

**Standing Committee on Copyright and Related Rights**

**Thirty-Eight Session**  
**Geneva, April 1 to 5, 2019**

**EDUCATIONAL ACTIVITIES COPYRIGHT EXCEPTIONS: TYPOLOGY ANALYSIS**

*prepared by Professor Daniel Seng*

## LIMITATIONS AND EXCEPTIONS IN COPYRIGHT LAW FOR EDUCATIONAL ACTIVITIES: TYPOLOGY ANALYSIS

### I. Introduction

This is an analysis of the copyright limitations and exceptions as applied to educational activities. It supplements the research done in Report on Copyright Limitations and Exceptions for Educational Activities and the Revised Report on Copyright Limitations and Exceptions for Educational Activities by isolating the key elements included in the provisions that WIPO member states have used in their copyright laws to provide for various limitations and exceptions for the specified educational activities. Presented in the form of a typology, the analysis is by no means exhaustive or intended to be so, but is designed to provide some guidance to WIPO delegates as they consider the terms of any guidance or possible instrument that address these copyright limitations and exceptions. The typology also affords lawmakers of individual member states a framework for the drafting of new or revised provisions that seek to enable the enumerated educational activities.

### II. Types of Educational Activities

Article 26(1) of the 1948 UN Universal Declaration of Human Rights states that “everyone has the right to education”.<sup>1</sup> The concept of “education” has always received the broadest possible support in international instruments. At the Stockholm Conference, in discussions about the limitations and exceptions, delegates refer to educational, scientific or scholastic purposes interchangeably, and make no attempt at adopting refined and unrealistic distinctions.<sup>2</sup> Delegates to the Stockholm Conference were fully cognisant that teaching, research and instruction not only took place in schools, but also in private and at all levels.<sup>3</sup>

In this regard, Stockholm Conference delegates were ahead of their times in recognizing that teaching and research as an intellectual exercise for the betterment of society and self can take an infinite variety of forms. For instance, traditional learning activities - known as the collectivist model - are teacher-centered. Learning takes place by explaining knowledge and skills and transferring information, through a fixed structure with a high degree of instructor facilitation. Modern day instruction places greater emphasis on the individualistic model, where experiential learning is student-centered and learning outcomes are flexible and open. Learning is experiential and can take place at the individual level, in small groups or in large groups. Knowledge and skills are developed through experience and experimentation, inquiry and reflection, and is flexible with minimal facilitation on the part of the instructor. The advent of distance learning and in its electronic form, online courses, further make it possible for learning to be more asynchronous and less constrained by time, space and geography. In addition, online courses can further the goal of equal access by increasing the accessibility of courses to students with a range of impairments, disabilities, learning styles and preferences, native languages and other characteristics.<sup>4</sup>

---

<sup>1</sup> Universal Declaration of Human Rights, General Assembly of the United Nations, Resolution 217A(III) of 10 December 1948, <http://www.un.org/en/documents/udhr/> (accessed 12 May 2009) [hereinafter *UN UDHR*].

<sup>2</sup> See e.g., RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, JUNE 11 TO JULY 14, 1967 at 82, 70-71, 116-17, 143-144, 156, 436 (Document S/1), 860-1 (minutes) *et seq.*

<sup>3</sup> RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, JUNE 11 TO JULY 14, 1967 at 886-87.

<sup>4</sup> Sheryl Burgstahler, Equal Access: Universal Design of Distance Learning Programs, DO-IT (Disabilities, Opportunities, Internetworking, and Technology) Center, University of Washington, 2017, <https://www.washington.edu/doiit/equal-access-universal-design-distance-learning-programs>.

All these developments portend a need for new perspective of educational activities. After discussions with the WIPO Copyright Secretariat, this typology has selected the following educational activities for review. It should be noted that these topical educational activities are by no means enumerative, exhaustive or mutually exclusive, but are designed as broad edifices around which the copyright limitations and exceptions issues could coalesce. These are:

- the access and use of materials by individuals, such as students, including adults receiving life-long and vocational training, and researchers, for educational and research purposes
- the access and use of materials by educational and research institutions, including educators, researchers and staff of such institutions, for educational instruction and research
- distance learning activities
- online courses
- the adaptation and translation of materials for educational and research purposes

This version of the typology will not consider the import and export of works for educational purposes. It will also not consider the electronic lending of works for educational purposes as this activity is better dealt with under the library typology.

### III. Structure of the Typology

For each educational activity topic, the typology is divided into four columns, whose content are as follows:

#### A. Category of Educational Activity (First Column)

This column expands on the educational activity under consideration, by providing examples of learning and research activities under consideration.

It also identifies the statutory provisions that are applicable to the educational activity under consideration.

#### B. Owner's Rights Implicated (Second Column)

This column identifies the copyright and neighbouring rights that are affected by the exercise of the educational activity. The affected rights are divided into primary (those that are most affected) and secondary (those that are less affected).

#### C. Elements of Statutory Limitations and Exceptions (Third column)

This column isolates the three common elements that make up the statutory limitations and exceptions:

- the scope of works - the types of works to which the limitations and exceptions apply
- the purpose of use – the purpose(s) for which the limitations and exceptions are used
- the conditions of use– the conditions attached to qualify for the limitations and exceptions

As many of the WIPO member states use the three-step test as a proxy for enumerating the conditions required to establish the limitation and exception, the condition element will not isolate the elements of the three-step test.

It should also be noted that these enumerated purposes, scope and conditions represent alternative formulations in the copyright laws of the member states. It is not expected for a member state to enact a limitation or exception that includes all the elements set out in this column.

#### D. Elements for Ongoing Consideration (Fourth Column)

Different WIPO member states will implement the components that make up the common elements of the statutory limitations and exceptions differently. This column seeks to document and record these differences and inconsistencies in the implementational details of the provisions in the member states' statutory limitations and exceptions.

There could also be unresolved issues or matters pertaining to the scope and extent of the statutory limitations and exceptions in the copyright laws of the WIPO member states. These are documented here as well. For instance, the issue of the applicability of limitations and exceptions to matters involving cross-border elements is a difficult one and remains largely unresolved in the copyright laws of most WIPO member states.

