

Standing Committee on the Law of Patents

Thirty-Eighth Session
Geneva, November 2 to 6, 2026

DRAFT REFERENCE DOCUMENT ON THE EXCEPTION REGARDING PRIVATE AND/OR NON-COMMERCIAL USE

Document prepared by the Secretariat

INTRODUCTION

1. At its thirty-seventh session, held in Geneva from November 3 to 7, 2025, the Standing Committee on the Law of Patents (SCP) agreed that, in accordance with the agreement reached at its twenty-sixth session, the Secretariat would prepare a draft reference document on the exception regarding private and/or non-commercial use, to be submitted to the thirty-eighth session of the SCP (see document SCP/37/11, paragraph 30, under “Exceptions and Limitations to Patent Rights”).
2. In accordance with the above decision of the SCP, the Annex to this document contains the said draft reference document for the Committee’s discussion at its thirty-eighth session, to be held in Geneva from November 2 to 6, 2026. For the preparation of the draft reference document, the Secretariat made use of information provided by the Member States¹, as well as other information made available through various SCP activities. In addition, the Secretariat consulted other sources of information to obtain supplementary material on the topic.
3. As requested by the Committee, the document primarily focuses on the exception regarding private and/or non-commercial use. While other exceptions and limitations to patent rights, including those relating to experimental or research use, may also be relevant to certain

¹ Member States and Regional Patent Offices were invited, through Note C. 9304 dated January 30, 2026, to submit to the International Bureau any input for the preparation of the draft reference document on the exception regarding private and/or non-commercial use. The input received is published on the website of the SCP electronic forum at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received. It should be noted, however, that only a limited number of responses were received from Member States in connection with this document.

private and/or non-commercial activities, the present document confines its analysis to exceptions that are specifically applicable to private and/or non-commercial activities. For information on other exceptions and limitations to patent rights, reference is made to relevant documents prepared within the framework of the Committee's work.²

4. The document contains the following sections: (i) Overview of the exception regarding private and/or non-commercial use; (ii) Public policy objectives of the exception; (iii) International legal framework of the exception regarding private and/or non-commercial use; (iv) Exception regarding private and/or non-commercial use of patented inventions under regional instruments; (v) National implementation of the exception regarding private and/or non-commercial use of patented inventions; (vi) Challenges faced by the Member States in implementing the exception; and (vii) Results of national/regional implementation of the exception. In addition, a separate document contains an Appendix that compiles legal provisions from various national/regional laws on the exception regarding private and/or non-commercial use of patented inventions.

[Annex follows]

² For documents relating to other exceptions and limitations to patent rights, please consult the SCP website at: https://www.wipo.int/en/web/patents/topics/exceptions_limitations.

DRAFT REFERENCE DOCUMENT ON THE
EXCEPTION REGARDING PRIVATE AND/OR
NON-COMMERCIAL USE

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APPENDIX

1. Overview of the exception regarding private and/or non-commercial use

1.1 Background

1. The material reviewed for this document as of August 2026 indicates that at least 77 countries and 1 regional office provide a provision relevant to private and/or non-commercial use.³

2. The materials also show that there is no single legal mechanism to provide for a private and/or non-commercial use exception under the various national laws. Some provide an express exception for acts done privately and for non-commercial purposes. Others contain no separately labelled private-use and/or non-commercial use exception but define the scope of the rights conferred by a patent with certain qualifications at the outset (i.e. by limiting the scope of the right to industrial, commercial, business, trade or professional exploitation). In some jurisdictions, a third type of provision emerges: an express private and/or non-commercial use exception is supplemented by statutory conditions concerning economic prejudice, normal exploitation or legitimate interests. Unlike the general application of Article 30 of the TRIPS Agreement to all exceptions and limitations under national patent laws, these conditions appear expressly in this third category of national provisions governing the exception. The fourth type consists of jurisdictions that do not provide a general private and/or non-commercial use exception in legislation, but where such activities may nevertheless fall outside the scope of patent infringement through judicial interpretation or other uncodified legal doctrines. The above four mechanisms should be distinguished because they may allocate the burden of proof differently and may not produce identical outcomes in borderline cases.

1.2 Historical development

3. Historically, patent laws were primarily concerned with industrial and commercial exploitation because most patented products and processes required capital, specialized equipment or organized production. Private manufacturing therefore had limited practical importance. Even before the development of the TRIPS Article 30 framework, the concept of a private-use limitation had already been discussed within the WIPO Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions held in 1988. During the Committee's meetings, delegations considered exclusions from patent infringement for acts undertaken privately for non-commercial purposes.⁴ The comparative record from the SCP shows two pathways of development from a historical perspective: some statutes confined the patent right to trade, business or industrial activity, while later statutes and regional instruments increasingly articulated an express exception for acts done privately and for non-commercial purposes.⁵

4. The recent inputs from Member States confirm the two identifiable legislative paths. Some laws retained a commercial-scope formulation over successive revisions, as reported for China and Belarus, while several European provisions were introduced or framed with reference to the Article 31(a) of 1975 Community Patent Convention, although that Convention never entered

³ The Secretariat's review draws mainly on the 20 inputs submitted by Member States and regional patent offices in response to Note C. 9304 of January 30, 2026, supplemented by Secretariat research of national and regional legislation.

⁴ Industrial Property, October 1988, "Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions", Fifth Session (Geneva, June 13 to 17, 1988), ("Expert Committee Report"), pp. 361, 362 and 364.

⁵ See document SCP/20/3, pp. 4 and 5.

into force. For instance, Portugal, Italy and the United Kingdom identify the Community Patent Convention as part of the legislative background to their current formulations. Hong Kong, China reports that its formulation drew, in particular, on the Irish Patents Act 1992. Switzerland reports that the introduction of an express statutory exception in 2006 was intended to address uncertainties concerning the distinction between private and commercial activities.⁶

1.3 Conceptual elements: private character and non-commercial purpose

5. The terms often used to characterize the exception address related but distinct matters. “Private” concerns the sphere in which the act occurs, the identity of the actor and the beneficiary of the use. “Non-commercial” concerns the purpose of the act and its relationship to market, professional or business exploitation. An act undertaken by an individual is not necessarily private, and an act undertaken without profit is not necessarily non-commercial in the legal sense. Where legislation refers to acts carried out “privately and for non-commercial purposes,” the activity will ordinarily need to satisfy both conditions.

