

# Limitations and Exceptions in Copyright Law for Educational and Research Activities

WIPO Regional Meeting for the Africa Group on Libraries, Archives, Museums and  
Educational and Research Institutions in the Field of Copyright

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# Introduction

**Education:** any acts (uses) to convey instruction and to study: teaching, exercises, exams, etc.

**Research:** any acts (uses) necessary to gather and discover information.

**Uses may be covered by:**

## **Exceptions and Limitations in Copyright Laws (E&L)**

- Uses authorized by Law
- For free or remunerated (non-voluntary licensing)

## **Voluntary Licensing**

- Collective licensing (by CMOs – based on mandates)
- Individual licensing (by © owners – i.e. databases)

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## Survey of E&L for teaching and research in African region national laws

WIPO *Study on Copyright Limitations and Exceptions for Educational Activities*, by Prof. Seng  
(2017)

## Practices and challenges for online teaching and research

*INTERIM REPORT ON PRACTICES AND CHALLENGES OF EDUCATIONAL AND RESEARCH  
INSTITUTIONS IN RELATION TO ONLINE DISTANCE EDUCATION AND RESEARCH ACTIVITIES,  
prepared by M.Torres, R.Xalabarder, SCCR/38/9*

# **Survey of E&L for teaching and research in African region**

# Exceptions and Limitations

All National Laws provide for E&L:

- ✓ For private study / purposes (Art. 9.2 BC)
  - ✓ For quotations (Art. 10.1 BC)
  - ✓ For teaching and research purposes (Art. 10.2 BC)
  - ✓ ... how far does it cover?
  - ✓ ... also online?
- 
- Some under “fair dealing” / for free  
Some under remuneration / compensation (often via collective licensing)
  
  - **No uniformity** in national laws (but patterns)

# Scope of E&L ... depends on several Factors:

- **Purposes:** illustration for teaching, school, classroom use, lessons, lectures, instruction, exams, etc.
- **Exempted acts:** reproduction (photocopying), distribution, performance, communication to public, making available... translations? digitization?
- **Beneficiaries:** all educational levels?, non-profit, for-profit?
- **Individual users:** teachers, students, researchers, staff
- **Kind of works:** any kind? Only publications?
- **Amount of works:** 10%, 5%, 15 pages, 1 image, etc.?
- **For free or Remunerated:** if remunerated, mandatory collective licensing?

# Survey E&L for teaching and research in Africa

	Africa		World	
	M. States	Provisions	M. States	Provisions
<b>Private/Personal Use</b>	<b>50</b>	<b>104</b>	<b>179</b>	<b>358</b>
<b>Quotations</b>	<b>50</b>	<b>74</b>	<b>183</b>	<b>256</b>
<i>Performance</i>	35	36	131	199
<i>Reproduction for teaching &amp; research</i>	41	157	160	413
<i>Illustration for teaching &amp; research in Broadcasts &amp; Recordings</i>	38	60	137	270
<i>Illustration for teaching &amp; research in Publications</i>	35	39		
<i>Online (specifically)</i>	3	4		

# Private/Personal Use | Berne Convention

Article 9 BC (Stockholm, 1967)

[...]

**(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.**

*The “three-step-test”*



# Private/Personal Use | Member States

50 Member States

104 provisions

*Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, Chad, Comoros, Congo, Cote d'Ivoire, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe*



# Private/Personal Use | Examples

## Malawi Copyright Act, 2016

### 38. *(Reproduction, etc, of a work for user's private use)*

The reproduction, translation, adaptation, arrangement or other transformation of a work exclusively for the user's own **personal or private use** of a work which has already been **lawfully made available** to the public, shall be permitted:

Provided that it is made on the basis of a representation that is authorized under this Act, at the initiative of the user and **not for purposes of gain and only in single copies**.

# Private/Personal Use | Examples

## Egypt Law Pertaining to the Protection of Intellectual Property Rights, 2002

### Article 171

Without prejudice to the moral rights of the author under this Law, the author may not, after the publication of the work, prevent third parties from carrying out any of the following acts:

[...]

