

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

Country: Australia

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: _____

The three step test appears explicitly in the *Copyright Act 1968* in section 200AB which provides for the use of works and other subject-matter for certain purposes. These certain purposes are:

- Use by body administering library or archives
- Use by body administering educational institution
- Use by or for a person with a disability

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: _____

Free use exceptions can be located throughout the *Copyright Act 1968*. The exceptions can be loosely grouped into categories of fair dealing, format changing, reproductions by libraries and archives, technological uses and other miscellaneous uses. Key provisions governing free use are included below. For provisions relating to fair dealing, please refer to the answer to question 6. Where two sections are cited together, the first provision applies to works and the second applies to subject matter other than works.

Fair dealing:

- Sections 40, 103C: Research or study
- Sections 41, 103A: Criticism or review
- Sections 41A, 103AA: Parody or satire
- Sections 42, 103B: Reporting news
- Sections 43, 104: Giving professional advice and/or judicial proceedings

Copying by libraries and archives:

- Sections 48A, 104A: Copying by parliamentary libraries for members of parliament
- Section 48A: reproducing and communicating works by libraries and archives for users
- Section 50: Reproducing and communicating works by libraries or archives for other libraries or archives
- Section 51: Reproducing and communicating unpublished works in libraries or archives.
- Section 51AA: Reproducing and communicating works in Australian archives
- Section 51A Reproducing and communicating works for preservation and other purposes
- Section 51B: Making preservation copies of significant works in key cultural institutions' collections
- Section 52: Publication of unpublished works kept in libraries or archives

Technological uses:

- Section s 43A, 111A: Temporary reproductions made in the course of communication
- Section s 43B, 111B: Temporary reproductions of works as part of a technical process of use
- Section 47AA: Reproduction for the purposes of simulcasting in digital form
- Section 110C: Making of a copy of a sound recording or cinematograph film for the purpose of simulcasting in a digital form.
- Section 47B: Reproduction for normal use or study of computer programs
- Section 47C: Back-up copy of computer programs
- Section 47D: Reproducing computer programs to make interoperable products
- Section 47E: Reproducing computer programs to correct errors
- Section 47F: Reproducing computer programs for security testing
- Section 116AN: Circumventing an access control technological protection measure.
This section provides for the following exceptions:
 - Permission
 - Interoperability
 - Encryption research
 - Computer security testing
 - Online privacy
 - Law enforcement and national security

- Libraries, archive and educational institutions for the sole purpose of making an acquisition decision
- Prescribed acts

Miscellaneous:

- Sections 44B, 112B: Reproduction of writing on approved label for containers for chemical product
- Sections 64 to 73: Acts not constituting infringements of copyright in artistic works
- Section 182A: Reproduction of statutory instruments and judgments
- Section 105: Copyright in certain recordings not infringed by causing recordings to be heard in public or broadcast
- Section 106: Causing sound recording to be heard at guest house or club
- Section 109: copyright in published sound recording not infringed by broadcast in certain circumstances

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: _____

Key provisions establishing and governing declared copyright collecting societies, equitable remuneration and the statutory licensing schemes can be found in the *Copyright Act 1968* under:

- Part VA: Copying and communication of broadcasts by educational and other institutions
- Part VB: Reproducing and communicating works etc. by educational and other institutions
 - The statutory licencing scheme provided for under Part VB includes the following uses:
 - reproduction and communication of works by institutions assisting persons with a print disability
 - reproduction and communication of works etc. by institutions assisting persons with an intellectual disability
- Part VC: Retransmission of free-to-air broadcasts
- Part VII, Division 2: Use of copyright material for the Crown
- Part VD: Providing for the digital retransmission of free-to-air broadcasts.

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: _____

The *Copyright Act 1968* provides for fair dealing exceptions and private use exceptions. The fair dealing exceptions include exceptions for the purpose of research or study, criticism or review, parody or satire and the reporting of news. Private use exceptions include the reformatting of print materials, sound recordings, cinematographic films and photographs for private use. Further detail of these private use exceptions can be found in the following provisions:

- Section 109A: Copyright sound recordings for private and domestic use
- Section 47J: Reproducing photograph in different format for private use
- Section 110AA: Copying cinematograph film in different format for private use
- Section 43C: Reproducing works in books, newspapers and periodical publications in different form for private use
- Section 111: Recording broadcasts for replaying at more convenient time

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

- Yes
 No

If yes, please describe: _____

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

- Yes – only in a limited area
 No

If yes, please describe: _____

The enforceability of such agreements has not been tested in Australian case law. There is only one provision in the *Copyright Act 1968* where such an arrangement is explicitly referred to. Section 47H prevents agreements which contain any of the following exceptions from having any effect:

- Section 47B(3): Reproduction as an incidental and automatic technical process of running a copy of a computer program for the purpose of studying the ideas behind the program and how it functions.
- Section 47C: Back up copy of computer programs
- Section 47D: Reproducing computer programs to make interoperable products

- Section 47E: Reproducing computer programs to correct errors
- Section 47F: Reproducing computer programs for security testing

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: _____

Reproduction or communication from a lawful source for a use to be protected by a limitation or exceptions provision is in some cases an express requirement and in others an implied requirement. *Copyright Act 1968* provisions which expressly require a lawful source include:

