STANDING COMMITTEE ON COPYRIGHT
AND RELATED RIGHTS

Nineteenth Session
Geneva, December 14 to 18, 2009

SECOND DRAFT QUESTIONNAIRE ON LIMITATIONS AND EXCEPTIONS

prepared by the Secretariat
INTRODUCTION

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

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

At the 18th session of the SCCR held in May 2009, it was agreed that delegations would send comments on the draft questionnaire (document SCCR/18/3) to the Secretariat before July 15, 2009. Based on those comments, the Secretariat would present a revised questionnaire at least one month prior to the nineteenth session of the SCCR for consideration and with the aim of final approval during that session.

It was also agreed that the areas covered by the questionnaire would include limitations and exceptions for educational activities, activities of libraries and archives, provisions for disabled persons, as well as the implications of digital technology in the field of copyright, including as they related to social, cultural and religious limitations and exceptions. The Committee noted that a number of delegations requested that the questionnaire should incorporate limitations and exceptions related to technology transfer issues. The Committee also noted that a number of delegations requested that in relation to visually impaired and other persons with disabilities, libraries and archives, educational use and research, questions regarding the function of limitations and exceptions across borders would be added. Finally, it was noted that governments should be enabled to furnish any other pertinent information regarding limitations and exceptions in their national laws that were not addressed in the questionnaire.

Comments were received from the following Member States: Brazil, Chile, India, United States of America, and the European Community and its member States, and the present document compiles all the proposed questions.

This draft questionnaire comprises 116 questions distributed in seven parts:

- Part I on general questions on limitations and exceptions;
- Part II on limitations and exceptions for educational activities;
- Part III on limitations and exceptions for libraries and archives;
- Part IV on limitations and exceptions for persons with disabilities;
- Part V on questions relating to religious, social and cultural exceptions;
- Part VI on other questions regarding digital technology; and
- Part VII on general questions to cover areas left out in Parts I to VI.
The answers to this questionnaire have been provided on behalf of:
Country: _____________________________________________________________
by
Name and contact information: __________________________________________

Part I: General

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

☐ Specific
☐ Open
☐ Mixed
☐ Others, please describe: ____________________________________________

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

☐ Yes
☐ No
☐ Partially, please describe: ____________________________________________

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

☐ Yes
☐ No

If yes, please describe: ________________________________________________

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

☐ Yes
☐ No

If yes, please describe: ________________________________________________

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

☐ Yes
☐ No
6. Does your national statute include specific limitations or exceptions permitting the use of copyrighted works for private or personal purposes, without previous authorization of the copyright or related rights owner?

☐ Yes
☐ No

Please describe:________________________________________________________

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

☐ Yes
☐ No

If yes, please describe:____________________________________________________

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

☐ Yes
☐ No

If yes, please describe:____________________________________________________

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

☐ Yes
☐ No

If yes, please describe:____________________________________________________

10. Does your national statute protect technological measures?

☐ Yes
☐ No
11. Does your national statute protect rights management information?

☐ Yes
☐ No

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

☐ Yes
☐ No

If yes, please describe:__________________________________________________________________________

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

Please describe:__________________________________________________________________________

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

☐ Yes
☐ No

If yes, please describe:__________________________________________________________________________

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

Please describe:__________________________________________________________________________

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

☐ Yes
☐ No

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

☐ Yes
☐ No

Please describe:__________________________________________________________

18. Does your national statute include limitations and exceptions for the activities of the service providers of digital transmission of works?

☐ Yes
☐ No

Please describe:__________________________________________________________

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

☐ Yes
☐ No

If yes, please describe:____________________________________________________

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

Please describe:__________________________________________________________

21. Are limitations and exceptions foreseen in your national statute considered adequate within the socio-economic reality of the country?

☐ Yes
☐ No

Please describe:__________________________________________________________
22. If not, what other limitations or exceptions would be necessary to achieve a more appropriate standard for the socio-economic reality?

Please describe:________________________________________________________________________

23. Are there impediments to guarantee the use of limitations and exceptions mentioned in the previous question (international constraints, empowerment, thematic and conceptual knowledge on limitations or exceptions, etc.)?

