

FINAL QUESTIONNAIRE ON LIMITATIONS AND EXCEPTIONS

prepared by the World Intellectual Property Organization (WIPO) Secretariat

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

Country: MALAWI

by

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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: __Yes the Act specifically allows use of copyright works under Section 10 for personal or private without the author's consent and without the obligation to pay remuneration for the use of such a work.

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: The Act requires that uses of works in the case of any work that has been lawfully published is permissible without the author's consent and without the obligation to pay remuneration for the use of such work

10. Does your national statute protect technological measures?

- Yes
 No

11. Does your national statute protect rights management information?

- Yes
 No

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

- Yes
 No

If yes, please describe: _____

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

Please describe: _Not sure. It would go through the normal process of court since there are no specialized courts to deal with matter of such nature.

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

- Yes
 No

If yes, please describe: _____

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

Please describe: __Not sure. It would go through the normal process of court since there are no specialized courts to deal with matter of such nature

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

- Yes
 No

Please describe: __The present Act does not provide specific protection for computer programs let alone exceptions and limitations applicable to computer programs. _____

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

- Yes
 No

Please describe: _ The present Act does not provide exceptions and limitations applicable to digital works. _____

18. Does your national statute include limitations and exceptions, or statutory safe harbors (statutory safe harbor refers to any statutory enactment which provides that a person will not be liable upon taking certain measures), for the activities of the service providers of digital transmission of works?

- Yes
 No

Please describe: __Same answer as in 16 and 17 _____

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: _Similar answer to 16, 17 and 18 _____

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

Please describe:___ It would go through the normal process of court since there are no specialized courts to deal with matter of such nature

Part II: Limitations and Exceptions related to Educational Activities

21. If your national statute is included in the analysis of specific exceptions contained in any of the studies on limitations and exceptions for educational or research activities (documents SCCR/19/4, SCCR/19/5, SCCR/19/6, SCCR/19/7, SCCR/19/8)¹, do you consider that the analysis is correct?

- Yes
 No
 The national statute was not included in the analysis

If you do not consider that the analysis is correct, please describe why:

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

- Yes
 No

Please list them: Use of the work by way of illustration in publications, broadcasts, programs distributed by cable, audiovisual works or sound recordings in schools, universities and professional training.

¹ For Latin American and the Caribbean countries, document SCCR/19/4. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130303

For African countries, document SCCR/19/5. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130241

For Arab countries, document SCCR/19/6. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130302

For Asian and the Pacific countries, document SCCR/19/7. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130249

For countries in North America, Europe, Caucasus, Central Asia and Israel, document SCCR/19/8. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130393

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

- Face-to-face activities
 Distance education
 Both

Please list them: _____

On performances²

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

² Performance is used here *lato sensu*. It is a broadly applied practice in national legislation to use terms other than those appearing in the international norms on copyright and related rights; that is, to characterize the acts and rights concerned in a way different from the way they are characterized legally in the said international norms. As in the current case, for example, several countries may grant a “right of public performance” in a way that it covers more or less all non-copy-related rights (not only the performance *stricto sensu*, but also and in particular, the right of broadcasting and the right of communication to the public by cable (wire), which, in the Berne Convention are construed as separate rights), or it is also frequent in national laws that a broader right of broadcasting is provided which also covers the right of communication to the public by cable (wire), a separate right under the Berne Convention.

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

- Teachers
- Students
- Educational institutions
- Others. Please describe: _____

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

- For-profit
 - Not-for-profit
 - Public
 - Private
 - Others. Please describe: __The Act is silent on this.
-

On reproduction

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

- Yes
- No

If yes, please describe: Use of the works by way of illustration in publication, broadcast, programmes distributed by cable, or audio-visual works or sound recordings for teaching to the extent justified by the purpose of the work in schools, universities and professional training. _____

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

- Reprography
- Digital copying
- Others. Please describe: _____

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

- Yes
- No

If yes, please describe: __The Act does not specifically indicate the type of reproduction allowed. It is inferred within the provisions on limitations and exceptions._____

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

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

- Teachers
 Students
 Educational institutions
 Others. Please describe: _____

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

- For-profit
 Not-for-profit
 Public
 Private
 Others. Please describe . The Act is silent on this.: _____

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

- Yes
 No

If yes, please describe: _____

On translations

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

- Yes
 No

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

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

- Teachers
 Students
 Educational institutions
 Others. Please describe: _____

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

- For-profit
 Not-for-profit
 Public
 Private
 Others. Please describe: _____ The Act is silent on this.
-

