

Copyright User Rights Survey v 11.11

INSTRUCTIONS

Thank you for agreeing to participate in our Copyright User Rights survey. We ask that you read all the instructions carefully before beginning the survey. You are encouraged to send any requests for clarification to our discussion board at infojustice.org/survey.

Purpose and Public Use

The purpose of this survey is to build a cross-country data set of changes in copyright user rights over time. This dataset, in turn, will enable econometric and other empirical studies of the impact of such changes.

To help us identify changes in law over time, we are asking copyright experts from around the world to fill out this survey. Researchers at American University Washington College of Law will then verify the information from the surveys and compile it into a database of legal changes that will be made available publicly through a Creative Commons license.

“User rights” in “Law”

This survey is designed to collect information about when your country’s *law* included particular types of copyright *user rights*. We mean to define each term broadly to document the full range of legal permission to use copyright material without authorization that exist in all parts of law.

- **“Law”** is meant to include all authoritative, published rules or interpretations. Such law may include statutory law, administrative regulations or directives, decisions by courts, enforcement agencies or others. We invite you to use the comment space provided for each question to clarify your responses wherever needed.
- **“User rights”** is defined as any functional permission to use copyright protected material without authorization of the right holder. User rights may exist in any part of the law, including in limitations or exceptions to protection, in definitions of the scope of protection or of copyrightable subject matter, in

automatic remuneration schemes (a.k.a. liability rules or statutory licenses), and in protections from liability or enforcement. User rights may exist within copyright specific statutes or decisions, or by virtue of other areas of law, such as constitutional rights, competition, consumer protection, or other fields of law. Once again, please use the comment space for further clarification of responses if needed.

Range of years recognized

Most of the questions ask that you fill in a range of years in which a user right was recognized – e.g. 1970-1985. Simply write into the applicable box your best estimate of when the user right was first recognized by any source of law, and when, if ever, the law on the user right subsequently changed.

We ask for information going back to 1970. This is to set our period of inquiry to the modern period in which copyright law has been more frequently changing, when economic and other impact data is available, and which may be within the more immediate knowledge of our surveyors.

Mostly/Probably - Mostly not/Probably not

We ask for your judgment on the degree of clarity in the law in regard to each user right. This is in recognition that changes in the law often occur through periods of re-interpretation in which there may be periods of ambiguity. For example, one may indicate that a given exception was “mostly/probably included” from 1970 to 1980 (e.g. by virtue of ambiguous statute or court decisions) and then “clearly included” from a later period, e.g. 1980-present, following a legal clarification. You are encouraged to use the comment section provide any clarification.

Not applicable

You may leave any box blank, or write “NA,” where there is no data for that entry. For example, if the user right was “clearly included” from 1970 to present, fill in only “1970-present” in the “clearly included” column and leave the rest of the boxes in column blank, or write “NA” in them.

General user right

By “**general**,” we mean that the exception applies to multiple categories of purpose (e.g. research, criticism, etc.) based on application of a common balancing test. For example, U.S. “fair use” and UK “fair dealing” exceptions are each “general” in that they subject a range of categories of purpose to a common balancing test.

Open to any purpose

An exception is “**open to any purpose**” if it authorizes uses without restriction as to the purpose of the use. In this sense, a user right may be general but not open to any purpose, as is UK’s fair dealing right.¹ Some specific (non-general) exceptions are also open to any purpose. For example, South Africa’s law authorizes quotation for any purpose.² Kenya’s Computer Programs exception is another example of an exception open to any purpose.³

¹ Copyright, Designs and Patents Act 1988, c. 48 (Eng.), <http://www.legislation.gov.uk/ukpga/1988/48/section/30> (authorizing fair dealing for the purposes of criticism, review and news reporting).

² Copyright Act 98 of 1978 § 12(3) (S. Afr.) (permitting “[A]ny quotation. . . . [c]ompatible with fair practice . . .”).

An exception is “**open to any purpose**” if it authorizes uses without restriction as to the purpose of the use. In this sense, a user right may be general but not open to any purpose, as is UK’s fair dealing right.⁴ Some specific (non-general) exceptions are also open to any purpose. For example, South Africa’s law authorizes quotation for any purpose.⁵ Kenya’s Computer Programs exception is another example of an exception open to any purpose.⁶

Commercial uses

Where applicable, the survey requests information on whether the given user right extends to commercial (i.e. – for profit) uses.