- Section 47B: Reproduction for normal use or study of computer programs
- Section 47C: Back up copy of computer programs
- Section 47D: Reproducing computer programs to make interoperable products
- Section 47E: Reproducing computer programs to correct errors
- Section 47F: Reproducing computer programs for security testing
- Section 47J: Reformatting a photo for private use
- Section 43C: Reproducing print material for private use
- Section 110AA: Reproducing a cinematograph film for private use
- Section 132APC: Exceptions relating to the circumvention of an access control technological protection measure
- Section 43B: Temporary reproductions of works as part of a technical process of use
- Section 47B: Reproduction for normal use or study of computer programs s47B,
- Section 109A: Copying sound recordings for private and domestic use
- Section 49: Reproducing and communicating works by libraries and archives for users
- Section 50: Reproducing and communicating works by libraries or archives for other libraries or archives

Provisions that have an implied requirement are those based on fair dealing provisions. Here, the lawfulness of the source material directly influences the fairness of the dealing. The fair dealing provisions in the *Copyright Act 1968* are:

- Sections 40, 103C: Research or study
- Sections 41, 103A: Criticism or review
- Sections 41A, 103AA: Parody or satire
- Sections 42, 103B: Reporting news
- Sections 43, 104: Giving professional advice and/or judicial proceedings

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: _____

The *Copyright Act 1968* provisions are drafted in a way to expect that exploitation of materials protected by technological protection measures requires circumvention of such measures. Therefore, for this question, please refer to the answer to question 14.

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: _____

This information is not held. Australia has a federal system of courts which means that each state and territory has its own courts system in addition to the federal court system. There is no consolidated information on the length of legal proceedings to assist in the answering of this question.

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: _____

Part V, Division 2A of the *Copyright Act 1968* contains the key provisions relating to technological protection measures (TPMs) and electronic rights management information. The following defences to circumventing an access control TPM (as defined in section 10(1)) are provided for under sections 116AN (civil liability) and 132APC (criminal liability):

- Permission
- Interoperability
- Encryption research
- Computer security testing
- Online privacy
- Law enforcement and national security
- Libraries and archives when making acquisition decisions, and
- Prescribed acts (listed in Schedule 10A, *Copyright Regulations 1969*).

The relevant acts prescribed in the *Copyright Regulations 1969* can be found in Schedule 10A of the regulations under rule 20Z. The most recent copy of the regulations can be found here:

[http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/FA9004AFE729787FCA2573FA001DDA88/\\$file/CopyrighRegs1969_F2007C00004.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/FA9004AFE729787FCA2573FA001DDA88/$file/CopyrighRegs1969_F2007C00004.pdf)

The offence of removing or altering electronic rights management information is outlined in sections 116B (civil liability) and 132AQ (criminal liability). Defences for this offence are:

- Permission
- Law enforcement and national security

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: _____

This information is not held. Australia has a federal system of courts which means that each state and territory has its own courts system in addition to the federal court system. There is no consolidated information on the length of legal proceedings to assist in the answering of this question.

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

- Yes
 No

Please describe: _____

Limitations and exceptions for the use of computer programs can be found in general limitations and exceptions provisions such as:

- Section 40: Fair dealing for purpose of research or study
- Technological protection measures and electronic rights information exceptions listed above in the answer to question 14.

Specific exceptions relating to the use of computer programs are outlined in Part III, Division 4A which outlines acts not constituting infringements of copyright in computer programs.

The relevant provisions are:

- Section 47B: Reproduction for normal use or study of computer programs
- Section 47C: Back- up copy of computer programs
- Section 47D: Reproducing computer programs to make interoperable products
- Section 47F: Reproducing computer programs to correct errors
- Section 47G: Reproducing computer programs for security testing

It is important to note that section 47H prevents agreements which exclude subsection 47B(3), or sections 47C, 47D, 47E or 47E from having any effect.

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

- Yes
 No

Please describe: _____

The following provisions in the *Copyright Act 1968* provide for the temporary use of digital works:

- Section 111B: Temporary copy of subject matter as part of a technical process of use
- Section 43B: Temporary reproductions of works as part of a technical process of use
- Section 111A Temporary copy made in the course of communication
- Section 43A: Temporary reproduction made in the course of communication.
- Section 200AAA: Proxy web caching by educational institutions

Please also refer to the answer to question 99.

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

Please describe: _____

Australia has a safe harbor scheme for carriage service providers which is set out in Part V, Division 2AA which provides limitations on remedies available against carriage service providers.

It is important to note the narrow definition of ‘carriage service providers’. The definition of carriage service provider in the *Copyright Act 1968* has the same meaning as in the *Telecommunications Act 1997*. Practically, the definition only includes internet service providers and not other providers of digital transmission of works such as search engines.

There are four different categories of activity to which different limitations on remedies apply. Each of these categories has a different set of conditions to which the carriage service provider must comply with in order to benefit from the statutory safe harbor scheme. However there are two general conditions that apply to all categories of activities. These conditions are set out in section 116AH. These conditions require that:

- Carriage service provider must adopt and reasonably implement a policy that provides for the termination, in appropriate circumstances, of the accounts of repeat infringers
- The carriage service provider must comply with any relevant industry codes in force that relate to accommodating and not interfering with standard technical measures use to protect and identify copyright material.

