

# FINAL QUESTIONNAIRE ON LIMITATIONS AND EXCEPTIONS

*prepared by the World Intellectual Property Organization (WIPO) Secretariat*

## INTRODUCTION

The WIPO Standing Committee on Copyright and Related Rights (SCCR) has agreed to address the issue of exceptions and limitations to copyright and related rights for the purposes of education, libraries and persons with disabilities, by exploring existing and proposed national laws on the subject, with a view to strengthening international understanding on exceptions and limitations.

During the 17<sup>th</sup> session of the SCCR held in November 2008, the WIPO Secretariat was requested to prepare a draft questionnaire regarding exceptions and limitations, with particular emphasis on the issues regarding education, libraries and persons with disabilities, for the consideration of Member States of the SCCR in the 18<sup>th</sup> session.

At the 18<sup>th</sup> session of the SCCR held in May 2009, it was agreed that delegations would send comments on the draft questionnaire (document SCCR/18/3) to the Secretariat. Based on those comments, the Secretariat would present a revised questionnaire.

In the conclusions of the 19<sup>th</sup> session of the SCCR held in December 2009, delegations were invited to send comments on the revised version of the questionnaire, or second draft questionnaire (document SCCR/19/2), to the Secretariat by January 8, 2010. On the basis of the comments and the discussions of the Committee, the Secretariat would finalize the questionnaire without any substantial changes in the content of the questions, and while retaining its seven chapters, and submit it to the Member States and the European Union by February 10, 2010 for replies.

### *Instructions*

The Secretariat presents this final questionnaire on limitations and exceptions and Member States are now invited to respond accordingly, via on-line or in paper form:

– On-line (preferred option): Replies may be provided by completion of the electronic form available on the WIPO website at <http://www.wipo.int/copyright/en/>. In order to access and complete the electronic form online, a general password has been created for all respondents: “LE2010”.

– Paper form: This copy is available in printable form from the aforementioned website and may be completed and sent to the International Bureau, c/o Copyright Law Division, WIPO, by post: 34, chemin des Colombettes, 1211 Geneva 20, Switzerland; by facsimile: +41 22 338 907010; or by e-mail: [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int).

Member States are invited to submit their replies by May 10, 2010. After that date, the questionnaire will no longer be available on the WIPO website.

The Secretariat shall prepare a consolidated paper for the Twentieth Session of the SCCR based on the information gathered from the replies to this questionnaire.

This final questionnaire comprises 103 questions distributed in seven parts:

- Part I on general questions on limitations and exceptions;
- Part II on limitations and exceptions for educational activities;
- Part III on limitations and exceptions for libraries and archives;
- Part IV on limitations and exceptions for persons with disabilities;
- Part V on questions relating to religious, social and cultural exceptions;
- Part VI on other questions regarding digital technology; and
- Part VII on general questions to cover areas left out in Parts I to VI.

This questionnaire is only intended as a tool for data collection to facilitate an analysis of the status of copyright limitations and exceptions in WIPO Member States. It is acceptable for respondents not to answer all questions, particularly when the available data does not allow giving an unequivocal answer to the questions.

When questions include the phrase “please describe,” respondents are encouraged to provide a citation for the statutory provision and/or governing court decision (if applicable) and any other additional description that supports their answer.

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

Country: **Austria**

by

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*Part I: General*

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

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: \_\_\_\_\_

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:

with regard to reporting of current events, uses in the interests of administration of justice and public administration, transient and incidental acts of reproduction, use of public speeches, use of newspaper articles, quotations, use of works in public places; use for the purpose of advertising the public exhibition or sale of artistic works, use in connection with the demonstration or repair of equipment and certain types of non-commercial performances of works

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:

With regard to reproduction for personal and private use, for the benefit of people with a disability, reproduction and distribution by libraries, museums and archives, reproduction, distribution and making available in school books and collections for use in churches, schools, or for educational purposes, use of video or audio media in libraries, performance of cinematographic works in schools and hotels.

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

- Yes  
 No

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

- Yes  
 No

Please describe:

Reproduction for private or personal use is permitted against remuneration.

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

- Yes  
 No

If yes, please describe: copyright levies

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:

With the exception of specific rules for software and creative databases there are no explicit rules in the Copyright Act dealing with this issue. In general, exceptions and limitations limit the rights provided by the Copyright Act and do not provide for users' rights. Thus, according to general rules users can oblige themselves to abstain from uses which are not forbidden by the Copyright 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:

The performance of works, the use in connection with the demonstration or repair of equipment, the distribution of video or audio media to archives, the use of video or audio media in libraries are not allowed if the respective use is effected by means of media produced or distributed in infringement of an exclusive right.