(2) **Make a single copy of the work for one's exclusive personal use**, provided that such a copy shall not hamper the normal exploitation of the work nor cause undue prejudice to the legitimate interests of the author or copyright holders;

# Private/Personal Use | ... compensated or not?



20 States apply levies (CMOs)

- (16) Audiovisual & Musical (Works / Recordings)
- (4) All kind of Works

30 States for free

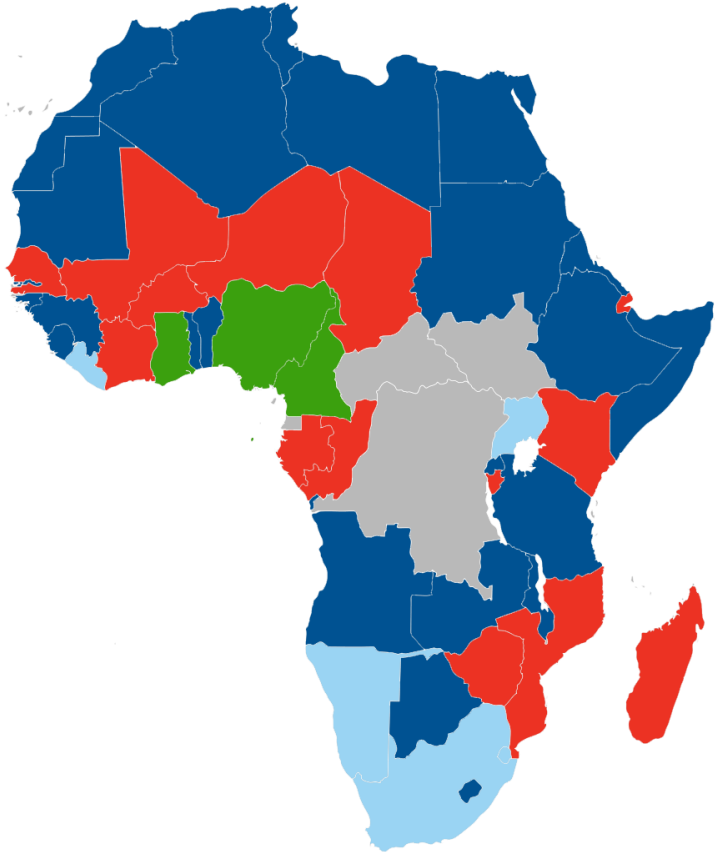
- (6) Fair use/dealing

Fair use/dealing factors:

- ✓ purpose or character of use;
- ✓ nature of work;
- ✓ amount and substantiality of part used;
- ✓ effect of use on market.

Algeria, Angola, Benin, Botswana, *Burkina Faso*, *Burundi*, *Cabo Verde*, *Cameroon*, *Chad*, Comoros, *Congo*, *Cote d'Ivoire*, *Djibouti*, Egypt, Eritrea, *Eswatini*, Ethiopia, *Gabon*, Gambia, *Ghana*, Guinea, Guinea-Bissau, *Kenya*, Lesotho, *Liberia*, Libya, *Madagascar*, Malawi, *Mali*, Mauritania, *Mauritius*, Morocco, *Mozambique*, *Namibia*, *Niger*, *Nigeria*, Rwanda, *Sao Tome and Principe*, *Senegal*, Seychelles, Sierra Leone, Somalia, *South Africa*, Sudan, Tanzania, Togo, Tunisia, *Uganda*, Zambia, *Zimb/Zimbabwe*

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# Quotation | Berne Convention

## Article 10.1 BC

- **Quotations** (scientific, critical, information, educational purposes)
- *To the extent justified by the purpose*
- *Compatible with fair practice*
  
- **Open (for any purposes), flexible („quote”) and tech neutral**
- **Any acts of exploitation**
- **All kind of works**
- **Mandatory for Member States**

