

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

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Report on the Questionnaire on Limitations and Exceptions  
*prepared by the Secretariat*

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## INTRODUCTION

The present document reports on the replies to the Final Questionnaire on Limitations and Exceptions sent by 40 Member States to the World Intellectual Property Organization (WIPO) Secretariat.

During the 17<sup>th</sup> session of the Standing Committee on Copyright and Related Rights (SCCR), held in November 2008, the Secretariat was requested to prepare a draft questionnaire regarding limitations and exceptions, with particular emphasis on the issues regarding education, libraries and persons with disabilities, for the consideration of Member States of the SCCR in the 18<sup>th</sup> session.

A first draft questionnaire (document SCCR/18/3) was presented by the Secretariat at the 18<sup>th</sup> session of the SCCR held in May 2009, and Member States requested the preparation of a revised questionnaire based on their comments provided prior to the 19<sup>th</sup> session of the SCCR.

A revised version of the draft questionnaire, or second draft questionnaire (document SCCR/19/2) was submitted for the consideration of Member States during the 19<sup>th</sup> session of the SCCR. Following the conclusions of that session, the Secretariat was requested to finalize the questionnaire on the basis of the comments and the discussions of the Committee without any substantial changes in the content of the questions and, while retaining its seven chapters, submit it to the Member States and the European Union for replies.

The final questionnaire comprised 103 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.

It was acceptable for respondents not to answer all questions, particularly when the available data did not allow giving an unequivocal answer to the questions. It was also understood that the information contained in the replies should not be taken to constitute a legally binding source of the applicable laws in the respondent Member States, or as guidance to the interpretation of such laws.

The questionnaire was made available to be replied, in printed form or via on-line, in English, French and Spanish. The initial deadline for Member States to send their replies to the WIPO Secretariat was May 10, 2010. This deadline was later extended to May 28, 2010.

The Secretariat received replies from the following Member States: Algeria, Argentina, Belgium, Bhutan, Botswana, Burkina Faso, Colombia, Croatia, Czech Republic, Estonia, Finland, Greece, Guatemala, Iceland, India, Ireland, Israel, Japan, Kenya, Latvia, Lithuania, Luxembourg, Madagascar, Mexico, New Zealand, Norway, Oman, Peru, Poland, Republic of Moldova, Singapore, Spain, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom, United States of America and Uruguay (40). Fifteen replies were submitted on-line and 25 were received in printed form. Four on-line replies were submitted in an incomplete form with not more than 20 questions answered, and in one case with only one question answered.

In the course of the preparation of this document the Secretariat examined more than 3,500 responses. Most of the questions followed a mixed format, namely, on the one hand, a combination of closed and open format questions to give multiple choice, or simple Yes/No answers and; on the other hand, there was also the opportunity for the respondent to provide further information on the answer given. In this respect, several replies only contained references to specific sections or articles of national statutes without providing the actual text of the provisions. In other cases, no clear relation seemed to exist between the additional information provided by the respondent and the question asked.

This report does not attempt to reproduce exactly all responses but rather tries to identify general trends in respect of those replies as well as to highlight different national approaches in the areas covered by the questionnaire.

The structure of this document follows the order of questions of the final questionnaire. The text of the final questionnaire is in the Annex of this document. The 40 replies received from Member States are available at: [http://www.wipo.int/copyright/en/limitations/limitations\\_replies.html](http://www.wipo.int/copyright/en/limitations/limitations_replies.html)

## PART I: GENERAL QUESTIONS ON LIMITATIONS AND EXCEPTIONS

### 1. Types of limitations and exceptions

Out of 40, twenty-eight Member States have a system of specific limitations and exceptions. Eleven Member States provide for mix of specific exceptions and open system, for example the United States of America fair use doctrine, which is very broad in scope and is being interpreted and applied by courts on basis of case law precedents; or more specific and limited, such as fair dealing concepts. Japan, one of the countries with specific statutory limitations and exceptions only, indicated that there are discussions being held regarding the introduction of an open system. Finland mentioned that its Copyright Act includes, besides specific statutory exceptions, also a system of extended collective licenses.

Replies overview:	Specific	28
	Open	0
	Mixed	11
	No answer	1

### 2. The three-step test as a general provision of national law

The laws of 19 Member States include the three-step-test as a general provision while national laws of 14 Member States do not. Some Member States emphasized that despite not having the three-step test as a general provision of national copyright law all national limitations and exceptions have been benchmarked against the test in preparing the legislation. Five Member States replied that their national laws include the three-step test partially. For example, in Belgium certain conditions of the three-step test are explicitly stated in certain exceptions to delimit their scope and, in addition, the three-step test as a rule of European Union law guides the judge in interpreting the scope of any national limitations and exceptions. However, the detailed replies of two Member States, out of the five with partial implementation of the three-step test, clearly stated that the test is not specifically mentioned anywhere in their national copyright statutes. For example, Japan reported that there are no special stipulations on the three-step test in the Copyright Act of Japan, but its principle is reflected in the Act.

Replies overview:	Yes	19
	No	14
	Partially	5
	No answer	2

### 3. Limitations and exceptions as free uses (no authorization, no remuneration)

Almost all Member States that submitted their replies to this question (38 out of 39) confirmed that their national laws provide some limitations and exceptions as free uses. Only the answer of Belgium seems to suggest that there are no free use limitations and exceptions in Belgian copyright law. Many limitations and exceptions were cited as examples of free uses and most often were related to educational purposes and private use. However, reproduction for educational purposes or for private purposes is sometimes subject to remuneration, especially in Member States with copyright levy systems in place. Other countries often mentioned examples



on limitations and exceptions for visually impaired persons, or persons with disabilities, for libraries and archives, for uses for informational purposes, quotations and certain exceptions relating to computer programs.

Replies overview:	Yes	38
	No	1
	No answer	1

#### 4. Limitations and exceptions based on statutory licenses (permission for remuneration)

Twelve Member States stated that they do not have in their national laws any limitations and exceptions construed as statutory licenses. National legislations of the remaining 26 Member States include at least some limitations and exceptions where the remuneration is provided for. Prevailing examples of acts falling under statutory license type limitations and exceptions are reproduction of a work for private purposes and reproduction of a work or short excerpt thereof for purposes of teaching and education. Other cited limitations and exceptions provide remuneration for public lending, use of a work for benefit of persons with disabilities, use of a phonogram by broadcasting, playing a sound recording in the public, rental of audio and audiovisual recordings, and uses for purpose of information and documentation.

Replies overview:	Yes	26
	No	12
	No answer	2

#### 5. Limitations and exceptions based on compulsory licenses

National laws of 16 Member States provide limitations and exceptions based on compulsory licenses. No detailed examples of scenarios in which such compulsory licenses may be applied were given. Twenty-two Member States do not use compulsory licenses in the field of copyright law. Ireland noted that, despite not having any provisions covering compulsory licenses, collective licensing schemes are permitted, for example, in relation to reprographic copying in educational establishments.

Replies overview:	Yes	16
	No	22
	No answer	2

#### 6. Limitations and exceptions for private or personal purposes

The prevalent majority of Member States who responded to this question (35 out of 38) stated that their national legislation provides specific limitations and exceptions permitting the use of copyrighted works for private or personal purposes without previous authorization of the rights owner. Most often these exceptions permit the reproduction of a work for private purposes, but exceptions covering other acts (e.g. translation and adaptation) were also cited. Examples of acts falling under exception for reproduction for private purposes encompass literary works or excerpts thereof, films, audio and audiovisual works, sound recordings, films and broadcasts. According to some Member States' submissions, the right of reproduction for private purposes is

commonly limited to works which are lawfully disseminated to the public. Private use is often limited to use by the person who makes the copy himself and by others personally interrelated with him (e.g. Poland). A frequent limitation of the scope of this exception is the prohibition of any use of the copy for any direct or indirect commercial purposes. Sometimes the purpose of the private use is further limited to private study (e.g. United Kingdom). Several Member States exclude particular types of works, such as computer programs (e.g. Ukraine), electronic databases (e.g. Czech Republic), works of architecture (e.g. Norway) or music notations (e.g. Greece), from the scope of the limitations and exceptions for reproduction for private purposes. Some Member States provide explicitly quantitative limits regarding the private reproduction exception, either for one (e.g. Bhutan, Republic of Moldova) or few (e.g. Sweden) copies.

Replies overview:	Yes	35
	No	3
	No answer	2

#### 7. Remuneration for use for private or personal purposes

Twenty-two Member States stated that they have included in their legislation some form of remuneration to authors or owners of related rights for use of their works or objects of related rights for personal purposes under respective limitations and exceptions. Almost all Member States that gave a detailed answer described a system of copyright levies usually imposed on manufacture, sale and importation of equipment which is or may be used for making private reproductions of protected works (such as photocopying machines, audio and audiovisual recording devices and blank tapes, CDs, DVDs and other media, including computer hard drives) and also on provision of reprographic copying services (copy centers). The copyright levy is usually calculated as a percentage of the selling price or price of copying services respectively. However, some countries have set the levy, at least in some cases, as a fixed amount per item (e.g. fixed amount per page in case of copying services). Norway indicated that authors are compensated through annual grants via the State budget. One of two countries which did not tick either Yes or No answer, the United States of America, pointed out in its textual reply that despite not having a copyright levy system, a royalty is paid upon the distribution of digital audio recording devices that could be used for home taping. Out of 16 countries not providing any remuneration for private use, three of them do not have any private use exception in their legislation.

Replies overview:	Yes	22
	No	16 (3 of which do not have private use exception)
	No answer	2

#### 8. Is it possible to override limitations and exceptions by contract?

Twenty-five Member States generally do not allow rightholders to override statutory limitations and exceptions by contractual means. However, several of these Member States' laws include particular limitations and exceptions which are applicable only if an act falling within their scope has not been expressly prohibited by the author. On the other hand, nine Member States do not generally prohibit contracting out of the limitations and exceptions provided in their national copyright law, but some of them still keep some particular limitations and exceptions as mandatory and non-waivable by contract. One of the countries replying neither Yes nor No, Finland, seem to fall within the first group, as its detailed reply points out that freedom of contract

is applied as a general rule also to copyright limitations and exceptions. Japan informed that nothing is stipulated in the Copyright Act of Japan, however the judiciary makes judgments according to the intent of each of the stipulations on limitations and exceptions.

Replies overview: Yes 9  
No 25  
No answer 6

#### 9. Are limitations and exceptions subject to lawful source requirement?

Twenty-four Member States replied that their national copyright laws subject the exercise of limitations and exceptions to the condition of lawful or authorized source. Six of these 24 replies mentioned only the requirement that the work has to be lawfully published or disseminated to the public, while the rest described examples of more specific requirement of lawfulness of the copy which is being used as a source for private copying, applicable often to the exception allowing the user to create a back-up copy of a computer program (e.g. Israel). Thirteen Member States stated that they do not have any lawful source requirement in their national laws, but one of them pointed out that in some cases the work must have been lawfully published for the limitations and exceptions to be applicable.

Replies overview: Yes 24 (6 of these only works lawfully published)  
No 13 (1 of these in some cases works lawfully published)  
No answer 3

#### 10. Protection of technological measures

Thirty-one Member States protect technological measures (TPMs) while six do not. New Zealand, as one of the countries providing protection of TPMs, clarified that the act of circumvention itself is not prohibited by its national legislation, only the importation and distribution of TPM circumvention devices or the offering of services for such circumvention.

Replies overview: Yes 31  
No 6  
No answer 3

#### 11. Protection of rights management information

Rights management information is protected by the national statutes of 30 Member States. The United States of America noted that the "integrity of copyright management information" is the only matter of protection under its national law.

Replies overview: Yes 30 (1 only trafficking with circumvention devices)  
No 8  
No answer 2

12. Specific mechanisms to ensure that exceptions are available despite TPMs

Laws of 17 Member States do not include any mechanisms to make sure that acts falling under limitations and exceptions may be performed despite the existence of TPM, including the laws of four Member States where protection of TPMs does not exist. One Member State explained that protection for TPMs in its law is distinct from copyright protection. Four Member States did not answer the question, including two Member States with no protection of TPMs. Nineteen Member States indicated that their national laws, at least in some cases, provided mechanisms to make sure that prohibition of circumvention of TPMs does not prevent beneficiaries of copyright limitations and exceptions from exercising them. Measures described in the detailed replies vary among countries and include a general limitation of application of TPM protection only to acts which are not covered by any exception or limitation (e.g. Poland), the establishment of an advisory office which shall monitor and report on the effects of TPMs on limitations and exceptions (e.g. Switzerland), the establishment of a Ministerial Board which is empowered to order rightholders to allow access to protected works and, if they fail to comply with the order, the Board can permit the user to circumvent the TPMs (e.g. Norway). Often the detailed replies mentioned that there is a general statutory obligation of rightholders to ensure that beneficiaries of statutory limitations and exceptions actually have the possibility to exercise them. If the rightholder fails to provide access to protected work, many Member States grant beneficiaries of limitations and exceptions a recourse to some form of judicial review (e.g. Ireland), arbitration (e.g. Finland), mediation (e.g. Greece) or administrative proceedings (e.g. Estonia). Recourse to judicial or administrative review may be allowed only if disputed acts fall under specific limitations and exceptions enumerated by the statute (e.g. Belgium).

