

Limitations and Exceptions in Copyright Law for Educational Activities: An Asia-Pacific Analysis

Regional Seminar for the Asia Pacific Group on
Libraries, Archives, Museums, and Educational and
Research Institutions in the Field of Copyright

A/Prof (Dr) Daniel Seng

Faculty of Law, National University of Singapore

29 Apr 2019

Objective of Presentation

- Introduction to Copyright Limitations and Exceptions for Educational Institutions
- Analysis of Limitations and Exceptions in Asia-Pacific Region
 - by types of educational and research activities
 - by specific class of limitations and exceptions

Educational Limitations & Exceptions

individual users

collective users

Access by Individuals

- private/personal use
- quotations
- performance for educational purposes

Access by Educational and Research Institutions

- quotations
- limited copy for education
- multi-copy reproductions for education

adaptation & translation

TPM/RMI flexibilities

Online Courses

- recording, broadcast, communication of educational materials
- multi-copy reproductions for education

Distance Learning

- recording, broadcast, communication of educational materials
- multi-copy reproductions for education

Asia-Pacific

- World's largest and most-populous region
- 4.5 billion (60% of world's population)
 - 50 WIPO member states
 - 33 jurisdictions represented
- Asia-Pacific the fastest-growing region in the world (IMF)
 - more than 60% of global growth
 - Asia: 5.6% growth in 2019
 - Oceania: 3.9% growth in 2019



Educational Limitations & Exceptions: Asia-Pacific vs Rest of World

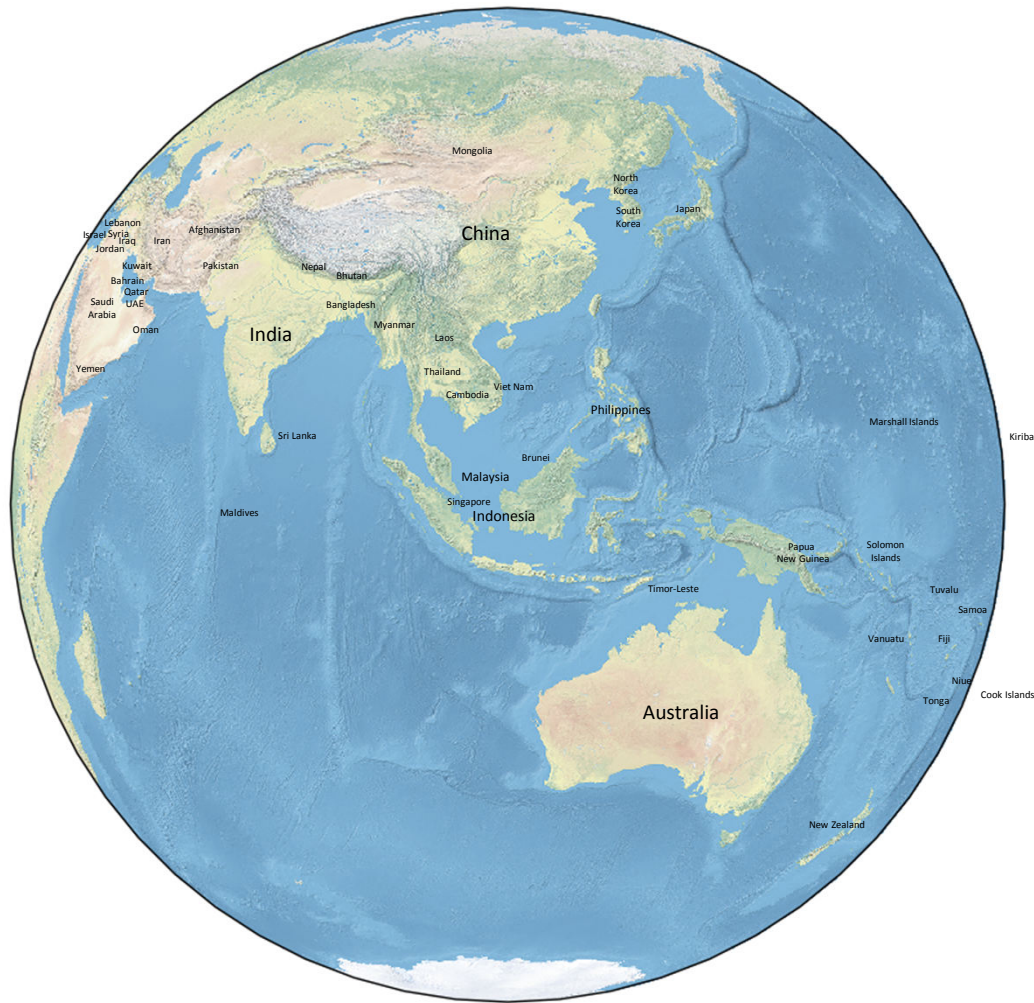
	Asia-Pacific		World	
	Member States	Provisions	Member States	Provisions
Private/Personal Use	45	78	179	358
Quotations	46	64	183	256
Performance	33	56	131	199
Reproduction	41	128	160	413
Communication, Broadcast, Recording, etc.	29	68	137	270