It should be noted that there could be significant differences in the language and phraseology of the components that make up the statutory limitations and exceptions. At the same time, these differences could be inconsequential given the historical, legal, sociological and cultural context in which the provisions ought to be interpreted.

This column therefore serves as repository of these outstanding issues for further ongoing deliberation and consideration by WIPO delegates, either with a view to the development of legal instruments or the enactment of revisions to national legislation for resolving these issues.

The outstanding issues are further classified into the following:

- rights implicated – the types of rights which should be excepted for the limitation and exception under consideration
- scope of works – whether the limitation and exception should include or exclude certain classes of works
- conditions – variations to the operative conditions for the limitation and exception
- beneficiary – characteristics or identity of the beneficiary to qualify for the limitation and exception
- conditions/licences – issues relating to the scope of the licences, including collective licences, for the copyright works which are the subject of the limitation and exception
- remuneration – whether the use is free, or some form of levy or equitable remuneration is required
- liability – issues as to the possible liability of the educational institution or research centre, both in direct and indirect liability, for any unlicensed and unauthorised acts of infringement, whether committed by the institution or by its staff, instructors, students or contractors
- TPM/RMI flexibilities – whether flexibilities are enabled to allow for the limitation and exception to be exercised

**TOPIC:**

**Access to/use of materials by individuals**

**Explanation:** The modern approach to teaching and research places more focus on student-centered and individual learning and research, through experience and experimentation, inquiry and reflection. Operating at the individual level, in small groups or in larger groups, experiential learning supplements traditional learning activities by empowering students and researchers to take the initiative to make decisions and feel accountable for their work, and learn from the natural consequences of discussion, debate, dialogue, open conversation and exchange, to put into practice their knowledge and skills, and to give and receive feedback.

Category of Educational Activity	Owner's Rights Implicated	Elements of Statutory Limitations and Exceptions	Elements for Ongoing Consideration
<p>Statutory Provision:</p> <ul style="list-style-type: none"> <li>• Private or Personal Use</li> <li>• Quotations</li> <li>• Performance for Educational Purposes</li> </ul> <p>Activities:</p> <ul style="list-style-type: none"> <li>• student/researcher accesses, copies (including reprography), downloads, adapts (e.g. translates) or uses materials to acquire new information or knowledge, or improve his or her knowledge or better understand instructional ideas, information or key concepts – whether by way of structured instruction or research or by way of personal edification, whether within or outside the classroom/research institute</li> <li>• student/researcher identifies new and other related or relevant areas of ideas, knowledge or information through searching for, accessing,</li> </ul>	<p>Primary:</p> <ul style="list-style-type: none"> <li>• reproduction e.g. copy, recording</li> <li>• communication (including making available)</li> <li>• translation, adaptation, arrangement</li> <li>• performance</li> </ul> <p>Secondary:</p> <ul style="list-style-type: none"> <li>• circumvention of TPM (if original is secured)</li> <li>• alteration of RMI (if necessary)</li> </ul>	<p><u>Private or Personal Use</u></p> <p>Scope of Works:</p> <ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• (lawfully) published and/or lawfully acquired work</li> <li>• copyright works: literary, dramatic, musical, artistic works</li> <li>• object of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>• excluded types of works: visual art, works of architecture, sculptures, applied art, drawings, computer programs, digital databases, sheet music</li> </ul> <p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• private/personal use</li> <li>• (scientific) research/study/performance/appreciation</li> <li>• use (exclusively within) family/domestic gathering/circle</li> </ul> <p>Conditions of Use:</p>	<p><u>Private or Personal Use</u></p> <ul style="list-style-type: none"> <li>• Rights implicated: limit to reproduction, include communication or encompass all forms of private or personal use</li> <li>• Rights implicated: include importation of limited quantities of works for personal use, or for educational and scientific purposes</li> <li>• Scope of works: includes or excludes digital works e.g. computer programs, databases</li> <li>• Conditions: extent of copying of work that can be made and frequency of copying</li> <li>• Beneficiary: a natural person or includes a legal person (e.g. an educational or research institute)</li> <li>• Beneficiary: include allowing beneficiary to authorise another person to effect the reproduction, communication, adaptation on his or her behalf e.g. a documentation or archiving centre or bookshop</li> </ul>

<p>studying and reviewing new content and materials</p> <ul style="list-style-type: none"> <li>• student/researcher accesses, copies (including reprography), downloads, quotes or uses materials in homework, essays, assignments, assessment tasks and examinations to support views, ideas or perspectives, to illustrate points or understanding, or to demonstrate competence and understanding</li> <li>• student/researcher rehearses, records and presents ideas and perspectives, takes questions and provides answers, in classroom or in small study groups (e.g. performances, practices)</li> <li>• students screen, stage and perform works (with or without instructors) in small or closed groups for educational or instructional purposes</li> <li>• student/researcher analyses, comments on, critiques, summarizes material for learning and research purposes (as above)</li> <li>• sharing student/researcher responses and answers (in single or multiple copy form, in physical or digital form) with other students, instructors and researchers for consolidation of information, peer-review, peer-assessment, preparation for assessment (e.g. self-study, review sessions) and evaluation</li> <li>• student/researcher makes adaptation (e.g. change from non-digital to digital, or from one digital</li> </ul>		<ul style="list-style-type: none"> <li>• private or personal use to be fair</li> <li>• use, reproduction, communication, performance etc. is carried out in family circle/home</li> <li>• not intended for collective use or not to be distributed or communicated to the public</li> <li>• no income, financial gain; no commercial purpose from use</li> <li>• reproduction is by own means, or by authorised person</li> <li>• reproduction is effected by on paper or similar medium by photographic/similar techniques or only by handwriting/typing</li> <li>• copy to be destroyed within 30 days of it being made</li> </ul> <p><u>Quotations</u></p> <p>Scope of Works:</p> <ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• (lawfully) published and/or lawfully acquired work</li> <li>• copyright works: literary, dramatic, musical, artistic works</li> <li>• object of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>• excluded types of works: works of architecture, computer programs</li> </ul> <p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• commentary, criticism, debate, discussion, review, polemy, education, science, teaching, illustration, information, research</li> </ul> <p>Conditions of Use:</p>	<ul style="list-style-type: none"> <li>• Remuneration: free private/personal use or remuneration in the form of levies payable on recording media or reprographic equipment</li> <li>• TPM/RMI flexibilities: giving natural/physical person as beneficiary access to flexibilities to enable person to use work for private or personal use for educational or scientific purposes</li> </ul> <p><u>Quotations</u></p> <ul style="list-style-type: none"> <li>• Scope: include right of translation or adaptation of quotation</li> <li>• TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable quotations for educational or scientific purposes</li> </ul> <p><u>Performance for Educational Purposes</u></p> <ul style="list-style-type: none"> <li>• Scope: include or exclude communicating or making available such performances</li> <li>• Conditions: include performance by staff, instructor or person acting under authority of school/educational institution</li> <li>• TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable performance for educational or research purposes</li> </ul>
--	--	---	---

