

The answers to this questionnaire have been provided on behalf of:
Country: United States of America

Name and contact information (including telephone and e-mail):--Michele Woods, 202-707-5613, mwoo@loc.gov and Steven Tepp, step@loc.gov, 202-707-8350, U.S. Copyright Office --Neil Graham, 571-272-4455, neil.graham@USPTO.gov, Jacqueline Morales, 571-272-5521, Jacqueline.Morales@USPTO.gov, and Darren Pogoda, 571-272-9300, Darren.Pogoda@USPTO.gov, U.S. Patent and Trademark Office.

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. **The U.S. has both statutory limitations and exceptions, including a fair use limitation (17 U.S.C. § 107), and case law precedent on the application and interpretation of copyright limitations and exceptions such as the fair use doctrine. The U.S. statutory limitations and exceptions are found in Sections 107-122 of the Copyright Act, 17 U.S.C. §§ 107-122. The U.S. Copyright Act can be found on the Copyright Office website at <http://www.copyright.gov/title17/> . Information on fair use can be found in a Factsheet from the Copyright Office at <http://www.copyright.gov/fls/fl1102.pdf>.**

Others please describe:

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

Yes

No. **The three-step test is not set out as a statutory provision.**

Partially, please describe.

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

Yes

No

Other, please describe: **The U.S. limitations and exceptions vary, but in many cases copyrighted materials may be used pursuant to a limitation or exception without prior authorization or payment of remuneration. See, e.g., 17 U.S.C. § 121 (exception for the blind or other persons with disabilities).**

If yes, please describe: _____

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

Yes

No

Other, please describe:

If yes, please describe: **The U.S. Copyright Act does not differentiate between statutory and compulsory licenses, which appears to be the premise of questions 4 and 5. The U.S. Copyright Act contains certain narrowly tailored licenses available without the direct permission of the copyright holder. The payment of license fees and the involvement of the parties in setting the amount of any compensation vary. See, e.g., 17 U.S.C. §§ 111, 112, 114, 115, 116, 118, 119, and 122.**

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. **See response to question 4.**

No

Other, please describe:

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: **There are limitations or exceptions in Title 17 that, while not necessarily limited to private or personal purposes, do permit such uses under certain circumstances, including Section 107 (fair use) and Section 108 (reproduction by libraries and archives).**

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

Yes

No

Other, please describe: **Certain sections of the Copyright Act that permit private or personal uses under certain circumstances, including Sections 107 (fair use) or 108 (reproduction by libraries and archives), do not provide for remuneration systems such as copyright levies. However, pursuant to Section 1004 a royalty is paid upon the distribution of digital audio recording devices that could be used for home taping. See generally Title 17, Chapter 10.**

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
 No

If yes, please describe: **Specific questions on the permissibility of licensing arrangements or other contractual arrangements would have to be considered on a case-by-case basis and would likely involve aspects of U.S. law other than the Copyright Act, including an examination of the applicable case law precedent. In general, however, U.S. law permits parties to agree to a wide range of licensing terms and contractual agreements. The Copyright Act includes some provisions that explicitly permit parties to agree to licensing fees and terms other than those that would be set under various limitations or exceptions. See, e.g., Sections 112(e)(5), 114(f)(3), 115(c)(3), 116(c), and 118(b)(2).**

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, in some cases.
 No

If yes, please describe: **A number of limitations or exceptions in the U.S. Copyright Act refer to copies of works that are “lawfully made.” See, e.g., Sections 109, 110, 112 and 114.**

10. Does your national statute protect technological measures?

- Yes. **U.S. law generally prohibits the circumvention of technological protection measures which control access to a protected work and manufacturing or trafficking in devices or mechanisms to circumvent technological protection measures. See 17 U.S.C. § 1201.**
 No

11. Does your national statute protect rights management information?

- Yes. **U.S. law protects the integrity of “copyright management information.” See 17 U.S.C. § 1202.**
 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
 Other, please describe: **The prohibitions in U.S. law that constitute legal protection for technological protection measures are distinct from the exclusive rights of copyright holders and thus have no bearing on the legal application of exceptions and limitations to exclusive rights. This legal distinction is borne out by Section 1201(c)(1), which**

reaffirms that “[n]othing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.”