Replies overview:	Yes	19
	No	17 (including 4 Member States with no protection of TPMs)
	No answer	4 (including 2 Member States with no protection of TPMs)

13. If recourse to legal proceedings is necessary, what is the average time needed?

Twenty-seven Member States either did not answer the question at all or answered it despite indicating in previous replies that there is no specific mechanism to ensure availability of limitations and exceptions if TPMs are applied. Five Member States replied that they were not aware of any precedents. However, Ireland estimates that such proceedings can be a matter of months. In one reply the institution which was supposed to deal with this type of proceedings has not been established yet. Two Member States highlighted that the duration of legal proceedings depends on many factors. Guatemala stated that a limit of no more than 10 days is provided by the Law. In Belgium such application shall be treated as a matter of urgency. Luxembourg informed that arbitration proceedings may take between one to four months, while full court proceedings may take years. In Greece, if the preliminary measure is sought, the average time needed is from four to six months.

14. Do limitations and exceptions prevail over the prohibition to circumvent TPMs?

Sixteen Member States communicated that, in their national laws, limitations and exceptions prevail over the prohibition to circumvent TPMs. A similar answer was provided by one Member State whose law actually includes no provision on TPMs. At least one Member State reported that the protection against circumvention does not apply if TPMs are circumvented to allow lawful use (Poland). Another country replied that the ban on circumvention applies even in such

situations but cannot be enforced against those who undertake the act of circumvention exclusively for legally permitted uses (Switzerland). Many Member States provided the same or very similar replies as under question 12, which may suggest that, contrary to some of the submitted replies, their laws do not allow users directly to circumvent TPMs in order to engage in acts falling under national limitations and exceptions, but to enforce the rightholder's obligation to provide unhindered access to the work. Eighteen Member States answered in the negative, including four Member States that did not provide any protection of TPMs. One Member State did not tick any box in the positive or negative, but provided a detailed textual answer which might suggest that the prohibition to circumvent TPMs is independent on copyright law and therefore prevails over copyright limitations and exceptions. Five Member States decided to leave the question unanswered, including one Member State not protecting TPMs in its legislation.

Replies overview: Yes 16  
No 19 (including 4 Member States with no protection of TPMs)  
No answer 5 (including 1 Member State with no protection of TPMs)

15. If recourse to legal proceedings is necessary, what is the average time needed?

Twenty-seven Member States either did not answer the question at all or answered it, despite indicating in previous replies that there is no specific mechanism to ensure availability of limitations and exceptions if TPMs are applied. Five Member States are not aware of any precedents, but Ireland estimates that such proceedings would be matter of months. In one Member State the institution which was supposed to deal with this type of proceedings has not been established yet. Two Member States highlighted that the duration of legal proceedings depends on many factors. Colombia indicated that such proceedings would last, in practical terms, approximately two years. In Belgium, such application shall be treated as a matter of urgency. Luxembourg informed that arbitration proceedings may take between one to four months while full court proceedings may take years. In Greece, if the preliminary measure is sought average time needed is from four to six months. Algeria indicated that such dispute would be solved with no delay and Oman estimated that it would not take more than three months. The general impression is that some respondents did not fully take into account distinctions between questions 12 and 14 and answered question 15 in the same way as question 13.

16. Limitations and exceptions for use of computer programs

National laws of 30 Member States contain specific limitations and exceptions for use of computer programs. Such limitations and exceptions cover acts such as: i) reproduction and adaptation necessary for the use of the program for its intended purpose, including the correction of errors, acts of reproduction performed in order to observe, study or test the program with the aim of identifying the ideas and principles behind the computer program; and ii) reproduction for purpose of making a back-up copy of the computer program (in many Member States this exception is limited by a further qualification that such back-up copy must be necessary for lawful use of the program, while in others it is also possible to make a back-up copy for purpose of maintenance of the program or simply there is no such qualification at all). Several Member States mentioned the exception covering decompilation of the computer program (i.e. reproduction and translation of the object code into a higher level computer language) in order to achieve interoperability of an independently created computer program. Botswana permits the

reproduction and modification of a computer program for personal purposes. Seven Member States do not have any specific exception or limitation for computer programs.

Replies overview: Yes 30  
No 7  
No answer 3

#### 17. Limitations and exceptions for the temporary use of digital works

Twenty Member States replied that their national laws provide some limitations and exceptions for the temporary use of digital works. Despite the fact that descriptions of such exceptions were worded differently, there was a very high level of resemblance among them. In general, such exceptions apply to cases where transient or incidental copy forms an integral and essential part of a technical process the sole purpose of which is to enable a transmission in a network by an intermediary or to enable lawful use and where such copies do not have any independent economic significance. Seventeen Member States stated that their national law does not include any exceptions or limitations for the temporary use of digital works.

Replies overview: Yes 20  
No 17  
No answer 3

#### 18. Exceptions, limitations or safe harbors for service providers of digital transmission

Statutory exceptions, limitations or safe harbor provisions on the activities of service providers related to the digital transmission of works exist in 19 Member States and do not appear in national legislation of other 18 Member States. However, as indicated by Israel, the matter may be dealt with through case law. Exceptions, limitations or safe harbors cited in detail apply, if statutory conditions are met, to transmission of works in digital networks initiated by recipients of the service, to caching (i.e. temporary storage for purpose of facilitating onward transmission of works to other recipients) and to hosting, i.e. storage of works at the request of the recipient of the service. Defense provided by safe harbors is usually available only if the service provider does not have any actual or constructive knowledge of infringing nature of the activity.

Replies overview: Yes 19  
No 18  
No answer 3

#### 19. Do exceptions prevail over the prohibition of trafficking with circumvention devices or provision of services assisting in circumvention of TPMs?

Twenty-eight Member States acknowledged that limitations and exceptions do not prevail over the prohibition of trafficking with devices or providing services assisting in circumvention of TPMs, including six Member States that do not protect TPMs in their national legislation. Despite nine Member States responded that according to their legislation limitations and exceptions do prevail, in at least four of those cases, detailed replies seem to suggest the contrary. Two detailed replies did not provide any clear information that supports the positive answers while two other

positive answers were not supported by any detailed reply at all. Only New Zealand specified that, under its national legislation, prescribed persons may acquire circumvention devices or provide such a service for the purpose of exercising limitations and exceptions on behalf of any person.

Replies overview: Yes 9  
No 28 (including 6 Member States with no protection of TPMs)  
No answer 3

20. If recourse to legal proceedings is necessary, what is the average time needed?

Almost all replies to this question were similar or identical to replies to questions 13 and 15. None of the Member States, who claimed that their national legislation allows that limitations and exceptions prevail over the prohibition of trafficking in devices or provision of services assisting in circumvention of TPMs, suggested any option of recourse to judicial proceedings. Twenty-eight Member States replied question 19 in the negative. Three of the remaining replies indicate that there are no precedents available or that the time for legal proceedings varies from case to case. Bhutan answered that there is no time limit, Luxembourg repeated its answer to question 13 stating that arbitration proceedings may take from one to four months, but full court proceedings may last up to several years, and Ireland estimates that such proceedings would be matter of months. Other Member States did not provide any information about possible time limits of relevant legal proceedings. These replies seem to indicate that some respondents did not fully take into account the difference between questions 12, 14 and 19 and answered question 20 in the same way as questions 13 and 15.

PART II: LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL ACTIVITIES

21. If national statute is included in any of WIPO studies on limitations and exceptions for education and research, is the analysis correct?

Twenty-three Member States whose national laws had been included in the WIPO studies on limitations and exceptions for education and research confirmed the analysis therein as correct. National laws of four Member States were not covered by the analyses. Five Member States expressed some reservations as to the correctness of the analysis of their national laws and provided corrections of several errors and omissions therein. Japan and Luxembourg did not express any objections to the analysis but informed that their copyright laws were amended after completion of the studies. Eight Member States did not give any reply to the question.

Replies overview: Yes 23  
No 5  
Not included 4  
No answer 8

## 22. Specific limitations and exceptions for educational purposes

Thirty-six Member States confirmed that their national laws include limitations and exceptions for educational purposes. There was no negative answer. Four Member States did not submit any reply to this question. In their detailed answers, Member States described a broad range of limitations and exceptions for educational purposes. The most frequently cited limitations and exceptions were those allowing reproduction of short works or fragments of works for the purpose of illustration in teaching and education (e.g. Finland, which excludes from the scope of this exception works specifically created for use in education), performance of works in educational activities, if the performance is carried out by teachers and students, reproduction of works or parts thereof in school textbooks (e.g. Greece, which limits the scope of this exception to textbooks approved by the Ministry of Education), use for examination purposes (e.g. India, Madagascar), broadcasting of a work in school education programs (e.g. Japan, Latvia), digital communication for purposes of distance education (e.g. the United States of America) or making of an anthology for educational purposes once the author has deceased (e.g. Belgium).

Replies overview:	Yes	36
	No	0
	No answer	4

## 23. What kind of activities are those limitations and exceptions related to?

Seventeen Member States limit the application of limitations and exceptions provided by their national legislation only to face-to-face activities, however some of these Member States indicated either that some of the national limitations and exceptions for educational purposes might in theory be applicable even to distance learning, but this view is not approved by any judicial authority yet (Poland) or that they are examining proposals to expand the scope of limitations and exceptions to include distance learning (United Kingdom). No Member State limits the applicability of educational limitations and exceptions solely to distance education. National laws of 15 Member States offer limitations and exceptions for both face-to-face activities and distance education. Eight Member States did not reply.

Replies overview:	Face-to-face only	17
	Distance education only	0
	Both	15
	No answer	8

## 24. Specific limitations and exceptions allowing performances for educational purposes

National legislations of 27 Member States have limitations and exceptions allowing performances for educational purposes. Certain Member States limit the scope of such limitations and exceptions to performances in face-to-face teaching activities (e.g. Botswana), while others include it within the scope of school performances, i.e. performances performed exclusively by students and teachers. The latter broader limitations and exceptions are in some cases limited by further conditions as to the audience (e.g. Estonia where the audience must consist only of the teaching staff and students or other persons who are directly connected with the educational institution, for example student's parents), as to the place of the performance (e.g. Spain where



some acts must take place in the educational institution), as to the ability to collect an entrance fee (e.g. Norway where audience must be admitted free of charge) or to generate any other income from the event directly or indirectly (e.g. Czech Republic). Eight Member States do not have any specific limitations and exceptions allowing performances for educational purposes, however Japan indicated that such performances may fall under more general exception permitting certain not for profit performances. Five Member States gave no reply.

Replies overview: Yes 27  
No 8  
No answer 5

#### 25. Remuneration for performances for educational purposes

Thirty Member States replied that their national legislation does not provide any remuneration for performances for educational purposes, including seven Member States not having any limitation or exception allowing such performances. Four Member States answered the question in the positive but their detailed answers were related to different topics (two were related to the use of performances as objects of related rights and two referred to national legislation limiting the scope to such performances for which no remuneration was paid). Six Member States did not answer the question.

Replies overview: Yes 4  
No 30  
No answer 6

#### 26. Requirements regarding quantitative or qualitative limits and nature of the works

Twenty-one Member States acknowledged that their laws include specific requirements regarding quantitative or qualitative limits and nature of the works covered by the specific limitations and exceptions allowing performances for educational purposes, including three Member States with no such limitation or exception. However, out of these 21 countries, five detailed replies did not relate to limitations and exceptions allowing performance of a work but to other topics, such as reproduction or communication in a closed network. Examples given included requirements such as that the work must have been published, the prohibition of any direct or indirect commercial benefit or of any payments to performers, the requirement that entrance fee for such performance must be free of charge, requirements related to the nature of performers (only students or teachers) or of the audience (only students, teachers or other related persons as parents), and requirements related to the place of the performance (e.g. Algeria, where performance for educational purposes must take place either in a family circle or in the educational establishment). Thirteen Member States replied that there are no requirements regarding qualitative or quantitative limits or nature of the works, however one of these Member States described some limitations regarding the identity of the audience in previous replies. Three of the replies in the negative came from Member States which provide no limitation or exception for performances for educational purposes.