Please describe:________________________________________________________________________
Part II: Limitations and Exceptions related to Educational Activities

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

☐ Yes
☐ No

Please list them:

____________________________________________________________________________________

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

☐ Face-to-face activities
☐ Distance education
☐ Both

Please list them:

____________________________________________________________________________________
26. 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:_______________________________________________________________

27. 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:_______________________________________________________________

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

☐ Yes  
☐ No  

If yes, please describe:_______________________________________________________________

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

☐ Teachers  
☐ Students  
☐ Educational institutions  
☐ Others. Please describe:_______________________________________________________________

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1 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.
30. In case educational institutions are eligible to engage in activities covered by specific limitations and exceptions allowing performances for educational purposes, does your national statute establish conditions regarding their nature? (more than one option can be selected)

☐ For-profit
☐ Not-for-profit
☐ Public
☐ Private
☐ Others. Please describe:_____________________________________________________


On reproduction

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

☐ Yes
☐ No

If yes, please describe:__________________________________________________________

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

☐ Reprography
☐ Digital copying
☐ Others. Please describe:_____________________________________________________

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

☐ Yes
☐ No

If yes, please describe:________________________________________________________

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

☐ Yes
☐ No

If yes, please describe:________________________________________________________

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

☐ Yes
☐ No

If yes, please describe:________________________________________________________
36. 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:_____________________________________________________

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

☐ For-profit
☐ Not-for-profit
☐ Public
☐ Private
☐ Others. Please describe:_____________________________________________________

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

☐ Yes
☐ No

If yes, please describe:_____________________________________________________

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

☐ Yes
☐ No

If yes, please describe:_____________________________________________________
On translations

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

☐ Yes
☐ No

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

☐ Yes
☐ No

If yes, please describe: __________________________________________________________

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

☐ Yes
☐ No

If yes, please describe: __________________________________________________________

43. 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: ________________________________________________________

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

☐ For-profit
☐ Not-for-profit
☐ Public
☐ Private
☐ Others. Please describe: ________________________________________________________
On making available in digital networks

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

☐ Yes  
☐ No  

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

☐ Yes  
☐ No  

If yes, please describe:__________________________________________________________________________

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

☐ Yes  
☐ No  

If yes, please describe:__________________________________________________________________________

48. Does your national statute provide for 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:__________________________________________________________________________

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

☐ Teachers  
☐ Students  
☐ Educational institutions  
☐ Others. Please describe:__________________________________________________________________________
50. 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:__________________________________________________________

51. 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:____________________________________________________________

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

☐ Yes
☐ No

53. Are the limitations and exceptions set out in your national statute for educational activities considered adequate to the socio-economic reality of your country?

☐ Yes
☐ No

Please describe:______________________________________________________________

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

Please describe:______________________________________________________________
55. Are there impediments to guarantee the use of limitations and exceptions mentioned in the previous question (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

56. 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)\textsuperscript{2}, do you consider that the analysis is correct?

\begin{itemize}
  \item Yes
  \item No
  \item The national statute was not included in the analysis
\end{itemize}

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


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

\begin{itemize}
  \item Yes
  \item No
\end{itemize}

Please describe:


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

Please describe:


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

\begin{itemize}
  \item Yes
  \item No
\end{itemize}

Please describe:


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

Please describe:


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

☐ Yes
☐ No

Please describe: _________________________________________________________________

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

Please describe: _________________________________________________________________

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

☐ Yes
☐ No

If yes, please describe: ____________________________________________________________

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

☐ Yes
☐ No

If yes, please describe: ____________________________________________________________

65. Are the limitations and exceptions foreseen in your national statute concerning libraries and archives considered adequate within the socio-economic reality of your country?

☐ Yes
☐ No

If yes, please describe: ____________________________________________________________

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

Please describe: _________________________________________________________________
67. Are there impediments to guarantee the use of limitations and exceptions mentioned in the previous question (international constraints, capacity building, lack of information about the limitations and exceptions, etc.)?

