

# WIPO



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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

## **STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**Nineteenth Session**  
**Geneva, December 14 to 18, 2009**

SECOND DRAFT QUESTIONNAIRE ON LIMITATIONS AND EXCEPTIONS

*prepared by the Secretariat*

## INTRODUCTION

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

During the 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 before July 15, 2009. Based on those comments, the Secretariat would present a revised questionnaire at least one month prior to the nineteenth session of the SCCR for consideration and with the aim of final approval during that session.

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

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

This draft questionnaire comprises 116 questions distributed in seven parts:

- Part I on general questions on limitations and exceptions;
- Part II on limitations and exceptions for educational activities;
- Part III on limitations and exceptions for libraries and archives;
- Part IV on limitations and exceptions for persons with disabilities;
- Part V on questions relating to religious, social and cultural exceptions;
- Part VI on other questions regarding digital technology; and
- Part VII on general questions to cover areas left out in Parts I to VI.

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

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

by

Name and contact information: \_\_\_\_\_

*Part I: General*

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

Specific

Open

Mixed

Others, please describe: \_\_\_\_\_

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

Yes

No

Partially, please describe: \_\_\_\_\_

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

Yes

No

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

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

Yes

No

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

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

Yes

No

6. Does your national statute include specific limitations or exceptions permitting the use of copyrighted works for private or personal purposes, without previous authorization of the copyright or related rights owner?

- Yes  
 No

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

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

- Yes  
 No

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

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

- Yes  
 No

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

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

- Yes  
 No

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

10. Does your national statute protect technological measures?

- Yes  
 No

11. Does your national statute protect rights management information?

- Yes  
 No

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

- Yes  
 No

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

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

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

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

- Yes  
 No

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

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

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

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

- Yes  
 No

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

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

Yes

No

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

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

Yes

No

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

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

Yes

No

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

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

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

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

Yes

No

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

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

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

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

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

*Part II: Limitations and Exceptions related to Educational Activities*

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

Yes

No

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

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

Face-to-face activities

Distance education

Both

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



*On performances<sup>1</sup>*

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

Yes

No

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

27. Does your national statute provide remuneration against the exercise of the specific limitations and exceptions that permit performances for educational purposes?

Yes

No

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

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

Yes

No

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

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

Teachers

Students

Educational institutions

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

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<sup>1</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.

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

For-profit

Not-for-profit

Public

Private

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

*On reproduction*

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

Yes

No

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

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

Reprography

Digital copying

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

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

Yes

No

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

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

Yes

No

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

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

Yes

No

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

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

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

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

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

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

- Yes  
 No

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

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

- Yes  
 No

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

*On translations*

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

Yes

No

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

Yes

No

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

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

Yes

No

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

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

Teachers

Students

Educational institutions

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

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

For-profit

Not-for-profit

Public

Private

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

*On making available in digital networks*

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

Yes

No

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

Yes

No

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

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

Yes

No

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

48. Does your national statute provide for any specific requirement regarding the qualitative or quantitative limits extent and nature of the works or objects of related rights covered by the specific limitations and exceptions for making available in digital networks for educational purposes?

Yes

No

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

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

Teachers

Students

Educational institutions

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

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

For-profit

Not-for-profit

Public

Private

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

51. Does your national statute subject the limitations and exceptions on making available in digital networks for educational purposes to the use of technological measures?

Yes

No

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

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

Yes

No

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

Yes

No

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

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

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

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

Yes

No

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



*Part III: Limitations and Exceptions related to Libraries and Archives*

56. If your national statute is included in the analysis of specific exceptions contained in the Annex of the WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives (document SCCR/17/2)<sup>2</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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57. 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: \_\_\_\_\_

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

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

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

- Yes  
 No

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

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

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

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<sup>2</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)

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

Yes

No

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

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

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

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

Yes

No

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

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

Yes

No

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

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

Yes

No

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

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

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

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

Yes

No

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

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

Yes

No

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

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

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

70. Does your national statute contain any limitations or exceptions that permit libraries to reproduce and/or distribute works (either reprographic and/or digital) for the purposes of interlibrary lending?

Yes

No

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

71. Does your national statute contain any limitations or exceptions that permit any other organizations (such as museums or educational institutions) to reproduce or distribute works for archival, preservation, or replacement purposes?

Yes

No

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

*Part IV: Limitations and Exceptions for Persons with Disabilities*

72. If your national statute is included in the analysis of specific exceptions contained in Annexes 2 and 3 of the Study on Limitations and Exceptions for the Visually Impaired (document SCCR/15/7)<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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73. Does your national statute contain any limitations or exceptions that permit reproduction, distribution, and/or other form of utilization of works for visually impaired persons, including the reading impaired?

- Yes  
 No

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

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

- Yes  
 No

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

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

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

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<sup>3</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)

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

Yes

No

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

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

Yes

No

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

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

Yes

No

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

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

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

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

Yes

No

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

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

Yes

No

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

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

Yes

No

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

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

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

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

Yes

No

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

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

Yes

No

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

86. Are the limitations and exceptions in your national statute concerning persons with disabilities considered suitable within the socio-economic reality of your country?

Yes

No

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

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

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

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

Yes

No

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

*Part V: Religious, social and cultural exceptions*

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

- Yes  
 No

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

- Religious activities  
 Cultural Activities  
 Social Activities

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

- Yes  
 No

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

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

- Yes  
 No

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

- Yes  
 No

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



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

- Yes  
 No

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

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

- Yes  
 No

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

- Yes  
 No

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

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

- Yes  
 No

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

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

- Yes  
 No

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

- Yes  
 No

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

*Part VI: Other questions on digital technology*

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

Yes

No

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

101. Does your national statute impose any kind of liability (direct, indirect, or secondary) according to which a party can be held liable for the copyright infringement of third parties under certain circumstances (such as when that party has the ability to control an infringer's actions or contributes to a third party's infringing actions)?

Yes

No

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

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

Yes

No

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

103. With respect to liability that arises from the infringement of a third party, for which of the following activities, if any, does your national statute provide limitations or exceptions to the liability of online service providers?

Acting as a conduit for infringing material (e.g., transmitting, routing, or supplying connections for material)

Caching infringing material

Storing infringing material at the direction of a user

Providing access by means of information search tools such as indices, references, hyperlinks and directories to infringing materials that users post

Others. Please specify: \_\_\_\_\_

104. What conditions, if any, must be met in order for an online service provider to qualify for the limitation of liability, exception to liability, or statutory safe harbor (statutory safe harbor refers to any statutory enactment which provides that a person will not be liable upon taking certain measures)?

Please specify: \_\_\_\_\_

*Part VII: General questions to cover areas left out in Part I to VI*

105. Are the following limitations or exceptions included in your national statute? (more than one option can be selected)

- right of quotation
- news reporting
- ephemeral copies
- incidental uses
- government uses
- non-voluntary license for broadcasting
- non-voluntary license for mechanical reproduction of musical works

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

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

- Yes
- No

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

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

- Yes
- No

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

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

- Yes
- No

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

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

- Yes
- No

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

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

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

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

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

112. Are there ongoing negotiations to sign a FTA?

Yes

No

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

113. If so, with which countries?

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

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

Yes

No

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

[End of document]