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: _____

The exceptions to trafficking circumvention devices or providing circumvention services are outlined in the following provisions of the *Copyright Act 1968*:

- Section 116AO: Manufacturing etc. a circumvention device for a technological protection measure. There will be no offence if:
 - There was no promotion or advertising done by the person found manufacturing or providing a circumvention device
 - The device is used to assist in enabling interoperability
 - The device is used to test computer security
 - The device is for the purposes of law enforcement or national security
- Section 116AP: Providing etc. a circumvention service for a technological protection measure. There will be no offence if:
 - There was no promotion or advertising done by the person found providing or offering the circumvention service
 - The service is used to enable interoperability
 - The service is used for encryption research
 - The service is used to test computer security
 - The service is used for the purposes of law enforcement or national security

With regard to electronic rights management information, the offence is set out in the following provisions:

- Section 116B: Removal or alteration of electronic rights management information

- Section 116C: Distribution to the public etc. of works whose electronic rights management information has been removed or altered
- Section 116CA: Distribution and importation of electronic rights management information that has been removed or altered.

The only exception to these above three offences is found in:

- Section 116CB: Exception relating to national security and law enforcement.

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: _____

This information is not held. Australia has a federal system of courts which means that each state and territory has its own courts system in addition to the federal court system. There is no consolidated information on the length of legal proceedings to assist in the answering of this question.

Part II: Limitations and Exceptions related to Educational Activities

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

- Yes
 No
 The national statute was not included in the analysis

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

We consider the analysis in SCCR/19/7 to be essentially correct. However, there are some minor errors.

- Page 25 paragraph 74 indicates that parents and guardians are classed as being directly connected with the place where an educational instruction is given. This is incorrect. Parents and guardians are specifically excluded as not being directly connected.
- Page 38 refers to Screenrights as being the collecting society for sound recordings in Australia. Screenrights is the collecting society for broadcasts and films. The Australasian Performing Right Association (APRA) and the Phonographic Performance Company of Australia Limited (PPCA) are the collecting societies for music and sound recordings respectively.

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

- Yes
 No

Please list them: _____

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

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

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

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

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

Australian copyright legislation provides a number of specific provisions and statutory licences with respect to the use, reproduction, and adaptation of copyright works for educational purposes. The following sections and Parts provide specific exceptions and limitations for use of copyright material for educational purposes:

- Section 28: performance and communication of works or other subject-matter in the course of educational instruction
- Section 40: fair dealing for purpose of research or study
- Section 44: inclusion of works in collections for use by places of education
- Section 47B: reproduction for normal use or study of computer programs
- Section 49: reproducing and communicating works by libraries and archives for users
- Section 50(8)(b): reproduction by libraries and archives
- Section 51: reproducing and communicating unpublished works in libraries or archives
- Section 83: (works of joint authorship): inclusion of joint works in collections for use in places of education
- Section 103: fair dealing for purpose of research or study (infringement of copyright in subject-matter other than works)
- Section 116AN: circumventing an access control technological protection measure, exception
- Section 116AO: manufacturing a circumvention device for a technological protection measure, exception
- Section 116AP: providing a circumvention device for a technological protection measure, exception
- Section 132APC: circumventing an access control technological protection measure, exception
- Section 132APD: manufacturing a circumvention device for a technological protection measure, exception
- Section 132APE: providing a circumvention device for a technological protection measure, exception
- Part VA: copying and communication of broadcasts by educational and other institutions
- Part VB: reproducing and communicating works etc. by educational and other institutions
- Section 135ZMB: multiple reproduction and communication of insubstantial parts of works that are in electronic form. Exception from infringement.
- Section 200: use of works and broadcasts for educational purposes
- Section 200AAA: proxy web caching by educational institutions
- Section 200AB: use of works and other subject-matter for certain purposes
- Section 248A(aa): and (1A): performers' protection
- Section 248B: Part XIA performers' protections. Educational purposes

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: _____

Section 10 of the *Copyright Act 1968* defines education institutions to include institutions that provide face-to-face study and/or distance education.

*On performances*²

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

- Yes
 No

If yes, please describe: _____

Section 28 allows literary, dramatic or musical works to be performed in class or otherwise in the presence of an audience by a teacher or student in the course of respectively giving or receiving an educational instruction. The educational instruction must not be for profit. The audience may consist of other teachers, students.

However, if there are parents and guardians who are not directly connected with the place giving the instruction attending school concerts, the concerts would not fall under the exception in section 28.

In addition, educational institutions are able to ‘reticulate’ films and sound recordings through a central source player in a different location (ie a device in a library from which material is displayed on monitors in a classroom). This exception also allows institutions to retransmit live broadcasts to the classroom. The copying of broadcasts for educational institutions is covered under a statutory licence scheme under Part VA.

There is also a separate statutory licensing schemes under Part VB which allows the copying and communication of works by educational institutions for educational purposes.

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

- Yes

² Performance is used here *lato sensu*. It is a broadly applied practice in national legislation to use terms other than those appearing in the international norms on copyright and related rights; that is, to characterize the acts and rights concerned in a way different from the way they are characterized legally in the said international norms. As in the current case, for example, several countries may grant a “right of public performance” in a way that it covers more or less all non-copy-related rights (not only the performance *stricto sensu*, but also and in particular, the right of broadcasting and the right of communication to the public by cable (wire), which, in the Berne Convention are construed as separate rights), or it is also frequent in national laws that a broader right of broadcasting is provided which also covers the right of communication to the public by cable (wire), a separate right under the Berne Convention.

