



Is it legal?

Education and Copyright in the Digital Age

Teresa Nobre
May 2022



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About the author:

TERESA NOBRE

Teresa is an attorney-at-law based in Lisbon, Portugal. She is a legal adviser to the COMMUNIA Association on the Digital Public Domain, and she is also the Creative Commons Portuguese Chapter Lead. Teresa holds a university degree in Law from the University of Lisbon Faculty of Law and a Master of Laws in Intellectual Property from the Munich Intellectual Property Law Center.

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Cover picture: Portrait of African American female teacher holding laptop in the class at school, Wavebreakmedia, 2021.

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Glossary

Copyright and related rights

“Copyright” refers to exclusive rights granted to the author of a work.

“Related rights” refer to exclusive rights granted to certain categories of people (e.g., performers such as actors and singers, producers of sound recordings and films, broadcast organisations) in respect of the materials they produce. Copyright and related rights are granted for a limited period of time and enable their rights owners to control the use of their materials and to receive remuneration.

Copyrighted works and other protected materials

“Copyrighted works” refer to literary and artistic creations that are protected by copyright, such as books, musical works, paintings and sculptures, audio-visual works, and theatre plays. **“Other protected materials”** refer to materials that are protected by related rights, such as performances, sound recordings, films, TV and radio broadcasts.

Exceptions and limitations to copyright and related rights¹

refer to cases where materials protected by copyright and related rights may, under circumstances specified in the law, be carried out without the owner’s permission. Laws across the world permit the use of protected materials without the owner’s permission for a variety of purposes, namely for education, research, and informational purposes. The use of a third-party material under an exception or limitation to copyright and related rights requires, in some cases, that compensation be paid to the rights owner; in others, it is free of charge. In this study, exceptions and limitations to copyright and related rights are often referred to as **“copyright exceptions”**, for the purpose of simplicity.

Educational exceptions

refer to exceptions and limitations to copyright and related rights that allow the use of copyrighted works and other protected materials, without the owner’s permission, for educational purposes (e.g., classes and other teaching and learning activities; uses that support, enrich, or complement the teaching; and examinations).

¹ There is no clarity in the law as to the difference between “limitations” and “exceptions”. Therefore, in this report, these terms will be used interchangeably.



Quotation exceptions

refer to exceptions and limitations to copyright and related rights that allow quotations from copyrighted works and other protected materials, without the owner's permission, provided that they are in accordance with fair practice. In general, quotations can be made not just from texts, but also from images, music, and video; they can be made for purposes such as criticism, review, and education; and they can take various forms (e.g., insertions of text in footnotes, inclusion of artworks in films, hyperlinks to files).

Fair dealing exceptions

refer to specific exceptions and limitations to copyright and related rights that allow the use of copyrighted works and other protected materials without the owner's permission for certain purposes defined in the law, such as criticism and review. In some countries, fair dealing exceptions also cover educational purposes.

Fair use

refers to a general and flexible exception to copyright that allows the use of copyrighted works and other protected materials, without the owner's permission, provided that the use is considered "fair use". National courts apply various factors (e.g., the purpose of the use, the amount of the work used, the commercial or non-profit nature of the activity, and the impact of the use on the potential market for the original work) to assess whether the activity may be permitted as "fair use". This open-ended exception permits uses for a variety of purposes, including education, research, and quotation.

I. Introduction

The right to choose materials for teaching and learning is an essential part of the professional autonomy and academic freedom of teachers, to enable them to address different needs in the classroom². Teachers often complement traditional teaching resources (e.g., textbooks and other curated teaching and learning materials) with a wide spectrum of materials from a variety of sources (e.g., short videos uploaded by individuals to social media platforms, newspaper articles, and cultural heritage collections) that are often protected by copyright and related rights. Therefore, the lack of a modern and supportive copyright framework can be an obstacle to deliver on the right to education, particularly digitally-supported and remote education.

In some countries, teachers benefit from broad and flexible copyright frameworks for education (i.e., copyright exceptions and limitations for educational purposes) that allow them to use essential copyrighted works and other protected materials for teaching and learning. However, other countries have outdated laws and force teachers to either refrain from using such materials or to work in legal grey zones.