Replies overview: Yes 21  
No 13  
No answer 6

27. Who is eligible to engage in activities covered by the specific limitations and exceptions allowing performances for educational purposes?

This question seems to have created certain level of confusion that may be observed in some replies that do not refer to specific limitations and exceptions allowing performances for educational purposes, but to limitations and exceptions for educational purposes in general. Nineteen Member States grant the possibility to engage in activities falling under specific limitations and exceptions for performances for educational purposes to teachers, students and to educational institutions including one Member State indicating in its previous replies that it did not provide such limitations and exceptions. Two of these Member States listed also additional beneficiaries of the limitations and exceptions, namely the United States of America mentioned governmental bodies and Poland mentioned libraries, archives and research institutions. Sweden highlighted that everyone is entitled to publicly perform works as long as it is done in the course of educational activities. Despite not having any specific exception for performances in education, Luxembourg indicated that there are no restrictions as to the identity of the beneficiaries applicable to educational activities. In five Member States only students and teachers benefit of relevant limitations and exceptions. The laws of other five Member States address only educational institutions as beneficiaries of limitations and exceptions allowing performances for educational purposes, but two Member States giving this reply indicated in their previous reply that their legislation does not include such limitation or exception. The reply given by Spain suggests that only teachers are eligible to engage in activities covered by specific limitations and exceptions allowing performances for educational purposes. Eight Member States left the question unanswered, two of them without any relevant limitations or exceptions.

Replies overview:	Teachers, students and educational institutions:	19
	Teachers and students:	5
	Educational institutions:	5
	Teachers:	1
	Others:	2
	No answer	8

28. If educational institutions are eligible to engage in activity covered by the specific limitations and exceptions allowing performances for educational purposes, does national statute establish conditions regarding their nature?

Some replies to this question were inconsistent, therefore it was very difficult to analyze them. Some Member States whose laws apparently require not-for-profit status of the educational establishment in order to benefit of the relevant limitations and exceptions also ticked the boxes requiring both public and private nature of the establishment, while other Member States did not tick any of these boxes. It was assumed that both variants mean the same, i.e. both private and public institutions are able to benefit of the limitations and exceptions provided they are of not-for-profit nature. Nine Member States replied that they do not prescribe any conditions regarding the nature of educational establishments, including two Member States where educational establishments were not listed as being able to benefit from relevant limitations and exceptions. Seven Member States answered that only not-for-profit educational establishments are eligible to operate under relevant limitations and exceptions, including one Member State having no limitation or exception of this kind. Four Member States, including one with no relevant limitation or exception answered that their national law requires the educational establishment to be public and not-for-profit to benefit from relevant limitations and exceptions. Some replies seem to be

incomplete or inaccurate. For instance, one reply suggested that only public for-profit establishments may take advantage of relevant limitations and exceptions. Another reply indicated that only private not-for-profit establishments can do so. A third reply mentioned for-profit establishments as beneficiaries of the exceptions. A fourth reply referred to for-profit private establishments only. Finally, a fifth reply limited the scope of relevant exceptions solely to private establishments. Doubts about accuracy of some of these replies are supported by the fact that two of these replies were given by Member States indicating in their previous replies that there are no relevant limitations or exceptions in their legislation. Fourteen Member States did not answer the question.

Replies overview:	No conditions, all educational establishments:	10
	Not for profit establishments only:	7
	Not for profit public establishments only:	4
	Not for profit private establishments only:	1
	For-profit public establishments only:	1
	For-profit establishments only:	1
	For-profit private establishments only:	1
	Private establishments only	1
	No answer	14

#### 29. Targeted limitations and exceptions allowing reproduction for educational purposes

National legislations of 30 Member States provide for limitations and exceptions specifically permitting reproduction for educational purposes. Examples given ranged from reproduction of articles and short excerpts of other works for use as illustration for educational purposes (in some cases excluding textbooks and university manuals from the scope of the works the parts of which may be copied, e.g. Spain), making of anthologies for educational use (e.g. Poland and Croatia, however, in the latter this exception is available only if such use is not explicitly prohibited by the author), and reproduction for purposes of examination (e.g. United Kingdom). Ireland permits reprographic copying for educational purposes only in the absence of a voluntary license granted by rightholders and noted in its reply that such licensing scheme is in operation. Two Member States replied that despite not having specific limitations and exceptions permitting reproduction, such acts fall within the scope of general limitations and exceptions allowing use of works for educational purposes. The United States of America described that the limitations or exceptions that permit reproduction for educational purposes in their legislation apply more broadly and not just for educational purposes (such as fair use exception). Only three Member States stated that there is no limitation or exception permitting reproduction for educational purposes in their national laws but the wording of the answer given by one of these Member States seems to suggest the contrary and another Member State replying in the negative specified that anybody can make reproduction for his own personal use.

Replies overview:	Yes	30
	No	3
	Covered by general exceptions:	3
	No answer	4

30. What kind of reproduction is covered by those limitations and exceptions?

In 23 Member States the limitations and exceptions allowing reproduction for educational purposes encompass both reproductions by means of reprography and digital copying. Three of these Member States specified that reproduction by any means is permitted. Another Member State added that manual copying is also allowed. Ten Member States permit only reprographic reproduction for educational purposes. Seven Member States did not submit any reply.

Replies overview:	Reprography and digital copying	23
	Reprography only	10
	No answer	7

31. Is preparation of course packs, compilations or anthologies allowed under those limitations and exceptions?

Limitations and exceptions allowing reproduction for educational purposes encompass preparation of course packs, compilations or anthologies in 21 Member States. Three of these Member States submitted only textual replies of more general nature but suggesting that the preparation of course packs, compilations or anthologies for educational purposes is permitted. Thirteen Member States do not permit the preparation of course packs, compilations or anthologies. One Member State answered both yes and no and clarified that while the law permits making of anthologies after the death of the author, the use of works for preparation of course packs is not allowed. Five Member States did not reply this question.

Replies overview:	Yes	21
	No	13
	Other	1
	No answer	5

32. Remuneration for the exercise of the limitations and exceptions allowing reproduction for educational purposes

Sixteen Member States replied that their national law grants rightholders some kind of remuneration for the exercise of the limitations and exceptions allowing reproduction for educational purposes. The forms in which such remuneration is provided vary from generally applied reprographic levies, levies for blank tapes and other media, levies on Internet and intranet use, application of compulsory licenses, extended collective licensing schemes, commercial licenses administered by collective rights management organizations to obligation to pay equitable remuneration. Nineteen Member States do not provide remuneration for reproduction for educational purposes. Five Member States did not reply.

Replies overview:	Yes	16
	No	19
	No answer	5

33. Existence of specific requirements regarding the qualitative or quantitative limits and nature of the works covered by the limitations and exceptions allowing reproduction for educational purposes

Twenty-seven Member States confirmed that their laws include specific requirements regarding the qualitative or quantitative limits and the nature of the works in order to have the work covered by the limitations and exceptions allowing reproduction for educational purposes. Detailed descriptions often included a requirement that the work copied must have been lawfully published. In some cases, works specifically created for educational purposes cannot be reproduced, but only short works or short excerpts of longer works (Kenya has a limit of two short passages for each work) and that number of copies is limited either more generally by the intended purpose of the educational use or by a concrete number given by the statute (e.g. Ireland specifically prescribes that the number of copies of any one item taken at any one time shall not exceed the number of students in a class plus two copies for each teacher). Many Member States further qualify the limitations and exceptions by the general requirement of good practices or by the explicit application of some or all conditions of the three-step-test. Eight Member States do not have any specific requirements. Five Member States did not reply.

Replies overview:   Yes           27  
                          No             8  
                          No answer  5

34. Who is eligible to engage in activities covered by the specific limitations and exceptions allowing reproduction for educational purposes?

Six Member States either explicitly confirmed that anybody can engage in activities falling under relevant limitations and exceptions as long as their purpose is use of resulting copies in education (however, national law in Singapore includes the condition that the copying must be carried out in the premises of the educational institution) or stated that their national laws do not specify categories of subjects that may engage in such activities. Seventeen Member States grant the possibility to engage in activities falling under specific limitations and exceptions for reproduction for educational purposes to teachers, students and educational institutions. In addition to these categories of beneficiaries, New Zealand added persons who asked to copy a work on behalf of educational institution, Poland specifically mentioned research institutions and Norway referred to publishers who are allowed to reproduce certain kinds of collective works for use in education five years after their publication. Governmental bodies were mentioned by the United States of America as another category of beneficiaries of certain relevant limitations and exceptions. In two Member States only students and teachers benefit of respective limitations and exceptions. The laws of seven Member States address only educational institutions as beneficiaries of limitations and exceptions allowing reproduction for educational purposes, Ireland also extends the scope of such limitations and exceptions to persons making reprographic copies on behalf of educational institutions. The reply provided by Spain suggests that only teachers are eligible to engage in activities covered by relevant limitations and exceptions. In Finland, teachers and educational institutions are eligible to engage in activities falling under limitations and exceptions allowing reproduction for educational purposes. Six Member States left the question unanswered.

Replies overview:   Anybody/not specified:                   6  
                          Teachers, students and educational institutions:   17  
                          Teachers and students:                   2

Teachers and educational institutions:	1
Educational institutions:	7
Teachers:	1
No answer	6

35. If educational institutions are eligible to engage in activity covered by the specific limitations and exceptions allowing reproduction for educational purposes, does national statute establish conditions regarding their nature?

Some Member States whose laws apparently require not-for-profit status of the educational establishment in order to allow the establishment to benefit of respective limitations and exceptions, have also ticked boxes requiring both the public and private nature of the establishment, while other Member States did not tick any of these boxes. It is assumed that both variants mean the same, i.e. both private and public institutions are able to benefit of the limitations and exceptions provided they are of not-for-profit nature. Eleven Member States replied that they do not prescribe any conditions regarding the nature of the institution (in some Member States the institution must be the educational establishment as defined by national legislation). Eight Member States answered that only not-for-profit educational establishments are eligible to operate under relevant limitations and exceptions. Three Member States answered that their national law requires the educational establishment to be public and not-for-profit in order to benefit from relevant limitations and exceptions. Three replies that referred to for-profit public establishments only, not-for-profit private establishments only and for-profit establishments only were probably incomplete or inaccurate. Fifteen Member States did not answer the question.

Replies overview:	No conditions, all educational establishments:	11
	Not for profit establishments only:	8
	Not for profit public establishments only:	3
	Not for profit private establishments only:	1
	For-profit public establishments only:	1
	For-profit establishments only:	1
	No answer	15

36. Does national law subject the limitations and exceptions allowing reproduction for educational purposes to the use of TPMs?

Thirteen Member States stated that their legislation subjects the limitations and exceptions allowing reproduction for educational purposes to the use of TPMs, 20 Member States replied in the negative and seven Member States did not submit any reply. Some detailed replies seem to indicate certain confusion as to what the question meant, i.e. if it was asked whether TPMs prevail over the limitations and exceptions allowing reproduction for educational purposes or whether reproductions made under such limitations and exceptions must be protected by TPMs. This confusion might have influenced the accuracy of several replies.

Replies overview:	Yes	13
	No	20
	No answer	7

### 37. Specific limitations and exceptions allowing translation for educational purposes

National copyright laws of 27 Member States do not include any specific limitations and exceptions allowing translation for educational purposes, however, Latvia added that despite not having any specific limitation or exception for translation, this act is permitted under general limitation for educational purposes. Eight Member States replied that their statutes provide specific limitations and exceptions permitting translation for educational purposes (e.g. Syria). Five Member States did not give any reply.

Replies overview:	Yes	8
	No	27
	No answer	5

### 38. Remuneration for limitations and exceptions allowing translation for educational purposes

Twenty-three Member States answered this question in the negative, but most of them (20 Member States) acknowledged in their previous reply that their national legislation does not include any specific limitations and exceptions allowing translation for educational purposes. Out of eight Member States with this kind of limitations and exceptions in their national copyright laws, four provide remuneration against the exercise of specific limitations and exceptions allowing translation for educational purposes, three do not and one did not reply. India specified that compulsory licenses are being issued by the Copyright Board after fixing royalty rates. Algeria also mentioned application of compulsory licenses. Mexico, which also provides remuneration, mentioned that translations for educational works must be authorized by the Secretary of Public Education. Thirteen Member States did not give any reply, seven of them obviously due to the reason that, according to their previous reply, they do not have any relevant limitations or exceptions.

