

## **Standing Committee on Copyright and Related Rights**

### **Twentieth Session**

**Geneva, June 21 to 24, 2010**

### Supplementary Information on the Studies on Limitations and Exceptions for Educational Activities

*Document prepared by the Secretariat*

The Annexes to this document contain supplementary information on the WIPO studies on limitations and exceptions for educational activities.

[Annexes follow]

ANNEX I

SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND  
EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

*by*  
*Greece*

Comments on Document SCCR/19/8 (the Xalabarder Study)

In page 67 we deleted “and” and we added “or”. In page 100 we deleted “and works of fine art” and we added some lines below the phrase “of Education or other competent Ministry.” We corrected also in the Appendix the last amendment of the Greek Copyright Law 2121/1993 and we added the website where the English translation of Law 2121/1993 is available.

[Annex II follows]

ANNEX II

SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND  
EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

*by*  
*Indonesia*

Comments on Document SCCR/19/7 (the Seng Study)

On page 70 (the Indonesia's part), there is a mistake in stating the year of independence of Indonesia, "1949". The correct year of Indonesia's independence is "1945", or 17 August 1945 precisely.

[Annex III follows]

ANNEX III

SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND  
EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

*by*  
*Japan*

Comments on Document SCCR/19/7 (the Seng Study)

The Japanese first copyright legislation was enacted in 1869. Therefore, we would like to change page 75 (subparagraph 269, second sentence) accordingly.

We would like to ask the writer or the Secretariat to add the information, what time points of legislations were based on. (For example, the Japanese Copyright Act amended in 2008 is the base for this analysis.)

[Annex IV follows]

## ANNEX IV

## SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

by  
Kenya

## Comments on Document SCCR/19/5 (the Fometeu Study)

Page 62: But what about laws such as those of Kenya, Nigeria and the Seychelles, which do not make any allusion to quotation? Does the fact that legislators have remained silent mean that quotation is forbidden by the national law of these countries? This question cannot be answered in the affirmative. Given that the Berne Convention considers that quotation is an imperative exception, the fact that a national legislator remains silent has no real impact on the benefit of this exception for nationals of the member States of the Union. In other words, no national of this Union should be prosecuted for counterfeiting for having made a quotation whereas this was not covered by national law.

Comment: Section 26 (a) of the Copyright Act does allude to quotation.

Page 77: Furthermore, the great majority of national laws prefer to use wording that leaves educational actors sufficient freedom while providing them with a yardstick. This consists of saying that the limitation for teaching must be exercised to the extent justified by the purpose. For example, the relevant South African law provides that “the copyright in a literary or musical work shall not be infringed by using such work, *to the extent justified by the purpose (...)*”. Several other texts are permeated by a similar logic, such as those of Angola, Benin, Botswana, Central African Republic, Congo Brazzaville, Democratic Republic of Congo, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Tanzania and Zimbabwe.

Only a few countries do not specifically mention this limit: Burkina Faso, Cameroon, Cape Verde, Chad, Côte d'Ivoire, Ghana, Kenya, Senegal, Seychelles, Swaziland, Togo and Zambia. However, this does not imply that the use of works for teaching is freer in these countries. In reality, restricting use to the extent justified by the purpose is consubstantial with the restriction itself, insofar as teaching is both the source of this restriction of protected rights and the main yardstick.

Comment: Kenya limits the use for educational purposes to two short passages. The use is not unlimited.

Annex

*Kenya: Copyright Act, 2001*

References	Art. 26.1(d), (e), (f)
Field concerned by the restriction	Copyright
Type of teaching benefiting from the restriction	Teaching provided by schools and universities established in accordance with the law
End beneficiary of the restriction	Pupils, students, teachers
Works covered by the restriction	<del>Literary and musical works, broadcasts.</del> All See Section 28 (2) and Section 29 (a) except performances
Rights covered by the restriction	Reproduction, performance, communication to the public
Acts authorized in conjunction with the restriction	<ul style="list-style-type: none"> <li>- Insertion in a publication</li> <li>- Radio or television broadcasts</li> <li>- Reproduction of broadcasts for use in schools</li> </ul>
Purpose of the restriction	Illustration for teaching
Nature of the restriction	Exception
Compensation for the restriction	Free
General conditions	<ul style="list-style-type: none"> <li>- Borrowing limited to two short extracts</li> <li>- Reference to the source and author's name</li> </ul>

[Annex V follows]

## ANNEX V

## SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

by  
Pakistan

Comments on Document SCCR/19/7 (the Seng Study)

IPO-Pakistan's Comments on the WIPO Study on the Copyright Exceptions for the Benefit of Educational Activities for Asia and Australia (Part-II, Paragraphs 404-423; Pakistan's Copyright Law)