The COVID-19 pandemic has highlighted, more than ever before, that legal frameworks for access, use, and re-use of copyrighted materials and other protected materials for educational purposes are often inadequate in a digital world. The pandemic has caused a massive disruption of the normal organisation of education³. With schools compelled to close almost overnight⁴, the education community was forced to rapidly shift to a remote environment⁵. Classes went live online or were pre-recorded, with teachers using email, cloud-based

2 International Labour Organization (ILO)/UNESCO Recommendation concerning the Status of Teachers (1966) and UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997). ILO and UNESCO. Retrieved from: [wcms_493315.pdf \(ilo.org\)](https://www.ilo.org/wcmsp5/groups/public/-/databases/-/wcms_493315.pdf)

3 The COVID-19 pandemic has “created the largest disruption of education systems in history, affecting nearly 1.6 billion learners in more than 190 countries and all continents,” including “94 per cent of the world’s student population, up to 99 per cent in low and lower-middle income countries”. United Nations. (2020). Policy Brief: Education During COVID-19 and Beyond. (August). Retrieved from: <https://unsdg.un.org/resources/policy-brief-education-during-covid-19-and-beyond>.

4 See UNESCO ‘COVID-19 Impact on Education’ (global monitoring of school closures caused by COVID-19). Retrieved from: <https://en.unesco.org/covid19/educationresponse>.

5 During the peak of the pandemic, online learning was offered in 90 per cent of all countries worldwide (including in all high-income countries), followed by TV (87 per cent), paper-based take-home materials (85 per cent) and radio-based remote learning (61 per cent) (with low income and lower middle-income countries relying more heavily on broadcast media). UNESCO, UNICEF, and the World Bank (2020). What Have We Learnt? Overview of findings from a survey of Ministries of Education on National Responses to COVID-19. (October). p.21. Retrieved from: <https://data.unicef.org/resources/national-education-responses-to-covid19/>

storage and online chat platforms to share materials with students. As schools reopen, continue in hybrid formats, or are forced to move to distance education due to wars or natural disasters for example, remote teaching and learning, as well as digitally-supported education, remain an important feature of education systems.

While the nature of teaching shifts, teachers continue using many of their in-school teaching activities and methodologies in online and remote settings. Previously, they were showing, reading, playing, and distributing materials to an audience (i.e., students) that was at the same location where the activity was taking place (i.e., school). During remote teaching, they carry out these activities for an audience that is attending a live online class, listening to a pre-recorded class, or accessing materials shared through remote communication channels from different locations (e.g., at home).

From a copyright perspective, however, these activities are not the same: they trigger different types of exclusive rights. This means that, in order for teachers to carry out these activities without the permission of the copyright owner, their national copyright laws need to have in place broad and flexible educational exceptions. Such exceptions to copyright need to be technology neutral, cover the rights needed in an online context (e.g., communication to the public at a distance and on demand), and not be limited to certain venues (e.g., school premises).

The European Union (EU) has reformed its copyright laws to address some of the limitations copyright law placed on digitally-supported and remote education⁶, which will soon support these new remote and hybrid modes of in-person and online participation in educational activities in all of its Member States⁷. The education communities in the United States rely on general “fair use” provisions when extending long-standing practices into new digital settings. However, in many other countries across the world, particularly in the Global South, the legal

6 In 2019, the EU made it mandatory for Member States to introduce or maintain in force in their national laws an educational exception giving educators and learners at educational institutions the freedom to use copyrighted materials in digital and cross-border teaching and learning activities. In addition, the EU also adopted a legal solution to decide which educational exception applies to cross-border activities (i.e., educational activities that involve participants located in different EU Member States): the activities are considered to take place in the country where the educational institution is located, regardless of where the participants are actually located and using the materials. In other words, educators only have to comply with the educational exception established in the national law of the country where the educational establishment, which is responsible for the activity, is located. See Article 5 of the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0790#d1e40-92-1>

7 As of 9 April 2022, 12 EU Member States had already introduced or updated their educational exceptions to copyright to cover digital and cross-border teaching and learning activities, as mandated by the new Copyright Directive.

framework for education does not look as favourable in terms of use of copyrighted materials.