Replies overview:	Yes	4
	No	23
	No answer	13

### 39. Existence of specific requirements regarding the qualitative or quantitative limits and nature of the works covered by the limitations and exceptions allowing translation for educational purposes

Out of eight Member States that provide in their national law limitations and exceptions allowing translation for educational purposes, five stated that no specific requirements regarding the qualitative or quantitative limits and nature of the work covered by such limitations and exceptions exist. The rest of the replies in the negative (20 in total) was submitted by Member States that do not have this type of limitations and exceptions in their legislation. Three Member States confirmed that their copyright statutes provide for some specific requirements. Japan described that this exception applies as long as the translation does not unreasonably prejudice the interests of the copyright owner in light of the nature and the purpose of the work as well as the number of copies and the form of the translation, the source must be clearly indicated in the manner and to the extent reasonable in the circumstances, and any use of the translation for other than educational purposes is prohibited.

Replies overview:	Yes	3
	No	25
	No answer	12

40. Who is eligible to engage in activities covered by the specific limitations and exceptions allowing translation for educational purposes?

Four out of eight Member States having limitations and exceptions allowing translation for educational purposes in their legislation informed that teachers, students and educational institutions may benefit from such limitations and exceptions. An identical reply was given by Latvia where general limitations and exceptions for educational purposes cover also the act of translation. Algeria stated that only educational institutions can engage in activities falling within the scope of these limitations and exceptions. In India, educational institutions and publishers are allowed to make translations for educational purposes. In Japan, students and teachers are allowed to translate protected works but only within the activities related to not-for-profit educational institutions. In Poland, beneficiaries of these limitations and exceptions are teachers, educational and research institutions. Twenty-eight Member States did not reply to this question and most of them (24 in total) do not have any relevant limitations and exceptions in their national legislation. Three Member States answered this question despite reporting that their national legislation includes no limitations and exceptions allowing translation for educational purposes.

Replies overview:	Teachers, students and educational institutions:	5
	Teachers and students:	1
	Teachers, educational and research institutions:	1
	Educational institutions:	1
	Educational institutions and publishers	1
	No answer	28
	Answer provided but no relevant exception:	3

41. If educational institutions are eligible to engage in activity covered by the specific limitations and exceptions allowing translations for educational purposes, does national statute establish conditions regarding their nature?

Out of eight Member States providing specific limitations and exceptions allowing translation for educational purposes and allowing educational institutions as beneficiaries of such limitations and exceptions, two did not answer the question. Algeria reported that its legislation allows only not-for-profit public educational institutions to benefit from such limitations and exceptions, while Estonia and Oman require only not-for-profit character of the institution. Syria, India and Poland do not prescribe any requirements regarding the nature of educational institutions which may perform activities covered by relevant limitations and exceptions. In Japan, only teachers and students are allowed to operate under relevant limitations and exceptions. In total, 32 Member States did not answer the question. Twenty-five out of them have no relevant limitations and exceptions in their national copyright laws. Two Member States answered this question despite reporting that their national law does not include any limitations and exceptions allowing translation for educational purposes.

Replies overview:	No conditions, all educational establishments:	3
	Not for profit establishments:	2
	Not for profit public establishments:	1



No answer	32
Answer provided but no relevant exception:	2

42. Specific limitations and exceptions for making available in digital networks for educational purposes

National copyright laws of 28 Member States do not include any specific limitations and exceptions for making available in digital networks for educational purposes. Ireland pointed out that, in general, provisions of its Copyright Act do not distinguish between analogue and digital copying. Sweden highlighted that it has no relevant limitations and exceptions, but communication of a work to a class of students is not considered as communication to the public and therefore does not fall within the sphere of exclusive rights. Latvia added that despite not having any specific limitation or exception for making available in digital networks for educational purposes, there is a limitation related to internal networks of libraries, archives and museums, through which works may be available to users for self-education purposes. The United States of America described a provision stating 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. Eight Member States replied that their statutes provide specific limitations and exceptions permitting for making available in digital networks for educational purposes. Japan specified that the activities are permitted only in lessons held at the same time at a place other than that where the lessons are being taught. Poland reported that, despite it is possible to interpret relevant provisions of Polish national statute as to encompass acts of making available in digital networks, the issue is not yet fully clarified. Four Member States did not give any reply.

Replies overview:	Yes	8
	No	28
	No answer	4

43. Is preparation of course packs, compilations or anthologies allowed under limitations and exceptions for making available in digital networks for educational purposes?

Limitations and exceptions for making available in digital networks for educational purposes encompass the preparation of course packs, compilations or anthologies in all eight Member States which confirmed they have such limitations and exceptions in their legislation. One of these Member States reiterated that only short excerpts of works may be reproduced and another Member State highlighted that if materials are for the purpose of use in the course of lessons the exception is available. All sixteen Member States that answered in the negative do not have relevant limitations and exceptions. Out of sixteen Member States not giving any answer, twelve have no relevant limitation or exception.

Replies overview:	Yes	8
	No	16
	No answer	16

44. Remuneration for limitations and exceptions for making available in digital networks for educational purposes

Twenty Member States answered this question in the negative, but most of them (16 in total) acknowledged in their previous reply that their national legislation does not include any specific limitations and exceptions for making available in digital networks for educational purposes. Out of eight Member States indicating that they have this kind of limitations and exceptions in their national copyright laws, four Member States provide remuneration against exercise of these specific limitations and exceptions, and four Member States do not. Spain specified that equitable remuneration is payable and Belgium informed that remuneration is paid to authors and publishers. Sixteen Member States did not give any reply, eleven of them according to their previous reply of question 42 not having any relevant limitations or exceptions. Latvia gave detailed textual reply explaining that remuneration for making available in internal networks of libraries, archives and museums is paid within the public lending scheme.

Replies overview:   Yes           4  
                          No             20  
                          No answer  16

45. Existence of specific requirements regarding the qualitative or quantitative limits and nature of the works covered by the limitations and exceptions for making available in digital networks for educational purposes

Out of eight Member States that provide in their national law limitations and exceptions for making available in digital networks for educational purposes, two stated that no specific requirements regarding the qualitative or quantitative limits and nature of the work covered by such limitations and exceptions exist. The rest of the negative replies (14) was submitted by Member States that do not have this type of limitations and exceptions in their legislation. Six Member States confirmed that their copyright statutes provide for some specific requirements. Spain allows making available of a work within a closed network and through dedicated terminals in educational institutions, provided that the works are among the collections of the institution and are not subject to certain licensing conditions. In Belgium, the act of making available must be justified in the light of non-profit goals being pursued, must not be prejudicial to normal exploitation of the work, must be done only in closed networks and must fall within normal activities of the establishment. Japan highlighted that the source must be clearly indicated in the manner and to the extent reasonable in the circumstances and that a work can be made available only in the course of the lessons in the educational institutions for those persons who are taking the lessons at the same time at a place other than that where the lessons are being taught. In Estonia, the condition of a lawful source must be fulfilled. Three Member States explained that there are some conditions to be met for their general limitations and exceptions which are applicable to acts of making available in digital networks for educational purposes to apply. Fifteen Member States did not answer at all, including ten Member States with no relevant limitations and exceptions.

Replies overview:   Yes           9  
                          No            16  
                          No answer  15

46. Who is eligible to engage in activities covered by the specific limitations and exceptions for making available in digital networks for educational purposes?

Two out of eight Member States having specific limitations and exceptions for making available in digital networks for educational purposes in their legislation, namely Poland and Singapore, informed that teachers and educational institutions may benefit from such limitations and exceptions. Poland also has research institutions as another category of beneficiaries and, in Singapore, any person is protected by limitations and exceptions if the communication is initiated from the premises of the educational institution by or on behalf of the educational institution. In Belgium, students, teachers and educational institutions are eligible to do so. Algeria and Spain stated that only educational institutions can engage in activities falling within the scope of these limitations and exceptions, as is the case in the United States of America where more general limitations and exceptions may apply and where governmental bodies are the second category of eligible subjects. In Japan, students and teachers are allowed to engage in these activities but only in relation to not-for-profit educational institutions. In Estonia, only teachers are eligible to take advantage of relevant limitations and exceptions. New Zealand specified that only authenticated users may access an on-line copy of a work, i.e. participants in the course the work is made available for, or persons who have been through verification process for the access of the work. Twenty-four Member States did not reply, 20 of them indicated in previous reply not having any relevant limitations and exceptions in their national legislation. Seven Member States answered this question despite reporting that their national legislation includes no limitations and exceptions allowing making available in digital networks for educational purposes.

Replies overview:	Teachers, students and educational institutions:	1
	Teachers and students:	1
	Teachers and educational institutions:	2
	Educational institutions:	3
	Teachers:	1
	Others – only authenticated users:	1
	No answer	24
	Answer provided but no relevant exception:	7

47. If educational institutions are eligible to engage in activity covered by the specific limitations and exceptions allowing making available in digital networks for educational purposes, does national statute establish conditions regarding their nature?

Out of six Member States providing specific limitations and exceptions allowing translation for educational purposes and allowing educational institutions as beneficiaries of such limitations and exceptions, three did not answer the question. Algeria reported that its legislation allow only not-for-profit public educational institutions to benefit from such limitations and exceptions. Poland does not prescribe any requirements regarding the nature of educational institutions which may perform activities covered by relevant limitations and exceptions. In Belgium and Singapore, only not-for-profit educational institutions are allowed to operate under relevant limitations and exceptions. The same situation is in the United States of America where such activities are cover by more general limitations and exceptions and governmental bodies are additional beneficiaries. Apart from three Member States providing specific limitations and exceptions mentioned above, other 30 Member States did not answer this question, 26 out of them having no relevant limitations and exceptions in their national copyright laws. Two Member

States answered this question despite reporting they do not provide any relevant limitations or exceptions in their laws.

Replies overview:	No conditions, all educational establishments:	1
	Not for profit establishments:	3
	Not for profit public establishments:	1
	No answer	33
	Answer provided but no relevant exception:	2

48. Does national law subject the limitations and exceptions for making available in digital networks for educational purposes to the use of TPMs?

Seven Member States stated that their legislation subjects the limitations and exceptions for making available in digital networks for educational purposes to the use of TPMs, including two Member States not having any specific limitations or exceptions of this type. In Belgium, the act of making available can be done only in closed networks. New Zealand limits access to works communicated through digital networks to “authenticated users”. In the United States of America, governmental bodies or accredited non-profit educational institutions that digitally transmit certain copyrighted works to remote locations are required to apply TPMs that reasonably prevent the retention of the work in accessible form by recipients of the transmission for longer than the class session and the unauthorized further dissemination of the work in accessible form by such recipients to others; and refrain from engaging in conduct that would reasonably be expected to interfere with the TPMs used by copyright owners to prevent such retention or unauthorized further dissemination. Seventeen Member States replied in the negative, including three Members States that do provide such specific limitations and exceptions in their national statutes. Sixteen Member States did not submit any reply. Some detailed replies seem to indicate certain confusion as to what the question means, i.e. if it asks whether TPMs prevail over the limitations and exceptions allowing reproduction for educational purposes or whether reproductions made under such limitations and exceptions must be protected by TPMs. This confusion might have influenced the accuracy of several replies.

Replies overview:	Yes	7
	No	17
	No answer	16

49. Does national statute include any other limitations and exceptions related to educational purposes that have not been covered above?

Seven Member States stated that their legislation provides other limitations and exceptions related to educational purposes that have not been covered by the questionnaire. Ireland gave an example of acts done for the purposes of an examination by way of setting questions, communicating questions to the candidates or answering questions. Twenty-six Member States answered in the negative and seven Member States did not submit any answer.

Replies overview:	Yes	7
	No	26
	No answer	7

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

Twenty-nine Member States either did not submit any reply or expressed the opinion that the current catalogue of limitations and exceptions in their national laws is sufficient. Eight Member States are considering adding limitations and exceptions for making available of works in digital networks, mainly for purposes of distance education. Some of these Member States are currently in the process of reviewing their laws or drafting amendments thereof. Two Member States recognized the need to provide limitations and exceptions allowing reproduction of educational materials and one Member State informed that even changes in other areas of copyright law, such as orphan works and reproduction by libraries and archives could have an impact on the scope of copyright limitations and exceptions for educational purposes.

51. Impediments to the use of limitations and exceptions for educational purposes

Twenty-two Member States are not aware of any impediments to the use of limitations and exceptions for educational purposes. Ten Member States observe some impediments such as insufficiencies in, or lack of clarity, of the national laws, constraints imposed by international treaties and regional agreements on the implementation of new limitations and exceptions. Most often, the lack of information about available limitations and exceptions was cited as the main reason of these impediments. Eight Member States did not reply to this question.

Replies overview:   Yes           10  
                          No             22  
                          No answer  8

PART III: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES

52. If national statute is included in any of WIPO studies on limitations and exceptions for libraries and archives, is the analysis correct?