<p>format to another digital format) or translation (change from one language to another) of existing material to facilitate any of the above learning objectives</p> <ul style="list-style-type: none"> <li>• student/researcher with disabilities, impairments, different learning styles and preferences etc. makes adaptation of existing material to facilitate any of the above learning objectives</li> <li>• student as adult learner, recipient of vocational training or career upgrading exploring and applying material to professional or everyday life or career</li> </ul>		<ul style="list-style-type: none"> <li>• amount quoted is justifiable/necessary to achieve purpose, or is compatible with fair practice or fair use factors</li> <li>• attribution as to source and author required (if indicated on source)</li> </ul> <p><u>Performance for Educational Purposes</u></p> <p>Scope of Works:</p> <ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• (lawfully) published and/or lawfully acquired work</li> <li>• copyright works: literary, dramatic, musical, artistic works</li> <li>• object of protection by neighbouring rights e.g. sound recordings, broadcasts, performances</li> <li>• excluded types of works: textbooks, university manuals, single use works, compilations, computer programs, sheet music</li> </ul> <p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• educational activities, instruction, training</li> </ul> <p>Conditions of Use:</p> <ul style="list-style-type: none"> <li>• audience consisting of teachers, pupils, pupils' relatives, "personal directly connected" with institution</li> <li>• no entrance fee/no pecuniary reward/non-profit purposes/proceeds solely for institution's purposes</li> <li>• attribution as to source and author required (if indicated on source)</li> </ul>	
---	--	--	--

**TOPIC:**

**Access to/use of materials by Educational/Research Institutions, Educators and Researchers**

**Explanation:** The basic approach to teaching and research is teacher-centered and institution-focused, in which learning and research outcomes are prescribed based on a fixed rubric or assessed using a standardized scoring or evaluation system. Traditional learning activities teach knowledge and skills by transferring information, and follow a fixed structure with a high degree of instructor facilitation. By providing access to, supplying or using materials, the teacher or instructor seeks to get students or researchers to engage in learning activities that are likely to result in achieving the intended learning outcome.

Category of Educational Activity	Owner's Rights Implicated	Elements of Statutory Limitations and Exceptions	Elements for Ongoing Consideration
<p>Statutory provision:</p> <ul style="list-style-type: none"> <li>• Quotations</li> <li>• Limited copy reproduction for Educational Purposes</li> <li>• Multiple copy reproduction for Educational Purposes</li> </ul> <p>Activities:</p> <ul style="list-style-type: none"> <li>• preparation: educational/research institute, educator/researcher quotes from or uses single copy of material for instruction preparation or research purposes e.g. to understand, analyse and critique material, identify key ideas, develop own ideas or material <i>etc.</i></li> <li>• preparation: educational/research institute, educator/researcher collects, collates, archives and stores materials (including storing on local networks, institutional intranets, on third party internet hosts or cloud-based systems), for preparation for instruction or research</li> </ul>	<p>Primary:</p> <ul style="list-style-type: none"> <li>• reproduction</li> </ul> <p>Secondary:</p> <ul style="list-style-type: none"> <li>• communication (including making available)</li> <li>• performance</li> <li>• circumvention of TPM (if original is secured)</li> <li>• alteration of RMI (if necessary)</li> </ul>	<p><u>Quotations</u></p> <p>Scope of Works:</p> <ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• (lawfully) published and/or lawfully acquired work</li> <li>• copyright works: literary, dramatic, musical, artistic works</li> <li>• object of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>• excluded types of works: works of architecture, computer programs</li> </ul> <p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• commentary, criticism, debate, discussion, review, polemy, education, science, teaching, illustration, information, research</li> </ul> <p>Conditions of Use:</p> <ul style="list-style-type: none"> <li>• amounted quoted is justifiable/necessary to achieve purpose, or is compatible with fair practice or fair use factors</li> <li>• attribution as to source and author required (if indicated on source)</li> </ul>	<p><u>Quotations</u></p> <ul style="list-style-type: none"> <li>• Scope: include right of translation or adaptation of quotation</li> <li>• TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable quotations for educational or research purposes</li> </ul> <p><u>Limited Copy Reproduction</u></p> <ul style="list-style-type: none"> <li>• Scope of works: includes or excludes digital works e.g. computer programs, databases</li> <li>• Rights implicated: include communication of works (including making available those works)</li> <li>• Beneficiary: include education-support institutions like tuition centres, vocational centres</li> <li>• Beneficiary: allowing beneficiary (educational institution, research centre) or instructors, staff, students of beneficiary to authorise another person to effect the reproduction, communication, adaptation on his or</li> </ul>