WIPO Study Paragraphs	IPO-Pakistan's Comments
<p>404. Pakistan has been a member of the Berne Union since 1948. She enacted her copyright legislation in 1962. Modelled on the U.K. Copyright Act 1911, the Pakistan Copyright Ordinance has since been revised substantially in 1992 and again in 2000. The 1992 amendments extended copyright protection to computer software, periodicals, video films and all kinds of audio-visual works, provided stiffer penalties for offenders and better compensation for those whose rights have been infringed, and restricted the scope of a compulsory license for translations (section 37). Pursuant to the obligations arising from its WTO membership in 1995, in 2000, amendments were made to, <i>inter alia</i>, recognize a new typographical arrangement right in published works, provide for an express rental right for computer programs and cinematographic works, and provide further enhancements to the criminal penalties and civil search orders.</p>	<p>Correct.</p>
<p>405. A review of its provisions for the benefit of educational activities follows.</p>	
<p>Section 36: Compulsory License in Works Withheld from Public</p> <p>406. Section 36 of the Pakistan Copyright Ordinance contains a provision which enables the Copyright Board to direct the Copyright Registrar to grant to an applicant a license to republish a work, perform it in public or communicate it to the public by broadcast, subject to payment to the copyright owner of such compensation and subject to such other terms and conditions as the Board may determine. The work must have been</p>	<p>Correct.</p>

<p>previously published or performed in public. If the Board is satisfied that a refusal is not in the public interest or that the grounds of refusal are not reasonable or that the republication of the work is necessary in the public interest, an application for the license may be granted in the following circumstances:</p> <ul style="list-style-type: none"> <li>– Where the copyright owner has refused to republish or allow the republication of the work, or allow the public performance of the work and by reason of such refusal the work is withheld from the public</li> <li>– Where the copyright owner has refused to allow a public communication by broadcast of such a work or a work recorded on a (sound) record, on terms which the applicant considers reasonable</li> <li>– Where the copyright owner is dead or unknown or cannot be traced or found and the republication of the work is necessary in the public interest.</li> </ul>	
<p>407. Section 36(2) provides that the Pakistani Federal Government or the Board may, upon an application by any governmental or statutory institution, in the public interest, grant a license to reprint, translate, adapt or publish any textbook on a non-profit basis. There is no mention made in this section as regards any compensation or equitable remuneration payable. This has caused considerable concern to international book publishers.</p>	<p>It may be noted that it is section 36(3) of the Pakistan's Copyright Ordinance, 1962.</p> <p>This section has never been used. It has just been provided to avoid any emergency situation as surged in 1974 when students agitated against the scarcity of text books.</p> <p>It is pertinent to mention here that the proposal for adding the words "subject to the payment of compensation/remuneration as decided by the Federal Government or the Board" in this section is under consideration of IPO-Pakistan.</p>
<p>Section 37: License to Produce and Publish Translations</p> <p>408. Section 37 is Pakistan's implementation of a compulsory license scheme similar to Article II of the Appendix to the Berne Convention. However, it should be noted that Pakistan has not made a declaration to</p>	<p>Yes, section 37 of the Copyright Ordinance, 1962 is similar to Article II of the Berne Convention.</p>

<p>indicate that it is applying Article II of the Appendix.</p>	
<p>409. Section 37 enables a Pakistan citizen or domicile to apply to the Copyright Board for a license to produce and publish a translation of a literary or dramatic work in any Pakistani language or a language ordinarily used in Pakistan not being English, French or Spanish. The Board may hold an inquiry, subject to giving wherever practicable, the copyright owner an opportunity of being heard, and direct the Copyright Registrar to grant a non-exclusive, non-transferable license, to produce and publish a translation on condition that the applicant pay the copyright owner royalties in respect of copies of the translation sold to the public, calculated at a rate to be determined by the Board. The conditions are:</p> <ul style="list-style-type: none"> <li>– That no translation of the work in the required language has been published by the copyright owner within one year of first publication of the work, or if a translation has been so published, it has been out of print.</li> <li>– That the applicant has proved to the Board's satisfaction that he had request and been denied authorization by the copyright owner to produce and publish such translation, or that he was unable to find the copyright owner, and had sent his request to the publisher whose name appears fro the work, not less than 2 months before the license application.</li> <li>– That the Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay royalties to the copyright owner.</li> <li>– That the Board is satisfied that the grant of the license will be in the public interest, for reasons to be recorded in writing.</li> </ul>	<p>Correct.</p>
<p>Section 57(1)(a)(i): Private Use and Research as Fair Dealing</p> <p>410. Section 57(1)(a)(i) exempts from copyright infringement a fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study.</p>	<p>Correct.</p>
<p>411. The explanation to section 57(1) clauses (a) or (b) provides the following presumptions as regards what constitutes a fair dealing with a work (for purposes of private use and research, criticism or review and the reporting of current events):</p> <p>Literary or dramatic work in prose: Single extract of up</p>	<p>Correct.</p>