Open to use of any type of work

A user right is “**open to any type of work**” if its application is not restricted to a subclass of protected works. For example, some quotation or incidental use exceptions may only apply to the use of literary and artistic works, excluding application to audio-visual or cinematographic works. It is important to consider subsequent amendments for this question, as often (but not always) exceptions to rights are expanded at the same time as subjects of protection.

Open to any type of user

An exception is “**open to any user**” if it does not restrict the types of persons or organizations that may make use of the rights. Some education exceptions, for example, can only be used by students, or by teachers, but not those acting on their behalf (e.g. a copy shop or library).

Subject to a balancing test

A user right is “**subject to a balancing test**” if application of the provision requires case-by-case consideration of the interests of the rights holder weighed against the social purpose of right. Answer in the affirmative if the user right includes consideration case-by-case factors such as:

“consistent with fair practice,”

“to the extent justified by the purpose,”

“conflict with a normal exploitation of the work” or

“unreasonable prejudice to the legitimate interests of the rights holder”

Citations

³ The Copyright Act (2014) Cap. 130 § 4 (Kenya) (authorizing reproduction of computer programs “[F]or any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program”).

⁴ Copyright, Designs and Patents Act 1988, c. 48 (Eng.), <http://www.legislation.gov.uk/ukpga/1988/48/section/30> (authorizing fair dealing for the purposes of criticism, review and news reporting).

⁵ Copyright Act 98 of 1978 § 12(3) (S. Afr.) (permitting “[A]ny quotation. . . [c]ompatible with fair practice . . .”).

⁶ The Copyright Act (2014) Cap. 130 § 4 (Kenya) (authorizing reproduction of computer programs “[F]or any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program”).

Each question provides a column for a legal citation. Please provide the law, court decision, or administrative regulation or directive that supports your answer. (If you wish, you may instead enter the citation in the same space where you enter the years when your country's law included each level of protection.)

Additional Comments

Each question is followed by a space for comments. You may use this space to provide any additional information that may be useful in understanding the law relevant to the specific question. You may include a quotation from the given law in this space if it would be useful to interpret your answers. We particularly encourage the use of the comment section whenever your answer includes use of one of the "probably" categories.

Remuneration

Where appropriate, we ask whether the user right requires remuneration, for example in the form of levies on media goods, statutory licenses, etc.

"Don't know"

There may be questions that you are not able to answer authoritatively. We invite you to skip such questions, or columns within the questions, by entering "Don't know." We would be eager for any references to individuals who may be able to answer any skipped questions.

Glossary of terms

We have compiled a draft [glossary of terms](#) associated with this survey. If there are any terms that remain unclear to you, please send a message to the discussion board at infojustice.org/survey.

Personal Information

Name

University or Organization

Email address

1. General Exception

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a general exception for the use of copyrighted works

Columns (2-6) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to the general exception

Column (7) Provide citations to the law (including legislated law, regulations, and court cases) that support your answers

	(1) Exception recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use of any type of work	(5) Open to any type of user	(6) Subject to a balancing test	(7) Citations
Clearly Included							
Mostly/ Probably Included							
Mostly not/ Probably Not Included							
Not Included							

(8) Comments:

2. Quotation

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting unauthorized quotations or excerpts

Columns (2-8) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (9) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use of quotations <u>of</u> any type of work	(5) Open to use of quotations <u>in</u> any type of new work	(6) Open to any type of user	(7) Open to the free display of excerpts or snippets online*	(8) Subject to a balancing test	(9) Citations
Clearly Included									
Mostly/ Probably Included									
Mostly Not/ Probably Not Included									
Not Included									

(10) Comments:

3. Education

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting unauthorized educational uses

Columns (2-9) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (10) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use of any type of work	(5) Open to any type of user	(6) Open to online courseware	(7) Open to collections of works	(8) Open to the reproduction or creation of textbooks for students	(9) Subject to a balancing test	(10) Citations
Clearly Included										
Mostly/ Probably Included										
Mostly not/ Probably Not Included										
Not Included										

(11) Additional comments:

4. Research

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the unauthorized use of works for research

Columns (2-5) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (6) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to commercial uses	(3) Open to use of any type of work	(4) Open to any type of user	(5) Subject to a balancing test	(6) Citations
Clearly Included						
Mostly/ Probably Included						
Mostly Not/ Probably Not Included						
Not Included						

(7) Additional comments:

5. Personal or Private Uses

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting unauthorized personal or private uses

Columns (2-9) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (10) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to use of any type of work	(4) Open to any type of user	(5) Open to format-shifting	(6) Open to time-shifting	(7) Open to online (cloud) storage	(8) Subject to a balancing test	(9) Subject to remuneration	(10) Citations
Clearly Included										
Mostly/ Probably Included										
Mostly not/ Probably not Included										
Not Included										

(11) Additional comments:

6. Computer Programs

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting unauthorized uses of computer programs

Columns (2-8) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (9) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to any type of user	(5) Open to reverse engineering to create interoperable products	(6) Open to the making of copies regardless of contractual provisions to the contrary	(7) Open to un-authorized uses of interfaces	(8) Subject to a balancing test	(9) Citations
Clearly Included									
Mostly/ Probably Included									
Mostly Not/ Probably Not Included									
Not Included									

(10) Additional comments:

7. Databases or Other Compilations of Non-Original Facts

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the unauthorized use of databases or other compilations of non-original facts. In this question, as in the others, we are interested in the *user right* regardless if it is found in your nation's copyright law or in another area of law (such as a separate law on databases).

Columns (2-5) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (6) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to any type of user	(5) Subject to a balancing test	(6) Citations
Clearly Included						
Mostly/ Probably Included						
Mostly Not/ Probably Not Included						
Not Included						

(7) Comments

8. Text- and Data-Mining

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the use of a work in order to carry out a computational analysis of anything recorded in the work, e.g. for the purposes of data-mining or text-mining.

Columns (2-6) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (7) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use of any type of work	(5) Open to any type of user	(6) Subject to a balancing test	(7) Citations
Clearly Included							
Mostly/ Probably Included							
Mostly Not/ Probably Not Included							
Not Included							

(8) Comments:

9. Library Rights

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting unauthorized uses by libraries

Columns (2-8) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (9) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to use of any type of work	(4) Open to archiving or preservation uses	(5) Open to copies for research of patrons	(6) Open to providing copies to other libraries	(7) Subject to a balancing test	(8) Subject to remuneration	(9) Citations
Clearly Included									
Mostly/ Probably Included									
Mostly Not/ Probably Not Included									
Not Included									

(10) Comments:

10. Disability Access

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the making of copyrighted works accessible to people with disabilities

Columns (2-6) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (7) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to commercial uses	(3) Open to use of any type of work	(4) Open to any type of user	(5) Open to use for any type of disability	(6) Subject to a balancing test	(7) Citations
Clearly Included							
Mostly/ Probably Included							
Mostly Not/ Probably Not Included							
Not Included							

(8) Comments:

11. Transformative Use

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the transformation of a protected work into a new work with a different purpose and intended audience⁷

Columns (2-7) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column 8) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use <u>of</u> any type of work	(5) Open to use <u>in</u> any type of new work	(6) Open to any type of user	(7) Subject to a balancing test	(8) Citations
Clearly Included								
Mostly/ Probably Included								
Mostly Not/ Probably Not Included								
Not Included								

(9) Comments:

⁷ Note: A user right that allows some but not all types of transformative use – such as one only for adaptations – would qualify as recognizing a user right of this category, albeit one not open to any purpose.

12. Parody and/or Satire

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting unauthorized use of works in parody and/or satire

Columns (2-7) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (8) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to commercial uses	(3) Open to use of any type of work	(4) Open to any type of user	(5) Open to parody	(6) Open to satire	(7) Subject to a balancing test	(8) Citations
Clearly Included								
Mostly/ Probably Included								
Mostly Not/ Probably Not Included								
Not Included								

(9) Comments:

13. Incidental Inclusion

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the incidental inclusion of a copyrighted work in a new work