<ul style="list-style-type: none"> <li>• preparation: as above, including reprography, conversion, digitization, adaptation (e.g. change from non-digital to digital, or from one digital format to another digital format) or translation (change from one language to another) of existing material to facilitate any of the above educational or research objectives</li> <li>• preparation: as above, including circumventing, bypassing or disabling any TPM or RMI that would prevent or interfere with any of the above educational or research objectives</li> <li>• instruction: educational/research institute, educator/researcher uses, presents and/or distributes copies (including electronic copies and electronic distributions) of materials on an ad hoc basis to impart information, knowledge, explain ideas or information, to students, other researchers</li> <li>• instruction: educational/research institute, educator/researcher makes single or multiple copies (or extracts of copies) of materials (e.g. handouts, assigned readings) for formal instruction, typically for a specific course or module, or for research purposes, to facilitate or enable synchronised discussions and sharing of information</li> <li>• instruction: educational institute, educator extracts, pre-selects, collects and/or compiles material into course packs for instructional</li> </ul>		<p><u>Limited Copy Reproduction</u></p> <p>Scope of Works:</p> <ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• (lawfully) published and/or lawfully acquired work</li> <li>• copyright works: literary, dramatic, musical, artistic works</li> <li>• object of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>• articles, short works, extracts of works, scholarly, history, literature, scientific works</li> <li>• lectures, lessons, talks delivered at educational establishments</li> <li>• excluded types of works: works of architecture, computer programs, musical scores</li> <li>• excluded types of works: single use works, works intended to be "consumables" e.g. workbooks, exercises, works published as material intended for educational purposes or as teaching or instructional material e.g. textbooks, school or university manuals, performances and phonograms for educational purposes</li> </ul> <p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• educational, pedagogical, scientific, research purpose</li> <li>• critical thinking, cultural purposes, commentary, presentation, training (professional or vocational)</li> <li>• illustration for instruction or teaching and/or scientific research</li> <li>• face-to-face teaching, instruction or discussion, for course of education or lesson</li> </ul>	<p>her behalf e.g. a documentation or archiving centre or bookshop</p> <ul style="list-style-type: none"> <li>• Remuneration: free, or requiring remuneration in the form of levies payable on recording media or reprographic equipment or other equitable remuneration mechanism</li> <li>• Conditions: extent of copying of work that can be made and frequency of copying</li> <li>• Conditions: unavailability of or limitations in terms and conditions of collective licence (e.g. no digital copying or making available) whereby limited copy reproduction cannot be effected</li> <li>• Conditions: terms and conditions of licence override, restrict or circumscribe statutory limitations and exceptions</li> <li>• Liability: indirect liability of educational institution, research centre for unlicensed and unauthorised reproduction, communication, adaptation etc. made by instructors, staff, students, third party contractors (e.g. those offering reprographic services or digital conversions) albeit for educational or research purposes</li> <li>• Liability: indirect liability of Internet intermediaries whose resources have been used for unlicensed and unauthorised reproduction, communication, adaptation etc. made by instructors, staff, students, educational institutions, research centres</li> </ul>
---	--	--	--

<p>purposes for specific course or module and circulates or enables multiple copies to be circulated to students</p> <ul style="list-style-type: none"> <li>assessment: educational/research institute, educator/researcher quotes from, extracts, or makes single or multiple copies of material for students, other researchers, in the form of assessments, questions, evaluations, surveys etc. to assess or evaluate students' and researchers' understanding, comprehension or personal reflection</li> </ul>		<ul style="list-style-type: none"> <li>in the course of instruction or preparation for instruction</li> <li>making of films/audio-visual works or film/audio-visual work sound-tracks in course/preparation of/for instruction</li> <li>research or (private) study</li> <li>examination: setting, communicating and answering the questions</li> </ul> <p>Conditions of Use:</p> <ul style="list-style-type: none"> <li>no income, financial gain; no commercial purpose from use</li> <li>compatible with fair practice, fair use/dealing factors</li> <li>copy at teacher's individual request; copy to be spontaneous</li> <li>copy/reproduction to be carried out by an educational institution (e.g. school, university), scientific establishment and/or research centre</li> <li>copy/reproduction to be carried out by a person giving or receiving instruction, a teacher or a student, personnel of educational institution, scientific establishment or research centre</li> <li>copy/reproduction is not by way of reprographic process</li> <li>no collective licence available (of which institution or centre is/should be aware)</li> <li>copy may not be published or used commercially, or transferred to any other person</li> <li>attribution as to source and author required (if indicated on source), unless infeasible or impractical</li> </ul> <p><u>Multiple Copy Reproduction</u></p> <p>Scope of Works:</p>	<ul style="list-style-type: none"> <li>TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable reproductions for educational or research purposes</li> </ul> <p><u>Multiple Copy Reproduction</u></p> <ul style="list-style-type: none"> <li>Scope of works: includes or excludes digital works e.g. computer programs, databases</li> <li>Rights implicated: include <i>both</i> reproduction and communication of multiple copies of works (including making available those works)</li> <li>Conditions: extent of copying of work that can be made and frequency of copying (both w/o a licence and with a licence)</li> <li>Beneficiary: include profit-oriented, education-support institutions like tuition centres, vocational centres</li> <li>Beneficiary: allowing beneficiary (educational institution, research centre) or instructors, staff, students of beneficiary to authorise another person to effect the reproduction, communication, adaptation on his or her behalf e.g. a documentation or archiving centre or bookshop</li> <li>Remuneration: require some equitable remuneration mechanism based on record keeping or some other administrative requirements</li> <li>Conditions/Licences: unaffordable licensing prices, difficulties of establishing remuneration fees, limited types of licences (e.g. only</li> </ul>
---	--	---	--

