

Copyright Limitations and Exceptions for Educational Activities

EXECUTIVE SUMMARY

The importance of education in any society is axiomatic. Even where copyright legislation and international treaties seek to protect the rights of authors in their works and intellectual creations, the special status of the use of works to promote and facilitate education has been preserved.

It is in this context that this study undertakes a review of the limitations and exceptions of national legislation that deal with educational activities, to better understand how national legislatures have balanced the public interest in advancing education against the interests of authors and artistes in their intellectual creations. The copyright legislation of all 188 member states of WIPO that pertain to educational activities are the focus of this review. However, because of access issues with regards to accurate and current translations of member states' legislation, this draft study will present its analysis and findings only with regards to the copyright legislation of 136 member states. (When completed, this study will review the legislation of all 188 member states.)

This study focuses on eight categories of limitations and exceptions that pertain to educational activities. These are provisions that relate to private or personal use (to reflect the individual and self-edification aspect of personal education and research), quotations (since learning and instruction involve illustration, argumentation, referral, comments and criticisms), the use of reproductions for educational purposes (including both single and multiple copies, by both reprographic and non-reprographic means, with or without collective licensing), educational publications (as instructional material for use by educational institutions), school performances (to enable performances as part of educational curricula), educational communications (which encompass broadcasts, cable transmissions, the making of recordings of such communications and performances and online distance learning via the "making available" right), compulsory licences for reproduction and translation of works for educational purposes (which are special provisions for developing countries that are based on Articles II and III of the Appendix to the Berne Convention), and exceptions to the implementation of technological protection measures and rights management information (where digital rights management has to be circumvented in the interests of conducting educational activities).

Of the 1,120 provisions extracted from the 2,844 pieces of copyright legislation of 136 member states, 1,070 of them are limitations and exceptions that fall into the first six categories outlined above. Only 52 provisions pertain to compulsory licences for reproduction and translation, and 30 provisions pertain to the circumvention of digital rights management for educational purposes. Of the 1,070 provisions, 227 provisions from 130 member states relate to private and personal use, 188 provisions from 132 member states relate to quotations, 220 provisions from 111 member states relate to educational reproductions and 226 provisions from 96 member states relate to educational broadcasts, communications and recordings. The significant number of provisions that relate to private and personal use confirms their relevance as they sanction the self-edification and personal instruction perspective of education. Likewise, the breadth of different formulations for the 220 educational reproduction and 226 educational communication provisions reflects the diversity of educational activities that could be characterized as reproductions and communications. However, to the extent that the activities involve the reproduction of multiple copies of works, which could have an unreasonably prejudicial effect on the legitimate interests of the authors

of such works, many such reproduction provisions only permit such reproductions based on the unavailability of any collective licences granted to educational institutions, or are subject to the requirement that equitable remuneration be made to the copyright owners.

Also significant are the provisions that permit the use of quotations, since teaching is often conducted through illustration, argumentation, referral, comments and criticisms. The provisions excepting educational publications and school performances are no less significant.

What are less used are the provisions for compulsory licenses for translations and reproductions (52 provisions from 29 member states), which are used by developing countries to make works available and accessible for educational purposes. There are also only a few provisions (30 provisions from 23 member states) to exempt the circumvention of digital rights management where it relates to educational activities, perhaps in the absence of guidance from international treaties for this purpose.

At this stage of this study, since the study is not yet complete, it would be inappropriate to make definitive conclusions based on the partial results of this study. But this draft would be remiss if some tentative conclusions are not drawn from the partial results thus far. Subject to the final outcome of the study, what this study has demonstrated is that the 136 member states whose legislation has been reviewed have demonstrated a good understanding and application of the permissible limitations and exceptions for educational activities in international treaties to their national legislation. In particular, the national limitations and exceptions both acknowledge and accept the multifaceted nature of education in its various manifestations, be it personal instruction, reprographic reproduction, educational publication, distance learning or school performance. Notwithstanding the fact that the education-related provisions in international treaties have been drafted well before the advent of modern communications technologies and the dramatic changes in online education, these provisions seem to have held their own and still afford useful guidance to national legislatures.

The provisions for compulsory licenses remain relevant to a not insignificant number of WIPO member states, and their detailed implementation in national legislation highlights the benefits of a detailed set of rules for their adoption. In comparison, however, the education-related exceptions for TPM and RMI are much less widely accepted and uniform in implementation. This could perhaps be something that WIPO member states may wish to consider, in the absence of guidance at the international level.

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