However, Section 1201 contains a lengthy list of exemptions from the general prohibition on circumvention of technological protection measures. *See, e.g.*, 17 U.S.C. §§ 1201 (a)(1)(B), (C), and (D); 1201 (c), (d), (e), (f), (g), (h), (i) and (j); 17 U.S.C. §114(d)(2)(C)(viii). *See also* “Rulemaking on Exemptions from Prohibition on Circumvention of Technological Measures that Control Access to Copyrighted Works” at <http://www.copyright.gov/1201/>.

If yes, please describe:

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

Please describe: **The precise duration of legal proceedings is dependant on many variables, including the complexity of the case, the behavior of the parties, and the court’s docket. Whether technological protection measures have been applied to the work(s) at issue may or may not have an effect on the duration of the proceeding.**

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

Other, please describe:

The prohibitions that constitute legal protection for technological protection measures and rights management information are distinct from the exclusive rights of copyright holders and thus have no bearing on the legal application of exceptions and limitations to exclusive rights.

However, a number of exemptions are contained within Sections 1201 and 1202. With respect to Section 1201 on technological protection measures, see the response to question 12. Section 1202 on copyright management information provides an exemption in Section 1202(d) for law enforcement, intelligence, and other government activities. In addition, Section 1202(e) provides limitations on liability for analog and digital transmissions by broadcast stations and cable systems under certain circumstances.

Although better viewed as a limitation on remedies rather than an exemption per se, U.S. law also contains a provision requiring courts to remit civil damages in any case in which a library, archive, educational institution, or public broadcasting entity sustains the burden of proving that it was not aware of and had no reason to believe that its acts constituted a violation of Section 1201 or 1202. 17 U.S.C. § 1203(c)(5)(B). These entities are also exempt from any criminal liability for TPM or RMI violations. 17 U.S.C. § 1204(b).

If yes, please describe:

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

Please describe: **The precise duration of legal proceedings is dependant on many variables, including the complexity of the case, the behavior of the parties, and the court's docket. Whether technological protection measures or digital rights management has been applied to the work(s) at issue may or may not have an effect on the duration of the proceeding.**

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

- Yes
 No

Please describe: **See 17 U.S.C. § 117 (Limitations on exclusive rights: Computer programs).**

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

- Yes
 No

Please describe: **The U.S. Copyright Act provides for temporary copies of digital works in a number of circumstances. See 17 U.S.C. §§ 112 (ephemeral recordings); 117 (computer programs); 512 (limitations on liability relating to material online). See also Digital Millennium Copyright Act § 104 Study (August 2001), at http://www.copyright.gov/reports/studies/dmca/dmca_study.html. 17 U.S.C. § 107 (fair use) might also apply to the temporary use of digital works in certain situations.**

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

- Yes
 No

Please describe: **The U.S. Copyright Act provides limitations on liability, or statutory safe harbors, for qualifying online service providers. See 17 U.S.C § 512 (Limitations on liability relating to material online).**

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

Other. **See responses to questions 12 and 14.**

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: **See responses to Questions 13 and 15.**

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

Other, please describe: **The analysis in SCCR/19/8 is useful but would benefit from some revisions that more accurately reflect U.S. law and the situation in the U.S. regarding limitations and exceptions for educational or research activities. See accompanying document with comments regarding SCCR/19/8.**

The national statute was not included in the analysis

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

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

Yes

No

Please list them: **17 U.S.C. § 110(1) (face-to-face teaching); 110(2) (distance education) 110(4) (performance of nondramatic literary or musical works); and 110(8) (performance of nondramatic literary work for blind or other handicapped persons); 17 U.S.C. § 121(c) (creation and distribution of print instructional materials for blind or other persons with disabilities). Other provisions such as Section 107 (fair use) and Section 108 (reproduction by libraries and archives) might also apply.**