# Quotation | Member States



50 States

74 Provisions

*Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi  
Cabo Verde, Cameroon, Chad, Comoros, Congo, Cote  
d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea,  
Eswatini, Ethiopia, Gabon, Gambia, Ghana, Guinea,  
Guinea-Bissau, Kenya, Lesotho, Liberia, Libya,  
Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco,  
Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome  
and Principe, Senegal, Seychelles, Sierra Leone, Somalia,  
South Africa, Togo, Tunisia, Uganda, Tanzania, Zambia,  
Zimbabwe*

# Quotation | Examples

## Madagascar Law on Literary and Artistic property, 1995

**Article 44** – Notwithstanding the provisions of Title II, Chapter II, on proprietary rights, it shall be permitted, without authorization from the author and **without payment of remuneration**, to **use** the analyses and short quotations lawfully published in another work, provided the source and the name of the author are given, and where this name features in the source, provided this quotation is **in line with good practice** and provided **its length is no greater than that warranted by the goal to be achieved**.



# Quotation | Examples

## Ethiopia Copyright and Neighboring Rights Protection Proclamation, 2004

### 10. Quotation

1/ Notwithstanding the Provisions of Article 7 (l)(a) of this Proclamation, the owner of copyright cannot forbid the *reproduction* of a quotation of a published work.

2/ The quotation shall be **compatible with fair practice** and does not exceed the **extent justified by the purpose**.

3/ Where the quotation is taken from a source which contains the name of the author, it shall indicate the **source and the name of the author**.

# Reproduction, Performance, Broadcast ...

## Berne Convention

### Article 10.2 BC (Stockholm, 1967)

- *For purposes of illustration for teaching*
- *To the extent justified by the purpose*
- *Compatible with fair practice*
- **Open, flexible and tech neutral**
- **Any acts of exploitation**
- **All kind of works**
- **All levels of teaching (BC Appendix)**
- **Remuneration... not required but possible**

*“It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the **utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.**”*

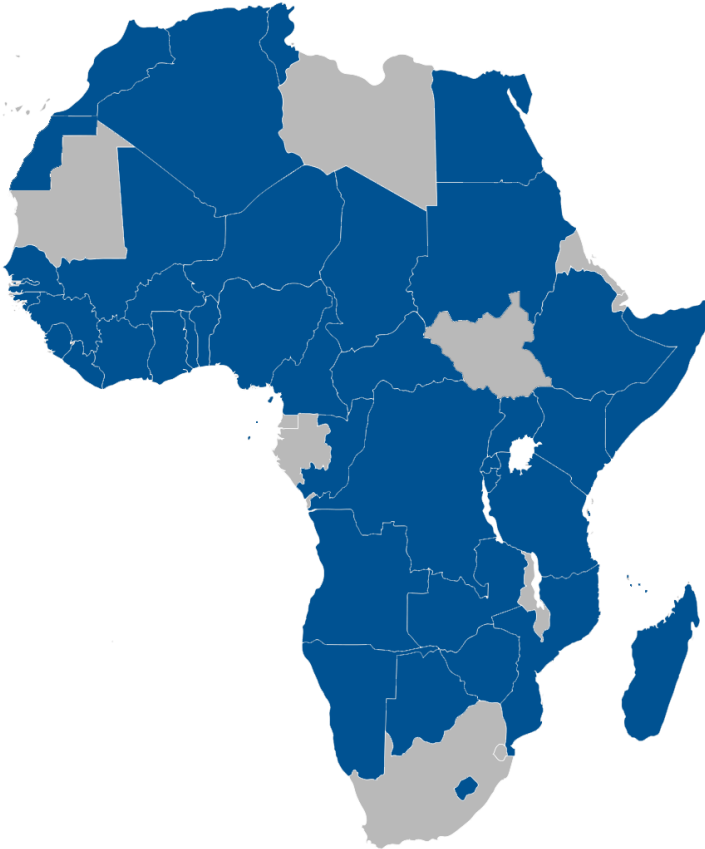
# Reproduction, Performance, Broadcast ...