Seventeen Member States whose national laws had been included in WIPO studies on limitations and exceptions for libraries and archives confirmed the analysis therein as correct. National laws of five Member States had not been covered by the analysis. Ten Members States expressed some reservations as to the correctness or completeness of the analysis of their national laws. Most of these Member States provided detailed corrections of errors and omissions spotted. Japan did not express any objections to the analysis but informed that their copyright laws were amended after the completion of the analysis. Six Member States did not give any reply to the question. One Member State informed that they had not read the specified document because it was not made available.

Replies overview:   Yes           17  
                          No             10  
                          Not included  5  
                          No answer    6  
                          Other           2

### 53. Limitations and exceptions that permit copying by libraries and/or archives for purposes of preservation or replacement

Thirty-two Member States confirmed that their national laws include limitations and exceptions that permit copying by libraries and/or archives for purposes of preservation or replacement. Legislations of three Member States do not include any limitations and exceptions of this kind. Five Member States did not submit any reply to this question. In addition to allowing reproduction by libraries and archives for purposes of replacement of lost, damaged or unusable works from their own collections, many national statutes explicitly permit reproduction for purposes of replacement of lost, damaged or unusable works from the collection of another library or archive (e.g. Madagascar). In some Member States, either these limitations and exceptions are reserved for non-for-profit libraries and archives only (e.g. Ukraine) or the national statute expressly prohibits to perform acts falling under such limitations and exceptions for any financial or commercial gain (e.g. Switzerland). Frequently, the availability of the right to make a reproduction for purposes of replacement or preservation is subject to the impossibility of obtaining such work by other means (e.g. Mexico), or that it is not reasonably practicable to purchase a copy of the work concerned (e.g. Ireland). Some Member States provide further condition that the act of reprographic reproduction must be an isolated case occurring, if repeated, on separate and unrelated occasions (e.g. Bhutan). Switzerland places other conditions on subsequent use of copies made for preservation purposes, namely that they must be stored in an archive not accessible to the general public and be marked as archive copies. Statutes of some Member States explicitly permit digital preservation (e.g. Estonia). Libraries and archives are usually allowed to reproduce only works from their collections, but some Member States do not have any restriction of this kind, for example Kenya, where public libraries are allowed to reproduce any works as long as the reproduction is in the public interest and no revenue is derived therefrom.

Replies overview:	Yes	32
	No	3
	No answer	5

### 54. What types of works can be reproduced for purposes of preservation or replacement?

Answers varied substantially regarding this question. Some Member States do not limit the scope of relevant limitations and exceptions by specifying particular types of works which may or may not be reproduced. Other Member States replied that only works from the library or archive collection may be reproduced. A number of Member States requires that the work is lawfully published for the reproduction to be allowed. Legislation of several Member States describes some categories of works that fall under the relevant limitations and exceptions. Another way of limiting the scope is to define categories of works which cannot be reproduced under such limitations and exceptions, computer programs being the most often mentioned category. Seven Member States did not reply at all, including three Member States not having any relevant limitations or exceptions in this respect.

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

Out of 32 Member States that provide in their national law limitations and exceptions purposes of preservation or replacement nine stated that no qualitative or quantitative limits exist, despite one of the previous replies of one such Member State suggested the contrary by referring to “single copies”. Two remaining negative replies were submitted by Member States that do not have this type of limitations and exceptions in their legislation. Twenty-two Member States confirmed that their copyright statutes provide for some qualitative or quantitative limits. Many countries provide the amount of copies that may be made under relevant limitations and exceptions, most often to a single copy (e.g. Guatemala), but other countries allow more (e.g. India allows three copies). Quantitative limitations may also be flexible with no fixed number of copies, for example in Belgium, where number of copies permitted is determined by the goal of preservation of cultural and scientific heritage. Some Member States require the work to be published or otherwise disseminated to the public (e.g. Botswana). Member States may also have a condition that a work may be reproduced for preservation or replacement purposes only if it is not commercially available (e.g. Latvia in relation to digital reproduction). Seven Member States did not answer at all, including one Member State with no relevant limitations and exceptions.

Replies overview:	Yes	22
	No	11
	No answer	7

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

Many Member States do not prescribe any other conditions and therefore only quoted their replies to question 55 or did not submit any reply. Most of other Member States cited conditions which have been already mentioned in the analysis of replies to question 55, i.e. quantitative limits, condition that the work must have been lawfully published or the requirement that the work cannot be commercially available in order to be capable of being reproduced. In Singapore, an authorized officer of the library or archive must, after reasonable investigation, make a declaration stating that a copy of the work (not a second-hand copy) cannot be obtained within a reasonable time at an ordinary commercial price. Some Member States highlight in their copyright statutes that the reproduction may not serve any, direct or indirect, economic or commercial purpose (e.g. the Czech Republic). In Switzerland, copies made for preservation purposes must be stored in an archive not accessible to the general public and be marked as archive copies. Several Member States specifically mentioned the conditions of the three-step test to be applicable. Kenya requires that reproduction must be in public interest. Mexico stressed that the work cannot be altered or mutilated by such reproduction so that the moral rights of the authors are infringed. Twelve Member States did not submit any reply.

57. Limitations and exceptions that permit copying by libraries and/or archives for patron use

National laws of nineteen Member States include limitations and exceptions that permit copying by libraries and/or archives for patron use. According to 17 Member States, their legislation do not provide such limitations and exceptions. However, one of the Member States, claiming that there is no limitation or exception permitting libraries to copy works for patron use, cited a provision of its national law which includes a relevant exception. Another Member State, despite giving a negative answer, informed that libraries sometimes provide copying as paid service for the private use of patrons. Greece, one of the Member States that replied in the negative noticed

that it is disputed in theory whether private copy exception may be invoked by libraries making reproductions on behalf of natural persons. India admitted that its legislation does not provide for any specific limitation or exception of this kind but reported that copying for patron use is common practice and may be considered as an implied limitation or exception. Several Member States that answered in the positive explained that copying for patron use falls within the scope of private use limitations and exceptions. Other Member States have specific provision allowing reproduction (in some cases only reprographic, i.e. Botswana) for purpose of private research, study or scholarship.

Replies overview: Yes 19  
No 17  
No answer 4

58. What types of works can be reproduced by libraries for patron use?

Some Member States do not limit the scope of relevant limitations and exceptions by specifying particular types of works which may or may not be reproduced for patron use. Other Member States exclude particular categories of works, namely computer programs, musical notations, pictorial, graphic or sculptural works and some audiovisual works. Many Member States allow only articles or short extracts of other works to be reproduced. Some of these Member States allow, in addition, the reproduction of whole visual works as pictures or photographs. Switzerland excludes reproduction of complete or nearly complete works which are obtainable commercially from the scope of these limitations and exceptions. Nineteen Member States did not reply at all, including fifteen Member States claiming not having any relevant limitation or exception.

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

National laws of 29 Member States do not include any provisions regarding orphan works. One of these countries, namely Finland, explained that agreements between users and collective management organizations on the basis of extended collective license in certain cases cover the use of all works, including orphan works. Seven Member States have in their legislation certain provisions covering orphan works, however in some cases these provisions are limited to specific categories of works or uses. The Copyright Act of India provides compulsory licenses for unpublished orphan works only. In Ireland, the only specific provision relates to the right of the performers and the right of reproduction of a performance. Switzerland referred to the right to exploit phonograms and videograms contained in publicly accessible archives or broadcasters' archives where the rightholders are unknown or cannot be found. The United Kingdom stated that there is no legislation specifically described as permitting the use of orphan works, but the statute provides that copyright is not infringed if it is not possible to ascertain the identity of the author and it is not reasonable to assume that the copyright has expired. The United States of America informed that national law has no specific provision on orphan works, but some provisions permit certain users to make certain uses of certain classes of orphan works and other provisions reduce the risk in using an orphan work.

Replies overview: Yes 7  
No 29  
No answer 4



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

Twenty-one Member States do not plan to modify their existing laws in respect to limitations and exceptions related to the activities of libraries and archives. Two Member States did not tick any box regarding this question but provided textual replies. The United States of America informed that special report on this issue was commissioned. Sweden informed that a special commission appointed by the Government proposed broadening the existing extended collective license scheme in order to facilitate the digitization and the making accessible of the collections of libraries and archives and that this proposal is being consulted with the stakeholders. Oman plans to change its laws in a way that damages shall not be ordered against a non-for-profit library or archive that sustains the burden of proving that it was not aware and had no reason to believe that its act constituted an infringement. Latvia is seeking solutions for orphan works in accordance with European Union's initiatives. The Czech Republic discusses amendments in fields of interlibrary exchange of digital materials, lending of reproductions in electronic form that are part of printed publication and remuneration for public lending for publishers. Algeria is considering changing its national law to meet the expectations of educational institutions and scientists. Republic of Moldova plans to permit digital reproduction of works by libraries for certain purposes. Six Member States did not answer this question.

Replies overview:	Yes	11
	No	21
	No answer	6
	Other	2

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

Only six Member States expressed their views on what other limitations and exceptions for libraries and archives would be necessary to be included in national legislation. Colombia reports about the need for exceptions for libraries to be adapted to the digital environment. Estonia deems important to provide provisions on the use of orphan works and out of print works. Poland also believes that orphan works should be dealt with by its national legislation. Guatemala is concerned with limitations and exceptions allowing conversion of works to Braille and other accessible formats as audio. Ukraine would welcome exceptions for non-commercial digital libraries and archives allowing works in digital format to be made available to the public over the Internet. Syria mentioned limitations and exceptions relating to right of translation, right of making the work available, the right of digital reproduction of the work for archives and the right to reproduce a work for scientific research for students.

62. Impediments to the use of limitations and exceptions related to activities of libraries and archives

Twenty-three Member States are not aware of any impediments to the use of limitations and exceptions related to activities of libraries and archives. Ten Member States observe some impediments such as insufficiencies in, or lack of clarity, of national laws, constraints imposed by international treaties and regional agreements on the implementation of new limitations and exceptions. Most often the lack of information about available limitations and exceptions was cited as the main reason of these impediments. In one case, another cited impediment was the lack solutions of conflict between the exercise of limitations and exceptions and the use TPMs..

Estonia mentioned the need for international rules on orphan works and out-of-print works. Seven Member States did not reply.

Replies overview: Yes 10  
No 23  
No answer 7

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

Certain level of confusion could be observed in relation to the replies to this question. Two Member States explicitly stated that it was unclear to which of the question it referred and therefore they could not answer it. At least two Member States seem to have believed that the question related to the reproduction by libraries and archives for replacement or preservation purposes and answered the question accordingly. This confusion could have influenced the accuracy of the answers. Thirteen Member States, including one with no relevant limitation or exception acknowledged that their national statutes establish limits to reproduction for patron use. In several cases only one copy of each item is allowed. In Ireland, only one copy of an article may be furnished and the person receiving it cannot be furnished with more articles from a volume of a periodical than the number of issues that comprise that volume, or 10 per cent of the volume, whichever is the larger amount. Further, a copy shall not be supplied to more than three persons whose requirements are related to any similar requirement of any other person. The size of the part of the work which is being copied is often relevant – only short works as articles can be copied as a whole, in relation to other works only short excerpts may be taken. In the United Kingdom, unpublished works can be copied in their entirety regardless their length, while only short fragments may be taken from published works. Thirteen Member States including six with no limitations and exceptions for patron use replied in the negative. Fourteen Member States did not give any reply.

Replies overview: Yes 13  
No 13  
No answer 14

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

It is to be noted that the confusion described under question 63 above may have similarly influenced replies to question 64. One Member State explicitly stated that it was unclear to what the question refers to. At least six Member States seem to have believed that the question relates to reproduction by libraries and archives for replacement or preservation purposes and answered the question accordingly. This confusion could have influenced the accuracy of the answers. Twenty-four Member States including twelve with no relevant limitations and exceptions did not answer the question. Two Member States whose legislations provide limitations and exceptions for reproduction by libraries for patron use replied that there are no other conditions stipulated by their legislations. Two Member States highlighted that all activities under such limitations and exceptions must be of non-commercial nature. One Member State reiterated that the act of reproduction must be isolated. One Member State's legislation obliges the person requesting a copy to be made to supply the library or the archive with a declaration in writing in relation to the material concerned. Another Member State requires that the copy made must become the property of the patron and it cannot be made if the library has any notice that the copy is for any purpose other than private scholarship or research. If a copy of an entire work

is requested the library must conduct a reasonable investigation to determine that a copy cannot be obtained at a fair price.