6. When it comes to the formulation of the exception or the assessment of a given conduct under the applicable legislative framework of a jurisdiction, it is useful to separate three inquiries that are sometimes conflated:

- whether the activity occurs within the private sphere;
- whether the activity serves a commercial purpose; and
- whether the activity constitutes experimentation relating to the patented invention.

7. These inquiries address different legal questions and may lead to different outcomes regarding the applicability of the exception to a particular activity under national/regional law. Distinguishing these inquiries assists in separating private and/or non-commercial use from experimental use and from other independent exceptions and limitations.⁷

1.4 Differentiation from the research exception

8. The private/non-commercial use exception and the experimental-use or scientific-research exception are conceptually distinct. The former ordinarily focuses on the personal sphere and absence of commercial purpose. The latter focuses specifically on the object and purpose of the research or experiment, for example testing the patented invention, learning how it works, or generating knowledge about it without considering the nature of the entity invoking the exception. Research may be undertaken by a commercial entity and still qualify under a research exception, depending on national law; conversely, a private activity may be non-experimental. The two may overlap where an individual conducts study or experimentation privately and without commercial purpose. SCP/13/3 and subsequent SCP work treat them as separate exceptions, and the present document therefore addresses research activity only where national law combines it with, or uses it to explain, the private/non-commercial exception.⁸

⁶ See responses from Portugal and Switzerland to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received. See also Appendix for: Belarus; China; Denmark; Hong Kong, China; Italy; United Kingdom.

⁷ See document SCP/20/3, pp. 1-3, 6 and 7, and document SCP/29/3, pp. 3-6.

⁸ See SCP/13/3, “Exclusions from Patentable Subject Matter and Exceptions and Limitations to the Rights.”

9. Comparative legislation reinforces this separation. Australia protects specified experimental acts relating to the invention, including determining properties, claim scope, validity and improvements, without making privacy or non-profit status an express condition. New Zealand uses a similar, expressly enumerated approach. India also takes the same approach. Canada protects experimentation relating to patented subject matter, while preserving a common-law exception for private, non-commercial acts. These models demonstrate that an experimental exception may be broader than a private-use exception as regards the identity and institutional character of the actor.⁹

1.5 Private and/or non-commercial use exception: border areas

De minimis use

10. The concept of *de minimis* use refers to conduct regarded as too trivial or insignificant to warrant legal intervention. It is analytically distinct from the private and/or non-commercial use exception because the scale of an activity and its legal characterization do not necessarily coincide. A technically minor act may nevertheless be commercial in nature, while a substantial use may occur entirely within the private sphere and without commercial purpose.

11. Some commentators have linked the private and/or non-commercial use exception to *de minimis* considerations. As per this view, the exception addresses activities that are unlikely to affect the patent holder's market or licensing opportunities and therefore do not ordinarily justify enforcement. Accordingly, the policy concern underlying private-use exceptions is closely related to shielding activities of a *de minimis* character that would otherwise fall within the scope of patent rights but have little practical economic significance.¹⁰

12. Other commentators adopt a broader understanding of the exception. Rather than viewing private use merely as a *de minimis* defense,¹¹ they emphasize that some patent systems expressly confine patent rights to commercial, industrial, business or professional exploitation. Under this approach, the exception serves not only to exclude trivial activities but also to define the boundary between market-oriented exploitation and activities occurring outside the economic sphere.¹² Recent scholarship has further examined whether Article 30 of the TRIPS Agreement may accommodate certain forms of socially beneficial non-commercial production, repair and personal technological activity extending beyond the traditional domestic setting.¹³

13. A more restrictive view has been expressed in United States case law. A concurring opinion in *Embrex, Inc. v. Service Engineering Corp.* argued that United States patent law leaves no room for a free-standing *de minimis* or experimental-use defense because the statutory right extends to any unauthorized "use" of a patented invention. In that view, the limited scale of an infringement may be relevant to remedies, particularly damages, but does not determine the existence of liability.¹⁴

⁹ See Australia, Patents Act, 1990, s. 119C(1); New Zealand, Patents Act 2013, s. 143; India, Patents Act, 1970, s. 47(3); Canada, Patent Act, RSC 1985, c P-4, ss. 55.2 and 55.3.

¹⁰ See Christopher Garrison, Exceptions to Patent Rights in Developing Countries, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No. 17, UNCTAD/ITE/IPC/2006/12 (2006), pp. x and 4.

¹¹ Christopher Garrison, Exceptions to Patent Rights in Developing Countries, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No. 17, UNCTAD/ITE/IPC/2006/12 (2006).

¹² Lionel Bently, "Exclusions from Patentability and Exceptions to Patentees' Rights: Taking Exceptions Seriously," 64 Current Legal Problems 315-347 (2011).

¹³ Muhammad Zaheer Abbas, "Patent Law and 3D Printing Applications in Response to COVID-19: Exceptions to Inventor Rights," 25(2) Journal of World Intellectual Property 317-334 (2022).

¹⁴ *Embrex, Inc. v. Service Engineering Corp.*, 216 F.3d 1343, 1352-53 (Fed. Cir. 2000).

14. The materials reviewed do not support treating the *de minimis* character of an activity as an independent legal test for applicability of the private and/or non-commercial use exception. Rather, the applicability of the exception depends on the wording of the relevant national provision and the conditions it establishes. At the same time, the comparative materials and literature suggest that the policy rationale underlying many private and/or non-commercial use exceptions extends beyond merely excluding trivial acts. In a number of jurisdictions, the exception serves more broadly to distinguish market-oriented exploitation from activities occurring outside the commercial sphere. While the limited scale of an activity may be relevant in assessing whether the conditions of the exception are fulfilled, the *de minimis* nature of the conduct is not, in itself, determinative of whether the exception applies.