		<ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• (lawfully) published and/or lawfully acquired work</li> <li>• copyright works: literary, dramatic, musical, artistic works</li> <li>• object of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>• articles, short works, extracts of works, scholarly, history, literature, scientific works</li> <li>• excluded types of works: works of architecture, computer programs, broadcasts</li> <li>• excluded types of works: single use works, works intended to be "consumables" e.g. workbooks, exercises, works published as material intended for educational purposes or as teaching or instructional material e.g. textbooks, school or university manuals, performances and phonograms for educational purposes</li> </ul> <p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• educational, pedagogical, scientific, research purpose</li> <li>• critical thinking, cultural purposes, commentary, presentation, training (professional or vocational)</li> <li>• illustration for instruction or teaching and/or scientific research</li> <li>• face-to-face teaching, instruction (in classroom) or discussion, for course of education or lesson</li> <li>• examination: setting, communicating and answering the questions</li> </ul> <p>Conditions of Use:</p> <ul style="list-style-type: none"> <li>• no income, financial gain; no commercial purpose from use</li> </ul>	<p>blanket and no ad hoc per-use transactional use licences), unavailability of or limitations in terms and conditions of licence (e.g. no digital copying or making available licences, licenses only for some types of works, only national licence - no cross-border or international licences for overseas works)</p> <ul style="list-style-type: none"> <li>• Conditions: use of multiple copy reproduction limitation or exception may be subject to availability of overriding licence or overriding licence may be more restrictive than limitation or exception</li> <li>• Conditions: terms and conditions of licence override, restrict or circumscribe statutory limitations and exceptions</li> <li>• Conditions/Liability: difficulty of complying with administrative requirements of collective licence (e.g. recording of title and other details of work reproduced) whereby limited copy reproduction cannot be effected, and possible exposure of educational institution, research centre, instructors, staff, and students to liability</li> <li>• Liability: indirect liability of educational institution, research centre for unlicensed and unauthorised reproduction, communication, adaptation etc. made by instructors, staff, students, third party contractors (e.g. those offering reprographic services or</li> </ul>
--	--	---	--

		<ul style="list-style-type: none"> <li>• copy at teacher's individual request; copy to be spontaneous</li> <li>• copy/reproduction to be carried out on premises of an educational institution (e.g. school, university), scientific establishment and/or research centre</li> <li>• copy/reproduction to be carried out by a person giving or receiving instruction, a teacher or a student, personnel of educational institution, scientific establishment or research centre</li> <li>• no collective licence available (of which institution or centre is/should be aware)</li> <li>• attribution as to source and author required (if indicated on source), unless infeasible or impractical</li> </ul>	<p>digital conversions) albeit for educational or research purposes</p> <ul style="list-style-type: none"> <li>• Liability: indirect liability of Internet intermediaries whose resources have been used for unlicensed and unauthorised reproduction, communication, adaptation etc. made by instructors, staff, students, educational institutions, research centres</li> <li>• TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable reproductions for educational or research purposes</li> </ul>
--	--	--	---

**TOPIC:**

**Distance Learning Activities**

**Explanation:** The availability, first, of mail and fax correspondence, and subsequently and now more typically, dissemination of information by telecommunications and broadcast, made it possible for the learning process to be effected without face-to-face instruction, thereby overcoming the limitations of geography and time. In distance learning, instructional materials produced by the educational institution or learning provider is sent directly to the student via a combination of mail, fax, TV, radio, or direct broadcast satellite. Tutorial support is provided via telephone or correspondence, and assessments, typically written, are sent back typically via correspondence for review by the educational institution. Many distance learning programmes are supplemented with face-to-face or campus-based learning for a hybrid learning model, and come to be described as "external study courses" when comparing them with similar programs offered on-campus by the educational institution. (Although the issues for the two educational activities largely correspond to each other, for purposes of this typology, the discussion about Distance Learning Activities excludes the conduct of Online Courses as an educational activity.)

Category of Educational Activity	Owner's Rights Implicated	Elements of Statutory Limitations and Exceptions	Elements for Ongoing Consideration
<p>Statutory provision:</p> <ul style="list-style-type: none"> <li>Recording, Broadcast/Communication of Educational Materials</li> <li>Multiple copy reproduction for educational purposes</li> </ul> <p>Activities:</p> <ul style="list-style-type: none"> <li>(largely as above w.r.t. preparation, instruction and assessment for Access to/use of materials by Educational/Research Institutions, Educators and Researchers)</li> <li>preparation: educational institute produces instructional materials in print form and distributes them via mail or fax correspondence to student correspondents</li> <li>preparation: educational institute produces instructional materials in broadcast form (e.g. as aural or</li> </ul>	<p>Primary:</p> <ul style="list-style-type: none"> <li>communication</li> <li>reproduction</li> <li>distribution</li> </ul> <p>Secondary:</p> <ul style="list-style-type: none"> <li>performance</li> <li>circumvention of TPM (if original is secured)</li> <li>alteration of RMI (if necessary)</li> </ul>	<p><u>Recording, Broadcast/Communication of Educational Materials</u></p> <p>Scope of Works:</p> <ul style="list-style-type: none"> <li>(no limitations)</li> <li>(lawfully) published and/or lawfully acquired work</li> <li>copyright works: literary, dramatic, musical, artistic works</li> <li>object of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>excluded types of works: works of architecture, computer programs, cable programmes available only from cable television services, public stage performances</li> <li>excluded types of works: single use works, works intended to be "consumables" e.g. workbooks, exercises, works published as material intended for educational purposes or as teaching or instructional material e.g. textbooks, school or university manuals, performances and phonograms for educational purposes</li> </ul>	<p><u>Recording, Broadcast/Communication of Educational Materials</u></p> <ul style="list-style-type: none"> <li>Scope of works: includes or excludes digital works e.g. computer programs, databases</li> <li>Rights implicated: include making available of works and distribution of works (e.g. right of dissemination e.g. communication may not encompass the circulation of physical copies)</li> <li>Beneficiary: include profit-oriented, education-affiliated learning providers, external study institutes, adult-education institutions and vocational centres</li> <li>Beneficiary: include correspondent 'students' from overseas jurisdictions (different from that where beneficiary institution is based)</li> <li>Beneficiary: allowing beneficiary (educational institution, research centre) or instructors, staff, students</li> </ul>