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

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

Both

Please list them: **See response to Question 22. In addition, see the following materials:**

- **U.S. Copyright Office Circular 21: Reproduction of Copyrighted Works by Educators and Librarians**, at <http://www.copyright.gov/circs/circ21.pdf>
- **The Section 108 Study Group Report, March 2008**, <http://www.section108.gov/docs/Sec108StudyGroupReport.pdf> (addresses reproductions by libraries and archives)
- **Report on Copyright and Digital Distance Education, U.S. Copyright Office, May 1999** at http://www.copyright.gov/reports/de_rprt.pdf

On performances²

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: **See 17 U.S.C. § 110(1) (face-to-face teaching); 110(2) (distance education); 110(4) (performance of nondramatic literary or musical works); and 110(8) (performance of nondramatic literary works for blind or other handicapped persons).**

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

Yes
 No

If yes, please describe: _____

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

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: **Various requirements apply to each subsection of Section 110 of the Copyright Act. See 17 U.S.C. § 110(1); 110(2); 110(4); and 110(8).**

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)

For various subsections of Section 110:

Teachers

Students

Educational institutions

Others. Please describe: **Governmental bodies. Section 110(8) also permits transmission through the facilities of noncommercial educational broadcast stations, radio subcarrier authorizations or cable systems.**

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 various subsections of Section 110:

For-profit

Not-for-profit.

Public

Private

Other. Please describe: **Accreditation; without purpose of direct or indirect commercial advantage.**

On reproduction

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

Yes

No

Other. Please describe: **In general, the limitations or exceptions that permit reproduction for educational purposes apply more broadly and not just for educational purposes. See, e.g., 17 U.S.C. §§ 107 (fair use), 108 (reproduction by libraries and archives). 17 U.S.C. § 112(f) also provides that under certain circumstances it is not an infringement of copyright for a governmental body or nonprofit educational institution to make copies or phonorecords of a work for transmissions authorized under the Section 110(2) distance learning provisions. See also U.S. Copyright Office Circular 21: Reproduction of Copyrighted Works by Educators and Librarians, at <http://www.copyright.gov/circs/circ21.pdf>, including the “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals,” “Guidelines for Educational Uses of Music,” and “Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes.”**

If yes, please describe: _____

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

- Reprography under some circumstances.
- Digital copying under some circumstances.
- Others. Please describe: **As described in the response to question 29, various types of reproduction for educational purposes may be permitted pursuant to general limitations or exceptions such as Section 107 and Section 108. Under specified circumstances, Section 112(f) allows reproduction of analog or digital copies or phonorecords of a work.**

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

- Yes
- No
- Other, please describe: **These activities are not mentioned specifically in the Copyright Act but in limited circumstances limitations or exceptions such as fair use might apply.**

If yes, please describe: _____

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

- Yes
- No
- Other, please describe: **Most reproduction for educational purposes is not made under specific limitations and exceptions solely allowing reproduction for educational purposes. Reproductions that meet the requirements of other exceptions and limitations generally do not involve remuneration.**

If yes, please describe: _____

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
- Other, please describe: **Section 112(f) has specific requirements. See responses to questions 29-32 regarding nature of other limitations and exceptions that could apply to reproduction for educational purposes. Case law precedent might also address specific requirements affecting reproduction for educational purposes.**

If yes, please describe: _____

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: **Section 112(f) applies to “a governmental body or other nonprofit educational institution entitled under section 110(2) to transmit a performance or display.” See responses to questions 29-32 regarding nature of and eligibility for other limitations and exceptions that could apply to reproduction for educational purposes. Case law precedent might also address eligibility requirements affecting reproduction for educational purposes.**

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)

Section 112(f):