Personal digital creation

15. Emerging digital technologies can blur the boundary between personal activity and preparatory commercial conduct. Digital files can be copied, transmitted, and converted into physical products with little additional infrastructure. A prototype initially made for personal use may later be displayed to customers, offered through an online platform, or supplied through a print-on-demand service. Ecuador's input, for instance, identifies the absence of objective criteria for distinguishing private use from the preparatory phase of a commercial act in digital environments and suggests guidance on balancing patent-holder interests with new forms of personal technological creation. This concern does not imply that a digital file necessarily infringes a patent; the relevant question remains whether acts falling within the patent holder's exclusive rights have occurred and whether the applicable exception covers them.

16. Recent academic literature identifies distributed production as presenting new challenges for the application of the exception. Consumer-accessible fabrication technologies have renewed attention to the limits of the private and/or non-commercial use exception, an issue that had previously attracted relatively limited attention in patent law discussions.¹⁵ One piece of literature analyzes whether traditional private-use rules extend to 3D printing.¹⁶ Other literature focuses on the role of commercial CAD-file intermediaries and cautions against treating digital files themselves as patented products in a manner that could chill legitimate activity.¹⁷ Another commentator advocates clearer protection for volunteer makers and repair in emergency contexts.¹⁸ Although these studies reach different conclusions regarding the appropriate scope of the exception, they share a concern that individually small acts may, when aggregated through digital networks, produce market effects that are not easily captured by traditional distinctions based solely on household or domestic use. Accordingly, factors such as purpose, scale, intermediation and market substitution may become increasingly relevant in assessing the applicability of the exception.

2. Public policy objectives of the exception

17. A recurrent rationale is that private and/or non-commercial activities lie outside the core economic field at which patent exclusivity is directed. Several submissions confirm this rationale. The submission from China explains that extending infringement to every personal or non-commercial act would make patent coverage excessively broad and interfere with ordinary

¹⁵ See document SCP/20/3, pp. 7 and 8. See also document SCP/29/3, pp. 4 and 5.

¹⁶ Rosa Ballardini and Nari Lee, "The Private and Non-commercial Use Defence Revisited: The Case of 3D Printing Technologies," in Rosa Maria Ballardini, Marcus Norrgård and Jouni Partanen (eds.), 3D Printing, Intellectual Property and Innovation: Insights from Law and Technology (Kluwer Law International, 2017).

¹⁷ Lucas S. Osborn and Timothy R. Holbrook, "Digital Patent Infringement in an Era of 3D Printing," 48 U.C. Davis Law Review 1319 (2015).

¹⁸ Muhammad Zaheer Abbas, "Patent Law and 3D Printing Applications in Response to COVID-19: Exceptions to Inventor Rights," 25(2) Journal of World Intellectual Property 317-334 (2022).

activities, while its patent law has historically been framed around acts undertaken for production or business purposes. Cyprus links the exception to private initiative and learning in colleges and universities and to uses that produce neither profit nor harm to the patent owner. Honduras refers to personal or family use and to the promotion of teaching and scientific research. Sri Lanka identifies the promotion of creativity together with protection of patent-holder interests. These explanations differ in emphasis, but each treats the exception as a means of avoiding enforcement where the connection with market exploitation is weak or absent.¹⁹

18. Academic commentaries have identified several policy rationales for the exception. A commentator distinguishes a narrow *de minimis* defense from broader statutory models confining patent rights to commercial or industrial activity. Another commentator argues that genuinely private use contributes little to patent incentives while licensing and policing such conduct create transaction costs, and characterizes the exception as an adjustable mechanism capable of national tailoring. Further, commentators emphasize that conjunctive or disjunctive drafting (i.e., using “and” or “or” to link the different conditions), and the choice of terms such as private, non-profit or non-industrial, can materially affect the Article 30 analysis under the TRIPS Agreement.²⁰

19. Thus, the inputs from Member States identify several overlapping policy rationales: protection of the personal and domestic sphere; avoidance of interference where normal commercial exploitation is weak or absent; balancing the interests of right holders, users and society; dissemination of technological knowledge; encouragement of research, education and creativity; and alignment with regional or international frameworks. Austria, Belarus, Brazil, Hungary, Italy, Norway, Romania and Serbia provide examples of these rationales in different terms.²¹

20. Additionally, several Member States explain the exception in terms of balancing the interests of patent holders, users and society. In this context, the term “third parties” refers to persons or entities whose legitimate interests may be affected by the scope of the patent right or the exception, such as users of technology, researchers, educators, follow-on innovators and suppliers, whereas “the public” refers more broadly to collective societal interests.²² The categories may overlap. Estonia, for example, permits private non-commercial use only where it does not harm the patent proprietor's interests.

21. Several inputs identify the promotion of private initiative, learning, creativity, teaching, research and dissemination of knowledge as policy objectives.²³ Honduras refers to eliminating barriers to trade, protecting strictly personal or family/individual use and stimulating scientific

¹⁹ See responses from China, Cyprus, Honduras and Sri Lanka to Questionnaire on Exceptions and Limitations to Patent Rights, published on the SCP Electronic Forum website at: <https://www.wipo.int/scp/en/exceptions/>

²⁰ Christopher Garrison, Exceptions to Patent Rights in Developing Countries, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No. 17, UNCTAD/ITE/IPC/2006/12 (2006); Lionel Bently, “Exclusions from Patentability and Exceptions to Patentees’ Rights: Taking Exceptions Seriously,” 64 Current Legal Problems 315-347 (2011); Bram De Jonge and Bernard Maister, The Many National Formulations of the “Private and Non-Commercial Use” Exception in Patent Law: Which, If Any, Satisfy TRIPS?, Wageningen Working Papers in Law and Governance 2016/01 (2016), doi:10.2139/ssrn.2732502.

²¹ See Appendix for: Austria; Belarus; Brazil; Hungary; Italy; Norway; Romania; Republic of Serbia.

