

 Respondent 101783
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**Single response:** Questionnaire on Limitations and Exceptions  
**Respondent id:** 101783  
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1. The answers to this questionnaire have been provided on behalf of:

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

3. Mixed

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

2. No

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

1. Yes

Most exceptions to copyright in New Zealand provide that a person can use a work without authorisation from, or payment to, the copyright owner. However, exceptions are generally conditional - for example, when deciding whether a use of a work has been fair dealing for the purpose of research or private study, a court must take into account whether that work could have been obtained within a reasonable amount of time at an ordinary commercial price. Limitations and exceptions can be found in Part 3 of the Copyright Act 1994 (NZ)

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

2. No

Section 69 of the Copyright Act 1994 provides mechanism for a prescribed body to make braille adaptations of literary works available to visually impaired persons in certain circumstances.

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

2. No

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

1. Yes

Section 43 of the Copyright Act 1994 provides that a person does not infringe copyright in a work where that person is using the work for the purpose of research or private study, under certain conditions.

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

2. No

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

1. Yes

The Copyright Act 1994 is silent on this issue. However, under New Zealand law generally, the position is that parties would be able to contract out of such exceptions and limitations.

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

1. Yes

Section 56A of the Copyright Act 1994 allows a prescribed library to communicate a digital copy of a work to an authenticated user if that copy has been obtained lawfully. We would read this as including the fact that the source of the copy was lawful and authorised. Section 68 of the Copyright Act 1994 also provides that where a recording of spoken words is made in writing or otherwise for the purposes of news reporting or communicating those words to the public it is not an infringement of copyright to copy that record provided that the use is authorised by the speaker and the person in possession of the copy. Other limitations and exceptions are not subject to such requirements.

**11. Does your national statute protect technological measures?**

1. Yes

**12. Does your national statute protect rights management information?**

1. Yes

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

1. Yes

Under the New Zealand Copyright Act, the importation and distribution of a technological protection measure (TPM) circumvention device, or the offering of services for such circumvention, is prohibited, rather than the act of circumvention itself. The Act provides that prescribed persons can acquire and use a circumvention device in order to exercise one of the permitted acts (our term for limitations and exceptions) in part 3 of the Act, on behalf of any person. The Act therefore ensures limitations and exceptions still apply despite the underlying work being protected by a TPM.

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

Recourse to legal proceedings is not needed in order to exercise a limitation and exception. Where a copyright owner alleges breach of copyright, a defendant would raise a defence that their use was covered by the limitations and exceptions in the Act. In this case, the normal timeframe for an action in a civil court in New Zealand would apply.

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

1. Yes

As described above, New Zealand does not prohibit the act of circumventing a TPM. Limitations and exceptions apply to acts restricted by copyright, and therefore do not apply to the act of altering, removing or concealing rights management information.

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

See answer to question 13 above. The same applies to RMI actions, however, New Zealand also provides a criminal offence for the circumvention of RMI. Different court processes and time frames are likely to apply in criminal proceedings.

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

1. Yes

Sections 80 to 80D of the Copyright Act 1994 (NZ). Exceptions apply to research and study, back up copies and decompilation of a computer programme.

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

1. Yes

New Zealand provides that a transient or incidental (ie temporary) reproduction of a work does not infringe copyright if that enables the lawful use of the work and if the reproduction has no independent economic significance.

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

1. Yes

Sections 92B to E of the Copyright Act 1994 describe the nature of safe harbours and the conditions for their applicability. New Zealand limits the liability of service providers, rather than the remedies available against service providers (as in the US for example).

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

1. Yes

Prescribed persons may acquire circumvention devices or provide such a service for the purpose of exercising limitations and exceptions on behalf of any person. See section 226E

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

As per question 13 above.

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

1. Yes

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

1. Yes

Sections 43 to 49, 79, and 177 to 179 of the Copyright Act 1994.

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

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

1. Yes

Section 47 of the Copyright Act 1994. In New Zealand, these performances are not a "restricted act" requiring authorisation from the copyright owner, providing certain conditions are met.