## Berne Convention

- **Face to Face uses ... In classrooms:**
  - Analogue copies (photocopies)
  - Performances (recite, sing, play, etc)
  - Showing audiovisual recordings and phonograms
  - Communications (broadcasting)
  - Compilations of teaching materials (anthologies?)
- ... as long as “extent justified” and “compatible with fair practice”
- **Online uses ... not always** formally exempted.

Again ... No uniform national solutions.

# Reproduction for Teaching | Member States



41 Member States

157 Provisions

Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Central African Republic, Congo, DR Congo, Djibouti, Egypt, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, Tanzania, Zambia, Zimbabwe

Only F2F, reprographic copies

# Reproduction for Teaching | Examples

## Lesotho Copyright Order, 1989

**s.9 (1)** Notwithstanding section 7, the following uses of a protected work, either in the original language or in translation, shall be permissible without the author's consent and without the obligation to pay remuneration for the use of the work,

(f) **the reproduction, by photography, sound or video-recording, or electronic storage**, by public libraries, national archives and museums, noncommercial documentation centres, **scientific institutions and educational establishments**, of literary artistic or scientific **works** which have already been lawfully made available to the public:

Provided that such reproduction, the number of copies made, and use thereof are **limited to the needs of the regular activities** of the entity reproducing the work, and **neither conflict with the normal exploitation of the work nor unreasonably prejudice the legitimate interest of the author;**

# Reproduction for Teaching | Examples

## Tunisia Law on Literary and Artistic Property, 1994

**12.** Sound or audiovisual recordings and reproductions of broadcast literary, scientific or artistic works shall be lawful if such **recordings or reproductions** are made **for educational or cultural purposes**.

**13.** The Ministry responsible for culture **may authorize** as required the public libraries, the non-commercial documentation centers, the scientific institutes and teaching establishments, the youth centers and culture centers, to reproduce literary, scientific or artistic **works in the necessary quantity and limited to the needs** of their activities **in return for remuneration** to be laid down, failing amicable agreement between the parties, by the Tunisian Copyright Protection Agency.

# Reproduction for Teaching | Examples

## Botswana Copyright and Neighbouring Rights Act, 2000 (Last Amended 2006)

**15. Reproduction for teaching** (1) The following acts effected for purposes of teaching shall be permitted without authorization 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**;

(b) the **reprographic reproduction, for face-to-face teaching** in education 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, offered by a collective administration organization** of which the educational institution is or should be aware, under which such reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

# Performances for Teaching | Member States



35 Member States

36 Provisions

*Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, DR Congo, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Lybia, Madagascar, Malawi, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sierra Leone, Togo, Tunisia, Uganda, Zimbabwe*



# Performances for Teaching | Examples

## Algeria Loi relative aux droits d'auteur et aux droits voisins, 2003

Art. 44 **Acting or performing a work for educational and training purposes** to meet pure pedagogical needs. ... is allowed (no authorization required) .

## Benin Law on Copyright and Neighboring Rights, 2006

Art. 13 Where a work has been lawfully made accessible to the public, the author may not prohibit **private performances** thereof given exclusively within the family circle that do not generate any form of revenue, or given **free of charge in a teaching establishment for strictly educational or academic purposes**, for the benefit of **staff, students and their families**.

# Performances for Teaching | Examples

## Libya Law Issuing the Copyright Protection Law, 1968

**Article(11)** After the publication of his work, the author may not prevent its eurythmy, acting, or delivery if it took place during **a family gathering, a society, a private club or school meeting** as long as it does not yield any financial return.

The armed forces' musical band, other bands of the State or other public persons, except the radio and television bands shall have the right to play the works without having to pay any consideration to the author as long as it does not yield a financial return.