²² See a response from Brazil to Questionnaire on Exceptions and Limitations to Patent Rights, published on the SCP Electronic Forum website at: <https://www.wipo.int/scp/en/exceptions/> and a response from Czech Republic to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received. See also responses from Belarus and Egypt to Questionnaire on Exceptions and Limitations to Patent Rights, published on the SCP Electronic Forum website at: <https://www.wipo.int/scp/en/exceptions/>.

²³ See a response from Spain to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received.

research and teaching.²⁴ Cyprus refers to encouraging private initiative, principally learning in colleges and universities.²⁵ Sri Lanka refers to promoting creativity while protecting the rights of patent holders.²⁶

22. Although the research exception is conceptually distinct, many Member States describe private/non-commercial use together with knowledge sharing, experimental research and R&D. For example, Mexico's input links private or academic, non-commercial experimental, testing and teaching activities to the promotion of inventive industrially applicable activity, technical improvements and dissemination of technological knowledge.²⁷

3. International legal framework of the exception regarding private and/or non-commercial use

3.1 Agreement on trade-related aspects of intellectual property rights (TRIPS)

23. The TRIPS Agreement does not provide a specific private/non-commercial use exception. Article 30 nevertheless supplies the general legal framework for any exception to patent rights. Its three conditions are cumulative: the exception must be limited; it must not unreasonably conflict with normal exploitation of the patent; and it must not unreasonably prejudice the patent owner's legitimate interests, taking account of the legitimate interests of third parties. In *Canada - Patent Protection of Pharmaceutical Products*, Report of the Panel, WT/DS114/R, adopted 7 April 2000, the WTO Panel explained that "limited" concerns the extent to which the exclusive rights are curtailed; that normal exploitation concerns the commercial activity through which the patent owner extracts economic value; and that prejudice must be assessed for reasonableness in light of the interests recognized by the agreement. The dispute concerned regulatory review and stockpiling exception and their consistency with three-step test in Article 30, not private use, and therefore did not rule on the present exception. Its reasoning nonetheless sets out the interpretation of the general conditions applicable to any exception to patent rights and suggests that a carefully delimited exception confined to genuinely private and/or non-commercial acts is easier to reconcile with the conditions set out in Article 30 than broader exceptions affecting commercial exploitation. Some commentary proposes to preserve a meaningful policy space in the context of the private and/or non-commercial use exception, as long as it complies with the safeguards in Article 30 of TRIPS.²⁸

4. Exception regarding private and/or non-commercial use of patented inventions under regional instruments

4.1 European Patent Convention (EPC)

24. The European Patent Convention governs the grant and validity of European patents but does not harmonize infringement rules or exceptions to the rights conferred after grant. Accordingly, the EPC is identified here only to clarify that it is not the source of private and/or

²⁴ See document SCP/20/3, p. 3.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ See Appendix for: Mexico.

²⁸ See Christopher Garrison, *Exceptions to Patent Rights in Developing Countries*, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No. 17, pp. 19-42, UNCTAD/ITE/IPC/2006/12 (2006). According to Garrison, Article 30 should not be interpreted as permitting only narrow or *de minimis* exceptions, since a number of long-established and widely accepted patent exceptions, including the private and non-commercial use exception, continued to be regarded as valid following the entry into force of TRIPS; in his view, Article 30 therefore preserves meaningful policy space for Members to accommodate appropriately tailored exceptions addressing specific policy objectives.

non-commercial use exception in the European context. The relevant rules are found in national laws and, for patents within the court's jurisdiction, in the Agreement on a Unified Patent Court.

4.2 Unified Patent Court Agreement (UPCA)

25. The UPCA expressly provides the exception. Article 27(a) provides that the rights conferred by a patent do not extend to acts done privately and for non-commercial purposes.²⁹ Literature confirms that the Community Patent Convention (1975) supplied an influential European formula to UPCA Article 27(a). Importantly, the substantive patent law provisions of the UPCA apply to European patents with unitary effect, and the European patent parts that are covered by the UPC's jurisdiction (18 EU Member States at the time of writing this draft reference document) that have not been opted out of the UPC's jurisdiction (or have been opted back in), as well as their corresponding supplementary protection certificates, as the case may be. The full contour of Article 27(a) is yet to be interpreted in the context of the UPCA. However, the Central Division of the UPC's Court of First Instance in Milan, in the context of interpreting the requirement of "concerned by a patent" in Article 47(6) of the UPCA for validity challenges, reasoned by reference to Article 27(a) of the UPCA that "distinction must be drawn between private and commercial acts" and that "since legal persons cannot act "privately", their acts must always be classified as commercial", even if they are not yet active in a relevant industry.³⁰ In other words, a legal person cannot act privately and its acts are therefore commercial. Although the ruling was not directly addressing the exception enshrined in Article 27(a) UPCA, it made a direct reference to it, providing the court's take on the contours of the private and non-commercial use exception as far as legal persons are concerned.

4.3 African Regional Intellectual Property Organization (ARIPO) (Harare Protocol)

26. The Harare Protocol establishes a regional procedure for filing, examination and grant. It does not set out a comprehensive regional law of infringement. Article 22(2) provides, in substance, that infringement of an ARIPO patent is governed by the national law applicable in each designated State. The absence of a Protocol-level private/non-commercial use exception is therefore consistent with the allocation of infringement questions to national law rather than evidence of a regional decision to reject the exception. Assessment of private or non-commercial conduct must consequently be made under the law of the designated Contracting State.

4.4 African Intellectual Property Organization (OAPI) (Bangui Agreement)

27. The Bangui Agreement operates as the common patent law of OAPI Member States. Article 7 of Annex I enumerates limitations concerning exhaustion, foreign conveyances, experimental, scientific and educational acts, regulatory studies and tests, and prior possession, but it does not contain an express private/non-commercial patent exception. By contrast, the Agreement expressly uses private-use concepts in relation to industrial designs, copyright and related rights, integrated-circuit layout designs and plant varieties.³¹

4.5 Eurasian Patent Organization (EAPO)

28. The Eurasian Patent Convention does not itself enumerate all non-infringing acts, but Rule 19 of the Patent Regulations provides that use of a patented invention for private, non-

²⁹ Agreement on a Unified Patent Court, Article 27(a), which reads: The rights conferred by a patent shall not extend to any of the following: (a) acts done privately and for non-commercial purposes.