All Asia-Pacific Member States



total: 50 member states; 32 member states here

All Asia-Pacific Member States



total: 50 member states; 32 member states here

Private/Personal Use and Education

- Private or Personal Use as relates to Education
 - “educare”: (Latin) to draw out that which lies within: personal manifestation of education
 - education may start in schools but it does not stop at home: self-edification and self-instruction
 - education and research as individually driven, self-actualization processes
 - school curriculum increasingly focuses on individual-centric model of learning and experiential learning



Photo of Robert Mitchum at home reading with his two sons, James (left) and Christopher (right).

Private/Personal Use and Education



45 member states; 78 provisions

Private/Personal Use and Education

- China, Art. 22, Copyright Law 2001
 - Article 22 In the following cases, a work may be exploited without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be mentioned and the other rights enjoyed by the copyright owner by virtue of this Law shall not be prejudiced:
 - (1) use of a published work for the purposes of the user's own private study, research or self-appreciation;
- Observation: acknowledges significance of individual study, research and self-edification

Private/Personal Use and Education

- Cook Islands, s 14(1), Copyright Act 2013
 - Copying for research or private study
 - An individual does not infringe copyright in a work by copying the work for research, private study, or other private and non-commercial activity and the research, private study, or other activity is carried out by the individual or his or her family or friends.
- Observation: sanctions "facilitative" copying (by family or friends) for individual research or private study
- *cf. Chancellor, Masters & Scholars of the University of Oxford & Ors. v Rameshwari Photocopying Services & Delhi University* (Delhi High Court, 2016)

Private/Personal Use and Education

- Bangladesh, s 72(1)(1)(i), Copyright Act 2000
 - Certain acts not to be infringement of copyright.
 - The following acts shall not constitute infringement of copyright, namely:-
 - (1) Fair use of a literary, dramatic, musical or artistic work for the purpose of-
 - (i) private study or private use including research;
- Observation: concept of "fair use"; distinction between study and use; but includes research

Private/Personal Use and "Fair Use/Dealing"

- 14 member states; 18 provisions

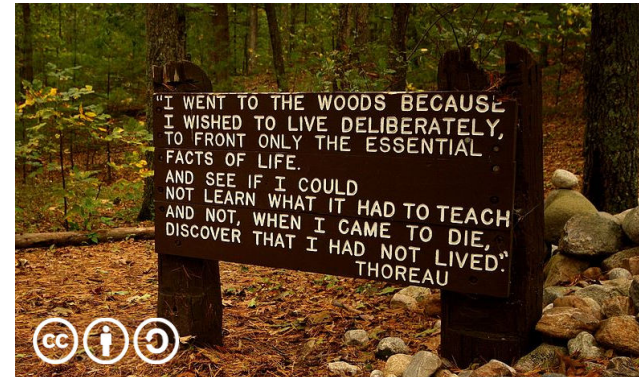
- Australia
- Bangladesh
- Brunei Darussalam
- India
- Israel
- Kiribati
- Malaysia