No

If yes, please describe: _____

The performance itself is not remunerable. However, any copies of broadcasts or hardcopy works used in the performance are remunerable under statutory licences in Parts VA and VB respectively.

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: _____

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: _____

Only those directly connected with the place giving instruction are covered by the exception in section 28. However, the statutory licensing schemes in Parts VA and VB do not contain the same limitation.

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

For-profit

Not-for-profit

Public

Private

Others. Please

describe: _____

Section 28 has a specific limitation that the place of education where the instruction for the performance is given be not for profit. However, all educational institutions are able to adapt works under the statutory licensing scheme in Part VB.

On reproduction

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

- Yes
 No

If yes, please describe: _____

There are several parts of the Copyright Act allowing reproduction for educational purposes. The main exceptions include:

- Part VA and VB, which provide for statutory licensing schemes for the copying and communication of broadcasts by educational institutions for educational purposes, and the copying and communicating works respectively. Copyright in a literary or dramatic work is not infringed by the making of one or more reproductions of a page, or pages of a work, provided it is reproduced on the premises of an educational institution for the purposes of a course of education provided by that institution. This exception does not extend to a reproduction of a whole work.
- Section 40, which allows fair dealing of a work for the purposes of research or study
- Section 44, which allows copying for compilations for uses by places of education
- Section 200, which allows other types of copying, besides from copying by an appliance capable of producing multiple copies, such as a photocopier, for educational purposes, and
- Section 200AAA, which allows proxy web caching by educational institutions.

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: _____

The type of reproduction varies between exceptions.

- Section 40 and Part VB allows for digital copying and reprography.
- Sections 47B, 47D, 47E, and 47F allow for the copying of computer programs in certain circumstances.
- Section 200 provides for other types of reproduction and use of works for educational instruction by means otherwise than by the use of an appliance adapted for the production of multiple copies. For example, this section would allow hand written copies.
- Section 200AAA allows proxy caching by educational without infringing copyright.

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

- Yes
 No

If yes, please describe: _____

Section 44 allows for reproduction for the preparation of compilations.

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: _____

Part VB provides for a statutory licensing scheme that allows educational institutions to make reproductions of works providing an arrangement to remunerate copyright owners through an approved (ie, by Government) copyright collection society. If an agreement on the amount of remuneration between the copyright collecting society and the educational institutions cannot be reached, the Copyright Tribunal of Australia can determine the amount of remuneration. Part VB applies to published literary, dramatic, musical or artistic works, and published sound recordings or cinematograph films.

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

- Yes
 No

If yes, please describe: _____

The amount of reproduction varies between exceptions.

- Copying of works under section 40 is limited to a reasonable portion, which is 10% of the number of pages in an edition, work or adaptation or, if the work is divided into chapters, a single chapter.
- Part VB provides limits on the copying of works by an educational institution. Section 135ZG allows free use copying of insubstantial parts of hardcopy works by an educational institution. Insubstantial being less than 1% of a work, or 2 or more pages if there are less than 200 pages in the edition.
- Divisions 2 and 2A in Part VB place limits on the use of work by an educational institution under the statutory licence by defining what a reasonable portion for different types of works for the purposes of Part VB. The limitations in Part VB are set out in the table below.

Provision	Work	Restrictions and Conditions
Section 135ZJ (Division 2)	Article contained in a (hardcopy) periodical publication	Not more than 2 or more articles in same periodical unless articles relate to same subject-matter
Section 135ZK (Division 2)	Literary or dramatic work contained in a printed (hardcopy) published anthology	Work not to comprise more than 15 pages in anthology
Section 135ZL (Division 2)	Literary, dramatic, musical or artistic work (hardcopy) (other than an article in a periodical)	Not applicable to whole or more than a reasonable portion of a separately published work unless satisfied, after reasonable investigation, that reproductions (other than second-hand reproductions) cannot be obtained within a reasonable time at an ordinary commercial price
Section 135ZM (Division 2)	Artistic work that explains or illustrates accompanying (hardcopy) article, literary, dramatic or musical work	Artistic work on reproduced page to explain or illustrate article or work, for which remuneration notice has been given
Section 135ZMC (Division 2A)	Article contained in a periodical (electronic form)	Not more than 2 or more articles in same periodical unless articles relate to same subject-matter
Section 135ZMD (Division 2A)	Literary, dramatic, musical or artistic work (electronic form) (other than an article in a periodical)	Not applicable to whole or more than a reasonable portion of a separately published literary or dramatic work, or the whole or more than 10% of a separately published musical work unless satisfied, after reasonable investigation, that the work is not available in electronic form within a reasonable time at an ordinary commercial price Not to simultaneously make available online another part of work via section 135ZMD
Section 135ZMDA (Division 2A)	Literary or dramatic work contained in an ((paged) electronic form) published anthology	Work not to comprise more than 15 pages in anthology
Section 135ZME (Division 2A)	Artistic work (in electronic form) that explains or illustrates accompanying (electronic form) article, literary, dramatic or musical work	Artistic work on reproduced page to explain or illustrate article or work, for which remuneration notice has been given

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: Educational institution has an extensive meaning in s10 of the Copyright Act _____

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: _____

Unlike performances, there is no restriction on whether educational institutions are not for profit. The definition of educational institution in section 10 does not distinguish between for-profit and not-for-profit or public and private institutions.

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: _____

However, there is a very limited exception in subsection 116AN(8), which allows circumvention of access control measures by educational institutions for the sole purpose of making an acquisition decision.