For-profit

Not-for-profit

Public

Private

Others. Please describe: **Governmental. See responses to questions 29-32 regarding conditions for other limitations and exceptions that could apply to reproduction for educational purposes. Case law precedent might also address conditions affecting reproduction for educational purposes.**

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

Yes

No

Other. **The prohibitions in U.S. law that constitute legal protection for technological protection measures are distinct from the exclusive rights of copyright holders and thus have no bearing on the legal application of exceptions and limitations to exclusive rights. This legal distinction is borne out by section 1201(c)(1), which reaffirms that “[n]othing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.”**

U.S. law does not require the use of technological measures, except in the distance education context (see answer to question 48). If technological protection measures are applied to reproduction, exemptions may be available (e.g. pursuant to Section 1201). Section 112(f)(2)(B) also specifies that only in the case where “the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2),” may print or other analog versions of works be converted into digital formats.

If yes, please describe:

On translations

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

- Yes
- No

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

- Yes
- No
- Other, please describe: **Not applicable.**

If yes, please describe: _____

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

- Yes
- No
- Other, please describe: **Not applicable.**

If yes, please describe: _____

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

- Teachers
- Students
- Educational institutions
- Others. Please describe: _____
- Other, please describe: **Not applicable.**

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: _____
- Other, please describe: **Not applicable.**

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

Other, please describe: **17 U.S.C. § 110(2) provides that performance or display of certain copyrighted works by or in the course of a digital transmission (or other transmission) may not be an infringement of copyright.**

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

Yes

No. **No specific limitations or exceptions in the Copyright Act address coursepacks, compilations or anthologies for educational purposes. As noted above, in limited circumstances limitations or exceptions such as fair use might apply.**

If yes, please describe: _____

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. **17 U.S.C. § 110 (2), applicable to performance or display of certain copyrighted works by or in the course of a digital transmission, does not provide for remuneration.**

If yes, please describe: _____

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: **17 U.S.C. § 110 (2) limits performance or display of certain copyrighted works by or in the course of a digital transmission.**

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)

Section 110 (2):

Teachers

Students

Educational institutions (non-profit and accredited)

Others. Please describe: **Governmental bodies.**

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: **Accredited non-profit educational institutions; Governmental bodies.**

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:

Under 17 U.S.C. § 110(2)(D)(ii), government bodies or accredited nonprofit educational institutions that digitally transmit certain copyrighted works to remote locations are required to (I) apply technological measures that reasonably prevent (aa) the retention of the work in accessible form by recipients of the transmission for longer than the class session and (bb) the unauthorized further dissemination of the work in accessible form by such recipients to others; and (II) refrain from engaging in conduct that would reasonably be expected to interfere with the technological measures used by copyright owners to prevent such retention or unauthorized further dissemination. Apart from this provision, the use of technological measures by copyright owners or persons/entities that distribute copyrighted works is entirely voluntary.

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: **The examination of issues involving limitations and exceptions is constantly evolving. Some topics that have been studied by the U.S. Copyright Office in recent years, including orphan works and reproduction by libraries and archives (Section 108), could have an impact on the scope of copyright limitations and exceptions applicable to educational purposes.**

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

- Yes
 No

If yes, please describe: _____

Part III: Limitations and Exceptions related to Libraries and Archives

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

- Yes
 No
 The national statute was not included in the analysis
 Other. **The analysis in the Annex of SCCR/17/2 reflects the relevant law, but would benefit from minor edits to ensure consistency with the language of the provisions cited. We refer you to the attached document, which contains our revisions to the Annex of document SCCR/17/2.**

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

- Yes
 No

Please describe: **Section 108 of the United States Copyright Act allows libraries and archives to make and distribute copies of materials for specified purposes under specified conditions. Section 108(a) establishes the general eligibility requirements for libraries and archives. Sections 108(b) and (c) set forth the more specific requirements libraries and archives must meet before they may reproduce and distribute copies of works for purposes of preservation or replacement. In addition, during the last 20 years of any term of copyright of a published work, Section 108(h) permits a library or archive to reproduce, distribute, display or perform, in facsimile or digital form, the entire work or portions of the work, for purposes of preservation, scholarship or research, as long as certain conditions are met. The Annex to document SCCR/17/2, noted in question 52, provides an overview of these requirements (pages 416-17, and 421-22).**