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:

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: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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

- Yes  
 No

Please describe:

Reproduction of computer programs for private use is limited to the reproduction necessary for the agreed use, back-up copies, analysing the program and decompilation.

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

- Yes  
 No

Please describe:

A temporary reproduction is permissible when it is transient or incidental and when it is an integral and essential part of a technological process and when its sole purpose is to enable a transmission in a network between third parties by an intermediary, or a lawful use and when it has no independent economic significance.

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:

There are limitations to the liability of internet service providers in cases of mere conduit, search engines, caching, hosting and linking.

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

*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)<sup>1</sup>, 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:

Document SCCR/19/8 contains several misunderstandings:

- Article 42 (6) of the Austrian Copyright Act is not restricted to “works of literature” but covers all works (see pages 75, 76, 88, 155)
- The exceptions for teaching compilations in Articles 45, 51 and 54 of the Austrian Copyright Act cover the making available right as well. Thus, the Austrian Copyright Act allows “online teaching compilations” (see pages 80, 101, 102, 104, 155)
- Articles 50 and 53 of the Austrian Copyright Act allow the public performance of works of literature and of musical works, where the members of the audience pay no admission or other fee and the recitation is not made for profit. Thus, no specific exception is needed to avoid the “curious scenario” described on page 76.
- As regards quotations Article 46 Copyright Act only covers works of literature. The quotation of works of music is covered by Article 52 Copyright Act, the quotation of works of fine art by Article 54. Copyright Act (see page 155).
- The last amendments of the Austrian Copyright Acts are published in [BGBl. I Nr. 110/2000](#), [BGBl. I Nr. 32/2003](#), [BGBl. I Nr. 81/2006](#), [BGBl. I Nr. 75/2009](#) (BGBl. stands for “Bundesgesetzblatt” which means “federal law gazette”). There is no amendment “2006/129” (see page 137)

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

- Yes

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<sup>1</sup> 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](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](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](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](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](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130393)



No

Please list them:

Art. 42 (6) Copyright Act allows the reproduction of works and the distribution of physical copies to the participants of class or lecture.

Articles 45, 51, 54 and 59c Copyright Act allow the reproduction, distribution and making available of works in teaching anthologies.

As regards performances for educational purposes Article 54 (1) 4 Copyright Act allows the public display of works of art in an educational lecture and Article 56c allows the public presentation of a cinematographic work. Without referring explicitly to educational purposes, Articles 50 and 53 Copyright Act allow the public performance of works of literature and of musical works, where the members of the audience pay no admission or other fee and the recitation is not made for profit.

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

Face-to-face activities

Distance education

Both

Please list them:

*On performances*<sup>2</sup>

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:

Article 54 (1) 4 Copyright Act allows the public display of works of art in an educational lecture and Article 56c Copyright Act allows the public presentation of cinematographic works in schools and universities.

Without referring explicitly to educational purposes, Articles 50 and 53 Copyright Act allow the public performance of works of literature and of musical works, where the members of the audience pay no admission or other fee and the recitation is not made for profit.

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:

Remuneration is due for public presentation of cinematographic works in schools and universities (Article 56c Copyright Act).

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:

Article 54 (1) (4) Copyright Act is restricted to works of fine art, Article 56c Copyright Act to cinematographic works.

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<sup>2</sup> 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: \_\_\_\_\_

*On reproduction*

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

- Yes  
 No

If yes, please describe:

According to Article 42 (6) Copyright Act schools and universities may make and distribute copies for purposes of teaching or training, in the quantities required for a specific class or lecture.

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: There is no limitation.

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

- Yes  
 No

If yes, please describe:

Articles 45, 51, 54 and 59c Copyright Act allow the reproduction, distribution and making available of works in teaching anthologies.

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:

Claims for remuneration may only be asserted by collecting societies.

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

- Yes  
 No

If yes, please describe:

Article 42 (6) Copyright Act: Works which, by their nature and designation, are intended for use in schools, teaching or training are excluded.

Article 56c Copyright Act is limited to cinematographic works (including feature films) and associated music.

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: Publisher of school books

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:

The reproduction for a specific class or lecture (Article 42 (6)) is allowed without further limitations on paper. On other media it is only permissible for the pursuit of non-commercial purposes.