- Mongolia
- Myanmar
- New Zealand
- Niue
- Pakistan
- Singapore
- Tuvalu

- (optionally) fair use/dealing factors: purpose or character of use, nature of work; amount and substantiality of part taken; effect of use on market

Quotations, Excerpts & Education

- Quotations associated with education:
 - quotations for “scientific, critical, informatory or educational purposes”: Stockholm Conference
 - scholarship involves quoting from not just books and articles, but also visual works, lectures, performances, broadcasts: Ricketson and Ginsburg
- Limitation:
 - “compatible with fair practice”, “extent does not exceed that justified by purpose”: Art. 10(1)



Thoreau's quote near his cabin site, Walden Pond.: Alex

Quotations, Excerpts & Education



46 member states; 64 provisions

Quotations, Excerpts & Education

- Iran, Art. 7, Act for Protection of Authors, Composers and Artistic Rights (Copyright Law)
 - It is permissible to quote from published works and to refer to them for, literary, scientific, technical or educational purposes, and in criticism or praise, provided that the sources of quotations are mentioned and the customary limitations are observed.
 - NB. Mentioning the sources of quotations, in cases where the work is reproduced for use in educational institutions by teachers employed thereat, is not necessary, provided there is no monetary gain involved.
- Observation: importance of quotation for educational instruction; very typical to attribute sources of quotations

Quotations, Excerpts & Education

- Kuwait, Art (9), Law No. 64 of 1999 concerning Intellectual Property Rights
 - After publishing his literary work the author may not prohibit the same analysis and short quotations from it where the purpose thereof is criticism, enlightenment, study or information, provided that the reference to the original work and the author are clearly mentioned.
- Observations: short quotations; purpose for criticism, study or information; attribution requirement

Quotations, Excerpts & Education

- Mongolia, Art. 24.1.2, Copyright and Related Rights (2006)
 - Exceptions and Limitations
 - The following circumstances where the works were used without contradicting the normal exploitation of published works and without affecting the legal interests of the right holders shall not be deemed as copyright infringement:
 - 24.1.2. To quote from and to use parts of published works for research works, criticisms and information
- Observations: three-step test applied; role of quotations in research, critique and information

Educational Performances

- Educational Performances
 - performances as part of school curriculum
 - as part of “utilization ... for teaching”: Art. 10(2), Berne Convention
 - “semi-public” showings in clubs or societies, often part of school, as part of extra-curricular activities
 - cf. overlap with “communication”
 - but distinction made in WIPO studies between showing/playing to an audience on site (a performance) and showing/playing to an audience off-site (a communication)



Secretary Clinton Visits a Music Classroom: US Government



By Wesamuels - Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=38261030>

Educational Performances



33 member states; 56 provisions

Educational Performances

- Fiji, s. 45, Copyright Act 1999
 - Performing, playing, or showing work in course of activities of educational establishment
 - (1) The performance of a literary, dramatic, or musical work before an audience consisting of persons who are students or staff members at a school or educational establishment or are directly connected with the activities of the school or establishment-
 - (a) by a student or staff member in the course of the activities of the school or establishment; or
 - (b) at the school or establishment by any person for the purposes of instruction,
 - is not a performance in public for the purposes of section 32(1).
- Observations: operates by deeming educational performance to be *not* a public performance; limited audience and locality

Educational Performances

- Malaysia, s 13(2)(f), Copyright Act 1987
 - Notwithstanding subsection (1), the right of control under that subsection does not include the right to control—
 - (f) the inclusion of a work in a broadcast, performance, showing, or playing to the public, collection of literary or musical works, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair practice:
 - Provided that mention is made of the source and of the name of the author which appears on the work used;
- Observation: "utilization" in Art. 10(2), Berne Convention as encompassing "broadcast, performance, showing, playing to the public" with attribution requirement