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

Please describe: **If copies are made for the preservation or replacement of library materials, there is no limitation on the types of works that may be reproduced. 17 U.S.C. § 108(i).**

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

- Yes
 No

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

Please describe: **Sections 108(b) and (c) permit libraries and archives to make up to three copies of a work for preservation or replacement purposes. A single copy of a work may be made under Section 108(h), which applies to published works in the last 20 years of their copyright term.**

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

Please describe: **See answer to Question 53 above.**

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

- Yes
 No

Please describe: **See Sections 108(d) and 108(e), and the Annex to SCCR/17/2, pp. 417-421 for an overview of the provisions pertaining to patron use. Section 108(f)(1) limits liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises, provided that such equipment displays a notice that the making of a copy may be subject to the copyright law. For patron use of materials obtained through interlibrary loan services, see Section 108(g)(2), and pages 420-421 of the annex to SCCR/17/2.**

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

Please describe: **All types of works are covered, except for musical works; pictorial, graphic or sculptural works; or motion pictures or other audiovisual works other than audiovisual works dealing with news. However, no limitation exists with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with Sections 108(d) and (e). See Section 108(i).**

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

- Yes
 No
 Other

The U.S. Copyright Act does not have a specific section or provision on orphan works, but there are some provisions in the law that address issues related to orphan works (as described below). In recent years Congress has been considering broader legislation to deal specifically with orphan works.

The Copyright Office published a Report on Orphan Works in January, 2006, available on the Copyright Office website at www.copyright.gov/orphan. As the report notes, U.S. copyright law “does contain a few provisions that permit certain users to make certain uses of certain classes of orphan works, and other provisions that reduce the risk in using an orphan work.” Section 108(h) of the Copyright Act allows libraries and archives certain uses of works in the last 20 years of their term if, in general terms, the work is not subject to normal commercial exploitation and is not obtainable at a

reasonable price. Section 115(b) provides that a notice of intention to obtain a compulsory license to distribute phonorecords of certain nondramatic musical works may be filed in the Copyright Office if “the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served.” Section 504(c)(2) provides for a reduction of statutory damages against an infringer that can prove he or she “was not aware and had no reason to believe that his or her acts constituted an infringement of copyright.” The termination provisions found in Sections 203, 304(c), and 304(d) of the U.S. Copyright Act attempt to address certain situations in which a person with an interest in a work cannot be located. It is also possible that fair use may apply to particular uses of certain orphan works, pursuant to section 107. This list is not exhaustive of the provisions of the Copyright Act that could be relevant to the use of an orphan work.

Several orphan works bills have been considered in Congress since the Copyright Office’s report in 2006. Recent discussions in the United States have focused on a legislative solution that would incorporate a diligent search requirement and a limitation on remedies against good faith users.

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
- Other

A specially commissioned "Section 108 Study Group" released a report in 2008 on updating the exceptions and limitations related to the activities of libraries and archives. The Study Group was convened as an independent group by the National Digital Information Infrastructure and Preservation program of the Library of Congress and by the U.S. Copyright Office. The recommendations, conclusions, and other outcomes of the Study Group's Report were its own and did not reflect the opinions of the Library of Congress or the U.S. Copyright Office. Background materials and the Final Report of the Study Group are available at www.section108.gov.