<p>to 400 words</p> <p>Series of extracts (with comments interposed) up to 800 words with no one extract exceeding 300 words</p> <p>Literary or dramatic work in poetry: Extract or extracts up to 40 lines, not to exceed ¼ of whole of any poem.</p>	
<p>412. It also adds that in the case of a review of a newly published work, “reasonably longer extracts may be deemed fair dealing with such work.”</p>	<p>Correct.</p>
<p>Section 57(1)(a)(ii): Criticism or Review as Fair Dealing</p> <p>413. Section 57(1)(a)(ii) exempts from copyright infringement a fair dealing with a literary, dramatic, musical or artistic work for the purposes of criticism or review, whether of that work or of any other work.</p>	<p>Correct.</p>
<p>414. There is an acknowledgment condition requiring that the work so used be identified by its title or other description, and that the author be identified, unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made. However, this is found in the proviso to <i>section 57(1)(x)</i> instead of section 57(1). As previously noted in relation to the Indian Copyright Act, this would appear to be a formatting mistake made in relation to the Indian Copyright Act, which has likewise appeared in the Pakistan Copyright Ordinance. For reasons noted above in relation to the “acknowledgment condition problem”, it is submitted that the condition should be a free-standing condition that applies to the relevant section 57(1) exception, such as a fair dealing for criticism or review.</p>	<p>Both Indian and Pakistan Copyright Laws are based upon the British Copyright Act, 1911.</p> <p>Acknowledgement condition applies to sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (f), (m), and (p) of section 57(1) of the Copyright Ordinance, 1962.</p>
<p>415. The above presumption provisions as regards fair dealing in the Pakistani Copyright Ordinance, as outlined above, also apply to the dealing in a work for criticism or review.</p>	<p>Correct.</p>
<p>Section 57(1)(g): Chrestomathies</p> <p>416. Section 57(1)(g) exempts from copyright infringement any bona fide publication of a collection, mainly composed of non-copyright matter, intended for use of educational institutions, of short passages from published (and copyrighted) literary or dramatic works, not themselves published for the use of educational institutions. The conditions are that the work must be so described in the title and in any of the publisher's advertisements, and that not more than two such passages from works by the same author are published by the same publisher during any period of five years. In the case of works of joint authorship, this condition extends to passages of all works by any one of the</p>	<p>Correct.</p>

authors, whether alone or in collaboration.	
417. The Pakistan Copyright Ordinance does not contain a requirement in this regard that a sufficient acknowledgment be made of all such short passages extracted for publication, unlike the Indian Copyright Act.	The proposal for including clause (g) in acknowledgement condition of 57(1)(x) of Copyright Ordinance, 1962 is under consideration of IPO-Pakistan.
Section 57(1)(h): Course of Instruction 418. Section 57(1)(h) exempts from copyright infringement the reproduction of any literary, dramatic, musical or artistic work by a teacher or a pupil in the course of “and for the sole purpose of” instruction, whether at an educational institution or elsewhere, where the reproduction is made by a teacher or a pupil otherwise than by the use of a printing process.	Correct.
Section 57(1)(h): Examinations 419. Section 57(1)(h) exempts from copyright infringement the reproduction of any literary, dramatic, musical or artistic work as part of the questions to be answered in an examination and in answers to such questions.	Correct.
Section 57(1)(i), (l): Performances in Educational Institutions 420. Section 57(1)(i) exempts from copyright infringement the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work, by the staff and students of the institution, a cinematograph film or a (sound) recording, or the communication of such a film or recording, if the audience is limited to staff, students, parents and guardians of the students and persons directly connected with the activities of the institution.	Correct.
421. This exception appears wider than those in other jurisdictions, where parents and guardian of students are generally excluded from the permissible audience.	The parents and guardians are included to encourage the extra-curricular activities of their children.
422. An educational institution may also rely on section 57(1)(l), which exempts from copyright infringement the performance of a literary, dramatic or musical work by an amateur club or society (such as those found in schools as part of the students’ extra-curricular activities), if the performance is given to a non-paying audience, or for the benefit of a religious, charitable or educational institution.	The exception for performance of a cinematographic work or a (sound) record is not included in section 57(1)(l) but available to “educational

	institutions” under section 57(1)(i) of the Copyright Ordinance, 1962.
<p>Section 57(2): Translations and Adaptations of Excepted Works</p> <p>423. Section 57(2) provides a general exception that exempts from copyright infringement any translation of a literary, dramatic or musical work, or any adaptation of a literary, dramatic, musical or artistic work, excepted under the aforesaid exceptions in section 57(1).</p>	Correct.