<p>audiovisual recordings) and disseminates them via recordings, telecommunications or broadcasts to student correspondents</p> <ul style="list-style-type: none"> <li>• instruction: educational institute records or "live" broadcasts classroom instruction or lectures on-campus for dissemination via recordings, telecommunications or broadcasts to student correspondents – dissemination may be "live"/synchronous or "delayed"/time-deferred/asynchronous</li> <li>• instruction: instructor and correspondent may engage in long-distance synchronous teaching, instruction or tuition with exchange of material and information via telecommunications facilities – whether via audio only or with audiovisual communications</li> <li>• assessment: educational institute distributes assessment materials in print form, or disseminates assessment materials and instruction via recordings, telecommunications or broadcasts to student correspondents; and in turn collects the completed assessment materials, typically via distributed written correspondence</li> </ul>		<p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• educational, pedagogical, scientific, research purpose</li> <li>• critical thinking, cultural purposes, commentary, presentation, training (professional or vocational)</li> <li>• illustration for instruction or teaching</li> <li>• distance learning, external study course, correspondence course, communication for teaching purposes, time-deferred instruction, to support or supplement classroom (face-to-face) teaching or instruction</li> <li>• examination: setting, communicating and answering the questions</li> </ul> <p>Conditions of Use:</p> <ul style="list-style-type: none"> <li>• no income, financial gain; no commercial purpose from use</li> <li>• compatible with fair practice, fair use/dealing factors</li> <li>• communication within premises of educational institution</li> <li>• communication initiated from premises of educational institution</li> <li>• participants limited to enrolled students or those acting under school authority</li> <li>• no collective licence available (of which school/institution is/should be aware)</li> <li>• communication, performance or display is directly related to/of material assistance to/in course of course content/teaching/instruction</li> <li>• distributed recording to be used only for educational purposes/not to be used for any other purpose</li> <li>• attribution as to source and author required (if indicated on source), unless infeasible</li> </ul>	<p>of beneficiary to authorise another person (typically an expert third party) to effect the reproduction, communication, distribution, adaptation on his or her behalf e.g. cinematographer, film/video/broadcast producer, sound technician, post-production engineer, editor etc.</p> <ul style="list-style-type: none"> <li>• Remuneration: free, or requiring remuneration in the form of levies payable on recording media or reprographic equipment or other equitable remuneration mechanism</li> <li>• Conditions/Licences: unavailability of or limitations in terms and conditions of collective licence (e.g. no distribution outside of on-campus learning programme, no cross-border or international licences for overseas distribution) whereby distance learning cannot be effected</li> <li>• Conditions: terms and conditions of licence override, restrict or circumscribe statutory limitations and exceptions</li> <li>• Liability: indirect liability of educational institution, beneficiary for unlicensed and unauthorised reproduction, communication, distribution, adaptation etc. made by instructors, staff, students, third party contractors or affiliates for offering distance learning programmes</li> <li>• Liability: indirect liability of intermediaries such as broadcasters and distributors whose resources</li> </ul>
--	--	--	--

		<p><u>Multiple Copy Reproduction</u> (see above)</p>	<p>have been used for unlicensed and unauthorised reproduction, communication, distribution, adaptation etc. of distance learning programmes</p> <ul style="list-style-type: none"> <li>• TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable adaptations, communication, reproductions and distributions for distance learning</li> </ul> <p><u>Multiple Copy Reproduction</u></p> <ul style="list-style-type: none"> <li>• (largely as above w.r.t. Access to/use of materials by Educational/Research Institutions, Educators and Researchers)</li> <li>• Beneficiary: include profit-oriented, education-affiliated learning providers, external study institutes, adult-education institutions and vocational centres</li> <li>• Conditions/Licences: unavailability of or limitations in terms and conditions of collective licence (e.g. no distribution outside of on-campus learning programme, no cross-border or international licences for overseas distribution) whereby distance learning cannot be effected</li> </ul>
--	--	--	---

<b>TOPIC:</b>			
<b>Online Courses</b>			
<b>Explanation:</b> The advent of electronic communications and the Internet have made it possible to offer distance learning free of the constraints of mail correspondence, and overcome the limitations of unidirectional communications such as broadcasting and cable programme services. Online courses enable materials to be accessible and available for near immediate distribution to the registered students, for instruction, tuition support and intra-student engagement and collaboration to be conducted both synchronously and asynchronously, as well as individually and in groups, either immediately or time-delayed, and for assessments and evaluations to be carried out instantaneously, wherever the learning institution or students may be. In this regard, all the materials are digital and communication of the materials, instruction and information is done electronically, usually via the Internet or a secured intranet, thereby enabling access to instructional materials and information and instructional services anytime and anywhere. <sup>5</sup>			
<b>Category of Educational Activity</b>	<b>Owner's Rights Implicated</b>	<b>Elements of Statutory Limitations and Exceptions</b>	<b>Elements for Ongoing Consideration</b>
<p>Statutory provision:</p> <ul style="list-style-type: none"> <li>Recording, Broadcast/Communication of educational materials</li> <li>Multiple copy reproduction for educational purposes</li> </ul> <p>Activities:</p> <ul style="list-style-type: none"> <li>(largely as above w.r.t. preparation, instruction and assessment for Access to/use of Materials by Educational/Research Institutions, Educators and Researchers and Distance Learning)</li> <li>preparation: educational institute collects, extracts, collates, archives and stores material from existing digital resources (including publicly accessible Internet websites or resources, licensed or paywalled)</li> </ul>	<p>Primary:</p> <ul style="list-style-type: none"> <li>communication (including making available)</li> <li>reproduction</li> </ul> <p>Secondary:</p> <ul style="list-style-type: none"> <li>distribution (if supplemented with printed materials)</li> <li>performance</li> <li>circumvention of TPM (if original is secured)</li> <li>alteration of RMI (if necessary)</li> </ul>	<p><u>Recording, Broadcast/Communication of Educational Materials</u></p> <p>Scope of Works:</p> <ul style="list-style-type: none"> <li>(no limitations)</li> <li>(lawfully) published and/or lawfully acquired work</li> <li>copyright works: literary, dramatic, musical, artistic works</li> <li>objects of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>excluded types of works: works of architecture, computer programs, cable programmes available only from cable television services, public stage performances</li> <li>excluded types of works: single use works, works intended to be "consumables" e.g. workbooks, exercises, works published as material intended for educational purposes or as teaching or instructional material e.g. textbooks, school or university manuals, performances and phonograms for educational purposes</li> </ul>	<p><u>Recording, Broadcast/Communication of Educational Materials</u></p> <ul style="list-style-type: none"> <li>Scope of works: includes or excludes digital works e.g. computer programs, databases</li> <li>Rights implicated: include making available of works <i>with</i> reproduction of works since every online communication of digital works will implicate both rights</li> <li>Beneficiary: include profit-oriented, education-affiliated learning providers, external study institutes, adult-education businesses and vocational centres, SPOC, SSOC, SMOC, and MOOC providers</li> <li>Beneficiary: include correspondent students and participants (who are not students as they are not necessarily seeking formal educational accreditation)</li> </ul>