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

2. No

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

2. No

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

1. Teachers
2. Students
3. Educational institutions

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

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

1. Yes

Section 44 of the Copyright Act 1994 provides that copying by an educational institution is not an infringement of copyright under certain conditions, for example, that the copy is made by a person giving or receiving a lesson.

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

selected)

1. Reprography
2. Digital copying
3. Others

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Any other means

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

1. Yes

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Section 46 of the Copyright Act 1994 allows for copies of short passages of published works to be included in anthologies or compilations, provided certain conditions are met, for example, that a sufficient acknowledgement has been made.

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

2. No

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

1. Yes

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Section 44(3) of the Copyright Act 1994. If copying is done on behalf of an educational institution rather than the institution itself, certain limits as to the amount of a work that may be copied apply, and only where other conditions are met, such as the copy being made for an educational purpose.

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

1. Teachers
2. Students
3. Educational institutions
4. Others

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Those asked, on behalf of an educational institution, to copy a work.

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

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

1. Yes

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Section 44A of the Copyright Act 1994. Where an educational establishment wishes to store make available a copy of a work online, that copy must only be viewable by authenticated users

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

2. No

**39. Does your national statute provide remuneration against the exercise of specific limitations and exceptions**

allowing translations for educational purposes?

2. No

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

2. No

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

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

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

1. Yes

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

1. Yes

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The statute is silent as to the nature of copies that may be made available.

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

2. No

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

2. No

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

4. Others

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Section 44A(3) of the Copyright Act 1994. Only authenticated users may access an online copy of a work. This can cover a participant in the course the work is made available for, or persons who have been through a verification process for the access of the work.

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

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

1. Yes

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A person accessing the work must be an "authenticated user" - this requires a login process or other access prevention measure.

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

1. Yes

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

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

1. Yes

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Lack of knowledge about exceptions may be an impediment. However, we do not monitor or survey educational institutions regarding the use of these provisions.

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

2. No

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The section on TPMs (page 301) suggests that the provision of a circumvention service is not prohibited by the Copyright Act 1994. Section 226A(2) specifically prohibits the provision of a service to a person who the provider knows intends to use the service to circumvent a TPM and infringe copyright in the work.

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

1. Yes

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Section 55 of the Copyright Act 1994, copying for preservation or replacement is permitted under certain conditions.

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

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Any item in the collection of the Library

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

1. Yes

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Section 55(3) of the Copyright Act 1994 - digital copies are subject to different conditions than physical copies.

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

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Section 55 of the Copyright Act 1994. The copy must preserve or replace and original. The exception only applies where it is not reasonably practical to purchase another copy.

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

2. No

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

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

2. No

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

2. No

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

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

1. Yes

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Lack of knowledge about some exceptions may be an impediment. In recent discussions with some libraries, knowledge of the range of exceptions to TPMs that our Act provides was limited.

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

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

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

1. Yes

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Section 54 of the Copyright Act 1994. Must be a copy of a book, and certain conditions must be met. The book must not have been commercially available within the last 6 months, the library supplied must keep accurate records to identify the copy and allow the copyright owner to inspect the copy, and the library supplied must pay equitable remuneration to the copyright owner.

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

2. No

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However, the definition of prescribed library or archive in section 50 of the Act is fairly broad.

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

1. Yes



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

1. Yes

Section 69 of the Copyright Act 1994. New Zealand allows for prescribed bodies to make and communicate braille or otherwise modified for special needs copies of published literary or dramatic works for supply to persons with print disabilities.

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

1. Yes

see above

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

The prescribed body must have made reasonable efforts to obtain a copy commercially, the copy must only be supplied to persons with print disabilities, the body must as soon as is practicable take all reasonable steps to notify the copyright owner, and any payment must be no more than the cost of making the copy and a reasonable contribution to the general expenses of the prescribed body.

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

1. Yes

The Act does not prohibit such activities. As the exception in section 69(1) allows for the communication of a copy modified for persons with print disabilities, we would read the exception to cover works that a prescribed body had imported.

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

2. No

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

2. No

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

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

2. No

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

2. No

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

2. No

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

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

2. No

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

2. No

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

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We consider the current provisions adequate.

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

2. No

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We are not aware of any impediments to the use of these provisions.