³⁰ See Unified Patent Court, Court of First Instance, Central Division (Milan), LS9 GmbH v. Bellissa HAAS GmbH, UPC CFI 860/2025, Decision of 19 August 2026.

³¹ See Bangui Agreement, Annex IV; Annex VII; Annex IX; Annex X.

profit-making purposes does not constitute infringement of a Eurasian patent. The formulation expressly joins the private setting with a non-profit purpose and therefore does not protect an act merely because the actor is an individual.

4.6 Andean Community Decision

29. Andean Community, Decision 486, Article 53(a), provides that the patent owner may not exercise the exclusive right with respect to acts carried out in a private circle and for non-commercial purposes. The provision supplies a uniform limitation for Andean Community members applying the Decision. Its cumulative conditions align the exception with conduct outside organized market exploitation.

5. National implementation of the exception regarding private and/or non-commercial use of patented inventions

5.1 Mechanisms to regulate the exception

30. From a comparative perspective, the implementation of provisions related to the private and/or non-commercial use exception identified in national laws may be grouped into four categories, according to the legislative mechanisms that define them. For the precise scope of the exception, individual statutory wording remains controlling, and the same policy objective may be implemented through different drafting techniques. The categories below reflect the principal legislative approaches identified in Member State inputs, previous SCP materials and additional Secretariat research.

31. In the first group, the exclusive patent right is defined by reference to commercial, industrial, business, professional or trade-related exploitation. In these jurisdictions, the exception is implicit, as conduct outside the defined economic sphere falls outside the patent right without reliance on a separately framed private-use exception.

32. A second group expressly excludes certain private and/or non-commercial acts from patent infringement. Within this group, two principal drafting techniques can be distinguished. Some jurisdictions require the act to be both private and/or non-commercial, while others refer to private or non-commercial use in the alternative or employ related formulations such as personal, domestic, family or non-profit use. Although these variants may differ in scope, they share the common legislative technique of expressly excluding specified acts from patent infringement.

33. A third group combines a private and/or non-commercial use exception with additional conditions referring to economic prejudice, normal exploitation of the invention, legitimate interests of the patent holder, or comparable safeguards. These provisions do not merely exclude private or non-commercial acts, but also require compliance with further conditions intended to protect the economic interests associated with the patent. Some of these additional conditions reflect the factors enshrined in Article 30 of the TRIPS Agreement, importing the international requirement imposed on national laws into the domestic framework as a requirement applied in the scrutiny of the individual conduct.

34. A fourth group consists of jurisdictions where no specific private and/or non-commercial use exception was identified in the statute, but the treatment of private and/or non-commercial use exception may instead be inferred through judicial interpretation, general principles of patent law, or other uncoded doctrines. Australia and Egypt are jurisdictions in which the materials reviewed do not identify a general statutory private/non-commercial-use exception, but

private or non-commercial use are considered as part of defenses to patent infringement in common law or generally understood as part of a formulation of the three-step test in the TRIPS Agreement.³²

Table 1: Mechanisms for regulating private and/or non-commercial use³³

Mechanism	Jurisdictions
1. Scope Limitation: Patent rights limited to trade, business or professional exploitation	Algeria, Austria, China, Honduras, Japan, Kenya, Madagascar, Malaysia, Netherlands, Norway, Poland, Republic of Korea, Sri Lanka, Sweden, Tanzania, Uganda
2A. Express dual prong exception: cumulative private and non-commercial acts	Albania, Belgium, Bosnia and Herzegovina, Croatia, Dominican Republic, France, Germany, Hong Kong (China), Hungary, Ireland, Italy, Latvia, Luxembourg, Morocco, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Switzerland, Syrian Arab Republic, Turkey, United Kingdom, Zambia
2B. Express exception (variants): private or non-commercial use and related personal-domestic-non-profit use formulations	Argentina, Armenia, Azerbaijan, Belarus, Bolivia, Chile, Colombia, Czech Republic, Denmark, EAPO, Ecuador, Finland, Georgia, Greece, Guatemala, Israel, Mexico, Nicaragua, Panama, Peru, Russian Federation, Serbia, Saudi Arabia, Tajikistan, Ukraine, Viet Nam ³⁴
3. Express exception subject to safeguard conditions	Brazil, Bulgaria, Costa Rica, Cyprus, Estonia, El Salvador, Lithuania, Malta, Philippines, Republic of Moldova, Uruguay ³⁵

³² See also a response from Australia to C.9304, "In Australia, there is no statutory exclusion for private and/or non-commercial use. While not yet determined by Australian Courts, it is considered that a non-commercial use defence may arise under common law - see the UK decision *Frearson v Loe* (1878) 9 ChD 48. (Genes and Ingenuity, Chapter 13, Report 99, Australian Law Reform Commission, June 2004)." See also a response from Egypt to C.9304, "While Egyptian law doesn't use the exact phrase "private and non-commercial use", the spirit of the exception is integrated into the following provisions of Article 10 of Law No. 82 of 2002, Article 10 [...] The following shall not be considered as infringements of that right when carried out by third parties: [...] (6) Any other acts by third parties, provided that they shall not unreasonably hamper the normal exploitation of the patent, and shall not be unreasonably prejudicial to the legitimate interests of the patent owner taking into consideration the legitimate interests of others."

³³ Based on inputs from Member States, previous SCP documents and additional Secretariat research.

³⁴ Mechanism 2B includes both provisions that refer to private or non-commercial use in the alternative and provisions that employ related personal, domestic, family or non-profit formulations. Although these formulations may differ in scope, they share the legislative technique of expressly excluding specified non-commercial conduct from patent infringement.

³⁵ For comparative purposes, these jurisdictions are treated separately because the safeguard conditions are incorporated directly into the national provision governing the exception, rather than arising solely from the general application of Article 30 of the TRIPS Agreement.