# ... In Publications, Broadcasts and Recordings



43 Member States

60 Provisions

*Angola, Benin, Burkina Faso, Burundi, Cabo Verde, Cameroon, Chad, Congo, Côte d'Ivoire, Djibouti, Eswatini, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Lybia, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Togo, Tunisia, Uganda, Tanzania, Zimbabwe*

- *Green: broadcasts and recordings / Red: publications / Blue: all of the above*

# ... In Publications, Broadcasts and Recordings

## Morocco Law on Copyright and Related Rights, 2002

### Article 15

Notwithstanding the provisions of Article 10 above, it shall be permitted, **without the author's authorization or the payment of a fee**, but provided that the source and author's name are indicated, where this name appears in the source, to:

(a) **use** a lawfully published work **as an illustration** in publications, broadcasts, or sound or visual recordings **intended for educational purposes**;

# ... In Publications, Broadcasts and Recordings

South Africa Copyright Act, 1978 (Last amended 2002)

*12 General exceptions from protection of literary and musical works*

(4) The copyright in a literary or musical work shall not be infringed by using such work, to the extent justified by the purpose, **by way of illustration in any publication, broadcast or sound or visual record for teaching**: Provided that such use shall be compatible with fair practice and that the source shall be mentioned, as well as the name of the author if it appears on the work.

# Teaching Compilations | Examples

## Nigeria Copyright Act, 2004

### Second Schedule

(f) the inclusion in a collection of literary or musical work which includes not more than two excerpts from the work, if the collection bears a statement that it is designed for educational use and includes an acknowledgement of the title and authorship of the work;

## Guinea-Bissau Copyright Code, 1971

Art.185(2) The **transcription of extracts or fragments** from the literary or musical works of others shall be **permitted in anthologies for use in schools**, under the terms of and within the limits referred to in the preceding paragraph. Should a transcription exceed those limits, the author shall have the **right to fair recompense**.

# Compulsory licensing to Translate & Publish | Examples



22 Member States

50 provisions

*Algeria, Angola, Burundi, Cabo Verde, Central African Republic, Congo, Djibouti, Egypt, Ethiopia, Gabon, Guinea, Guinea-Bissau, Lesotho, Malawi, Mali, Nigeria, Rwanda, Somalia, Togo, Uganda, Zambia, Zimbabwe*

# What about Online Uses?

- **Art.10(2) BC** covers it ... as long as
  - *To the extent justified by the purpose*
  - *Compatible with fair practice*
- “distance learning” and “online courses”
- Online courses require *making available* + *reproduction*
- *Adaptation and Translation* also important



# Explicit Online Uses | Member States



3 Member States:

*Liberia, Mauritius, Seychelles*

4 Provisions

**Reference to „uses on computer networks“, not explicitly „online distance uses“**

# Explicit Online Uses | Examples

## Liberia Intellectual Property Act, 1997

Sec.9.8 Fair Use: (a) Notwithstanding the provisions of Sections 9.6 and 9.7, **the fair use of a copyright work**, including such use by reproduction in copies ...or by any other means specified by that section, for purposes such as parody, satire, criticism, comment, news reporting, **teaching (including multiple copies for classroom use)**, scholarship or research, is not an infringement of copyright.

Sec. 9.12 Reproduction and Other Utilization for Teaching : (a) the utilization can **also include the making available of such works in computer networks**, provided that **access to the works is only available to enrolled pupils or students and their teachers.**”

# Explicit Online Uses | Examples

## Mauritius Copyright Act, 2014

Sec. 19(1)(a): “the utilisation for scientific research purposes or by way of illustration for teaching of a work that has lawfully been made available to the public, in publications, broadcasting or sound or visual recordings, where such utilisation — (i) is compatible with fair practice; and (ii) does not exceed the extent justified by the purpose;

(3) “utilisation” includes the **making available of such works in computer networks**, where **access to the works is only available to enrolled pupils or students and their teachers.**