Articles 45, 51, 54 Copyright Act allow the reproduction, distribution and making available of works in teaching anthologies for the pursuit of non-commercial purposes only.

However, Article 59c Copyright Act allows the reproduction, distribution and making available of works in teaching anthologies even for the pursuit of commercial purposes if the competent collecting society gives its consent.

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

- Yes
- No

If yes, please describe: \_\_\_\_\_

*On translations*

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

- Yes
- No

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

- Yes
- No

If yes, please describe: \_\_\_\_\_

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

- Yes
- No

If yes, please describe: \_\_\_\_\_

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

- Teachers
- Students
- Educational institutions
- Others. Please describe: \_\_\_\_\_

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

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

*On making available in digital networks*

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

- Yes  
 No

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

- Yes  
 No

If yes, please describe:

Articles 45, 51, 54 and 59c Copyright Act allow the reproduction, distribution and making available of works in teaching anthologies.

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:

Claims for remuneration may only be asserted by collecting societies.

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: as described above

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: publishers of school books

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

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: \_\_\_\_\_



*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)<sup>3</sup>, 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:

The Study states that published works may be copied under the following conditions:  
“Only a single copy may be produced; Digital copies may only be produced if the original is in the possession of the collection; Single copies of works which have not been published or are out of print can also be made.”

This analysis is incorrect and misleading. According to Austrian Copyright law, § 42 (7)  
1. ANY WORK (whether published or not) may be copied if the original is in the possession of the collection (but only a single copy may be made).  
2. A PUBLISHED WORK may be copied (in SEVERAL copies), on condition that the work is out of print or has not been distributed in a sufficient number of copies.  
ALL copies referred to above may be digital copies, provided however that the copies are produced only for non-commercial ends.

The Study further states that “This provision permits a copy to be exhibited, lent, or used under the same provisions as the original.”

This information is inaccurate and incomplete. § 42 (7) Copyright Act states that a legitimate copy may be exhibited, lent or USED ACCORDING TO § 56b Copyright Act (i.e., (dis)played on single workstations).

In case the copy has been made on the basis of a work which is part of the collection, the use of the copy must be governed by “the same provisions as those that apply to the original work”, which means that the copy must not be used as an item additional to the original work in the collection, but must be used instead of the original work.

In case the copy has been made of a published work which is not part of the collection, it is preconditional for such use of a copy (i.e. exhibited, lent, displayed on terminals) that the original is ACTUALLY out-of-print while using the copy.

As regards the source the Austrian Copyright Act is available at:  
<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>

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<sup>3</sup> Document SCCR/17/2, page 72. Available at:  
[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=109192](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192)

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:

See above § 42 (7), first option: “Any Work may be copied if the original is in the possession of the collection (but only a single copy may be made).

This is commonly referred to as the “preservation copy”, whereas the second option (“A published work”) is usually referred to as the “archival copy”.

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

Please describe:

Any kind of works may be concerned. The preservation copy will typically be made when an item is not available to public access due to conservational or security reason, or for documentation when the object is e.g. lent to third parties. Preservation copies may also be needed for safeguarding digital assets (long-term preservation of digital objects).

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

- Yes  
 No

Please describe:

The reproduced object must be either part of the collection or must be a published work that is out of print or has not been distributed in a sufficient number of copies.

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

If the original work is part of the collection, only one copy may be made of it.

If the original work is not part of the collection (and the copy is therefore not a “preservation” copy, but an “archival copy”), “several” copies may be made of it, but only on condition that the original work has been previously published, is actually out of print or has not been distributed in a sufficient number.

Another important limitation is that copying of a whole book, of a whole periodical or sheet music is allowed only if it is a preservation copy (and prohibited if it is just an archival copy), or if it is out of print or has not been distributed in sufficient number.

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

- Yes  
 No

Please describe:

According to § 42a Copyright Act, copies may be made on order of a patron for patron's own use. This is not limited to libraries or archives, but may apply to any person or institution making copies on behalf of another person: "On order, several copies may be made free of charge for a third person for his/her own use. However, such a copy may be made on the basis of remuneration, if 1. the copying is effected by the use of any kind of photographic technique or by some other process having similar effects;"

It has to be noted though that the Austrian Copyright law differentiates between "own" use and "private" use, and that private use is not contained in "own" use. Copying on behalf of another person is limited to copies for such a third persons "own" use, and may not be made for the patron's private use. If a digital copy is made (and some remuneration paid, even if it just for covering the costs of reproduction), the copying is legitimate only if the copy serves research purposes and serves ends that are not commercial.