Educational Performances

- Oman, Art. 20.6(b), Law on Copyright and Related Rights (2008)
 - Article (20): Subject to the moral copyrights, stipulated under this law, the following uses of works shall be lawful even without the consent of the author provided that the source and the name of the author are mentioned if listed in the work, and provided that a free use shall not be allowed if the use conflicts with the normal exploitation of the work, performance, or phonogram or unreasonably prejudices the legitimate interests of the author, performer, or producer of phonograms:
 - 6. Public performance of a dramatic, musical or dramatic musical, choreographic, pantomime works or any other work, created for dramatic performance, if:
 - b- Purposes of face-to-face learning activities in approved non-profit educational institutions, in classrooms or similar places dedicated to education.
 - In both cases, it is provided not to obtain, directly or indirectly, any financial gain.
- Observation: focus on "face-to-face" instruction; limited to approved non-profit educational institutions or similar places; no financial gain allowed; three-step test

Educational and Research Reproductions

- Reproductions in Art. 10(2), Berne Convention
 - “utilization ... of literary or artistic works”
 - “by way of illustration”
 - “for teaching”
 - teaching at all levels, public and private, *not* limited to “teaching in schools”: Stockholm Conference
 - in “publications, broadcasts, sound or visual recordings”
 - “shall be a matter for legislation in the countries of the Union”



Bundesarchiv - Bild 183-S77547
Foto: Heßig | November 1967
Jungen und Mädchen im Schulunterricht:
Bundesarchiv, Bild 183-S77547 / CC-BY-SA 3.0



Training classroom – staff and students, CC-BY

Educational & Research Reproductions

- Teacher-centric model of learning
 - information and knowledge transfer with fixed and systematic curriculum
- Educational Activities:
 - preparation of instructional materials: copy, store, collate, review, convert, digitize, adapt, bypass TPM/RMI
 - instruction: extract, copy, present, distribute, compile (e.g. coursepacks)
 - assessment: quote, extract, copy, distribute
- Limited reproduction or multi-copy reproduction
- Most widely-implemented limitation & exception



Bundesarchiv - Bild 183-S77547
Foto: Heßig / November 1967
Jungen und Mädchen im Schulunterricht:
Bundesarchiv, Bild 183-S77547 / CC-BY-SA 3.0



Training classroom – staff and students, CC-BY

Educational & Research Reproductions



41 member states; 128 provisions



Educational & Research Reproductions

- Cambodia, Arts. 25(1).c & 50(b), (c), Law on Copyright and Related Rights (2003)
 - Art. 25(1).c: The author cannot prohibit the following acts:
 - c. The use of work for the purposes of education, which is not for financial gain.
 - Art. 50: Notwithstanding the provisions of articles 41, 42, 43, 44, 45, 46, 47 and 48 of this law, the following acts are permitted without the authorization of the right-holder, and without payment of any remuneration:
 - b. The reproduction merely for the purposes of scientific research.
 - c. The reproduction for the framework of educational purpose, except for the performance or phonogram which has been produced for the educational purposes.
- Observation: focus on "utilization" for "purposes of education"; non-profit element; scientific research expressly mentioned apart from education; "educational consumables" excluded

Educational & Research Reproductions

- Papua New Guinea, s 12(a), Copyright and Neighbouring Rights Act 2000
 - Reprographic Reproductions by Public Institutions.
 - Notwithstanding the provisions of Section 6 (1) (a), a public institution whose activities does not serve direct or indirect commercial gain may, without the authorisation of the author or other owner of copyright, make a single copy of the work by reprographic reproduction -
 - (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a person, provided that -
 - (i) the public institution is satisfied that the copy shall be used solely for the purposes of study, scholarship or private research; and
 - (ii) the act of reproduction is an isolated case occurring, where repeated, on separate and unrelated occasions; and
 - (iii) there is no license or other authority available under which approval for such copies can be made; or
- Observations: "public institution" as including a public library or an archive (and including education and research institutions?) – overlap between education and library limitations and exceptions (*cf.* s 11, which refers to "reproductions for teaching in educational institutions"); conditioned on "no license or other authority available"