☐ Yes
☐ No

If yes, please describe:__________________________________________________________

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

☐ Yes
☐ No

Please describe:__________________________________________________________

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

Please describe:__________________________________________________________

70. 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:__________________________________________________________

71. 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:__________________________________________________________
Part IV: Limitations and Exceptions for Persons with Disabilities

72. 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), 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:

________________________________________________________________________

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

☐ Yes  ☐ No

Please describe:________________________________________________________________________

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

☐ Yes  ☐ No

Please describe:________________________________________________________________________

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

Please describe:________________________________________________________________________

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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 visually impaired persons, including the reading impaired?

☐ Yes
☐ No

Please describe:______________________________________________________________________________

77. 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:______________________________________________________________________________

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

☐ Yes
☐ No

Please describe:______________________________________________________________________________

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

Please describe:______________________________________________________________________________

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

☐ Yes
☐ No

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

☐ Yes
☐ No

Please describe:______________________________________________________________

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

☐ Yes
☐ No

Please describe:______________________________________________________________

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

Please describe:______________________________________________________________

84. 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:______________________________________________________________

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

☐ Yes
☐ No

If yes, please describe:________________________________________________________
86. Are the limitations and exceptions in your national statute concerning persons with disabilities considered suitable within the socio-economic reality of your country?

☐ Yes
☐ No

Please describe:__________________________________________________________

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

Please describe:__________________________________________________________

88. Are there impediments to guarantee the use of the limitations and exceptions mentioned in the previous question (international constraints, capacity building, lack of information about the limitations and exceptions, etc.)?

☐ Yes
☐ No

Please describe:__________________________________________________________
Part V: Religious, social and cultural exceptions

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

☐ Yes
☐ No

90. 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

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

☐ Yes
☐ No

If yes, please describe:________________________________________________________

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

☐ Yes
☐ No

93. Does your national statute subject the exercise of limitations and exceptions on uses 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:________________________________________________________
94. Does your national statute subject the exercise of limitations and exceptions on uses for cultural purposes to the condition of the nature of cultural activities?

☐ Yes
☐ No

If yes, please describe:________________________________________________________

95. Does your national statute provide remuneration for the exercise of limitations and exceptions on uses for cultural purposes?

☐ Yes
☐ No

96. 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 on uses for cultural purposes?

☐ Yes
☐ No

If yes, please describe:________________________________________________________

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

☐ Yes
☐ No

If yes, please describe:________________________________________________________

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

☐ Yes
☐ No

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

☐ Yes
☐ No

If yes, please describe:________________________________________________________
Part VI: Other questions on digital technology

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

☐ Yes  ☐ No

If yes, please describe:______________________________________________________________

101. 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:______________________________________________________________

102. With respect to liability that arises from the infringement 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 to the liability of online service providers in any way?

☐ Yes  ☐ No

If yes, please describe:______________________________________________________________

103. With respect to liability that arises from the infringement of a third party, for which of the following activities, if any, does your national statute provide limitations or exceptions 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:____________________________________________________________
104. 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 (statutory safe harbor refers to any statutory enactment which provides that a person will not be liable upon taking certain measures)?

Please specify:_____________________________________________________________
Part VII: General questions to cover areas left out in Part I to VI

105. 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:__________________________________________________________

106. 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:____________________________________________________

107. Does your national statute provide remuneration for the exercise of limitations and exceptions for all or some of those purposes?

- [ ] Yes
- [ ] No

If yes, please describe:____________________________________________________

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

- [ ] Yes
- [ ] No

If yes, please describe:____________________________________________________

109. Has your country signed a Free Trade Agreement containing clauses on copyright and related rights that may create some form of constraint to the effective implementation and negotiation of exceptions and limitations?

- [ ] Yes
- [ ] No

Please describe:__________________________________________________________
110. If so, with which country or group of countries?

Please describe:

111. If so, what kind of constraint was created by such agreement?

Please describe:

112. Are there ongoing negotiations to sign a FTA?

☐ Yes

☐ No

Please describe:

113. If so, with which countries?

Please describe:

114. Are there in these negotiations any clause that imposes restrictions on the exceptions and limitations?

☐ Yes

☐ No

Please describe:

115. Such limitations and exceptions are considered: rights of users, rights of the society as a whole, or are understood only as restrictions on copyright?

Please describe:

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


Member States are invited to approve the draft questionnaire contained in this document.

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