4. No general private/non-commercial use exception or special regime but could be implicitly interpreted through doctrines or other uncoded modes/interpretations	Australia, Canada, Egypt
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5.2 Definitions of “private” and “commercial”

35. Few jurisdictions provide exhaustive statutory definitions of “private” and “commercial.” The concepts are generally interpreted through the wording and purpose of the patent statute, ordinary meaning of the terms, the relationship of the act to business or professional activity, and any available case law. “Private” ordinarily concerns the sphere, actor and beneficiary of the act; it does not merely mean that the conduct is secret. The phrase “non-commercial” concerns purpose and connection with economic or professional exploitation.³⁶ Where the statute uses “and,” the conditions are cumulative.

36. The inputs from Member States materially expand the interpretive record. China states that “production or business purposes” is broad, does not depend on profitability and is not determined by whether the actor is a profit-making entity. The Czech Republic associates non-commercial use with activity outside a business framework and not carried out for profit, potentially including education, teaching and charity. Germany treats privacy and non-commercial purpose cumulatively, restricts private action to natural persons and emphasizes that even a single act may have a commercial purpose. Hungary and Slovakia provide definitions of economic or commercial activity linked respectively to professional, regular value-producing activity and an aim of making profit. The Netherlands notes that professional activities may include activities undertaken by universities and governmental entities.³⁷

37. The German input states that the requirements of private action and non-commercial purpose are cumulative; only natural persons can act privately; and “private sphere” examples include family, household, sports, play, entertainment and private study. Germany further notes that public bodies, schools, universities and hospitals are not regarded as acting within the private sphere for the purposes of the exception. Acts for profit or in the course of professional practice do not serve “non-commercial purposes.”³⁸

38. The United Kingdom input states that “privately” does not mean secretly or confidentially, but refers to an act done for the person’s own use. In *Smith, Kline & French Laboratories Ltd v Evans Medical Ltd*³⁹, the court considered supplies of a patented product connected with hospital and regulatory purposes and treated the statutory exceptions according to the purposes of the acts rather than their confidential character. The case is cited in commentary for the proposition that an act having both non-commercial and commercial purposes does not satisfy the private and/or non-commercial exception. The inquiry is therefore fact-specific: an act

³⁶ See Appendix for: Argentina, which expressly states “[a] third party who privately or in an academic environment and **without gainful intent**,...” (emphasis added).

³⁷ See a response from Czech Republic to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received and Appendix for: China; Germany; Hungary; Netherlands; Slovakia. See also a response from the Netherlands to Questionnaire on Exceptions and Limitations to Patent Rights, published on the SCP Electronic Forum website at: <https://www.wipo.int/scp/en/exceptions/>.

³⁸ See a response from Germany to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received.

³⁹ See a response from United Kingdom to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received. See also *Smith Kline & French Laboratories Ltd v Evans Medical Ltd* [1989] FSR 513.

undertaken partly to advance business or market objectives is not converted into protected private use merely because it also serves a personal, clinical or informational purpose.

39. Further national case law supports a fact-specific inquiry. Israel distinguishes unprofitable home use and pure scientific research from distribution to potential customers, commercial-production development or sample shipment. Spain reports that use within commercial activity is not private, while the mere appearance of a product on a website may not, without additional evidence, constitute a commercial offer in the technical legal sense. France reports that domestic manufacture may fall within the private sphere, whereas presentation at a professional trade fair does not.⁴⁰

40. In addition to the Israeli, Spanish and French decisions already discussed, courts in Italy, Austria and Germany have adopted a similarly restrictive interpretation of the private and/or non-commercial use exception. In Italy, the *Tribunale di Bologna* relied on Article 68 of the Italian Industrial Property Code, which provides that the exclusive rights conferred by a patent do not extend to “acts carried out privately and for non-commercial purposes,” but held that the defendant’s importation and use of the patented product formed part of a commercial supply arrangement and therefore fell outside the exception.⁴¹ In Austria, the *Oberster Gerichtshof* interpreted §22 of the Patent Act as limited to acts undertaken for strictly private needs and not for commercial purposes. In its decisions, the Court rejected the private-use defense because the use was part of ordinary commercial business operations and therefore commercial in character.⁴² German courts have reached the same conclusion under §11(1) of the Patent Act. In decisions involving online auction sales and agricultural field trials, the courts recognized that §11(1) PatG excludes only acts undertaken in the private sphere and for non-commercial purposes, but held that the activities at issue were commercially oriented and therefore infringed the patent.⁴³ These decisions reinforce a common judicial approach whereby the exception is interpreted narrowly and is unavailable where the use contributes to commercial activity, profit generation or market-oriented conduct.

41. Several national laws make a clear distinction between the private use exception and the experimental use exception. Section 60(5)(a) of the United Kingdom Patents Act 1977 is cumulative in terms of requiring private and non-commercial use for the exception to apply, while section 60(5)(b) asks whether the experiment relates to the subject matter of the invention. *Smith Kline & French Laboratories Ltd v Evans Medical Ltd* and *McDonald v Graham* treat a mixed commercial purpose as fatal to the private-use defense. By contrast, *Monsanto v Stauffer*, *Auchincloss* and *CoreValve* focus on the immediate or preponderant purpose of the experiment; a commercial background does not automatically defeat the experimental-use exception where the activity genuinely seeks information about the patented subject matter.⁴⁴ Other jurisdictions, including the Czech Republic, France, Spain and the Republic of Moldova, also place private/non-commercial use and experimental or research use in separate provisions.

⁴⁰ See a response from France to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received. See also Israel: C.S. 1512/93, *The Welcome Foundation Ltd v Teva Pharmaceutical Industries Ltd*; C.S. 881/94, *Eli Lilly and Co v Teva Pharmaceutical Industries Ltd*. Spain: Provincial Court of Valencia, Judgment No. 20/2008, ECLI:ES:APV:2008:832; Provincial Court of Burgos, Judgment No. 432/2006, ECLI:ES:APBU:2006:1030.