Educational & Research Reproductions

- Tonga, s 11, Copyright Act (Act No. 12 of 2002)
 - Reproduction for teaching
 - (1) Notwithstanding the provisions of section 6(1)(a), the following acts shall be permitted without authorisation of the author, or other owner of copyright—
 - (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings, provided that such reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;
 - (b) the reprographic reproduction, for face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that—
 - (i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions; and
 - (ii) there is no collective licence available (that is, offered by a collective administration organisation of which the educational institution is or should be aware) under which such reproduction can be made.
- Observations: division into "single copy" reproduction and "multiple copy" reproduction; if licence condition is known or ought to be known, no reprographic reproduction enabled

Educational & Research Reproductions

- Philippines, s 185.1, Intellectual Property Code of the Philippines
 - Fair Use of a Copyrighted Work.
 - The fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number of copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright.
 - In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:
 - (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
 - (b) The nature of the copyrighted work;
 - (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - (d) The effect of the use upon the potential market for or value of the copyrighted work.
- Observations: "fair use" open-textured approach to educational and research reproductions derived from U.S. copyright law; *see also* Australia, Japan, Malaysia, Mongolia, Singapore, South Korea, Sri Lanka

Educational & Research Reproductions

- Singapore, s 52, Copyright Act
 - Multiple copying or communication under statutory licence by educational institutions
 - (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of copies, or the communication, of the whole or a part of that article, by or on behalf of the body administering an educational institution for the educational purposes of that or another educational institution.
 - (2) ... [applies to books]
 - (6) Subsection (1) shall not apply to copies of the whole or a part of an article contained in a periodical publication, being copies made, by or on behalf of the body administering an educational institution, for the educational purposes of an educational institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of those copies, a record of the copying setting out such particulars as may be prescribed by the regulations.

Educational & Research Reproductions

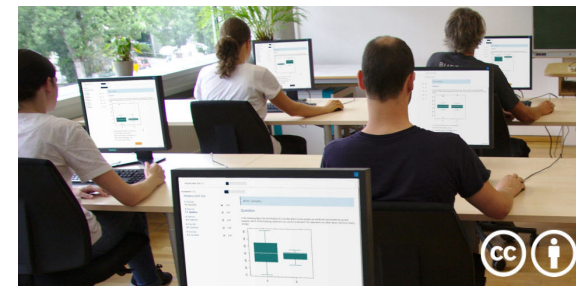
- Singapore, s 52, Copyright Act
 - (8) For the purposes of subsections (6), (7), (7C) and (7D), a record of the copying or communication, as the case may be, of a work or a part of a work —
 - (a) shall be kept in writing or in any other manner prescribed by the regulations; and
 - (b) if it is kept in writing, shall be in accordance with the prescribed form.
 - (11) Where copies of the whole or a part of a work, not being copies stated in the record to be copies to which subsection (9) or (10) applies, are made by or on behalf of the body administering an educational institution and, by virtue of this section, the making of those copies does not infringe copyright in the work, that body shall, if the owner of the copyright in the work makes a request, in writing, at any time during the prescribed period after the making of the copies, for payment for the making of the copies, pay to the owner such an amount by way of equitable remuneration for the making of those copies as is agreed upon between the owner and the body or, in default of agreement, such amount as is determined by a Copyright Tribunal on the application of either the owner or the body.
- Observations: statutory licence to enable educational institution to conduct multiple reproductions (and communication); records to be kept of copies/communication; copyright owner entitled to remuneration; *see also* Australia and South Korea

Educational Broadcasts, Communications & Recordings

- Educational Broadcasts, Communications and Recordings:
 - “in ... broadcasts or sound or visual recordings for teaching”: Art. 10(2), Berne Convention
 - “recordings” as fixations of broadcasts/cable programming and making of copies of audio-visual works for instructional purposes included here (rather than as reproductions – see Art. 9(3))
 - includes “communications” and “making available” right (digital transmissions)
 - “off-site” “performances” cf. “performances”