# Explicit Online Uses | Examples

## Seychelles Copyright Act, 2014

Sec. 12 (1) The following acts shall be permitted without authorisation of the author, or other owner of copyright-

- (a) the utilisation by way of **illustration for the purposes of teaching or scientific research** of a work that has lawfully been made available to the public, in publications, broadcasting or sound or visual recordings, provided that such utilisation is compatible with fair-practice and does not exceed the extent justified by the purpose;
- (b) the utilisation by way **of making available of such works in computer networks**, provided **that access to the works is only available to enrolled pupils or students and their teachers**;

## Online Uses „implicitly” covered? | Examples

**Ghana:** “any use” of a work, in original or translated, for teaching in public educational or profesional training

**Nigeria:** “any use” made of a work for educational purposes in an approved educational institution

**Zimbabwe:** “anything done” for purposes of examination

## Fair use for online uses? | Examples

**Teaching purposes:** Kenya (?), Liberia, Uganda, Zambia, Zimbabwe

**General fair use** (private study & research): Eswatini, Namibia, South Africa

# Practices and Challenges for teaching and research uses conducted online

*Based on INTERIM REPORT ON PRACTICES AND CHALLENGES OF EDUCATIONAL AND RESEARCH INSTITUTIONS IN RELATION TO ONLINE DISTANCE EDUCATION AND RESEARCH ACTIVITIES, prepared by M.Torres, R.Xalabarder, SCCR/38/9*

# 1. Challenges for the enforcement of E&L

- **Legal uncertainty about exempted uses?**  
(unclear language, insufficient scope, applicable law)
- **Awareness of © law? Lack of guidance? Misconceptions?**  
(off-line = online, 10% always allowed, as long as non-commercial, library licensed material)
- Exempted uses **prevented by TPM** and/or **contractual terms?**

### *Exempted uses prevented / restricted by TPM*

- **© owner is obliged to provide means to lift TPM** (*Liberia, Mauritius, Rwanda*)
- **TPM can be removed/circumvented/disabled** (*Malawi, Morocco, Sao Tomé and Príncipe, Seychelles, Zimbabwe*)

### *Exempted uses prevented / restricted by licensing terms*

- **Terms of overriding E&L are:** Unenforceable (i.e. UK) or Null and void (i.e. EU) (*Sao Tomé and Príncipe*)



## 2. Licensing (Individual / Collective)

Licensing systems and availability vary widely

- **Market, economic, cultural (language) circumstances**
  - ✓ **CMOs** and collective licensing fully operational in some countries. Not in others.
  - ✓ Different licensing availability for **kind of Works** (IFRROs, audiovisual, music).
- **Different licensing models**
  - ✓ **Collective licensing** based on voluntary CMO mandates; Collective licensing prescribed or “incentivized” by law; Extended collective licensing?
  - ✓ **Direct licensing** by copyright owner: individual or blanket license?

# Licensing Challenges

- Are licenses available in that market?
- For all kind of works?
- CMOs or individual?
- Have CMOs obtained “mandates” from © owners?
- Can authors/owners/CMOs be identified & located?
- Scope of licensing: is it sufficient?
- Conditions to obtain license : price, time, TPMs restricting E&L?
- Cumulation & incompatible licensing? Loops? Gaps?
- Territorial scope

### 3. Territorial challenges

- Online teaching and research may be cross-border
- Students, researchers located in different countries
- Materials obtained from sources “abroad”

Which law applies online? (Art. 5.2 BC) different scope of E&L → **Legal uncertainty**

Difficulties in **identifying & locating owners** from other countries...

**Collective licensing is territorial-based** → online multi-territorial,  
cross-border

# Attempts to overcome territoriality

- **Licensing** based on number of students with access to intranet (regardless of territory) and apply one national law & one territorial license
- **Licensing** “branch campuses” separately by each RRO
- **Statutory provision** (aka “legal fiction“?): teaching takes place in **one country only**  
→ One national law / one E&L or one license ... covering uses in all territories

**Let's get to work!**