[Annex VI follows]

ANNEX VI

SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND  
EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

*by*

*Russian Federation*

Comments on Document SCCR/19/8 (the Xalabarder Study)

The study is based on the Law of the Russian Federation No. 5351-1 of July 9, 1993 on Copyright and Related Rights (with the Additions and Amendments of July 19, 1995, July 20, 2004) which is no longer in force.

As of January 1, 2008 issues of copyright and related rights are governed by a newly enacted Part IV of the Civil Code of the Russian Federation.

[Annex VII follows]

## ANNEX VII

SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND  
EXCEPTIONS FOR EDUCATIONAL ACTIVITIES*by**The Netherlands*

## Comments on Document SCCR/19/8 (the Xalabarder Study)

The Dutch delegation would like to draw the attention of the Secretariat and the aforementioned expert to article 12 and 16c of the Dutch Copyright Act. Both articles are not to their full extent covered in the study despite their importance for educational activities.

Article 12 fifth paragraph states that a recitation, performance or presentation which is exclusively for the purposes of education provided on behalf of the public authorities or a non-profit-making legal person, in so far as such a recitation, performance or presentation forms part of the school work plan or curriculum where applicable, or which exclusively serves a scientific purpose, shall not be deemed public and therefore allowed without the prior consent of the copyright owner.

Article 16c allows to digital private copying including to a certain extent downloading. It is an extremely important article next to article 16b, already covered in the study, that relates to more traditional forms of private copying. The Dutch delegation would highly appreciate it if the expert could also deal with articles 12 and 16c in the outstanding study.

[Annex VIII follows]

## ANNEX VIII

SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND  
EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

by  
*New Zealand*

## Comments on Document SCCR/19/7 (the Seng Study)

1. The document examined the 2007 version of the Copyright Act, however it was amended in 2008 by the Copyright (New Technologies) Amendment Act. We have made comments to take account of these amendments.
2. Paragraphs 380 to 400, from pages 98 to 103 should read as follows:

“New Zealand

“380. The history of New Zealand copyright law parallels that of Australian copyright law. Early copyright protection in New Zealand was achieved through a mixture of local and Imperial legislation.<sup>531</sup> After the New Zealand statutes were consolidated into the New Zealand Copyright Act 1908, it was quickly superseded by the Imperial Copyright Act in 1913.<sup>532</sup> Following from the 1956 U.K. Copyright Act, the New Zealand Copyright Act was passed in 1962.<sup>533</sup> Modeled largely on the U.K. Copyright, Designs and Patents Act 1988,<sup>534</sup> the latest version of the New Zealand Copyright Act was passed in 1994. The Copyright Act 1994 was most recently amended by the Copyright (New Technologies) Amendment Act 2008 to ensure the copyright framework in New Zealand adequately dealt with ongoing developments in the technology sphere, and to further clarify certain provisions of the act.

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<sup>531</sup> S Ricketson, *THE LAW OF INTELLECTUAL PROPERTY: COPYRIGHT, DESIGNS & CONFIDENTIAL INFORMATION* (2<sup>nd</sup> ed, 1999) at § 3.395.

<sup>532</sup> *Id.*

<sup>533</sup> *Id.*

<sup>534</sup> *Id.*

#### Sections 42 and 176: Criticism, Review

“381. Section 42(1) provides that fair dealing with a work for the purpose of criticism or review of that or another work, or of a performance of a work, does not infringe copyright in the work if the fair dealing is accompanied by a sufficient acknowledgement.

“382. A similar exception applies in relation to performance rights regarding the fair dealing of a performance or recording for purposes of criticism or review or for reporting current events in section 176.

#### Section 43: Research or Private Study

“383. Section 43(1) exempts from copyright infringement any fair dealing of a literary, dramatic, musical or artistic work for the purpose of research or private study. Unlike Fiji, this exception is not premised on the availability of a collective license of which the individual is or should be aware under which the fair dealing can be effected.

“384. For the purpose of determining if copying, by means of a reprographic process or by any other means, constitutes fair dealing for the purposes of research or private study, the court is directed to have regard to the five factors of the purpose of the copying, the nature of the item copied, whether the item could have been obtained within a reasonable time at an ordinary commercial price, the effect of the copying on the potential market for or value of the work and the amount and substantiality of the part copied taken in relation to the whole item (“five fair dealing factors”).<sup>535</sup> However, section 43(4) states that nothing in the section authorizes the making of more than one copy of the same work or of the same part of the work on any one occasion. Section 43(4) was substituted by section 23 of the Copyright (New Technologies) Amendment Act to clarify that for the purposes of this section a copy does not include a transient reproduction to which s43A applies.

Section 23 of the Copyright (New Technologies) Amendment Act 2008 inserted into the Copyright Act section 43A, which states that a transient reproduction (a reproduction made via a technical process that is used for a communication that does not infringe copyright or enables the fair dealing of a work), does not infringe copyright under the act. To qualify for the exception transient reproductions must have no independent economic significance.