65. Limitations or exceptions that permit libraries to reproduce and/or distribute works (either reprographic and/or digital) for the purposes of interlibrary lending

Fifteen Member States proclaimed that their legislation includes limitations and exceptions that permit reproduction for the purpose of interlibrary lending. Some detailed answers, however, referred either to public lending right only or to the right of reproduction for replacement purposes only. In Sweden, distribution from one library to another is not considered as an act of making available to the public and is therefore out of the sphere of restricted acts. Norway explicitly allows users to use terminals located in one library to access digital works in the collection of another library but the statute expressly prohibits the receiving library to save a permanent copy of such work. In Ireland, the scope of relevant exception is narrowed by the provision stating that the exception shall not apply where, at the time the copy is made, the librarian or archivist making it could, by reasonable enquiry, obtain the consent of the rightholder. Legislations of 20 Member States do not include any limitation or exception of this type. However, Switzerland noted that the limitation on reproduction in libraries does not exclude interlibrary activities from its scope. Five Member States provided no reply.

Replies overview:	Yes	15
	No	20
	No answer	5

66. Does 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?

Fifteen Member States do not allow any other institutions than libraries or archives to reproduce or distribute works for archival, preservation or replacement purposes. India explained that, in spite of not having any relevant limitation or exception provided by the national statute, it is a common practice to make copies for preservation purposes and such acts are considered to be done under implied exception. Legislations of 20 Member States include limitations and exceptions permitting certain other institutions to engage in such acts. Examples of the institutions mentioned are museums, galleries, schools, universities, other non-for-profit school-related and educational establishments, research institutions and even national cinematographic archives (Greece). New Zealand pointed out that while its national limitations and exceptions are only available to “prescribed libraries,” the statutory definition thereof is fairly broad. Four Member States provided no reply.

Replies overview:	Yes	21
	No	15
	No answer	4

PART IV: LIMITATIONS AND EXCEPTIONS ON PERSONS WITH DISABILITIES

67. If national statute is included in the WIPO study on limitations and exceptions for the visually impaired, is the analysis correct?

Ten Member States whose national laws had been included in the WIPO study on limitations and exceptions for the visually impaired confirmed the analysis therein as correct. National laws of 11 respondent Member States were not been covered by the analysis. Ten Members States expressed some reservations as to the correctness or completeness of the analysis of their national laws. Most of these Member States provided detailed corrections of errors and omissions spotted. Japan did not express any objections to the analysis but informed that their copyright laws were amended after the completion of the analysis. One Member State informed they had not read the specified document yet. Seven Member States did not give any reply to the question.

Replies overview:	Yes	10
	No	10
	Not included	11
	No answer	7
	Others:	2

68. Limitations and exceptions that permit reproduction, distribution or other form of utilization of works for persons with print disabilities or visually impaired persons, including the reading impaired

National statutes of 24 Member States include limitations and exceptions for visually impaired. Legislations of 11 Member States do not include any limitations and exceptions of this kind. Five Member States did not submit any reply to this question. Thirteen Member States have general limitations and exceptions which in most cases cover any uses for the benefit of persons with any disability where the work is used in a manner directly related to the disability and to the extent required by the disability. Other Member States' legislations include limitations and exceptions with narrower scope, either for the benefit of persons with print disabilities or visually impaired persons only or for the benefit of visually impaired and hearing impaired. In one case, the limitations and exceptions cover only the reproduction right but in most Member States relevant limitations and exceptions cover also distribution of works and in many cases any other uses.

Replies overview:	Yes	24
	No	11
	No answer	5

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

Seven Member States specify formats falling within the scope of limitations and exceptions for the benefit of visually impaired persons. Two Member States limit the scope of the limitations and exceptions to reproductions in Braille. Two Member States have general requirement for format meeting special needs of visually impaired persons or any specialized formats exclusively for use by blind persons. Braille was just as an example of such format. Similar requirement was

mentioned in the detailed replies of three Member States which answered that their statutes do not specify the formats falling under relevant exceptions. In Norway, sound recordings are permitted under the compulsory license related to making of audiobooks. Argentina specified that the limitations and exceptions for the visually impaired cover texts in Braille, digital texts and audio recordings. Twenty-eight Member States, including 10 with no relevant limitations and exceptions, answered that their national laws do not specify the formats falling under this exception. One Member State replied both yes and no because one specific exception for visually impaired refers to all formats but sound recordings, and another exception refers exclusively to sound recordings. Four Member States did not reply at all.

Replies overview:   Yes           7  
                          No             28  
                          No answer  4  
                          Other         1

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

A frequent condition is that the work can be used only for non-commercial or not-for-profit purposes. Member States with relevant limitations and exceptions often repeated the general conditions that the usage must be directly linked to the disability in question and must not exceed the extent required by the specific disability. Some Member States require that the work must have been lawfully published. Seven Member States restrict the benefits of relevant limitations and exceptions only to certain authorized entities either defined generally in the statute or specifically designated by relevant national authority. Estonia excludes works created especially for disabled persons from the scope of relevant exception. The Republic of Moldova allows the reproduction of works especially created for such means of reproduction, even if they have not been lawfully published. In Singapore, the person who makes the reproduction for, or on behalf of, the body administering an institution assisting handicapped readers, must show that no new copy of a Braille, large-print or a photographic version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price. In several Member States the use must meet the conditions of the three-step test.

71. Does national statute contain any limitations or exceptions that permit the importation or exportation of material accessible to visually impaired persons?

Twenty-nine Member States replied that their national laws do not include any limitations or exceptions that permit the importation or exportation of material accessible to visually impaired persons. However, some of these Member States stated either that general exceptions allowing distribution for benefit of visually impaired or private use would cover such acts or that their copyright act does not prohibit such activities. One Member State highlighted that copyright law has only a territorial effect. The laws of five Member States include limitations and exceptions permitting the importation or exportation of material accessible to visually impaired persons. For example, the copyright law of the United States of America contains a special set of exceptions regarding the copyright holder's control of distribution (importation and exportation) permitting individuals and authorized entities to engage in many acts of importation to meet the needs of persons with print disabilities. Six Member States did not submit any reply.

Replies overview:   Yes           5  
                          No             29  
                          No answer  6

72. Limitations and exceptions that permit reproduction, distribution or other form of utilization of works for deaf persons

National statutes of 19 Member States contain limitations and exceptions for deaf persons. Legislations of 17 Member States do not include any limitations and exceptions of this kind. Four Member States did not submit any reply to this question. Thirteen Member States have general limitations and exceptions which in most cases cover any uses for the benefit of persons with any disability where the work is used in a manner directly related to the disability and to the extent required by the disability. Other Member States' limitations and exceptions are specifically focused on (sometimes *inter alia*) hearing impaired persons. In the United Kingdom, the relevant exception covers provision of subtitled copies of broadcasts.

Replies overview: Yes 19  
No 17  
No answer 4

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

Only two Member States specify formats falling within the scope of limitations and exceptions for the benefit of deaf persons. In Norway, a work can be reproduced on film for the benefit of hearing impaired persons. The exception in the United Kingdom refers to broadcasts. Thirty-one Member States including 14 with no relevant limitations and exceptions answered that their national laws do not specify the formats falling under this exception. One Member State replied both yes and no because one specific exception for hearing impaired refers to all formats but moving images, and another exception refers specifically to sign language. Six Member States did not reply at all including three with no relevant limitations or exceptions.

Replies overview: Yes 2  
No 31  
No answer 6  
Other 1

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

A frequent condition is that the work can be used only for non-commercial or not-for-profit purposes. Member States with relevant limitations and exceptions often repeated general conditions that the usage must be directly linked to the disability in question and must not exceed the extent required by the specific disability. Some Member States require that the work must have been lawfully published. Several Member States restrict the benefits of relevant limitations and exceptions only to certain authorized entities, either defined generally in the statute or specifically designated by relevant national authority. Estonia excludes works created especially for disabled persons from the scope of relevant exception. In the United States of America, the exception covers performances of non-dramatic literary works, by or in the course of a transmission primarily directed to deaf persons provided the transmission is made through one of the authorized facilities detailed in the statutory provision. In several Member States the use must meet the conditions of the three-step test.

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

Twenty-nine Member States replied that their national laws do not include any limitations or exceptions that permit the importation or exportation of material accessible to deaf persons. However, some of these Member States stated either that general exceptions allowing distribution for benefit of deaf persons or private use would cover such acts. Three Member States replied that their legislation includes limitations and exceptions permitting the importation or exportation of material accessible to deaf persons, however one reply referred to general permission to distribute the work for benefit of deaf persons and two others referred to remuneration for private copies and exemption from the obligation to pay such remuneration. Eight Member States did not submit any reply.

Replies overview: Yes 3  
No 29  
No answer 8

76. Limitations and exceptions that permit reproduction, distribution or other form of utilization of works for persons with any other disabilities

Fifteen Member States provide for limitations and exceptions for persons with other disabilities. Legislations of twenty Member States do not include any limitations and exceptions of this kind. Five Member States did not submit any reply to this question. Thirteen Member States have general limitations and exceptions which in most cases cover any uses for the benefit of persons with any disability where the work is used in a manner directly related to the disability and to the extent required by the disability. In the United Kingdom, the cited exception covers provision of subtitled copies of broadcasts. The United States of America answered that, even though there is no specific limitation or exception expressly referring to other disabilities, statutory limitations and exceptions of a generally applicable nature such as fair use might apply.

Replies overview: Yes 15  
No 20  
No answer 5

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

Only two Member States specify formats falling within the scope of limitations and exceptions for the benefit of persons with other disabilities. In Finland, a work can be reproduced by means other than sound recordings or moving images. Exception in the United Kingdom refers to broadcasts. Twenty-seven Member States including 14 with no relevant limitations and exceptions answered that their national laws do not specify the formats falling under this exception. Eleven Member States did not reply at all including six with no relevant limitations or exceptions.

Replies overview: Yes 2  
No 27  
No answer 11

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

Often appearing condition is that the work can be used only for non-commercial or not-for-profit purposes. The usage must be usually directly linked to the disability in question and must not exceed the extent required by the specific disability. Some Member States require that the work must have been lawfully published. Several Member States restrict the benefits of relevant limitations and exceptions only to certain authorized entities either defined generally in the statute or specifically designated by relevant national authority. Estonia excludes works created especially for disabled persons from the scope of relevant exception. In several Member States the use must meet the conditions of the three-step test.

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

Twenty-eight Member States replied that their national laws do not include any limitations or exceptions that permit the importation or exportation of material accessible to persons with other disabilities. One of these Member States stated that it would be legal to import works for personal use. Two Member States replied that their laws include limitations and exceptions permitting the importation or exportation of material accessible to persons with other disabilities. However, one reply referred to general permission to distribute the work for the benefit of deaf persons and another referred to remuneration for private copies and exemption from the obligation to pay such remuneration. Ten Member States did not answer this question.

Replies overview:    Yes            2  
                              No            28  
                              No answer 10

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

Twenty-one Member States do not plan to modify their existing laws in respect to limitations and exceptions related to persons with print disabilities, visually impaired persons or other persons with disabilities. However, one of these respondents, India, indicated that an amendment of its Copyright Act, which includes limitations and exceptions covering all types of disabilities, is pending in the Parliament. Singapore, another country that replied in the negative, stated that it would continue to review international and local trends and consider implementing modifications where necessary. Two Member States did not tick any box but provided textual replies, namely the United States of America that informed that no such legislation is currently pending but the examination and consideration of issues involving limitations and exceptions is a constantly ongoing and evolving process; and Trinidad and Tobago that stated that the inclusion of such exceptions will be considered in due course. Uruguay, the Republic of Moldova, Norway, Kenya, Burkina Faso, Colombia and Algeria informed that there are new laws in preparation dealing with the issue of limitations and exceptions for persons with disabilities. Madagascar and Bhutan informed about their intention to incorporate into their national laws limitations and exceptions for persons with visual impairment or other disability. Eight Member States did not answer this question.



Replies overview:	Yes	9
	No	21
	No answer	8
	Other:	2

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

Only two Member States expressed their views on what other limitations and exceptions for persons with disabilities would be required to be included in their national legislation. Botswana stated that libraries should be allowed to convert materials from one format to another to make them accessible to persons with disabilities. Ukraine expressed the need to include limitations and exceptions that allow persons with disabilities use modern technologies like text-to-speech and audiobooks in digital format.

82. Impediments to the use of limitations and exceptions for persons with disabilities

Twenty-two Member States are not aware of any impediments to the use of limitations and exceptions for persons with disabilities. Seven Member States, including one with no relevant limitations and exceptions, replied that they are aware that some impediments exist. Examples mentioned were insufficiencies in, or lack of clarity, of national laws, capacity building issues, constraints imposed by international treaties and regional agreements on implementation of new limitations and exceptions, and most often lack of information about available limitations and exceptions. The United States of America informed that over the past year extensive public consultations with relevant stakeholders were held on the topic of facilitating access to copyrighted works for blind persons or persons with other disabilities and the records are available. Ten Member States did not reply to this question.