School children making broadcast: Brad Flickinger, CC BY-2.0



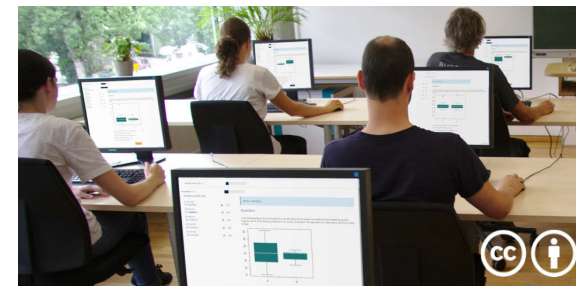
R/exams photo, CC BY

Educational Broadcasts, Communications & Recordings

- Encompass "distance learning" and "online courses"
- Online courses also encompasses the "making available" right and the right of reproduction
 - adaptation and translation exceptions are also important
 - limitations and exceptions to enable such educational activities



School children making broadcast: Brad Flickinger, CC BY-2.0



R/exams photo, CC BY

Educational Broadcasts, Communications & Recordings



29 member states; 68 provisions

Educational Broadcasts, Communications & Recordings

- Samoa, s 10(1)(a), Copyright Act 1998
 - Reproduction for teaching
 - Despite 6(1)(a), the following acts are permitted without authorisation of the author, or other owner of copyright:
 - (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings:
 - PROVIDED THAT reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;
- Observation: work reproduced in "sound or visual recordings" exempted – Art. 10(2), Berne Convention formula; see also s 24(c) (exemption extended to performances and sound recordings)

Educational Broadcasts, Communications & Recordings

- Vietnam, Art. 25, Law on Intellectual Property (2005)
 - Cases of use of published works in which permission and payment of royalties and/or remunerations are not required include:
 - g. Audiovisual recording of performances for the purpose of reporting current events or for teaching purpose;
- Observations: audiovisual recording of performances for teaching purposes

Educational Broadcasts, Communications & Recordings

- Cook Islands, s 17(8), Copyright Act 2013
 - Copying for educational purposes
 - An educational institution may communicate to individuals enrolled at the institution a work permitted to be copied or translated for private, educational, or research purposes under any of the other exceptions in this Act so long as the institution does so using a secure network that is accessible only by those individuals who are teaching or receiving instruction or who are responsible for the running of the network.
- Observation: exception extends existing (private, educational, research) limitations & exceptions; distance learning expressly permitted; so also are technical measures to limit access to instructional materials

Educational Broadcasts, Communications & Recordings

- China, Art 8, Regulations on the Protection of the Right to Network Dissemination
 - Article 8 Where the nine-year compulsory education or state education planning is implemented through the information network, the owner's permission [is not be required to use] fragments of [published] works, short written works or musical works, a single work of fine art, or photographic works to produce courseware, as long as the said works are provided by long-distance education institutions that have produced the courseware or [have legally] acquired the courseware [] to the registered students through information networks and for which remunerations shall be paid to the copyright owner.
- Observation: distance learning enabled; use of copyright content limited; use subject to remuneration

Conclusions

- Summary of work that is done at WIPO to provide a record of approaches adopted by member states to provide for limitations and exceptions for educational activities
- Different solutions and ways to balance priorities & adopt policy approaches towards different facets of educational and research activities
- Research as recipe for formulating similar limitations & exceptions, for upgrading/revising existing limitations & exceptions, to plug gaps in existing laws, for drafting educational and research licences
- Scope, purpose and conditions reflect different views and policy solutions
- Resolving outstanding elements requires a comprehensive appreciation of role and importance of educational and research activities

Limitations and Exceptions in Copyright Law for Educational Activities: An Asia-Pacific Analysis

The End

Daniel Seng

Faculty of Law, National University of Singapore

29 Apr 2019