

 Respondent 95885
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**Single response:** Questionnaire on Limitations and Exceptions  
**Respondent id:** 95885  
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1. The answers to this questionnaire have been provided on behalf of:

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

1. Specific

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

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

Section 26 provides for the use of copyright protected works under fair dealing for purposes of scientific research, criticism or review or reporting of current events subject to the acknowledgement of source. The Act also allows the inclusion of up to two passages for purposes of education and exceptions in relation to the use of a broadcast for educational activities, archives among others. It also provides for the reproduction of works under the direction of the Government or public libraries and non commercial documentation centres in cases of public interest. In all these cases, there is no need for authorisation or payment of remuneration.

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

2. No

N/A

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)?

2. No

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

It permits the exercise of exclusive rights by a third party for purposes of private use without the previous authorisation of the rights owner (Section 26 (1) (a)).

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

1. Yes

But only in the case of sound recordings where a private copying levy is payable (Section 28 (3) and (4)).

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

N/A

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

N/A

11. Does your national statute protect technological measures?

1. Yes

12. Does your national statute protect rights management information?

1. Yes

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

2. No

N/A

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?

\_\_\_\_\_

N/A

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

\_\_\_\_\_

N/A

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?

\_\_\_\_\_

N/A

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

1. Yes

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Section 26 (4) provides the following: (4) Notwithstanding the provisions of subsection (3), a person who is in lawful possession of a computer program may do any of the following acts without the authorization of the right holder whereby copies are necessary for the use of the computer program in accordance with its intended purpose - (a) to make copies of the program to the extent necessary to correct errors; or (b) to make a back-up copy; or (c) for the purpose of testing a program to determine its suitability for the person's use; or (d) for any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program. (5) The authorization of the right holder of the program shall not be required to decompile the program, convert the program into a version expressed in different programming language, code, notation for the purpose of obtaining formation needed to enable the program to operate with other programs. (6) Any copies made pursuant to this section shall be used only for the purpose for which it was made and shall be destroyed when the person's possession of the computer program ceases to be lawful.

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

2. No

\_\_\_\_\_

No specific provision.

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

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N/A

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

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N/A

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?

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N/A

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

1. Yes

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To a certain extent. However, not all the details were covered in the Analysis maybe due to the scope of the study.

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

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Under Section 26 (1), the relevant provisions with regard to exceptions for educational purposes are; • 'fair dealing' for purposes of criticism, review, scientific research, private use and reporting of current events for as long as the author is acknowledged as such, • the inclusion of not more than two short passages of a copyright-protected work in a collection of literary or musical works that is for use by an educational institution, • the reproduction and broadcasting of a work for educational purposes in an educational institution, • the reproduction under the direction or control of the government, or by public libraries, non-commercial documentation centres and research institutions, 'in the public interest' and where no income is derived from the reproduction.

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

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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?

2. No

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The Act under Section 26 (1) allows for the exceptions in realtion communication to the Public or broadcast by way of fair dealing, and for broadcasting for systemic instructional activities of academic institutions such as universities. There are no specific provisions for exceptions and limitations for performances.

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

2. No

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N/A

27. Does your national statute provide for any specific requirement regarding the qualitative or quantitative

limits and nature of the works or objects of related rights covered by the specific limitations and exceptions allowing performances for educational purposes?

1. Yes

Section 28 (1) (d) provides that the reproduction of a work for inclusion in a collection designed for educational purposes should not exceed two short passages.

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)

3. Educational institutions

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

2. Not-for-profit

3. Public

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

1. Yes

Section 26 provides the following; d) the inclusion in a collection of literary or musical works of not more than two short passages from the work in question if the collection is designed for use in a school registered under The Education Act or any university established by or under any written law and includes an acknowledgement of the title and authorship of the work; (e) the broadcasting of a work if the broadcast is intended to be used for purposes of systematic instructional activities;

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

1. Reprography

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

1. Yes

yes but these will only be limited to a maximum of two short passages for each work.

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

2. No

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

1. Yes

It limits it to two short passages in the case of

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)

3. Educational institutions

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

2. Not-for-profit

3. Public

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

1. Yes

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Circumvention of technological measures is not allowed under the law and there are no specific exceptions under Section 35 (3) which states; (3) Copyright and related rights shall be infringed by a person who - (a) circumvents any effective technical measure designed to protect works; or (b) manufactures or distributes devices which are primarily designed or produced for the purpose of circumventing technical measures designed to protect works protected under this Act; or (c) removes or alters any electronic rights management information; or (d) distributes, imports, broadcasts or makes available to the public, protected works, records or copies from which electronic rights management information has been removed or has been altered without the authority of the right holder.

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

2. No

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

2. No

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

2. No

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

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N/A

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

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

2. No

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

2. No

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

2. No

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

2. No

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

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\_\_\_\_\_  
N/A

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?

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N/A

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

2. No

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

\_\_\_\_\_  
Exceptions and limitation in realtion to distance learning.

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

2. No

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

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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

Section 26 (1) (h) provides; the reproduction of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centers and scientific institutions as may be prescribed, where the reproduction is in the public interest and no revenue is derived there from;

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

All works

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

2. No

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

It has to be within public interest and can only be carried out by non commercial, public and government institutions.

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

2. No

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

N/A

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

2. No

N/A

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

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The Kenya Copyright Board is currently in the process of reviewing the law including the exceptions and limitations. The final document has yet to be published.

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.)?

1. Yes

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The Act does not clearly define what public interest is.

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?

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It must be non profit (non commercial)entity or a public institution

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

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

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

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69. Does your national statute contain any limitations or exceptions that permit reproduction, distribution, and/or other form of utilization of works for persons with print disabilities<sup>5</sup> or visually impaired persons, including the reading impaired?

2. No

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

exception?

2. No

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n/a

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

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n/a

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

\_\_\_\_\_

n/a

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

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n/a

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

2. No

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n/a

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

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n/a

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

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n/a

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

\_\_\_\_\_

n/a

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

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n/a

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

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n/a

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

\_\_\_\_\_

n/a

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

1. Yes

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The Board is currently working on specific exceptions and limitations in relation to the visually impaired and people with learning disabilities. The final draft is to be handed over the the Attorney General by end of April 2010

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

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

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n/a

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

2. No

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

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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

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n/a

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

\_\_\_\_\_

n/a

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

\_\_\_\_\_

n/a

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

\_\_\_\_\_

n/a

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

2. No

\_\_\_\_\_

n/a

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

2. No

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

2. No

\_\_\_\_\_

n/a

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

1. Yes

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Under 26 (4) it allows for decompilation for purposes of interoperability of a program This is limited to people with access to the legitimate copy and will only be for inhouse purposes.

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

\_\_\_\_\_

n/a

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?

-

\_\_\_\_\_

n/a

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?

\_\_\_\_\_

n/a

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

- 2. news reporting
- 4. incidental uses
- 5. government uses

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The act does not specifically provide for tehe right of quotation.

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

2. No

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

2. No

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

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