“385. Where such copying is justified as research or private study, there is no infringement of the typographical arrangement of the edition of the work.<sup>536</sup>

#### Sections 44 and 177: Multiple Copying for Educational Instruction

“386. Sections 44 and 45 operate a multi-tier mechanism to enable the copying of literary, dramatic, musical or artistic works for educational or instruction purposes. Section 44 deals with the copying of a literary, dramatic, musical or artistic work or the typographical arrangement, and section 45 deals with the copying of a sound recording, film, or communication work and any work included therein.

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<sup>535</sup> New Zealand Copyright Act 1994, s. 43(3).

<sup>536</sup> New Zealand Copyright Act 1994, s. 43(2).

"387. The exceptions in section 44 are summarized in the table below: Provision	Section 44(1)	Section 44(2)	Section 44(3)	Section 44(4A)	Section 44A
Work	Literary, dramatic, musical or artistic work and typographical arrangement of published edition	Literary, dramatic, musical or artistic work and typographical arrangement of published edition	Literary, dramatic or musical work and typographical arrangement of published edition	Literary, dramatic or musical work and typographical arrangement of published edition	Copyright work
Extent	Copying of whole or part of work or edition	Copying of whole or part of work or edition	Copying of part of work or edition <sup>537</sup>	Communication of a copy of a work	Storing a copy of a work
Copies	No more than one copy is made on an one occasion	One or more copies are made on any one occasion	One or more copies are made on any one occasion		
Activity	By means of reprographic process or by any other means	NOT by means of reprographic process	By means of reprographic process or by any other means	transmit or make available by means of a communication technology, including by means of a telecommunications system or electronic retrieval system	Work is made available on a website or other electronic retrieval system
Purpose	In course of preparation for instruction, for use in course of instruction, in course of instruction	In course of preparation for instruction, for use in course of instruction, in course of instruction, after course of instruction	Copying is done for an educational purpose	Copy is made for an educational purpose	Stored for an educational purpose
Actor	By or on behalf of person who is to give, or who is giving, a lesson	By person who is to give, is giving, or has given the lesson By person who is to	By or on behalf of an educational establishment	By or on behalf of an educational establishment	By an educational establishment

<sup>537</sup> New Zealand Copyright Act 1994, s. 44(3)(d).

		receive, is receiving or has received the lesson			
Place	Educational establishment		(see above)		
Charges			No charge is made for supply of copy to any student or person who is to receive, is receiving or has received a lesson	No charge is made for supply of copy to any student or person who is to receive, is receiving or has received a lesson	
Condition			(Work/edition of 3 pages or fewer): 50% of work/edition <sup>538</sup> (Work/edition of more than 3 pages): Not more than 3% or 3 pages of work/edition <sup>539</sup> Copied part of work/edition may not and no other part of same work/edition may, within 14 days of copying, be copied again <sup>540</sup>	Communication to a person who is to receive, is receiving, or has received, a lesson that relates to the work. Work/edition of 3 pages or fewer): 50% of work/edition <sup>541</sup> (Work/edition of more than 3 pages): Not more than 3% or 3 pages of work/edition <sup>542</sup> Copied part of work/edition may not and no other part of same work/edition may, within 14 days of copying, be copied again <sup>543</sup>	Material must be displayed under a separate frame or identifier and identify the author (if known) and source of the work. The page must also state the name of the establishment and the date the work was stored Access must only be provided to an authenticated user – defined as a participant in the course of instruction for which the material is stored. Access must only be granted through a verification process that ensures the

<sup>538</sup> New Zealand Copyright Act 1994, s. 44(4).

<sup>539</sup> New Zealand Copyright Act 1994, s. 44(3)(f) (ignoring the transition provisions in s. 44(3)(f)(i)).

<sup>540</sup> New Zealand Copyright Act 1994, s. 44(6).

<sup>541</sup> New Zealand Copyright Act 1994, s. 44(4).

<sup>542</sup> New Zealand Copyright Act 1994, s. 44(3)(f) (ignoring the transition provisions in s. 44(3)(f)(i)).

<sup>543</sup> New Zealand Copyright Act 1994, s. 44(6).

					viewer is authenticated
Others			Copyright in the work is not infringed <sup>544</sup>	Copyright in the work is not infringed	Copyright in the work is not infringed unless the educational establishment knowingly fails to delete the stored material within a reasonable time after the material becomes no longer relevant to the course of instruction for which it was stored

*Table 1: Summary of Conditions in Section 44, New Zealand Copyright Act*

“388. The effect of section 44 may be summarized as follows. Section 44(1) permits the copying of one copy of up to the whole work by the instructor in an educational establishment, which is defined in the New Zealand Copyright Act as any school to which the Education Act 1989 or the Private Schools Conditional Integration Act 1975 applies, any special schools, classes, clinics or services under the Education Act 1964, any special institution, childhood centres, non-profit “institutions, private or government training establishments” under the Education Act 1989, and any other approved body.<sup>545</sup> Section 44(2) permits the multiple, non-reprographic copying of up to the whole work by an instructor or student for instructional purposes. It is worth noting that this exception is not confined to educational establishments. Hence for-profit professional training institutes may qualify for this exception.