Columns (2-7) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (8) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use <u>of</u> any type of work	(5) Open to use <u>in</u> any type of new work	(6) Open to any type of user	(7) Subject to a balancing test	(8) Citations
Clearly Included								
Mostly/ Probably Included								
Mostly Not/ Probably Not Included								
Not Included								

(9) Comments:

14. Panorama Right (Works in Public Spaces)

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the unauthorized reproduction of visual works stored in public spaces, such as architecture and public art (a.k.a. the “panorama right”)

Columns (2-8) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (9) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use <u>of</u> any type of work	(5) Open to use <u>in</u> any type of work	(6) Open to any type of user	(7) Subject to a balancing test	(8) Subject to remuneration	(9) Citations
Clearly Included									
Mostly/ Probably Included									
Mostly not/ Probably Not Included									
Not Included									

(10) Comments:

15. Orphan Works

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the unauthorized use of orphan works

Columns (2-8) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right.

Column (9) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use of any type of work	(5) Open to any type of user	(6) Subject to a balancing test	(7) Subject to the condition that the user conduct a diligent search for owner	(8) Subject to remuneration ⁸	(9) Citations
Clearly Included									
Mostly/ Probably Included									
Mostly not/ Probably Not Included									
Not Included									

(10) Comments:

⁸ If the user right is subject to a remuneration scheme, the structure of which may affect the user right in an unclear way, please use the comments section to elaborate.

16. National Government Works

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting the unauthorized use of national government works

Columns (2-6) Enter the ranges of years since 1970, if any, when the characteristics listed in the column headers applied to this right

Column (7) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) User right recognized	(2) Open to any purpose	(3) Open to commercial uses	(4) Open to use of any type of work	(5) Open to any type of user	(6) Subject to a balancing test	(7) Citations
Clearly Included							
Mostly/ Probably Included							
Mostly not/ Probably Not Included							
Not Included							

(8) Additional comments:

17. Exhaustion of Rights

Instructions:

Columns (1-3) Enter the ranges of years since 1970, if any, when the law included provisions for the national, regional, or international exhaustion of copyrights (a.k.a. first sale; Regional or international exhaustion permits parallel importation between countries.)

Column (4) Enter the ranges of years since 1970, if any, when the law included provisions for the exhaustion of rights in the digital environment

Column (5) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(1) National exhaustion (rights exhaust on first sale in the country)	(2) Regional exhaustion (rights exhaust on first sale in a region)	(3) International exhaustion (rights exhaust on first sale in any country)	(4) Digital exhaustion (rights exhaust on first sale through digital means)	(5) Citations
Clearly Included					
Mostly/ Probably Included					
Mostly not/ Probably Not Included					
Not Included					

(6) Comments:

Column (11) In what ranges of years since 1970, if any, were internet services protected from a general⁹ obligation to monitor or proactively review user content in any situation, including through "takedown and staydown" requirements, "duties of care," or other monitoring obligations?

Column (12) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answers

	(11) Protection from obligation recognized	(12) Citations
Clearly Included		
Mostly/ Probably included		
Less/ Probably Not Included		
Not Included		

(13) Comments:

⁹ By "general" we mean an obligation under the law that applies to all service providers. This does not include obligations to monitor that may be found in contracts between content providers and service providers.

19. Temporary Copies for Technological Processes

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a user right permitting temporary copies to be made to allow for the functioning of technological processes

Columns (2) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answer

	(1) User right recognized	(2) Citations
Clearly Included		
Mostly/ Probably included		
Mostly not/ Probably Not Included		
Not Included		

(3) Comments:

20. Supremacy of Contracts

Instructions:

Column (1) Enter the ranges of years since 1970, if any, when the law included a provision indicating that copyright user rights may not be waived by contract

Columns (2) Provide citations to the laws (including legislated law, regulations, and court cases) that support your answer

	(1) Provision recognized	(2) Citations
Clearly Included		
Mostly/ Probably included		
Mostly not/ Probably Not Included		
Not Included		

b) Additional comments:

21. Anticipated Future Changes to the Law

Do you expect to see changes in your country's law on copyright user rights in the next few years? If so, do you anticipate there will be changes within the next few years to the answers to any of the questions you answered above? Which user right may change, and what revisions may be up for debate in a legislature, or placed before the judiciary to decide?

Please use the space below to describe any possible changes in the next few years.