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

Please describe: **See answer to Question 60.**

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 (but see below)

If yes, please describe: **The Section 108 Study Group report makes a number of recommendations intended to update the exceptions and limitations related to the activities of libraries and archives to meet the unique challenges of the digital age. See Final Report, available at www.section108.gov.**

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

- Yes
 No

Please describe: **It is assumed that the phrase "these purposes" refers to exceptions and limitations related to the activities of libraries and archives for patron use (see question 57). Only a single copy can be made for patron use under Sections 108(d) and (e).**

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

Please describe: **If the copy is of an article, book chapter, or other short work under Section 108(d), the copy must become the property of the patron; the library must have no notice that the copy is for any purpose other than private scholarship, or research; and the library must display a warning notice where orders for copies are accepted and on order forms. If the copy is of an entire book or other work, or of a substantial part of such a work, in addition to the conditions already listed, the library must conduct a reasonable investigation to determine that a copy cannot be obtained at a fair price. Additionally, Section 108(g) prohibits libraries and archives from making copies for a user if they are aware or have substantial reason to believe that by doing so they are engaging in systematic copying of the same material.**

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: **See Section 108(g)(2) and the Annex to SCCR/17/2, pp. 420-421.**

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: **Section 108(h)(1) permits libraries and archives, including a nonprofit educational institution that functions as such, to reproduce, distribute, display or perform in facsimile or digital form a copy of a published work during the last 20 years of its copyright term, for purposes of preservation, scholarship, or research, as long as the library or archives meets certain conditions. Section 107 might also permit this type of activity under certain circumstances.**

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:

Other, please describe: **The analysis in SCCR/15/7 is useful, but would benefit from some revisions that more accurately reflect U.S. law regarding limitations and exceptions for persons with disabilities. We refer you to the attached documents which contain our comments and revisions to Annexes 2 and 3 of WIPO document SCCR/15/7.**

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: **See 17 U.S.C. § 121, 17 U.S.C. § 112(d), 17 U.S.C. § 110(8), 17 U.S.C. § 110(9), and §107 .**

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

- Yes
 No

Please describe: **17 U.S.C. § 121(d)(3) defines “specialized formats” to mean “(A) Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and (B) with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.” The term “print instructional materials” is defined in 20 U.S.C. § 1474(e)(3)(C) to mean “printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.”**

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

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.

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

Please describe: **The complete scope of the conditions that must be met in order to properly utilize the exception can be found in the full statutory text cited in response to Question 68. Section 121 of the U.S. Copyright Act (17 U.S.C. § 121(a)-(b)), provides that it is not an infringement for an “authorized entity” to reproduce or distribute copies or phonorecords of published non-dramatic literary works provided such copies or phonorecords are reproduced or distributed in “specialized formats” exclusively for use by “blind or other persons with disabilities” – as all these terms are defined in the statute. The statute is self-explanatory as to the requirements of (and limitations to) its application.**

The phrase “blind or other persons with disabilities” is defined in 17 U.S.C. § 121(d)(2) by cross-reference to a separate statute that is not part of the U.S. copyright law. That separate legislative enactment authorized funding to the Library of Congress to create a program to loan publications in specialized formats to blind and other physically handicapped residents of the United States who, pursuant to regulations prescribed by the Librarian of Congress, are certified by competent authorities as unable to read normal printed material as a result of physical limitations. The relevant eligibility and certification criteria promulgated pursuant to this legislative enactment are codified at 36 C.F.R. § 701.6.

Additional relevant provisions of the Copyright Act are summarized below:

17 U.S.C. § 121(c)

This subsection of the statute provides that it is not an infringement for a publisher of “print instructional materials” (as that term is defined in 17 U.S.C. § 121(d)(3)) to create and distribute to the National Instructional Materials Access Center (as that center is defined in 20 U.S.C. § 1474(e)) copies of electronic files that contain the contents of the print instructional materials, provided the following conditions are met: (1) the inclusion of the contents of the print instructional materials is required by a State or local educational agency; (2) the publisher had the right to publish such print instructional material in standard print format; and (3) the copies will be used solely for the reproduction or distribution of the contents of such print instructional materials in specialized formats.