⁴¹ *Tribunale di Bologna*, 16 November 2010, Darts-853-043-A-IT (Article 68 CPI).

⁴² OGH 10 September 1985, 40 b 361/84, Darts-234-120-A-AT; and OGH 15 May 1985, 4 Ob 317/85, Darts-234-111-A-AT.

⁴³ LG Düsseldorf, 4b O 69/11, Darts-607-550-A-DE; and Darts-460-629-A-DE (field trials).

⁴⁴ United Kingdom, Patents Act 1977, s. 60(5)(a)-(b); *Smith Kline & French Laboratories Ltd v Evans Medical Ltd* [1989] FSR 513; *McDonald v Graham* [1994] RPC 407; *Monsanto Co v Stauffer Chemical Co* [1985] RPC 515; *Auchincloss v Agricultural & Veterinary Supplies Ltd* [1999] RPC 397; *CoreValve Inc v Edwards Lifesciences AG* [2009] EWHC 6 (Pat).

The structural difference matters because a claimant needs to satisfy different conditions depending on which exception is invoked.

42. The Swiss input states that the private sphere encompasses privacy and the domestic or family sphere, and that private use may include study or educational purposes.⁴⁵ It also states that use by associations is not considered private even if the association pursues non-profit purposes. Swiss commentary further associates private use with personal consumption and individual rather than institutional activity.⁴⁶

5.3 Inclusions of academic, experimental and research activities

43. Some laws combine personal or academic settings with experimental, teaching, testing or research purposes in the same provision. Such drafting may protect conduct overlapping the different categories, for example a student privately testing an invention for learning, while also extending the defense to specified research or teaching activities that are not necessarily private. Argentina, Honduras and Mexico illustrate combined formulations.

44. The comparative formulations are not uniform. Greece and Saudi Arabia address non-professional or non-commercial research without necessarily establishing a general personal-use exception. Israel separates non-commercial scale or character from experimental acts, while Syria refers separately to private/non-commercial practices and scientific, environmental or climate-related research. France further illustrates that domestic manufacture may fall within the private sphere, whereas presentation in a professional trade setting does not.⁴⁷

5.4 Safeguard conditions relating to normal exploitation and legitimate interests

45. A number of jurisdictions expressly incorporate general requirements imported from Article 30 of the TRIPS Agreement into the legal provision regulating the private or non-commercial use exception. These safeguards are material where superficially private or non-commercial use could nevertheless have market effects.

46. Brazil refers to prejudice to economic interests; Bulgaria to significant financial loss; Costa Rica to unjustified interference with normal working and unreasonable prejudice; Cyprus, Lithuania and the Philippines to significant prejudice to economic interests; Estonia to harm to the proprietor's interests; El Salvador likewise links private and/or non-commercial acts to a requirement that they not unjustifiably interfere with the normal exploitation of the invention; and the Republic of Moldova to conflict with normal use and prejudice to legitimate interests, taking account of third-party interests. The Republic of Moldova further provides that, where these conditions are not satisfied, the patent owner may be entitled to adequate compensation for injury resulting from unauthorized exploitation.⁴⁸ The wording and legal effect of each safeguard should be assessed under the applicable national provision, rather than as a single uniform test.

⁴⁵ See a response from Switzerland to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received.

⁴⁶ *Ibid.*

⁴⁷ See a response from France to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received. See also Appendix for: Greece; Israel; Saudi Arabia; Syrian Arab Republic.

⁴⁸ See Appendix for: Brazil; Bulgaria; Costa Rica; Cyprus; El Salvador; Estonia; Lithuania; Philippines; Republic of Moldova.

5.5 Synthesis of analysis

47. The private and/or non-commercial use exception is widely recognized but is neither uniformly formulated nor uniformly explained. Three distinctions are central. First, some systems create an express exception, while others limit the patent right itself to commercial, business, trade or professional exploitation. Second, “private” and “non-commercial” may be cumulative and address different characteristics of the act. Third, non-commercial purpose does not necessarily remove market effects, which explains the use of safeguards concerning prejudice and normal exploitation. Digital fabrication, mixed-purpose conduct, institutional actors, evidence and contributory infringement make these distinctions increasingly important. The comparative materials support a cautious, text-specific analysis rather than a single universal definition.

48. The available literature generally treats private and/or non-commercial use and experimental use as distinct exceptions, although some jurisdictions combine elements of the two. It also reflects differing approaches to the scope of permitted activities, including the relationship between commercial and non-commercial purposes and the distinction between research conducted “on” and “with” patented inventions.

49. The materials further indicate that uncertainty may arise where key concepts such as “private,” “commercial” or “non-commercial” are undefined, or where activities pursue multiple purposes. Questions concerning the precise meaning of “private use” likewise continue to arise, as national laws variously associate that concept with personal, family, domestic, non-business or non-commercial activities.⁴⁹ At the same time, as discussed below, available information is limited regarding the practical invocation of the exception, its effects on behavior, licensing practices and market outcomes.

6. Challenges faced by the Member States in implementing the exception

6.1 Earlier reform initiatives and subsequent legislative developments

50. SCP/20/3 recorded four country-specific reform developments. Zambia was considering a bill to introduce a private and/or non-commercial use exception; Brazil was evaluating implementation of its existing exception; El Salvador anticipated revision of its legislation in the medium term; and Mexico considered amendment advisable because the scope of the exception was not clearly defined. It also noted that Madagascar's statutory framework could be revised in the future.⁵⁰

51. Subsequent information indicates that some of those reforms have proceeded. Zambia enacted the Patents Act No. 40 of 2016, which repealed and replaced the 1958 Act and entered into force on June 2, 2017.⁵¹ El Salvador enacted a new Intellectual Property Law in 2024, which entered into force in February 2025. The current provision reproduced in the Member State input expressly excludes private and/or non-commercial acts that do not unjustifiably interfere with normal exploitation. Mexico's current Federal Law for the Protection of Industrial Property now addresses the matter in Article 57(I), protecting specified experimental, testing and teaching activities undertaken in the private or academic sphere and for non-commercial purposes.⁵²

⁴⁹ See document SCP/18/3, pp. 3-6, document SCP/20/3, pp. 4-8 and document SCP/29/3, pp. 10 and 14-22.

