade Agreement (FTA) containing

clauses on copyright and related rights exceptions and limitations?

1. Yes

FTA with EU and Japan is in the process of negotiations.

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

FTA with EU and Japan is in the process of negotiations.

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

There are many uses that are not expressly permitted by the law but enjoyed as implied limitations and exceptions. These include many activities by the educational institutions, archives and libraries. There are also many cultural, religious and social activities treated as implied limitations and exceptions.