A separate (non-copyright) legislative enactment (The Individual with Disabilities Education Act of 2004) created the National Instructional Materials Access Center (“the Center”). Pursuant to that legislative enactment, the Center is required to: (a) establish a standard to be used in the preparation of electronic files that is suitable for efficient conversion of print instructional materials into specialized formats; (b) receive and maintain a catalog of print instructional materials made available to it by the textbook publishing industry and State and local educational agencies; and (c) provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools. *See* 20 U.S.C. § 1474(e).

17 U.S.C. § 110(8)

This statutory provision exempts performances of non-dramatic literary works, by or in the course of a transmission primarily directed to blind or other handicapped persons who are

unable to read normal printed material as a result of their handicap, provided the following conditions are met: (1) the performance is made without commercial purpose; and (2) the transmission is made through one of the authorized facilities detailed in this statutory provision.

17 U.S.C. § 112(d)

This statutory provision provides that it is not an infringement for a governmental body or nonprofit organization entitled to transmit a performance under the terms of 17 U.S.C. § 110(8) to make up to ten copies or phonorecords embodying the excepted performance, or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under 17 U.S.C. § 110(8), provided the following conditions are met: (1) any copy or phonorecord authorized by this statutory provision is retained or used solely by the organization that made it or by a governmental body or nonprofit organization entitled to transmit a performance of a work under 17 U.S.C. § 110(8) and no further copies or phonorecords are reproduced from it; (2) any such copy or phonorecord is used solely for transmissions authorized by 17 U.S.C. § 110(8), or for archival purposes; and (3) the governmental body or nonprofit organization permitting the use of any such copy or phonorecord does not charge for its use.

17 U.S.C. § 110(9)

This statutory provision exempts single occasion performances of dramatic literary works published at least ten years before the date of the performance, by or in the course of a transmission primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, provided the following conditions are met: (1) the performance is made without commercial purpose; and (2) the transmission is made through the type of authorized facility detailed in this statutory provision.

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, under some conditions and situations.
 No

Please describe: **Under 17 U.S.C. § 602(a) importation and exportation are considered forms of "distribution" under U.S. copyright law. Section 602(a) gives the copyright holder control of such importation and exportation.**

Section 602 itself contains a special set of exceptions (17 U.S.C. § 602(a)(3)(A)-(C)) which would permit individuals and authorized entities to engage in many acts of importation to meet the needs of persons with print disabilities.

More importantly, the exclusive right of distribution in 17 U.S.C. § 106(3) is subject to the limitations and exceptions contained in 17 U.S.C. §§ 107-122, including the exceptions for persons with print disabilities contained in 17 U.S.C. § 121. This means that acts of importation and exportation by "authorized entities" (as that term is defined in 17 U.S.C. § 121(d)(1)) that meet the conditions of § 121 will be exempt from § 602(a).

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

- Yes
 No

Please describe: **See 17 U.S.C. § 110(8) and, when within the scope of fair use, §107. See also response to Question 74.**

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

- Yes
 No

Please describe:

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

Please describe: **The complete scope of the conditions that must be met in order to properly utilize the exception can be found in the full statutory text. A summary is provided here:**

17 U.S.C. § 110(8)

This statutory provision exempts performances of non-dramatic literary works, by or in the course of a transmission primarily directed to deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals provided the following conditions are met: (1) the performance is made without commercial purpose; and (2) the transmission is made through one of the authorized facilities detailed in this statutory provision.