⁵⁰ See document SCP/20/3, pp. 7 and 8.

⁵¹ The Patents Act No. 40 of 2016 introduced an exception for private and non-commercial use. Additionally, it includes extended patent term, integration of PCT and provisions on utility models.

⁵² See Appendix for: El Salvador; Mexico; Zambia.

52. Madagascar's reform remains pending. A new industrial-property bill, Project Law No. 002/2026, was deposited with the National Assembly on May 28, 2026 and is recorded as under the consideration of a committee for examination.⁵³

6.2 Challenges

53. The first challenge is distinguishing the private sphere from activity conducted by non-profit entities, universities, associations or public bodies. Germany indicates that private action is associated with natural persons and domestic or personal settings; institutional conduct is not private merely because it lacks a profit motive. Switzerland similarly states that use by an association is not considered private even where the association pursues non-profit purposes. These examples show that "private" and "non-commercial" are separate requirements in cumulative formulations: an institution may act without profit but still outside the private sphere.

54. Some commentators have emphasized the nature of the activity rather than the status of the actor when assessing the applicability of the exception. A university, charity, hospital or non-profit maker is not private merely because it does not distribute profits. Relevant considerations include the personal or institutional setting, professional objective, scale, and whether the activity substitutes for a patent holder's market or licensing opportunity.⁵⁴

55. The United States case law supplies a particularly restrictive comparator. *Madey v Duke University* held that a university's non-profit status did not control where the challenged use furthered its legitimate institutional business, including research, education, prestige and the attraction of personnel and funding. *Embrex* likewise confined the common-law experimental-use defense to amusement, curiosity or strictly philosophical inquiry. These authorities illustrate why non-profit status, non-commercial purpose and private character should not be treated as interchangeable concepts.⁵⁵

56. The second challenge concerns mixed or dual-purpose activities. The United Kingdom input states that where one of the purposes is commercial in nature, the private-use defense will not apply.⁵⁶ Similar difficulties may arise in any system requiring both private character and non-commercial purpose.

57. The third challenge concerns digital and emerging technologies. Ecuador expressly identifies the lack of objective criteria to distinguish private use from the preparatory phase of a commercial act, especially in digital environments, and suggests a need for guidance on balancing patent-holder rights against new forms of personal technological use.⁵⁷

58. The fourth challenge concerns indirect or contributory infringement. The United Kingdom input explains that acts falling within the private-use exception do not necessarily protect suppliers from contributory infringement.⁵⁸ The United Kingdom's statutory structure also shows that the direct user's exception does not necessarily immunize a supplier. Under section 60(6), a person acting privately and for non-commercial purposes is not, solely for that reason, treated

⁵³ Madagascar, Project Law No. 002/2026 of January 15, 2026 on the industrial-property protection regime, deposited with the National Assembly on May 28, 2026, status: committee examination.

⁵⁴ Garrison. See also document SCP/18/3, pp. 4, 5 and 7-9 and document SCP/29/3, pp. 10 and 14-17.

⁵⁵ *Madey v Duke University*, 307 F.3d 1351, 1362-63 (Fed. Cir. 2002); *Embrex, Inc. v Service Engineering Corp.*, 216 F.3d 1343, 1352-53 (Fed. Cir. 2000).

⁵⁶ See a response from United Kingdom to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received.

⁵⁷ See a response from Ecuador to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received.

⁵⁸ See a response from United Kingdom to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received.

as a person entitled to work the invention for purposes of contributory infringement. The availability of the exception must therefore be assessed separately for the private user and for a commercial supplier of essential means.⁵⁹

59. Reported implementation experience is uneven. Algeria reports no litigation or implementation difficulty. Cyprus considers its framework adequate and reports no amendments under consideration. The Czech Republic and Estonia report no known practical problem or court decisions. Portugal reports that its office has no information on implementation challenges or results. Switzerland reports no known infringement case since its Federal Patent Court became operational. Spain identifies only a limited body of case law. By contrast, Belarus regards clarification as desirable and identifies evidentiary difficulties, Brazil reports an evaluation of implementation, and Costa Rica reports that public policy was being devised.

60. The available evidence does not establish the reasons for the relatively small number of reported cases concerning the private and/or non-commercial use exception. Accordingly, the scarcity of reported litigation should not, without additional evidence, be interpreted as demonstrating either the effectiveness or the irrelevance of the exception.⁶⁰

7. Results of national/regional implementation of the exception

61. No information has been submitted by Member States regarding the socio-economic effects resulting from the implementation of the exception to patent rights relating to private and/or non-commercial use. Accordingly, the discussion below relies primarily on commentators rather than Member State reporting of practical outcomes.

62. A survey by a commentator indicates that national implementation of the private and/or non-commercial use exception has generally been cautious and restrictive. Despite differences in legislative design, jurisdictions tend to confine the exception to genuinely private and economically insignificant acts and to exclude activities that may affect commercial markets. The experience of countries such as Austria and Germany, where courts have interpreted “commercial” broadly enough to encompass certain activities of non-profit institutions, reflects a common concern with safeguarding the economic value of patent rights. Overall, state practice suggests that in practice, the exception is primarily understood, its different dogmatical underpinning notwithstanding, as a *de minimis* limitation on patent rights rather than as a broader mechanism for facilitating public-interest uses.⁶¹

[End of Annex and of document]

⁵⁹ See a response from United Kingdom to C.9304 dated January 30, 2026, published on the SCP Electronic Forum website at: https://www.wipo.int/en/web/scp/electronic-forum/meetings/session-38/comments_received.

⁶⁰ See document SCP/20/3, pp. 7 and 8 and document SCP/29/3, pp. 20-22.

⁶¹ Christopher Garrison, Exceptions to Patent Rights in Developing Countries, UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue Paper No. 17, UNCTAD/ITE/IPC/2006/12 (2006)