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: _____

Section 10 (interpretations) includes ‘translations’ is the definition of “adaptation”. The statutory licensing scheme under Part VB includes the adaption of works by educational institutions.

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: _____

Please see answer to question 32.

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: _____

Please see answer to question 35.

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: _____

Division 2A Part VB extends use under a statutory licence to electronic works.

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: _____

Please see the answer to Question 32.

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: _____

Please see the answer to Question 33.

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

- Teachers
 Students
 Educational institutions
 Others. Please

describe: _____

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

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

describe: _____

Division 2A Part VB includes a requirement to comply with the prescribed form in the remuneration notice.

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: _____

Please see the answer to Question 36.

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: _____

Not applicable.

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: _____

Not applicable.

Part III: Limitations and Exceptions related to Libraries and Archives

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

- Yes
 No
 The national statute was not included in the analysis

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

Only clarifications and necessary corrections of statements made in the document SCCR/17/2 will be noted below.

Page 31: “Of the 184 countries, seventy-nine have a statutory prohibition against circumvention of technological protection measures. Of those countries, twenty-six have an exception to the bar on circumvention that is explicitly applicable to libraries...most of them are members of the European union...the non-E.U. countries are: Australia...”

- It should be clarified that the library exception in section 116AN of the *Copyright Act 1968* explicitly states that it only applies when the circumvention is done for the sole purpose of making an acquisition decision in relation to the material. It is not a general exception for all uses a library, archive or educational institution may carry out. Further exceptions are allowed for under schedule 10A of the Copyright Regulations 1969 pursuant to subsections 116AN(9)(c) and 132APC(9)(c) of the *Copyright Act 1968*. Please refer to the answer to question 14 for more information.

Page 88: Country profile for Australia

- A few changes are required to the country profile included in the Appendix of SCCR/17/2 starting from page 88.
- Page 101: Under “Fair Dealing”, additional exceptions are included in sections 41 and 103A for criticism and review and sections 41A and 103AA for parody and satire.
- Page 102: All references to “Australian Archives” in the *Copyright Act 1968* should now be replaced with “National Archives of Australia”. This includes references to defined terms in section 10 of the Act.
- The latest version of the *Copyright Act 1968* incorporating Act No. 8 of 2010 is available at:
[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/11D46B81E CFC4118CA2576F0002347F7/\\$file/Copyright1968.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/11D46B81E CFC4118CA2576F0002347F7/$file/Copyright1968.pdf)

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

- Yes

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

No

Please describe: _____

The *Copyright Act 1968* contains the following provisions that permit copying by libraries and archives for preservation and replacement purposes:

- Section 50: Reproducing and communicating works by libraries or archives for other libraries or archives
- Section 51AA: Reproducing and communicating works in care of National Archives of Australia
- Section 51A: Reproducing and communicating works for preservation and other purposes
- Section 51B: Making preservation copies of significant works in key cultural institutions' collections.
- Section 112AA: Making preservation copies of significant published editions in key cultural institutions' collections.
- Section 110BA: Making preservation copies of significant recordings and films in key cultural institutions' collections
- Section 110B: Copying and communicating sound recordings and cinematograph films for preservation and other purposes

Further information is on the Fact Sheet 'Preservation copying' found at:

http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_IssuesandReviews_CopyrightAmendmentAct2006-Factsheets

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

Please describe: _____

Generally a library or archive can make preservation copies of a manuscript, or other original version including a painting, or a first copy of a film or sound recording. Significant published editions, sound recordings and cinematograph films can also be preserved. Whether a work is significant needs to be evaluated by the authorizing officer of either the library or archive.

If the library or archive is a 'key cultural institution' preservation copying extends to manuscripts; original artworks (where a photographic copy is not commercially available); published works (where a copy is not commercially available); a particular edition of a work; original sound recordings, unpublished sound recordings, original films, and unpublished films; published sound recording or film (where a copy is not commercially available).

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

Yes

No

Please describe: _____

Three copies may be made in the case of 'key cultural institutions'.

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

Please describe: _____

The exception is not available where a replacement copy is available for purchase at a reasonably commercial price. The purpose of the reproduction is limited to preservation or the replacement of a work which has been lost, stolen, or damaged. In addition, the copyright in a work will not be infringed if the reproduction by the library or archives is for administrative purposes. For more information please refer to the provisions listed in the answer to question 53.

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

- Yes
 No

Please describe: _____

Exceptions that apply to users of libraries and archives can be found in the following two provisions:

- Section 49: Reproducing and communicating works by libraries and archives for users
- Section 51: Reproducing and communicating unpublished works in libraries or archives

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

Please describe: _____

The types of works available to users, subject to certain conditions, are listed below:

- Section 49: an article or part of an article contained in a periodical or part of a published work
- Section 51: Literary, dramatic, musical or artistic works that are unpublished and whose authors have died at least 50 years previously and manuscripts or reproductions of unpublished thesis or similar literary works.

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: _____

Not applicable.

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: _____

Not applicable.

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

- Yes
 No

Please describe: _____

Not applicable.

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

Please describe: _____

Not applicable.

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: _____

The exceptions are provided for in the below provision of the *Copyright Act 1968*:

- Section 50: Reproducing and communicating works by libraries or archives for other libraries or archives

Subsection 50(1)(b) allows for a library to supply a reproduction to second library which has received a request from a user under section 49. The library may request a reproduction of an article or part of an article contained in a periodical publication or the whole or part of a published work.

