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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Eighteenth Session
Geneva, May 25 to 29, 2009

DRAFT QUESTIONNAIRE ON LIMITATIONS AND EXCEPTIONS

prepared by the Secretariat

INTRODUCTION

The WIPO Standing Committee on Copyright and Related Rights (SCCR) has agreed to address the issue of exceptions and limitations to copyright and related rights for the purposes of education, libraries and disabled persons, with a view to strengthen international understanding of the need to have adequate limitations, exploring existing and proposed models of protection, and moving towards agreement regarding these specific exceptions.

In line with the above initiative, during the 17th session of the SCCR held in November 2008, the WIPO Secretariat was requested to prepare a draft questionnaire regarding exceptions and limitations, with particular emphasis on the issues regarding education, libraries and disabled persons, for the consideration of Member States of the SCCR in 18th session to be held in May 2009.

Member States are invited to present their comments on and approve this draft questionnaire. Subsequently, the Secretariat will make the necessary arrangements to enable Member States to complete the final questionnaire electronically, or to print it out and complete it in hard copy by October 1, 2009.

This draft questionnaire comprises 52 questions distributed in four parts: the first on general questions on limitations and exceptions, the second on limitations and exceptions for educational activities, the third on limitations and exceptions for libraries and archives, and the fourth on limitations and exceptions for the disabled persons. The questions on the two latter parts are aimed at complementing the studies commissioned by WIPO regarding both topics, namely the WIPO Study on Limitations and Exceptions for the Visually Impaired, prepared by Judith Sullivan (document SCCR/15/7)¹, and the WIPO Study on Limitations and Exceptions for Libraries and Archives, prepared by Kenneth Crews (document SCCR/17/2)².

¹ Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696

² Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

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

Country: _____

by

Name and contact information: _____

Part I: General

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

Specific

Open

Mixed

Others, please describe: _____

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

Yes

No

Partially, please describe: _____

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

Yes

No

If yes, please describe: _____

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

Yes

No

If yes, please describe: _____

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

Yes

No

6. Does your national statute include as limitations or exceptions 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

8. Does your national statute allow precluding the exercise of limitations and exceptions when right owners offer licensing schemes?

Yes

No

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 and rights management information?

Yes

No

11. 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 list them: _____

12. 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: _____

13. 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: _____

Part II: Limitations and Exceptions related to Educational Activities

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

- Yes
 No

15. 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

On performances³

16. Does your national statute provide limitations and exceptions on performances for educational purposes, such as performances by teachers in classrooms or school concerts?

- Yes
 No

17. Does your national statute provide remuneration against the exercise of limitations and exceptions on performances for educational purposes?

- Yes
 No

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

- Yes
 No

³ 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.

If yes, please describe: _____

19. Who can benefit from the limitations and exceptions on performances for educational purposes? (more than one option can be selected)

Teachers

Students

Educational institutions

Others. Please describe: _____

20. In case educational institutions are among the beneficiaries of limitations and exceptions on 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: _____

21. Does your national statute establish qualitative or quantitative limits regarding the performances under the limitations and exceptions (for instance, a given percentage, substantive parts, whole work or only fragments)?

Yes

No

If yes, please describe: _____

On reproduction

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

Yes

No

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

Reprography

Digital copying

Others. Please describe: _____

24. Do the limitations or exceptions on reproduction include the preparation of coursepacks, compilations or anthologies?

- Yes
 No

If yes, please describe: _____

25. Does your national statute provide remuneration against the exercise of limitations and exceptions on reproduction for educational purposes?

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

27. Who can benefit from the limitations and exceptions on reproduction for educational purposes? (more than one option can be selected)

- Teachers
 Students
 Educational institutions
 Others. Please describe: _____

28. In case educational institutions are among the beneficiaries of limitations and exceptions on 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: _____

29. Does your national statute establish qualitative or quantitative limits regarding the reproduction under the limitations and exceptions (for instance, number of pages, a given percentage, substantive parts, whole work or only fragments)?

Yes

No

If yes, please describe: _____

30. 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: _____

31. Does your copyright law include any other limitations or exceptions related to educational purposes that have not been covered above?

On translations

32. Does your national statute provide limitations and exceptions on translations for educational purposes?

Yes

No

33. Does your national statute provide remuneration against the exercise of limitations and exceptions on translations for educational purposes?

Yes

No

If yes, please describe: _____

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

Yes

No

If yes, please describe: _____

35. Who can benefit from the limitations and exceptions on translations for educational purposes? (more than one option can be selected)

Teachers

Students

Educational institutions

Others. Please describe: _____

36. In case educational institutions are among the beneficiaries of limitations and exceptions on 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: _____

37. Does your national statute establish qualitative or quantitative limits regarding the translations under the limitations and exceptions (for instance, number of pages, a given percentage, substantive parts, whole work or only fragments)?

Yes

No

If yes, please describe: _____

On making available in digital networks

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

Yes

No

39. Do the limitations or exceptions on making available in digital networks include coursepacks, compilations or anthologies?

Yes

No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

41. 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 making available in digital networks for educational purposes?

- Yes
 No

If yes, please describe: _____

42. Who can benefit from the 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: _____

43. In case educational institutions are among the beneficiaries of limitations and exceptions on 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: _____

44. Does your national statute establish qualitative or quantitative limits regarding the making available in digital networks under the limitations and exceptions (for instance, number of pages, a given percentage, substantive parts, whole work or only fragments)?

- Yes
 No

If yes, please describe: _____

45. 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: _____

46. Does your copyright law include any other limitations or exceptions related to educational purposes that have not been covered above?

Yes

No

Part III: Limitations and Exceptions related to Libraries and Archives

As explained above, the purpose of this part is to complement the information on limitations and exceptions not covered by the WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives (document SCCR/17/2).

47. If your national statute is included in the analysis of specific exceptions contained in the Annex⁴ of the above study, 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:

48. Does your national statute include provisions regarding orphan works?

- Yes
 No

If yes, please describe: _____

49. Does your country have plans to include or modify the exceptions and limitations for the benefit of libraries and archives?

- Yes
 No

If yes, please describe: _____

⁴ Document SCCR/17/2, page 72. Available at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

Part IV: Limitations and Exceptions for People with Disabilities

As explained above, the purpose of this part is to complement the information on limitations and exceptions on disabled persons not covered by the WIPO Study on Limitations and Exceptions for the Visually Impaired (document SCCR/15/7).

50. If your national statute is included in the analysis of specific exceptions contained in Annexes 2⁵ and 3⁶ of the above study, 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:

51. Does your country have plans to include or modify the exceptions and limitations for the benefit of visually impaired persons or other disabled persons?

- Yes
 No

If yes, please describe: _____

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

[End of questionnaire]

⁵ Document SCCR/15/7, page 138. Available at
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696

⁶ Idem, page 183