Replies overview:	Yes	7
	No	22
	No answer	10
	Other	1

PART V: RELIGIOUS, SOCIAL AND CULTURAL LIMITATIONS AND EXCEPTIONS

83. Limitations and exceptions for religious, social and cultural purposes

Twenty-one Member States have in their national laws some limitations and exceptions for religious, social or cultural purposes. Legislations of 13 Member States do not include any limitations and exceptions of this kind. Five Member States did not submit any reply to this question. Japan informed that its law contains general exception for not-for-profit performances. Thirteen Member States have general limitations and exceptions which in most cases cover any uses for the benefit of people with any disability where the work is used in a manner directly related to the disability and to the extent required by the disability.

Replies overview: Yes 21  
No 13  
No answer 5  
Other 1

84. If it does, what kind of activities are those limitations and exceptions related to?

National legislations of 15 Member States include limitations and exceptions for religious activities. Certain cultural activities do not require any authorization from the rightholder in 11 Member States. Limitations and exceptions covering social activities appear in the national statutes of 11 Member States. One Member State replied that its law contains limitations and exceptions covering all three types of activities, despite answering the question 83 that there are no limitations and exceptions of this kind in its legislation. Eighteen Member States did not answer at all, including 12 Member States with no relevant limitations and exceptions.

Replies overview: Religious 15  
Cultural 11  
Social 11  
No answer 18  
Other 1

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

Out of 15 Member States which indicated that their national legislation includes limitations and exceptions for religious activities, nine Member States reported that they subject the exercise of these limitations and exceptions to the condition of the nature of the religious activities and six Member States informed that they do not. The remaining 12 answers in the negative were submitted by Member States which acknowledged that they do not have any limitations or exceptions for religious activities. Most Member States which gave detailed replies mentioned that relevant limitations and exceptions apply to religious services and ceremonies. Poland limits the scope of its limitation and exception with the requirement of non-commercial nature of the activities and, in the case of performances, the requirement that the performers should receive no remuneration for their performance. The Republic of Moldova allows public performance of lawfully published works of music during official or religious ceremonies or during funeral services. Limitations and exceptions provided by the law of the United States of America are applicable to performances in the course of services and at a place of worship or other religious assemblies. Thirteen Member States did not reply including 6 Member States which reported having no relevant limitations or exceptions.

Replies overview: Yes 9  
No 18  
No answer 13

86. Remuneration for the exercise of limitations and exceptions for religious purposes

Out of 15 Member States providing some limitations and exceptions for religious activities, only Norway provides remuneration for exercise of these limitations and exceptions. Fourteen Member States do not remunerate rightholders for the use of their works for religious activities. Another 11 negative replies came from Member States with no relevant limitations or exceptions. Fourteen Member States submitted no reply, including seven Member States with no limitations or exceptions of this kind.

Replies overview: Yes 1  
No 25  
No answer 14

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

Eleven Member States out of 15 countries with some limitations and exceptions for religious activities stated that their laws subject the exercise of limitations and exceptions for religious purposes to a specific requirement regarding the extent and nature of the works. Norway provided that in a collective work, intended for use in religious services or in education and consisting of works by a large number of authors, minor parts of literary or scientific works or musical works, or short works of this kind, may be reproduced if five years have elapsed since the expiry of the year in which the particular work was published. In connection with the text of such works, works of art and photographic works may also be reproduced if five years have elapsed since the expiry of the year in which the work was issued. Three Member States explicitly mentioned the requirement that the work has to be lawfully published or disseminated. In several Member States limitations and exceptions for religious purposes cover only public performance of musical works during religious ceremonies. The scope of the use is in some Member States explicitly limited to the extent justified by the nature of the ceremony. Four Member States with relevant limitations and exceptions replied that they do not subject the exercise of these limitations and exceptions to any specific requirements regarding the extent and nature of the works. Other 12 negative replies came from Member States with no relevant limitations or exceptions. Thirteen Member States submitted no reply, including six Member States with no limitations or exceptions of this kind.

Replies overview: Yes 11  
No 16  
No answer 13

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

Eight of 11 Member States whose national legislation includes limitations and exceptions for cultural activities subject the exercise of such limitations and exceptions to the condition of the nature of the cultural activities. Belgium mentioned public lending for cultural purposes by institutions officially recognized for such purposes. In the Czech Republic, the use of a work for the purposes of promoting an exhibition or sale of originals or reproductions of works of art to the

extent necessary for the promotion of such an event is permitted. In Madagascar, one exception is related to a specific cultural event – the Famadihana festival. Several national statutes provide limitations and exceptions allowing reproduction of works in catalogues of exhibitions, auctions or fairs (e.g. Ukraine). The United States of America have an exception covering the use by a governmental body or non-for-profit agricultural or horticultural organizations in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization. In Finland, where a musical work is performed with lyrics, the text may be made available to the audience in a concert program or a corresponding leaflet produced by printing, photocopying or by corresponding means. Sweden informed that it has no specific limitations for cultural or social activities, however, anyone may publicly perform works, with the exception of cinematographic works and works made for the stage, that have been made public on occasions where the performance of such works is not the main feature of the event, no admission fee is charged, and the event is not organized for commercial purposes. Three Member States with relevant limitations and exceptions do not subject the exercise thereof to the condition of the nature of the cultural activities. The remaining 11 answers in the negative were submitted by Member States acknowledging that they do not provide any limitations or exceptions for cultural activities. Seventeen Member States did not answer this question, and out of them 12 had no relevant limitations or exceptions.

Replies overview:	Yes	8
	No	14
	No answer	17
	Other	1

#### 89. Remuneration for the exercise of limitations and exceptions for cultural purposes

Among all respondents only Belgium provides remuneration for the exercise of limitations and exceptions for cultural purposes. Ten Member States with relevant limitations and exceptions do not remunerate rightholders for the use of their works under these limitations and exceptions activities. Another 14 replies in the negative came from Member States with no relevant limitations or exceptions. Fifteen Member States submitted no reply including nine Member States with no limitations or exceptions of this kind.

Replies overview:	Yes	1
	No	24
	No answer	15

#### 90. Does national statute subject the exercise of limitations and exceptions for cultural purposes to any specific requirement regarding the extent and nature of the works?

Ten Member States with relevant limitations and exceptions reported that they subject the exercise of such limitations and exceptions to specific requirements regarding the extent and nature of the works. In Belgium, the public lending of a work for cultural purposes cannot start before two months after audio or audiovisual works, phonograms or audiovisual recordings start being distributed to the public. In Finland, several limitations and exceptions are crafted for specific types of works (works of art, music lyrics etc.). The exception cited by the United States of America is applicable to non-dramatic musical works. Several Member States subject the use under relevant limitations and exceptions to the condition of non-commercial use. In the Republic of Moldova, the precondition that a musical work must be lawfully published applies to any

cultural limitation and exception. Fifteen Member States including 11 countries without relevant limitations and exceptions replied in the negative. Fifteen Member States including nine countries without relevant limitations and exceptions did not provide any reply.

Replies overview: Yes 10  
No 15  
No answer 15

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

Ten Member States whose national laws provide limitations and exceptions for social purposes replied that their statutes subject the exercise of acts falling under such limitations and exceptions to the condition of the nature of the cultural activities. Madagascar permits performances in hospitals and in prisons. The Copyright Act of the United States of America contains an exception applicable to social functions organized and promoted by nonprofit veterans or fraternal organizations and not open to the general public. In the national law of India exceptions are provided to the benefit of amateur clubs or societies performing for non-paying audience and for public performances in a closed room or hall in non-commercial residential places (not in hotels or similar establishments). In Finland, copies of published works included in radio and television broadcasts may be made by audio and video recording for temporary use in hospitals, senior citizens' homes, prisons and other similar institutions within a short period from the recording. Similar limitations and exceptions for the benefit of healthcare and social institutions may be found in laws of the Czech Republic and Belgium. The Belgian law specifically provides that acts falling within the scope of relevant exception must be done only for persons physically residing in the establishment and must not be done for profit. The Republic of Moldova does not require any conditions related to the nature of the social activities. Other 11 replies in the negative were given by Member States which reported having no relevant limitations or exceptions. Eighteen Member States did not answer this question, including 10 countries reporting no relevant limitations or exceptions.

Replies overview: Yes 10  
No 12  
No answer 18

92. Remuneration for the exercise of limitations and exceptions for social purposes

Out of 12 Member States providing some limitations and exceptions for social activities, only Belgium provides remuneration for exercise of them. Eleven Member States do not provide any remuneration for the use of works for social purposes under relevant limitations and exceptions. Other 12 replies in the negative came from Member States with no relevant limitations or exceptions. Sixteen Member States did not reply to this question, including 10 Member States with no limitations or exceptions of this kind.

Replies overview: Yes 1  
No 23  
No answer 16

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

Eight Member States with relevant limitations and exceptions replied in the positive. The requirements cited included the adequacy of the extent to the purpose of the statutory license, the lawful publication of the work, the application only to particular types of works (e.g. the exception mentioned by the United States of America applies only to non-dramatic literary or musical works). The Belgian exception for social establishments prescribes that acts must be done only for persons physically residing in the establishment. Fifteen Member States including 12 countries without relevant limitations and exceptions replied in the negative. Seventeen Member States, including 10 countries without relevant limitations and exceptions did not reply to this question.

Replies overview:	Yes	8
	No	15
	No answer	17

PART VI: OTHER QUESTIONS ON DIGITAL TECHNOLOGY

94. Limitations or exceptions for reverse engineering

Twenty-one Member States replied that their national laws include limitations or exceptions for reverse engineering. National provisions cited cover two areas: a) acts of reproduction and translation during decompilation of a computer program, i.e. translation of the program from machine readable object code to source code illegible to humans; and b) any acts done by a lawful user to observe, study or test the functioning of the computer program in order to determine the ideas and principles which underlie any element of the program. In many Member States the limitations and exceptions for purposes of decompilation apply only if the program is decompiled by a lawful user and only for achieving interoperability of an independently created computer program. Only those parts of a computer program which are necessary for achieving interoperability may be decompiled and only if the information is not readily available elsewhere. In Kenya, the decompilation for purpose of interoperability can be done only for internal purposes. Oman provides another exception covering activities done in good faith by an appropriately qualified researcher who has lawfully obtained a copy and makes good faith efforts to obtain authorization for such activities, to the extent necessary for the sole purpose of research in identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information. The United States of America noted that certain judicial decisions have concluded that reverse engineering of a computer program to produce a non-infringing program may be a fair use. Fifteen Member States do not have any limitation or exception for reverse engineering in their national laws. Four Member States did not reply to the question.

Replies overview:	Yes	21
	No	15
	No answer	4

#### 95. Liability for the copyright infringement of third parties

Twenty-three Member States recognize some kind of liability for the copyright infringement of third parties (secondary liability). The secondary liability may be provided explicitly by specific provisions of national copyright statute, or may arise out of general principles on liability provided by national laws other than copyright statutes, or may be of criminal nature or may flow from court made doctrines and individual judgments. Examples of acts constituting secondary liability included acts of contributing to a copyright infringement (inciting, aiding or abetting). In some Member States even the omission to interrupt an infringing act may, under some circumstances, give rise to liability. In some Member States, the acts of authorization of copyright infringement constitute secondary liability while in other Member States such acts amount to primary copyright infringement. Secondary liability may also arise from trafficking or other disposition with infringing copies. Thirteen Member States reported that under their national laws a party cannot be held liable from the copyright infringement of third parties. Four Member States did not answer this question.

Replies overview:   Yes           23  
                          No             13  
                          No answer  4

#### 96. Limitations or exceptions or statutory safe harbors to the liability of on-line service providers

Seventeen Member States out of 23 countries recognizing some form of liability for third party copyright infringement answered that their laws provide limitations, exceptions or safe harbors protecting on-line service providers from such liability under certain circumstances. One of the positive replies, however, described the right of the operators of telecommunications to reduce the list or terminate the provision of telecommunications services to consumers that violate the rules of the provision and receipt of telecommunications services and another detailed reply mentioned exception for temporary reproduction for purpose of transmission in electronic networks. This reply was submitted by a Member State which indicated in its reply to question 95 that a party cannot be held liable for copyright infringement by third parties. Most of limitations, exceptions or safe harbors cited by the Member States protect on-line service providers, under certain conditions, against liability for transmission of works in a communication networks (mere conduit), for temporarily storing works being transmitted in a communication network in order to make them easily available to other users (caching), for storing digital materials upon request of users of the service (hosting) and for providing location tools and services (linking, search engines). Seventeen Member States including seven countries providing for some kind of secondary liability replied to the negative. Six Member States including two countries with no liability for third party copyright infringement did not reply to the question.