Additional restrictions apply to this exception where the reproduction amounts to the whole, or more than a reasonable portion, of the work. This exception is similarly available to works which are in electronic form. There are no equivalent provisions for material such as CD-ROMs, DVDs or audio CDs.

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: _____

The following provisions only apply to libraries and archives as defined by the *Copyright Act 1968*. A library is required to be non-profit and have either part or all of its collection accessible to members of the public either directly or through interlibrary loans.

Parliamentary libraries whose principle purpose is to provide library services for members of parliament are also included in the definition. Archives must also be non-profit and have all or part of their collection accessible to members of the public.

- Section 50: Reproducing and communicating works by libraries or archives for other libraries or archives
- Section 51AA: Reproducing and communicating works in care of National Archives of Australia
- Section 51A: Reproducing and communicating works for preservation and other purposes
- Section 110B: Copying and communicating sound recordings and cinematograph films for preservation and other purposes

The following provisions require that the library or archive be a recognized cultural institution under a law of the Commonwealth, State or Territory.

- Section 51B: Making preservation copies of significant works in key cultural intuitions' collections.
- Section 112AA: Making preservation copies of significant published editions in key cultural institutions' collections.
- Section 110BA: Making preservation copies of significant recordings and films in key cultural institutions' collections

Part IV: Limitations and Exceptions for Persons with Disabilities

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

Yes

No

The national statute was not included in the analysis

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

Only clarifications and necessary corrections of statements made in the document SCCR/15/2 will be noted below.

Page 138: Country profile for Australia

Section 116A of the *Copyright Act 1968* has been repealed. The following provisions may now be relevant to the profile:

- Section 116AN: Circumventing an access control technological protection measure
- Section 116AO: Manufacturing etc. a circumvention device for a technological protection measure
- Section 116AP: Providing etc. a circumvention service for a technological protection measure
- Section 116B: Removal or alteration of electronic rights management information
- Section 116C: Distribution to the public etc. of works whose electronic rights management information has been removed or altered.
- Section 116CA: Distribution and importation of electronic rights management information that has been removed or altered

The latest version of the *Copyright Act 1968* incorporating Act No. 8 of 2010 is available at: [http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/11D46B81ECFC4118CA2576F0002347F7/\\$file/Copyright1968.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/11D46B81ECFC4118CA2576F0002347F7/$file/Copyright1968.pdf)

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

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

- Yes
 No

Please describe: _____

The following provisions include both free use exceptions and a statutory licensing scheme which allows for the reproduction, distribution and other forms of use for persons with print disabilities:

- Section 200AB: Use of works and other subject matter for certain purposes. Here, the exception applies to persons with a disability that causes difficulty in reading, viewing or hearing the work or other subject matter in a particular form.
 - The work or subject matter can be used or reproduced in a way to reduce that difficulty without needing the copyright owner's permission.
 - This exception is subject to the three step test.
 - This section is intended to 'fill the gaps' left by the statutory licence in Part VB, Division 3 of the Act. Where the use is already covered by the statutory licence (for example, in the case of institutions making a Braille copy of a book) the exception in section 200AB does not apply and institutions must continue to comply with the statutory licence.
- Part VA: Copying and communication of broadcasts by educational and other institutions. In this part an "institution" is defined to mean educational institutions and institutions assisting persons with an intellectual disability.
- Part VB: Reproducing and communicating works etc. by educational and other institutions. In this part an "institution" is defined to mean educational institutions, institutions assisting persons with an intellectual disability and institutions assisting persons with a print disability. Part VB also includes Division 3 and Division 4 which are listed below:
 - Division 3: Reproduction and communication of works by institutions assisting persons with a print disability. This contains the following provisions:
 - Section 135Z: Copying published editions by institutions assisting persons with a print disability
 - Section 135ZP ;multiple reproduction and communication of works by institutions assisting persons with a print disability
 - Section 135ZQ: making of relevant reproductions and relevant communications by institutions assisting persons with a print disability
 - Division 4: Reproduction and communication of works etc. by institutions assisting persons with an intellectual disability. This contains the following provisions:
 - Section 135ZR Copying of published editions by institutions assisting persons with an intellectual disability

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

- Section 135ZS: Copying and communication of eligible items by intuitions assisting persons with an intellectual disability
- Section 135ZT: Making of copies etc. for use in making copies or communications for a person with an intellectual disability

Individuals also have ‘personal use’ exceptions which allow a person, within limits, to copy and format-shift works for private use. For example, a person can copy a legitimately owned book or photograph into another format such as a digital file. Please refer to the answer to question 6 for more details.

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

- Yes
 No

Please describe: _____

In relation to the statutory licence in Part VB, Division 3 of the Act, particular formats are specified – sound recording, Braille, large-print, photographic or electronic versions. In relation to the exception in s 200AB, no format is specified. It is intended to be a flexible dealing exception to allow for ongoing changes in technology.

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

Please describe: _____

Please refer to the provisions listed in the answer to question 68.

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

- Yes
 No

Please describe: _____

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

- Yes
 No

Please describe: _____

Please refer to the answer to question 68 and in particular the references to section 200AB.

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

- Yes
 No

Please describe: _____

Please see answer to question 69.

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

Please describe: _____

Please refer to the provisions listed in the answer to question 68.