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

Please describe:

Any type of work in analogue format, as § 42a option 1 requires that "the copying is effected by the use of any kind of photographic technique or by some other process having similar effect." This can only be argued for a scan or similar technique (with subsequent transmission as a picture, PDF, or suchlike), but not for the copying of a digital file.

Another important limitation is that copying of a whole book, of a whole periodical or sheet music for the patrons own use is allowed only if the copied work is out of print or has not been distributed in sufficient number.

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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:

Libraries and archives are in favor of the following limitations:

The use of out-of print works and orphan works by trusted institutions (i.e. making accessible by national institution (libraries/archives) under specific circumstances, such as e.g. an opt-out clause for right-holders in combination with a cut-off date)

The possibility for multiple preservation copies (important especially with respect to digital works);

The copying on behalf and for the private purposes of patrons (important especially with respect to digital works);

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: \_\_\_\_\_

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

Yes

No

Please describe:

As outlined above, e.g. only one preservation copy may be made of original works that are part of the library collection; copying for patrons is limited to the copying from analogue works and copying of a whole book, of a whole periodical or sheet music for the patrons own use is allowed only if the copied work is out of print or has not been distributed in sufficient number.

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

Please describe: \_\_\_\_\_

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

Yes

No

Please describe: \_\_\_\_\_

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:

§ 42 (7), as outlined above (Question 52 an 53), contains an exception that permits reproduction for archival or preservation purposes. This exception is not limited to libraries or archives alone, but applies generally to “publicly accessible institutions collecting protected works”.

*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)<sup>4</sup>, 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:

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

- Yes  
 No

Please describe:

According to Article 42d Copyright Act reproduction and distribution of published works in formats accessible for persons with disabilities is permissible.

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

Please describe:

The limitation is restricted to published works not already commercially supplied in a usable format and to non-commercial uses.

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<sup>4</sup> Document SCCR/15/7, page 138. Available at:  
[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=75696](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696)

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

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

- Yes  
 No

Please describe:

As the Austrian Copyright Act does not provide for an importation or exportation right an explicit limitation or exception is not necessary. The issue is covered by the limitation to the distribution right.

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

- Yes  
 No

Please describe:

see 68

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

Please describe:

See 70

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

- Yes  
 No

Please describe:

See 71

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

- Yes  
 No

Please describe:  
See 68

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

Please describe:  
See 70

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

- Yes  
 No

Please describe:  
See 71

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: \_\_\_\_\_

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: \_\_\_\_\_

*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:

According to Article 53 (1) (2) Copyright Act public performance of a previously published musical work is permitted at an ecclesiastical or civil ceremony or at a military event, if the members of the audience are admitted free of charge.

According to Article 45 (1) Copyright Act works of literature be reproduced and distributed in a collection containing the works of several authors and intended by its nature and designation for use in churches, schools, or for educational purposes.

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

- Yes, with regard to the limitation provided by Article 45 (1) Copyright Act  
 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: The limitations concerned are limited to musical works (Article 53 Copyright Act ) and works of literature (Article 45 Copyright Act).

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:

According to Article 53 (1) (2) Copyright Act public performance of a previously published musical work is permitted at an ecclesiastical or civil ceremony or at a military event, if the members of the audience are admitted free of charge.

According to Article 53 (1) (4) Copyright Act public performance of a previously published musical work is permitted where the performance is given by a band composed of non-professional musicians or by a choir that exists, as attested to by the competent provincial government, to maintain folk customs and whose members do not participate for profit, and where such performance consists, at least to a clearly preponderant extent, of folk music, or of music or adaptations of music in the public domain.

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:

The limitation is restricted to previously published musical works.

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:

According to Article 40d (3) (2) Copyright Act a person entitled to use a computer program may observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled 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:

According to Article 81 (1a) Copyright Act an action for injunction may be brought against an intermediary whose services are used by a third party to infringe a copyright or related right.

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:

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: search engines

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: \_\_\_\_\_

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

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

- right of quotation
- news reporting
- ephemeral copies
- incidental uses
- government uses
- non-voluntary license for broadcasting
- non-voluntary license for mechanical reproduction of musical works

Please describe: \_\_\_\_\_

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

- Yes
- No

If yes, please describe: \_\_\_\_\_

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

- Yes
- No

Please describe: \_\_\_\_\_

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.

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[End of questionnaire]