<sup>5</sup> CalPoly.edu, "Educational Benefits of Online Learning", 1998, [http://blackboardsupport.calpoly.edu/content/faculty/handouts/Ben\\_Online.pdf](http://blackboardsupport.calpoly.edu/content/faculty/handouts/Ben_Online.pdf).

<p>resources, subscription databases) in preparation for instruction</p> <ul style="list-style-type: none"> <li>• preparation: educational institute produces, from licensed and unlicensed content, instructional materials in digital form (which includes conversion, digitization, adaptation and translation), stores and uploads them onto various network resources e.g. hosting servers, streaming servers, electronic forums, virtual learning environments</li> <li>• preparation: as above, and educational institute distributes them via electronic means of communication such as email, local networks or the Internet to student correspondents</li> <li>• instruction: asynchronous instruction where educational institute pre-records instruction or lectures for dissemination as recordings on various electronic platforms e.g. flipped classrooms, webinars, webcasts, teaching portals, Small Private Online Courses (SPOCs) and Massive Open Online Courses (MOOCs)<sup>6</sup></li> <li>• instruction: synchronous instruction where instructor engages one or more student correspondents "live" on various electronic platforms e.g. web-based voice over IP, video or web conferences, telerobotics,</li> </ul>		<p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• educational, pedagogical, scientific, research purpose</li> <li>• critical thinking, cultural purposes, commentary, presentation, training (professional or vocational)</li> <li>• illustration for instruction or teaching</li> <li>• synchronous face-to-face teaching via online medium</li> <li>• distance learning, external study course, correspondence course, communication for teaching purposes, time-deferred instruction, to support or supplement classroom (face-to-face) instruction</li> <li>• examination: setting, communicating and answering the questions</li> </ul> <p>Conditions of Use:</p> <ul style="list-style-type: none"> <li>• no income, financial gain; no commercial purpose from use</li> <li>• compatible with fair practice, fair use/dealing factors</li> <li>• communication within premises of educational institution</li> <li>• communication initiated from premises of educational institution, or on (designated) terminals (in establishments), or on computer/information/closed/secure network (operated or controlled by an educational institution), or via email</li> </ul>	<ul style="list-style-type: none"> <li>• Beneficiary: include students and participants from overseas jurisdictions (different from that where beneficiary institution is based)</li> <li>• Beneficiary: allowing beneficiary (educational institution, research centre) or instructors, staff, students of beneficiary to authorise another person (typically an expert third party) to effect the reproduction, communication, distribution, adaptation on his or her behalf e.g. platform developer and programmer, online course or module designer and developer, systems integrator, course operator</li> <li>• Remuneration: free, or requiring remuneration in the form of levies payable on recording media or replicating equipment or other equitable remuneration mechanism</li> <li>• Conditions/Licences: unavailability of or limitations in terms and conditions of collective licence (e.g. no dissemination or communication outside of on-campus learning programme, no cross-border or international licences for overseas dissemination or communication) whereby online courses cannot be effected</li> <li>• Conditions: terms and conditions of licence override, restrict or</li> </ul>
--	--	--	--

<sup>6</sup> Andreas M. Kaplan, Michael Haenlein, "Higher education and the digital revolution: About MOOCs, SPOCs, social media, and the Cookie Monster", *Business Horizons* (2016) 59, 441-450, doi:10.1016/j.bushor.2016.03.008.

<p>online tuition, Synchronous Small Online Courses (SSOCs), online campus lectures, campus live-streaming, Synchronous Massive Online Courses (SMOCs)<sup>7</sup></p> <ul style="list-style-type: none"> <li>• instruction: delayed or time-deferred instruction where educational institute records "live" classroom instruction or lectures on-campus for subsequent dissemination via recordings, telecommunications or broadcasts to student correspondents</li> <li>• instruction: instructor and correspondent(s) engage in long-distance synchronous and/or asynchronous teaching, instruction, presentation or tuition with uploading, posting and exchanging of material and information online – whether via email, intranet, Internet, virtual classroom, online forum, chat room, other virtual learning environments</li> <li>• instruction: correspondent with other correspondent(s) collaborate and engage in long-distance asynchronous and/or synchronous learning, sharing, discussions, peer reviewing with exchange of material and information online – whether via email, intranet, Internet, online forum, chat room, electronic study groups</li> <li>• instruction: student correspondents access instructional content and</li> </ul>		<ul style="list-style-type: none"> <li>• participants limited to enrolled students or those acting under school authority</li> <li>• no collective licence available (of which school/institution is/should be aware)</li> <li>• communication, performance or display is directly related to/of material assistance to/in course of course content/teaching/instruction</li> <li>• recording to be used only for educational purposes/not to be used for any other purpose</li> <li>• attribution as to source and author required (if indicated on source), unless infeasible</li> </ul> <p><u>Multiple Copy Reproduction</u> (see above)</p>	<p>circumscribe statutory limitations and exceptions</p> <ul style="list-style-type: none"> <li>• Liability: direct liability of beneficiary for unlicensed and unauthorised reproduction, communication, distribution, adaptation etc. from offering online courses arising from non-compliance with copyright laws of multiple jurisdictions, typically overseas jurisdictions of students and participants (different from that where beneficiary institution is based) where online courses are accessed</li> <li>• Liability: indirect liability of educational institution, beneficiary for unlicensed and unauthorised reproduction, communication, distribution, adaptation etc. made by instructors, staff, students, third party contractors or affiliates for offering online courses</li> <li>• Liability: indirect liability of intermediaries such as network access providers, service providers, hosts, platform operators etc. whose resources have been used for unlicensed and unauthorised reproduction, communication, distribution, adaptation etc. of online courses</li> <li>• TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable adaptations, communication, reproductions for online courses</li> </ul>
---	--	---	--