Replies overview:   Yes           17  
                          No             17  
                          No answer  6

#### 97. Activities for which national statute provides limitations or exceptions, or statutory safe harbors, to the liability of on-line service providers

Twenty-three Member States gave no reply to this question, including seven countries which do not provide any limitations or exceptions, or statutory safe harbors, to the liability of on-line

service providers, and 12 countries which do not recognize any form of liability for third party copyright infringement. Out of 16 Member States that reported having some kind of limitations, exceptions or safe harbors for on-line service providers, 11 countries indicated that their national laws provide safe harbors covering conduit, caching and storage. One of these Member States has, in addition, special legislation covering operation of electronic bulletin boards. One Member State replied that its safe harbors relate to transmission (conduit) and caching only. Four Member States exempt liability of on-line service providers for conduit, caching, storage and provision of access by means of information search tools such as indices, references, hyperlinks and directories to infringing material posted by users. Japan informed that its law does not recognize categories of conduct as “conduit”, “hosting” and “caching” or others. The law in Japan provides for limitations on the scope of the liability of on-line service providers under certain circumstances, and exempts the civil liability of on-line service providers in the following circumstances: (a) it is technically impossible for the provider to take measures to prevent the transmission of information; or (b) the provider does not know and does not have reasonable grounds to know that an act of infringement is occurring through the circulation of certain information although knowing that the information is being circulated.

Replies overview:	Conduit	16
	Caching	16
	Hosting	15
	Search tools	4
	Other	1
	No answer	23

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

Several Member States that provided detailed replies have similar conditions that must be met so that an on-line service provider qualifies for statutory safe harbor. In relation to mere transmission, (conduit) service providers are not liable if: they did not (a) originate the transmission, (b) select the recipient of the transmission, (c) select or modify the data. Service providers are not liable for acts of caching if they (a) do not modify the information (b) permit the access to the information to recipients that meet the conditions to that end (c) respect the general norms accepted and applied by the industry for the updating of the information, (d) do not interfere with the legal use of technology widely recognised and used by industry to obtain data on the use of the information (e) withdraw the information upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement. Service providers are not liable for storing users’ data (hosting) if: (a) the provider does not have actual or constructive knowledge of illegal activity or information; or (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information. Similar conditions as those applicable to exemptions of liability for hosting apply to provision of access by means of information search tools such as indices, references, hyperlinks and directories to infringing material posted by users. Japan exempts the civil liability of on-line service providers in the following circumstances: (a) it is technically impossible for the provider to take measures to prevent the transmission of information; or (b) the provider does not know and does not have reasonable grounds to know that an act of infringement is occurring through the circulation of certain information although knowing that the information is being circulated.



PART VII: GENERAL QUESTIONS TO COVER AREAS LEFT OUT IN PARTS I TO VI

99. Are the following limitations and exceptions included in national statute?

Right of quotation	Yes	32
	No	3
	No answer	5
News reporting	Yes	34
	No	1
	No answer	5
Ephemeral copies	Yes	22
	No	13
	No answer	5
Incidental uses	Yes	21
	No	14
	No answer	5
Government uses	Yes	28
	No	7
	No answer	5
Non-voluntary licenses for broadcasting	Yes	13
	No	22
	No answer	5
Non-voluntary licenses for mechanical reproduction of musical works	Yes	6
	No	29
	No answer	5

100. Limitations or exceptions for any other activities not covered in the questionnaire so far

National statutes of 22 Member States include limitations and exceptions for activities not covered in the questionnaire so far. Amongst many examples cited were limitations and exceptions covering: caricature, parody or pastiche; use of a work located in public place; use of photographic portraits by the person portrayed; use of works of applied art and works of architecture; political, official or legal speeches and documents; reading and recitation in public; acts done for purposes of public security; use of databases; broadcasting of works by national TV and radio; cable retransmission; non-commercial receipt of broadcasted contents with equipment placed in public places; advertising; criticism or review; simulcasting; non-subscription digital audio transmissions; digital audio transmissions within business establishments; use of typeface in ordinary course of printing; transfers of copies of works in electronic form. Thirteen Member States replied in the negative and five Member States did not answer the question.

Replies overview: Yes 22  
No 13  
No answer 5

101. Has the country concluded or is in the process of negotiating, a Free Trade Agreement containing clauses on copyright limitations and exceptions?

Nine Member States confirmed that they have concluded or are in process of negotiating a Free Trade Agreement (FTA) containing clauses on copyright limitations and exceptions. Seventeen Member States replied in the negative and 14 Member States did not answer the question. Some respondents clarified that Members of the European Union do not negotiate FTAs as individual Member States, as this is a matter of competence for the European Commission.

Replies overview: Yes 9  
No 17  
No answer 14

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

Guatemala reported FTAs with countries from Central America, Dominican Republic and the United States of America. India informed that FTAs with the European Union and Japan are in the process of negotiation. Mexico reported FTAs with Bolivia, Chile, Costa Rica, the European Union, the United States of America, Canada, Colombia, Nicaragua, El Salvador, Honduras, Guatemala, Israel, Uruguay and EFTA. Oman and Singapore concluded their respective FTAs with the United States of America. The United Kingdom stated that, as a Member State of the European Union, it is negotiating bilateral trade agreements with Singapore, Canada, India, Ukraine, Mercosur and China among others. In this connection, negotiations with South Korea, Peru and Colombia, and Central America have also concluded. The United States of America informed that a list of its Free Trade Agreements may be found on the USTR website.

103. Any further comments and information

Twenty-eight Member States did not provide any further comments or information. Algeria noted that its legislation is to be amended notably in the field of limitations and exceptions. Argentina reported that its national law does not include limitations and exceptions for personal purposes. Croatia added that its copyright law should be amended amongst others also in regards to limitations and exceptions but the exact scope of the amendments cannot be indicated yet. Finland and Sweden highlighted that their systems of extended collective licensing touch many issues relevant to the questionnaire without constituting limitations or exceptions to copyright. Finland also mentioned that its copyright law provides for works in which there is no copyright, such as laws and decrees, decisions and statements of public bodies, translations thereof etc. India informed that there are many uses that are not expressly permitted by the law but enjoyed as implied limitations and exceptions. These include many activities by the educational institutions, archives and libraries. There are also many cultural, religious and social activities treated as implied limitations and exceptions. Ireland noted that it did not include in its replies limitations and exceptions provided by European Directives on copyright applicable to satellite broadcasting and cable retransmission and legal protection of databases. Luxembourg provided

information about its Copyright Act in force and provided a link to unofficial consolidated version thereof. Madagascar reported that it plans to ratify the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) and provided identification of its legislative rules related to copyright. Oman noted that despite its copyright law do not provide provisions on orphan works or use of works by persons with disabilities it encourages education. The Republic of Moldova informed that, as an effect of the Partnership and Cooperation Agreement concluded with Member States of the European Union, the Republic of Moldova has taken the responsibility to harmonize its legal framework with the European legislation and as a result prepared new Bill on Copyright and Related Rights which includes many new limitations and exceptions, and provided detailed description of some features of the new Bill on Copyright and Related Rights. Ukraine mentioned limitations and exceptions for caricature, parody or pastiche and recommended for consideration the correlations between limitations and exceptions with the free public licenses like Creative Commons which can be considered as limitations and exceptions given to the public by rightholders.

[Annex follows]

## ANNEX

### FINAL QUESTIONNAIRE ON LIMITATIONS AND EXCEPTIONS

prepared by the World Intellectual Property Organization (WIPO) 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 17<sup>th</sup> 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 18<sup>th</sup> session.

At the 18<sup>th</sup> 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. Based on those comments, the Secretariat would present a revised questionnaire.

In the conclusions of the 19<sup>th</sup> session of the SCCR held in December 2009, delegations were invited to send comments on the revised version of the questionnaire, or second draft questionnaire (document SCCR/19/2), to the Secretariat by January 8, 2010. On the basis of the comments and the discussions of the Committee, the Secretariat would finalize the questionnaire without any substantial changes in the content of the questions, and while retaining its seven chapters, and submit it to the Member States and the European Union by February 10, 2010 for replies.

#### *Instructions*

The Secretariat presents this final questionnaire on limitations and exceptions and Member States are now invited to respond accordingly, via on-line or in paper form:

– On-line (preferred option): Replies may be provided by completion of the electronic form available on the WIPO website at <http://www.wipo.int/copyright/en/>. In order to access and complete the electronic form online, a general password has been created for all respondents: "LE2010".

– Paper form: This copy is available in printable form from the aforementioned website and may be completed and sent to the International Bureau, c/o Copyright Law Division, WIPO, by post: 34, chemin des Colombettes, 1211 Geneva 20, Switzerland; by facsimile: +41 22 338 907010; or by e-mail: [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int).

Member States are invited to submit their replies by May 28, 2010 (extended deadline). After that date, the questionnaire will no longer be available on the WIPO website.

The Secretariat shall prepare a consolidated paper for the Twentieth Session of the SCCR based on the information gathered from the replies to this questionnaire.

This final questionnaire comprises 103 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.

This questionnaire is only intended as a tool for data collection to facilitate an analysis of the status of copyright limitations and exceptions in WIPO Member States. It is acceptable for respondents not to answer all questions, particularly when the available data does not allow giving an unequivocal answer to the questions.

When questions include the phrase “please describe,” respondents are encouraged to provide a citation for the statutory provision and/or governing court decision (if applicable) and any other additional description that supports their answer.

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

Country: \_\_\_\_\_

by

Name and contact information (including telephone and e-mail):

\_\_\_\_\_

*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 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 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: \_\_\_\_\_



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

- 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, 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: \_\_\_\_\_

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 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: \_\_\_\_\_

*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)<sup>1</sup>, 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:

---

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

- Yes  
 No

Please list them: \_\_\_\_\_

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

- Face-to-face activities  
 Distance education  
 Both

Please list them: \_\_\_\_\_

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<sup>1</sup> 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](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](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](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](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](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130393)

*On performances<sup>2</sup>*

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: \_\_\_\_\_

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  
 No

If yes, please describe: \_\_\_\_\_

---

<sup>2</sup> 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.

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

- Teachers
- Students
- Educational institutions
- Others. Please describe: \_\_\_\_\_

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

- For-profit
- Not-for-profit
- Public
- Private
- Others. Please describe: \_\_\_\_\_

*On reproduction*

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

Yes

No

If yes, please describe: \_\_\_\_\_

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

Reprography

Digital copying

Others. Please describe: \_\_\_\_\_

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

Yes

No

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

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

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: \_\_\_\_\_

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

- For-profit
- Not-for-profit
- Public
- Private
- Others. Please describe: \_\_\_\_\_

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

- Yes
- No

If yes, please describe: \_\_\_\_\_

*On translations*

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

Yes

No

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

Yes

No

If yes, please describe: \_\_\_\_\_

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

Yes

No

If yes, please describe: \_\_\_\_\_

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

Teachers

Students

Educational institutions

Others. Please describe: \_\_\_\_\_

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

For-profit

Not-for-profit

Public

Private

Others. Please describe: \_\_\_\_\_

*On making available in digital networks*

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

Yes

No

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

Yes

No

If yes, please describe: \_\_\_\_\_

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

Yes

No

If yes, please describe: \_\_\_\_\_

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: \_\_\_\_\_

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

Teachers

Students

Educational institutions

Others. Please describe: \_\_\_\_\_



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

- For-profit
- Not-for-profit
- Public
- Private
- Others. Please describe: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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)<sup>3</sup>, 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:

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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: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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<sup>3</sup> Document SCCR/17/2, page 72. Available at:  
[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=109192](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192)

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

*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)<sup>4</sup>, 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:

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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 disabilities<sup>5</sup> or visually impaired persons, including the reading impaired?

- Yes  
 No

Please describe: \_\_\_\_\_

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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<sup>4</sup> Document SCCR/15/7, page 138. Available at:  
[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=75696](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696)

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

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

- Yes  
 No

Please describe: \_\_\_\_\_

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: \_\_\_\_\_

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

- Yes  
 No

Please describe: \_\_\_\_\_

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: \_\_\_\_\_

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

- Yes  
 No

Please describe: \_\_\_\_\_

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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

Yes

No

Please describe: \_\_\_\_\_



*Part V: Religious, social and cultural exceptions*

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

- Yes  
 No

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

- Religious activities  
 Cultural Activities  
 Social Activities

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

*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: \_\_\_\_\_

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: \_\_\_\_\_

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

- Yes  
 No

If yes, please describe: \_\_\_\_\_

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: \_\_\_\_\_

*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: \_\_\_\_\_

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

- Yes
- No

If yes, please describe: \_\_\_\_\_

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

- Yes
- No

Please describe: \_\_\_\_\_

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

Please describe: \_\_\_\_\_

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

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[End of Annex and of document]