“389. On the other hand, section 44(3) permits multiple reprographic copies of works to be made for instructional purposes in educational establishments, but the extent of the copying is limited to 3 pages or 3% of the work or edition, or 50% of the work if it has fewer than 3 pages. There are also restrictions regarding multiple repeated copying.

Sections 44(4) and 44A permit the communication and storage of the work to or for persons receiving lessons from the educational establishment under a number of conditions, for example under the condition that the viewer of the work is authenticated by the educational establishment.

#### Section 45: Media Studies, Language and Correspondence Courses

<sup>544</sup> New Zealand Copyright Act 1994, s. 44(5).

<sup>545</sup> New Zealand Copyright Act 1994, s. 2 (definition of educational establishment).

“390. The exceptions in section 45 are summarized in the table below:

Provision	Section 45(1)	Section 45(3)
Work	Sound recording, film, communication work, and any work included therein	Sound recording and any work included therein
Extent/activity	Copying of work consisting of or includes the making of a film or film sound track	Copying of work
Purpose	In course of preparation for instruction, for use in course of instruction, in course of instruction, after the course of instruction	In course of preparation for instruction, for use in course of instruction, in course of instruction, after course of instruction
Lesson	Lesson on how to make films or film sound-tracks	Lesson relates to learning of language, or conducted by correspondence
Actor	By person who is to give, is giving, or has given the lesson  By person who is to receive, is receiving or has received the lesson	By person who is to give, is giving, or has given the lesson  By person who is to receive, is receiving or has received the lesson
Charges	No charges for supply	No charges for supply
Condition		No available licensing scheme authorizing copying  Person doing the copying not aware of licensing scheme <sup>546</sup>

*Table 2: Summary of Conditions in Section 45, New Zealand Copyright Act*

“398. The exceptions here are narrower, and pertain specifically for media studies, language courses and courses conducted by correspondence. A similar exception arises to exempt from infringement of performers’ rights the copying of a recording of a performance for media studies, language courses and courses conducted by correspondence.<sup>547</sup>

#### Sections 46 and 71: Educational and Scientific Chrestomathies

“392. Section 46 permits the creation of anthologies for use in an educational establishment, by way of including short passages from published literary or dramatic works in a collection, as long as the collection “consists mainly of material in which no

<sup>546</sup> New Zealand Copyright Act 1994, ss. 45(5).

<sup>547</sup> New Zealand Copyright Act 1994, s. 177(1).

copyright subsists” or is owned by the publisher or by the Crown, the work itself is not intended for educational usage and there is a sufficient acknowledgment accompanying each inclusion.<sup>548</sup> However, not more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years may be included in the creation of the anthology.<sup>549</sup>

“393. Section 71 applies the same concept and allows for abstracts of articles on scientific or technical subjects in periodicals to be copied or issued to the public.

#### Sections 47, 178 and 188: Performances and Showing Works at Educational Establishments

“394. Section 47 exempts as public performances, performances of a literary, dramatic or musical work by teachers or students in the course of activities of the school or educational establishment, or at the school or establishment by any person for the purpose of instruction, before an audience of teachers, students and “other persons directly connected with its activities”.<sup>550</sup> The playing or showing of sound recordings, audio visual works, communication works for this purpose is also exempted as a “playing or showing of the work in public”<sup>551</sup>

“395. A similar exception in section 178 applies in relation to the playing or showing of a sound recording, film, communication work at an educational establishment for the purposes of instruction in similar circumstances.

“396. The exception in 188 exempts from infringement of performers’ rights, the free public playing or showing of a communication work to an audience who have not paid for admission. This is potentially applicable in relation to broadcasts or communications of school performances.

#### Sections 48 and 179: Recordings of Communication works for Educational Purposes

Section 48 was amended via section 29 of the Copyright (New Technologies) Amendment Act 2008 to broaden the scope of this exception, which previously only applied to copying or recording by educational establishments.

Section 48 now provides that copies of communication works made by, or on behalf of an educational establishment, or made and supplied by an educational resource supplier to an educational establishment, do not infringe copyright provided that the copy is made for educational purposes or the purpose of supplying an educational establishment.

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<sup>548</sup> New Zealand Copyright Act 1994, s. 46(1).

<sup>549</sup> New Zealand Copyright Act 1994, s. 46(2). References to “same author” here include works by all the joint authors and collaborators. New Zealand Copyright Act 1994, s. 46(3).