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

2. No

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

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

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

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

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

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

purposes

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

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

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

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

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

1. Yes

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Section 80A of the Copyright Act 1994. The lawful user of a copy of a computer programme expressed in low level language can decompile that programme if the information obtained from decompilation is necessary for the objective of creating an independent program that can be operated with the program decompiled or with another program. Certain conditions apply to this exceptions, for example, the exception will not apply if the information is readily available without such a decompialtion.

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

1. Yes

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Section 29 of the Copyright Act 1994 provides that infringement can occur directly or indirectly. New Zealand has little to no case law on the law of authorisation for copyright infringement, so the position is unclear as to whether the lack of control by an intermediary would constitute authorisation of a third party's infringement by that intermediary.

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

1. Yes

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Sections 92B to E of the Copyright Act 1994 describe these safe harbours. New Zealand provides that a service provider is not liable if certain conditions are met, rather than limiting the availability of remedies against that provider (as in the US for example). Injuntive releif is still available against service providers.

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

1. Acting as a conduit for infringing material (e.g., transmitting, routing, or supplying connections for material)
2. Caching infringing material

3. Storing infringing material at the direction of a user

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

With respect to storage at the direction of a user, a service provider will infringe copyright if the service provider knows or has reason to believe the material is infringing, and does not as soon as possible after becoming aware of this remove the material, and notify the user of such fact. With respect to caching, the service provider must not modify the material, must comply with any conditions imposed by the copyright owner of the material for access to that material, must not interfere with the lawful use of technology to obtain data on the use of the material, and must update the material in accordance with reasonable industry practice. The service provider will infringe copyright if the service provider does not delete the material or prevent access to it by users as soon as possible after the service provider became aware that the material has been deleted from its original source, access to the material at its original source has been prevented, or, a court has ordered that the material be deleted from its original source or that access to the material at its original source be prevented.

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

2. news reporting
3. ephemeral copies
4. incidental uses
5. government uses

Part 3 of the Copyright Act 1994. These are subject to copyright exceptions provided certain conditions are met.

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

1. Yes

Section 57 of the Copyright Act 1994, the archives of Television New Zealand, Radio New Zealand, and the New Zealand Film Archive, may play an audio or visual work held by the archive to any member of the public, provided that any payment for this is no more than a reasonable contribution to the maintenance of the archive, and provided that a license for such activity is not available (and the archive reasonably knew of this fact). Section 70 of the Copyright Act 1994 - the public reading or recitation of a reasonable extract of a published literary or dramatic work is not treated as a performance of that work as long as a sufficient acknowledgement is made. A sound recording or the communication to the public of the same recitation does not infringe copyright if the work or communication consists mainly of material that is not part of the extract. Section 72 of the Copyright Act 1994 - a sound recording of a folk song may be made for the purpose of inclusion in a prescribed archive without infringing the literary work or the underlying musical work, provided the words are unpublished and of unknown authorship at the time the recording is made, the making of the recording does not infringe any other copyright, the making of the recording is not prohibited by any performer and that no person is furnished with more than one copy of the recording. Section 74 provides exceptions to copyright for publicly viewable patent and design specifications. Section 78 of the Copyright Act 1994 - anything done for the purposes of reconstructing a building does not infringe copyright in the building or any drawing or plans for that building. Section 75 of the Copyright Act 1994 provides exceptions to copyright for 3 dimensional objects that may infringe copyright in an artistic work that has been applied industrially in New Zealand or any other country with or by license from the copyright owner more than 25 years before the copy was made (in the case of a work of artistic craftsmanship) or more than 16 years before the copy was made (in the case of a sculpture that is a cast or pattern for an object that has a primarily utilitarian function). The exception does not apply to works of architecture. Section 76 of the Copyright Act 1994 - the copying of a literary or artistic work that has been made overseas by or with the license of the copyright owner, that relates to a medicine imported by the Crown, does not infringe copyright. Section 81A of the Copyright Act 1994 allows for the private copying of a sound recording for the purpose of format shifting to devices owned by the owner of the sound recording, provided only one copy is made per device which that copy can be played on, the original was obtained legally, and the copy is only used for personal use or the personal use of member of the same household.

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

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

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