<sup>7</sup> *Id.*

<p>services via designated terminals, home computers, laptops, mobile devices e.g. smartphones and tablets, to give students maximum flexibility and not impose technical barriers for instruction</p> <ul style="list-style-type: none"> <li>• assessment: educational institute distributes and disseminates assessment materials in digital form via downloads, links, recordings etc.; and in turn collects the (synchronously or asynchronously e.g. self-paced) completed assessment materials or feedback, typically online vial email, intranet, Internet, virtual classrooms or platforms, instant electronic clickers, instant digital polls and other virtual learning environments</li> </ul>			<p><u>Multiple Copy Reproduction</u></p> <ul style="list-style-type: none"> <li>• (largely as above w.r.t. Access to/use of materials by Educational/Research Institutions, Educators and Researchers and also as above w.r.t. Online Courses via Recording, Broadcast/Communication of Educational Materials)</li> <li>• Conditions/Licences: unavailability of or limitations in terms and conditions of collective licence (e.g. no dissemination, communication (including making available) learning programme, no cross-border or international licences for overseas dissemination or communication) whereby online courses cannot be effected</li> </ul>
---	--	--	--

<p><b>TOPIC:</b></p> <p><b>Adaptations and Translations of Materials for Educational and Research Purposes</b></p> <p><b>Explanation:</b> The use of materials for educational and research purposes may entail or necessitate their translation from one language into another, rearrangements or transformations of the material, or changes from one format into another, for instance, from non-digital or print format into digital format or from one digital format into another digital format. Many of these required adaptations and translations are not unique to the conduct of educational activities and research, but the preparation, carrying out of instruction and conducting assessments as part of education and research may necessitate such adaptations and translations.</p>			
<p>Statutory provision:</p> <ul style="list-style-type: none"> <li>• Private or Personal Use</li> <li>• Quotations</li> <li>• Performance for Educational Purposes</li> <li>• Limited copy reproduction for Educational Purposes</li> <li>• Multiple copy reproduction for Educational Purposes</li> <li>• Recording, Broadcast/Communication of Educational Materials</li> </ul> <p>Activities (variously referred to above):</p> <ul style="list-style-type: none"> <li>• adapt a work by converting it from one form to another (e.g. from non-digital form to digital form, or between digital formats) for preparation for instruction, as part of instruction, as part of assessment or for research</li> <li>• adapt/convert a work from one form to another to enable communication, distance learning and online courses</li> <li>• translate a work for educational or research purposes (i.e. from one language into another language)</li> </ul>	<p>Primary:</p> <ul style="list-style-type: none"> <li>• reproduction</li> <li>• adaptation</li> </ul> <p>Secondary:</p> <ul style="list-style-type: none"> <li>• communication (including making available)</li> <li>• circumvention of TPM (if original is secured)</li> <li>• alteration of RMI (if necessary)</li> </ul>	<p>Scope of Works:</p> <ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• (lawfully) published and/or lawfully acquired work</li> <li>• copyright works: literary, dramatic, musical, artistic works</li> <li>• objects of protection by neighbouring rights e.g. sound recordings, broadcasts, cable programmes, performances</li> <li>• copyright works and works protected by neighbouring rights, including their adaptations and translations, in their original language or in translation</li> <li>• excluded types of works: visual art, works of architecture, sculptures, applied art, drawings, computer programs, digital databases, sheet music, audio and audio-visual works</li> </ul> <p>Purpose of Use:</p> <ul style="list-style-type: none"> <li>• (no limitations)</li> <li>• educational, pedagogical, scientific, research purpose</li> <li>• illustration for instruction or teaching and/or scientific research</li> <li>• commentary, criticism, debate, discussion, review, polemy, education, science, teaching, illustration, information, research</li> <li>• private/personal use</li> </ul>	<ul style="list-style-type: none"> <li>• Scope of works: limited to only original works or include original works and their adaptations and translations ("source work" formulation), or broad "use" formulation</li> <li>• Beneficiary: includes a person acting under the authority of educational institution e.g. a translator, language expert, programmer or developer</li> <li>• Remuneration: free, or requiring remuneration in the form of levies payable on recording media or equipment or other equitable remuneration mechanism</li> <li>• Conditions: terms and conditions of licence override, restrict or circumscribe statutory limitations and exceptions that enable adaptations and translations</li> <li>• Conditions/Licences: terms and conditions of licence limit adaptation or translation (e.g. no further adaptation or translation of already-translated or adapted work), or limited types of licences (e.g. only blanket and no ad hoc per-use transactional use licences), unavailability of licences (e.g. licences only for specific languages; only national licence - no cross-</li> </ul>

<ul style="list-style-type: none"> <li>rearrange or transform a work in conjunction with other educational or research purposes e.g. music and film studies, media, communications and social studies, data mining, statistical analysis and artificial intelligence research</li> </ul>		<ul style="list-style-type: none"> <li>(scientific) research/study/performance/appreciation</li> </ul> <p>Conditions of Use:</p> <ul style="list-style-type: none"> <li>no income, financial gain; no commercial purpose from use</li> <li>compatible with fair practice, fair use/dealing factors</li> <li>for needs of a natural person</li> <li>no collective licence available (of which institution or centre is/should be aware)</li> <li>adaptation may not be published or used commercially, or transferred to any other person</li> <li>attribution as to source and author required (if indicated on source), unless infeasible</li> </ul>	<p>border or international licences for overseas works)</p> <ul style="list-style-type: none"> <li>TPM/RMI flexibilities: giving beneficiary access to flexibilities to enable adaptations, translations for educational and research purposes</li> </ul>
--	--	---	---