<sup>550</sup> New Zealand Copyright Act 1994, s. 47(1). Parents and guardians of students are not per se deemed to be directly connected with the activities of the school. New Zealand Copyright Act 1994, s. 47(3).

<sup>551</sup> New Zealand Copyright Act 1994, s. 47(2).

As was the case with the previous version of this section, the exception does not apply if the establishment or supplier knew that a license authorising the copying or communication of that copy could be obtained under a licensing scheme.

“398. A similar exception in 179 applies to exempt any infringement of performance or recording rights included in the recording or copy.

#### Section 226: Technological Protection Measures

Section 226 has been significantly amended by section 90 of the Copyright (New Technologies) Amendment Act 2008 to deal with technological prevention measures (“TPMs”) in a more comprehensive manner.

Section 226A prohibits the selling, making, distributing or letting of a TPM circumvention device where that person knows or has reason to believe the device is likely or will be used to infringe copyright in a TPM work. 226A also prohibits the provision of a service if that service provider knows or has reason to believe the service will be used to circumvent a TPM assist such circumvention, or is likely to be used to infringe copyright in a TPM work.

Similarly, section 226C makes the aforementioned activities an offence if they are conducted in the course of business (as with other parts of the act this requires a certain scale of commercial activity determined by a court).

Sections 226D and 226E expressly allow for educational establishments to circumvent TPMs for the purposes of Part 3 of the Act (which outlines the educational exceptions). (NZ comment: the previous version of 226 differed in that it only implied that an educational establishment could do so.)

#### Sections 49 and 177(2): Examinations

“399. Section 47 exempts from copyright infringement, anything done for the purposes of an examination, whether by way of setting, communicating or answering the questions. A similar exception in section 177(2) exempts from any infringement of performance rights in performances.

#### Section 79: Rental of Computer Programs, Recordings and Audio Visual Works by Educational Institutions

“400. Section 79 exempts from copyright infringement any rental by an educational establishment or a prescribed library of a computer program, sound recording or film to any person, if the rental is not affected for profit and the subject matter of the rental work has previously been put into circulation with the copyright owner’s license.

#### Section 80: Study of Computer Programs

Sections 80A to 80D were inserted into the Copyright Act by the Copyright (New Technologies) Amendment Act 2008 to provide for the lawful decompilation, observation and study of computer programs by the lawful user of those programs. Decompilation describes the conversion of a computer program expressed in a low level language into a version expressed in a higher level language, and is permitted by section 80A under a number of circumstances.

Section 80B allows the copying or adaptation of a program to remove an error from the program, or for other lawful uses, provided that a properly functioning and error-free copy of the program is not available within a reasonable time at an ordinary commercial price.

Section 80C allows the observing, studying, or testing the functioning of the program in order to determine the ideas and principles that underlie any element of the program.”

3. Paragraph 651 in page 159 should read: “Other countries (...) also recognize exceptions for the making of video and sound recordings of broadcasts, communication of works...”

4. As to Paragraph 662 in page 163, New Zealand states that this comment no longer applies to New Zealand, as sections 43 and 44A provide that communication, storage and display of copyright works via the internet for educational purposes does not infringe copyright.)

5. Footnote 883 in page 163 should read: “New Zealand Copyright Act, s. 178 (exempting the playing or showing of a sound recording, film, broadcast or communication of work at an educational establishment).”

6. Footnote 1237 in page 196 should read: “New Zealand Copyright Act, s. 226 to 226E.”

7. As to Paragraph 749 in page 198, New Zealand states that the amended version of s226 provides that Technological Protections Measures are dealt with in a more specific fashion. See comments below.

8. Paragraph 751 in page 199, should read: “A rule to the same effect is found in (...) and New Zealand.” A footnote should be added and read: “New Zealand Copyright Act, s226A to 226E.”

9. Paragraph 752 in page 199 should read: “But even if it is not an infringement of copyright to use a work protected by technological measures pursuant to the education exceptions in copyright legislation, if such a use can only proceed by way of circumventing the technological measures, educational institutions, teachers and students may not have the skills or the means to be able to do so.

The New Zealand Copyright Act offers a solution. Section 226A of the Act prohibits the selling, making, distributing or letting of a TPM circumvention device where that person knows or has reason to believe the device is likely or will be used to infringe copyright in a TPM work. 226A also prohibits the provision of circumvention services if that service provider knows or has reason to believe the service will be used or is likely to be used to infringe copyright in a TPM work.

If an educational establishment does not have the necessary skills to be able to circumvent a TPM for the acts permitted under Part 3 (the educational exceptions), Section 226E allows a person to seek assistance from a copyright owner in using a TPM work. If the copyright owner refuses assistance or fails to respond to such a request within a reasonable time, the person may engage a qualified person to perform this task for them.