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
 Other

Please describe: **These exceptions do not, by their terms, apply specifically to deaf persons, but rather are universal exceptions that can be utilized by all persons. See 17 U.S.C. § 602(a)(3).**

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
 Other

Please describe: **Other disabilities are not expressly referenced in the Copyright Act, but depending on the circumstances, statutory limitations or exceptions of a generally applicable nature such as fair use might apply.**

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

- Yes
 No

Please describe:

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

Please describe: **N/A.**

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
 Other, please describe: **Although there is no such legislation currently pending in Congress, the examination and consideration of issues involving limitations and exceptions is a constantly ongoing and evolving process.**

If yes, please describe:

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

Please describe: **Please see response to Question 80.**

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
 Other

Please describe: **Over the past year, the United States has held extensive and public consultations with relevant stakeholders on the topic of facilitating access to copyrighted works for the blind or persons with other disabilities. The documentary record, (including all stakeholder comments), compiled pursuant to this consultative process can be accessed at <http://www.copyright.gov/docs/sccr/>.**

Part V: Religious, social and cultural exceptions

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

- Yes
 No

If yes, please describe: *See, e.g., 17 U.S.C. §§ 110(3) (performances of certain works of a religious nature in the course of religious services); 110(6) (performances of musical works by non-profit agricultural organizations); 110(10) (performances of musical works during social events of veterans or fraternal organizations); 110(11) (permitting families to use technologies to skip objectionable content in movies viewed at home); 112(c) (permitting a government body or other nonprofit organization to make one copy of a transmitted musical religious work).*

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: *See 17 U.S.C. § 110(3), applicable to performances in the course of services and at a place of worship or other religious assembly. See also Section 112(c), which is limited to transmission programs embodying a performance of a non-dramatic musical work of a religious nature.*

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: *See 17 U.S.C. § 110(3), applicable to nondramatic literary or musical works or dramatic-musical works of a religious nature.*

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: **See 17 U.S.C. § 110(6) applicable to a governmental body or nonprofit agricultural or horticultural organization in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization.**

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: **See 17 U.S.C. § 110(6), applicable to nondramatic musical works.**

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

- Yes
 No

If yes, please describe: **See 17 U.S.C. § 110(10), applicable to social functions organized and promoted by nonprofit veterans or fraternal organizations and not open to the general public.**

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

- Yes
 No

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

- Yes
 No

If yes, please describe: **See 17 U.S.C. § 110(10), applicable to nondramatic literary or musical works.**

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: **Certain judicial decisions have concluded that reverse engineering of a computer program to produce a non-infringing program may be a fair use under 17 U.S.C. § 107.**

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 language providing the exclusive right "to authorize" in 17 U.S.C. § 106 is understood to be a reference, at a minimum, to the general concept of contributory infringement/liability. In the United States the following court made doctrines are recognized by judicial decisions as potential bases for secondary liability for copyright infringement: (1) contributory liability; (2) vicarious liability; and (3) inducement liability. Additionally, the ISP safe harbors in 17 U.S.C. § 512 are implicitly predicated on the understanding that ISPs may be held secondarily liable for the actions of third parties in some cases.**

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 rights holders 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: **See 17 U.S.C. § 512, limitation on liability relating to material online.**

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: *See 17 U.S.C. § 512.*

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: **Depending on the particular facts, the right of quotation, news reporting and government uses are permissible under 17 U.S.C. § 107. For ephemeral copies, see 17 U.S.C. § 112. For incidental uses, see 17 U.S.C. § 117(a)(1). For non-voluntary licenses for broadcasting, see 17 U.S.C. §§ 111, 114, 118, 119, and 122. For non-voluntary license for mechanical reproductions of musical works, see 17 U.S.C. § 115. Under U.S. law non-voluntary licenses are generally non-exclusive and do not prevent parties from entering into private agreements apart from the statutory licenses. For exceptions and limitations related to government bodies, see, e.g., 17 U.S.C. §§ 110, 111, 112, 118, 121.**

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: **See, e.g., additional limitations and exceptions in 17 U.S.C. §§ 110, 113, and 120.**

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: **Provisions on copyright and related rights in U.S. free trade agreements are available to the public on the United States Trade Representative's website: www.ustr.gov.**

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

Please describe: **A list of the U.S. Free Trade Agreements in force, and signed but not implemented, may be found on the USTR website, at www.ustr.gov/trade-agreements/free-trade-agreements. Many of these FTAs have provisions related to copyright and related rights exceptions and limitations.**

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