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

- Yes
 No

Please describe: _____

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

- Yes
 No

Please describe: _____

Please refer to the answer to question 68 and in particular the references to section 200AB.

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

- Yes
 No

Please describe: _____

Please see answer to question 69.

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

Please describe: _____

Please refer to the provisions listed in the answer to question 68.

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

Yes

No

Please describe: _____

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

Yes

No

If yes, please describe: _____

Australia is participating in current discussions in the WIPO Standing Committee on Copyright and Related Rights on exceptions regarding education, libraries and persons with disabilities. Depending on the outcome of the discussions, and any possible international instrument, there may be a need for the Government to consider amendments to our copyright law.

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

Please describe: _____

Not applicable.

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: _____

Not applicable.

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: _____

Religious activities are only mentioned in one provision of the *Copyright Act 1968*:

- Section 106: Causing sound recording to be heard at guest house or club

This exception allows for a sound recording to be heard in public as a part of the activities of a non-profit organization conducting charitable activities or activities concerned with the advancement of religion, education or social welfare.

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

- Yes
 No

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

- Yes
 No

If yes, please describe: _____

The exception provided for in section 106 only applies to the communication of sound recordings to the public in certain settings.

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: _____

The only exceptions which relate to cultural purposes are listed below. All three relate to the making of preservation copies for materials that have been assessed for their cultural significance.

- Section 51B: Making preservation copies of significant works in key cultural institution's collections
- Section 112AA: Making preservation copies of significant published editions in key cultural institutions' collections
- Section 110BA: Making preservation copies of significant recordings and films in key cultural institutions' collections

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: _____

Please refer to the sections listed in the answer to question 88 for specific requirements. One general requirement too all three provisions, however, is that the work be a part of the collection of a cultural institution that has been recognized by a Commonwealth, State or Territory law.

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: _____

Not applicable.

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

Yes

No

Not applicable.

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: _____

Not Applicable

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: _____

The *Copyright Act 1968* contains the following provisions which allow for reverse engineering, subject to certain restrictions and conditions:

- Section 47B: Reproduction for normal use or study of computer programs
 - subject to exceptions, the copyright in a computer program is not infringed by the making of a reproduction if it is incidentally and automatically made as part of the technical process of running the program for purpose for which is was designed, or for the purposes of studying the ideas behind the program and the way in which is functions.
- Section 47C: Back-up copy of computer programs
 - the copyright in a computer program is not infringed by the making of a reproduction of the work which is:
 - made by, or on behalf of, the owner or licensee of the original copy
 - for that persons own use
 - for the purpose of storing and use in the event that the original copy is lost, destroyed or rendered unusable, or
 - part of the normal back-up copying of data for security purposes.
- Section 47D: Reproducing computer programs to make interoperable products
 - Copyright in a computer program is not infringed by the making of a reproduction or adaptation for the purpose of obtaining information necessary to make another program, or article to connect to and be used together with, or otherwise interoperate with, the original program.
- Section 47E: Reproducing computer programs to correct errors
 - Copyright in a computer program is not infringed by the making of a reproduction or adaptation of the work for the purpose of correcting an error in the original copy which prevents it from operating.
- Section 47F: Reproducing computer programs for security testing
 - Copyright in a computer program is not infringed by the making of a reproduction or adaptation for the purpose of testing the security of the original copy, computer system, or network of which the program is a part. Further, copyright is not infringed if the reproduction is made for the purpose of investigating or correcting a security flaw or vulnerability.

An exception for reverse engineering can also be found in section 23 of the *Circuit Layouts Act 1989* which allows for the reverse engineering of an eligible circuit layout. The section provides for the copying of either the layout or of the integrated circuit for the purposes of evaluating or analyzing the layout. There is no limitation on the purpose of this evaluation or analysis. The purpose can either be commercial or non-commercial.

Section 23 also provides for the making of a new and original circuit layout based on the analysis or evaluation of the reverse engineered circuit. The new circuit is required to be

sufficiently original to be protected by this exception. Copies or near copies will not contain the necessary level of creative contribution.

The section then allows for the making and commercial exploitation of an integrated circuit based on this new and original circuit layout.

The latest version of the *Circuit Layouts Act 1989* incorporating Act No. 21 of 2007 is available at:

[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/0795E509780FE8E8CA25730100108A99/\\$file/CircuitLayoutsAct1989.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/0795E509780FE8E8CA25730100108A99/$file/CircuitLayoutsAct1989.pdf)

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: _____
The relevant provisions of the *Copyright Act 1968* and corresponding circumstances are listed below:

- Section 36 Infringement by doing acts comprised in copyright
- In determining whether a person has authorized an infringing act under this section, the following matters must be taken into account:
- Extent of the person's power to prevent the infringement
 - Nature of the relationship between the two parties
 - Whether the person took any reasonable steps to prevent or avoid the doing of the act including compliance with any relevant industry codes of practice
- Section 39 Infringement by permitting place of public entertainment to be used for performance of work
 - Section 39A Infringing copies made on machines installed in libraries and archives
- Libraries and archives will not be found to be authorizing infringements if:
- There is a notice outlining the prescribed dimensions and forms allowable for copies and
 - That notice is readily visible to those using the machine as it is either fixed to the machine or in close proximity to the machine.
- Section 39B Communication by use of certain facilities

This section operates as a general catch all presumption against the finding of authorization if a person merely provides facilities to exploit copyright. The section includes carriage service providers as an explicit example.