Section 226D allows the making, importing, selling etc of a circumvention device to the qualified person for this purpose, provided that person has made a declaration to the supplier in a form prescribed by the act. A qualified person means a librarian of a prescribed library, the archivist of an archive, an educational establishment, or any other person specified by the Governor-General by Order in Council on the recommendation of the Minister.

Section 226E(3) of the Act also provides for those who undertake encryption research at an educational establishment to use a TPM circumvention device for the purpose of that research. Those trained, employed or experienced in the field of encryption technology may also be supplied and use such a device if they have obtained or have taken all reasonable steps to obtain permission from the copyright owner to do so.”

10. The Appendix in page 205, regarding the date in which New Zealand became Contracting Party to the Berne Convention, should read: “April 24, 1928.”

[Annex IX follows]

## ANNEX IX

## SUPPLEMENTARY INFORMATION ON THE STUDIES ON LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

by  
*Nigeria*

Comments on Document SCCR/19/5 (the Fometeu Study)

Exceptions from Copyright Control Pertaining to Teaching and Education under the Nigerian Copyright Act (Copyright Act, Chapter 28, Laws of the Federation of Nigeria 2004)

Provisions on Limitations and Exceptions under the Nigerian Copyright Law

The Second Schedule to the Copyright Act and Section 31(2) (a) & (b) creates and provides exceptions to copyright control in respect of certain uses of copyright works. The schedule has 19 paragraphs numbered alphabetically from (a) – (s). Although all the paragraphs are basically made to apply to rights in literary, musical and artistic works as well as cinematograph films, some of the paragraphs have also been made applicable to sound recordings and broadcasts. Paragraphs A, F, G, H, K, Q & R are relevant to Education. These exceptions are not just concerned directly with teaching, but include activities that support teaching and education generally. The provision of the Second Schedule include Fair deal exception, and are couched in a manner that allows for free use without the need for the user to contact the right holder before or after use to obtain any permission and without having to pay any kind of remuneration.

Excerpts from Second Schedule

“The right conferred in respect of a work by Section 5 of this Act does not include the right to control”-

i) The doing of any of the acts mentioned in Section 5 of the Act by way of fair dealing for the purpose of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship except where the work is incidentally included in a broadcast. (Paragraph a).

ii) The inclusion in a collection of literary or musical work which includes not more than two excerpts from the work, if the collection bears a statement that it is designed for educational use and includes an acknowledgement of the title and authorship of the work. (Paragraph F).

iii) The broadcast of a work if the broadcast is approved by the broadcasting authority as an educational broadcast; (paragraph G).

iv) Any use made of a work in an approved educational institution for the educational purposes of that institution, subject to the condition that, if a reproduction is made for any purpose it shall be destroyed before the end of the prescribed period, or if there is no prescribed period, before the end of the period of twelve months after it was made. (Paragraph H).

v) Any use made of a work by or under the direction or control of Government, or by such public libraries, non-commercial documentation centres and scientific or other institutions as may be prescribed, where the use is in the public interest, no revenue is derived therefrom and no admission fee is charged for communication, if any, to the public of the work so used. (Paragraph K).

vi) The making of not more than three copies of a book (including a pamphlet, sheet music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such a book is not available for sale in Nigeria. (Paragraph Q).

vii) The reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access. (Paragraph R).

#### Tabulated Summary of Exceptions and Limitations

National Law	Copyright Act (Cap 28, Laws of the Federation of Nigeria, 2004
Relevant Statutory References	Section 31(2) (a) & (b); Paragraphs (a), (f) (g) (h) (k) (q) & (r) of the Second Schedule to the Act.
Field Covered	Copyright Law
Benefitting Institutions	Approved educational institutions, Public Libraries, Non-commercial documentation centres, scientific and other institutions; and Museums
End Beneficiary of the Exception	Pupils, Students, Teachers, Researchers
Works Covered by the Exceptions	Literary, musical, artistic works, cinematograph films, broadcasts, Performances and Expressions of Folklore.
Rights Covered by the Exceptions	Reproduction, performance and broadcast
Purpose of exceptions	Illustration for teaching, research, educational purpose and library use.
Nature of Restrictions	Exceptions
Compensation for restriction	No compensation
General conditions	In the case of inclusion in a collection of literary or musical works, the Collection compiled must indicate that it is for educational purpose;  In the case of broadcast, it must be approved by the broadcasting authority as an educational broadcast;  In the case of reproduction by an approved educational institution, the reproduction must be destroyed at the end of the prescribed period; if no such period is specified, at the end of twelve

	<p>months;</p> <p>In the case of fair dealing, if the use is public, it must be accompanied by an acknowledgement of source;</p> <p>Reproduction by libraries if a book is not available for sale in Nigeria. Only three copies permitted.</p>
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[End of Annex IX and of document]