On making available in digital networks

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

- Yes
 No

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

- Yes
 No

If yes, please

describe: _____ N/A _____

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

- Yes
 No

If yes, please

describe: _____ N/A _____

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

- Yes
 No

If yes, please

describe: _____ N/A _____

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

- Teachers
 Students
 Educational institutions
 Others. Please

describe: _____ N/A _____

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

- For-profit
- Not-for-profit
- Public
- Private
- Others. Please

describe: ___N/A_____

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

- Yes
- No

If yes, please

describe: _____N/A_____

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

- Yes
- No

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

Please describe: ___Use of works available in digital environment_____

51. Are there impediments to the use of limitations and exceptions for educational purposes (international constraints, capacity building, lack of information about the limitations and exceptions, etc.)?

- Yes
- No

If yes, please describe: ___Lack of information about existence of limitations and exceptions._____

Part III: Limitations and Exceptions related to Libraries and Archives

52. If your national statute is included in the analysis of specific exceptions contained in the Annex of the WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives (document SCCR/17/2)³, 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:

53. Does your national statute contain any limitations or exceptions that permit copying by libraries and/or archives for purposes of preservation or replacement?

- Yes
 No

Please describe: Reproduction by public libraries and non-commercial documentation centres for electronic storage

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

Please describe: photography, audiovisual work or sound recording

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

- Yes
 No

Please describe: _____

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

Please describe: N/A

³ Document SCCR/17/2, page 72. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

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

- Yes
 No

Please describe: _____

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

Please describe: ___N/A_____

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: __We are currently reviewing our current copyright Act to include areas such as these ones._____

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

Please describe: ___N/A_____

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

- Yes
 No

If yes, please describe: __Lack of information about limitation and exceptions_____

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

- Yes
 No

Please describe: _____

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

Please describe: _____ N/A _____

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

- Yes
 No

Please describe: _____

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

- Yes
 No

Please describe: Electronic storage by public libraries, non-documentation centres, scientific institutions and educational establishments. _____

Part IV: Limitations and Exceptions for Persons with Disabilities

67. If your national statute is included in the analysis of specific exceptions contained in Annexes 2 and 3 of the Study on Limitations and Exceptions for the Visually Impaired (document SCCR/15/7)⁴, 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:

68. Does your national statute contain any limitations or exceptions that permit reproduction, distribution, and/or other form of utilization of works for persons with print disabilities⁵ or visually impaired persons, including the reading impaired?

- Yes
 No

Please describe: _____

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

- Yes
 No

Please describe: _____ N/A _____

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

Please describe: _____ N/A _____

⁴ Document SCCR/15/7, page 138. Available at:
http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696

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

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

- Yes
 No

Please describe: _____ N/A _____

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

- Yes
 No

Please describe: _____ N/A _____

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

- Yes
 No

Please describe: _____ N/A _____

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

Please describe: _____ N/A _____

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

- Yes
 No

Please describe: _____ N/A _____

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

- Yes
- No

Please describe: _____ N/A _____

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

- Yes
- No

Please describe: _____ N/A _____

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

Please describe: _____ N/A _____

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

- Yes
- No

Please describe: _____ N/A _____

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

- Yes
- No

If yes, please describe: _____ N/A _____

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

Please

describe: _____N/A_____

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

Yes

No

Please

describe: _____N/A_____

Part V: Religious, social and cultural exceptions

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

Yes

No

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

Religious activities

Cultural Activities

Social Activities

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

Yes

No

If yes, please describe: _____

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

Yes

No

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

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

- Yes
 No

If yes, please describe: _____

Part VI: Other questions on digital technology

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

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

- Yes
 No

If yes, please describe: _____

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

- Acting as a conduit for infringing material (e.g., transmitting, routing, or supplying connections for material)
 Caching infringing material
 Storing infringing material at the direction of a user
 Providing access by means of information search tools such as indices, references, hyperlinks and directories to infringing materials that users post
 Others. Please specify: _____ N/A _____

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

Please specify: _____ N/A _____

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

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

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

Please describe: Sections 10 and 17 to 22 of the Copyright Act describes limitations and exceptions in relation to the above-mentioned uses. However, government use is not specifically mentioned in the Act.

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

- Yes
- No

If yes, please describe: _____

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

- Yes
- No

Please describe: Malawi has signed FTA binding COMESA countries and it is in the process of signing TRIPS Agreement.

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

Please describe: COMESA, WTO members _____

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

This questionnaire has provided an insight to what areas need to be included in our Copyright Act in terms of exceptions and limitations which currently are not available. This is important as Malawi is in the process of reviewing its Copyright

legislation. _____

[End of questionnaire]