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: _____

Australia has a safe harbor scheme for carriage service providers which is set out in Part V, Division 2AA which provides limitations on remedies available against carriage service providers.

The comparable term in Australian legislation to 'online service provider' is 'carriage service provider'. In the *Copyright Act 1968* the term is defined under s10 as 'has the same meaning as in the *Telecommunications Act 1997*'. The Telecommunications Act, defines a person as a 'carriage service provider' 'if a person supplies, or proposes to supply, a listed carriage service to the public using: (a) a network unit owned by one or more carriers; or (b) a network unit in relation to which a nominated carrier declaration is in force' (see section 87 of the Telecommunications Act).

The conditions to be met in order for a carrier service provider (CSP) to qualify for Australia's statutory safe harbor is dependent upon the category of activities being undertaken. These activities are outlined in the answer to question 97. If all conditions are satisfied the CSP will not be liable for damages.

For all categories of activities, the CSP must adopt and reasonably implement a policy that provides for termination of the accounts of repeat infringers. They must also comply with relevant industry codes (if any) with respect to provisions for the accommodation and non-interference with standard technical measures used to protect and identify copyright material.

Additional conditions are attached to each of the activities referred to in question 97 and are set out in section 116AH of the *Copyright Act 1968*.

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

- Acting as a conduit for infringing material (e.g., transmitting, routing, or supplying connections for material)
- Caching infringing material
- Storing infringing material at the direction of a user
- Providing access by means of information search tools such as indices, references, hyperlinks and directories to infringing materials that users post
- Others. Please specify: _____

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

Please specify: _____

For each activity, as outlined in the answer to question 97, there are both general and specific conditions with which a carriage service provider must comply with in order to take advantage of the limitations on remedies. The general conditions which relate to all four activities are:

- Adopt and reasonably implement a policy of terminating in appropriate circumstances the accounts of users who are repeat copyright infringers.
- Accommodate and not interfere with standard technical measures used to protect and identify copyright material in accordance with a relevant industry code. If an industry code is not in force, this condition does not apply.

The specific conditions which relate to each different type of activity are set out in section 116AH in the *Copyright Act 1968*.

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: _____

News Reporting

The *Copyright Act 1968* provides for a fair dealing exception for the purpose of news reporting in section 42.

Ephemeral copies

The *Copyright Act 1968* provides limitations and exceptions for the making of a temporary copy in certain situations. These situations and the corresponding exception are outlined below and are subject to further limitations and conditions:

- Section 43A: Temporary reproductions made in the course of communication
 - provides that the making of a temporary reproduction will not infringe the copyright of that work, if it is made as part of the technical process of making or receiving a communication.
- Section 43B: Temporary reproductions of works as part of a technical process of use
 - provides that temporary reproductions of any copyright works which are incidentally made as a necessary part of a technical process of using the original copy does not amount to infringement of the copyright.
- Section 47B: When such a copy is required as an essential step in the use of the program:
 - subject to exceptions, the copyright in a computer program is not infringed by the making of a reproduction if it is incidentally and automatically made as part of the technical process of running the program for purpose for which is was designed.
- Section 47C: Back-up copy of computer programs
 - the copyright in a computer program is not infringed by the making of a reproduction of the work which is:
 - made by, or on behalf of, the owner or licensee of the original copy
 - for that persons own use
 - for the purpose of storing and use in the event that the original copy is lost, destroyed or rendered unusable, or
 - part of the normal back-up copying of data for security purposes.

Incidental uses

The *Copyright Act 1968* provides for exceptions to incidental use in the case of incidental use as a part of the technical process of use and of incidental use generally. Provisions include:

- Section 43B: Temporary reproductions of works as part of a technical process of use
- Section 47B: Reproduction for normal use or study of computer programs
- Section 67: Incidental filming or televising of artistic works

Government Uses

The Government has a statutory licence scheme which provides for the reproduction of copyright material for the ‘services of the Government’. Only Government entities are entitled to this exception and it is conditional on payment of a fair remuneration to an approved copyright collecting society or copyright owner.

Non-voluntary licence for broadcasting

The *Copyright Act 1968* provides for a non-voluntary licencing scheme for broadcasting. Relevant provisions can be found in:

- Part VC: Retransmission of free-to-air broadcasts

There is also currently a bill before Parliament which will insert a part VD providing for the digital retransmission of free-to-air broadcasts. Please refer to the answer to question 4 for more information.

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: _____

The list of countries with which we have FTAs or are negotiating FTAs can be found here along with full texts of the agreements: <http://www.dfat.gov.au/trade/ftas.html>

In summary, Australia has signed a Free Trade Agreement with the following countries containing clauses on copyright, however not all contain clauses on related rights exceptions and limitations.

- ASEAN and New Zealand
- Singapore
- Thailand
- United States: The full text of the agreement can be found here: http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html
- Chile

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

Please describe: _____

Please refer to the answer to question 101. More details on up and coming FTA negotiations can be found on: <http://www.dfat.gov.au/trade/>

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

_A n official electronic copy of the *Copyright Act 1968* can be found here:
<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/2E3EEB3B6191AB60CA2574FF0081BA02> _____ There are also relevant fact sheets on Australia's copyright law that are available at:
www.ag.gov.au/www/agd.nsf/Page/copyright