This study intends to demonstrate whether copyright exceptions and limitations for educational purposes are fit for remote educational practices. Several studies commissioned by the World Intellectual Property Organization (WIPO) have analysed the copyright frameworks for education across the world⁸. The author has also previously analysed the fragmented landscape of provisions allowing for educational uses of copyrighted works and other protected materials in Europe⁹, as well as in Africa, Asia-Pacific, and Latin America and the Caribbean¹⁰. This study draws on and goes beyond these earlier findings to better understand whether existing national education exceptions across the world have the necessary flexibility to cover activities that take place remotely.

It does this by analysing 10 digital and remote teaching and learning activities that involve the use of copyrighted materials and other protected materials under the copyright laws of 10 African countries (Cameroon, Egypt, Kenya, Morocco, Mozambique, Namibia, Nigeria, Senegal, South Africa, Zimbabwe), 10 countries from the Asia-Pacific region (Australia, Fiji, India, Indonesia, Iran, Malaysia, Nepal, the Philippines, Thailand, and Vietnam), 10 countries in Europe and North America (Czech Republic, Estonia, France, Germany, Hungary, Italy, The Netherlands, Poland, United Kingdom, United States), and 10 countries from Latin America and the Caribbean (Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, and Mexico).

8 Most recently, Seng, D. (2017). Updated Study And Additional Analysis Of Study On Copyright Limitations And Exceptions For Educational Activities, SCCR/35/5 REV. WIPO. Retrieved from: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=390249.

9 Nobre, T. (2017). Copyright and Education in Europe: 15 Everyday Cases in 15 Countries. COMMUNIA. Retrieved from: https://www.communia-association.org/wp-content/uploads/2017/05/15casesin15countries_FinalReport.pdf.

10 Nobre, T. (2019). Copyright and Education in Africa, Asia-Pacific and Latin America and the Caribbean. Education International. Retrieved from: <https://eie.io/3Q9wrCh>

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II. Methodology

This report presents the findings of a legal study into copyright exceptions and limitations for educational purposes in 40 countries. The national copyright exceptions were analysed by resolving 10 hypothetical digital and remote teaching and learning scenarios.

These scenarios include:

- Educational activities covering the communication of protected materials to students and their parents at a distance (e.g., showing a video or playing a music excerpt during a live online class)
- Making copyrighted materials available on demand to students outside the classroom (e.g., emailing reading material to students or sharing those materials through the school's digital platform)
- Sharing educational materials with students that are created by teachers and include third-party protected materials (e.g., images included in a worksheet, textbook excerpts included in a presentation)

The copyright exceptions and limitations analysed in this study are contained in the versions of the national laws shown in Table 1 below.

Country	National Laws and Legal Provisions	Retrieved from	Year of Version
Argentina	<i>Ley 11.723 - Regimen Legal de la Propiedad Intelectual: Article 10; Article 36</i>	http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/42755/texact.htm	2020
Australia	<i>Copyright Act 1968: Section 28; Section 200AB; Section 200(1A); Section 113P</i>	https://wipolex.wipo.int/en/text/501165	2019
Brazil	<i>Lei N.º 9.610 de 19 de Fevereiro de 1998 (Lei dos Direitos Autorais e dos Direitos Conexos): Article 46 III, VI and VIII; Article 89</i>	https://wipolex.wipo.int/en/text/582869	2019

Cameroon	Law No. 2000/011 of December 19, 2000, on copyright and neighbouring rights: Article 29(1)(b), (d) and (e); Article 29(2); Article 67(1)	https://wipolex.wipo.int/en/text/125950	2000
Chile	Ley 17336 sobre la Propiedad Intelectual: Article 71A; Article 71B; Article 71M; Article 71N; Article 71O; Article 71Q	https://www.bcn.cl/leychile/	2017
Colombia	Ley 23 de 1982 (28 de enero de 1982) sobre derechos de autor: Article 31; Article 32; Article 98(2); Article 164; Article 168(2); Article 178(c) and (d) Ley 1915 (12 de julio de 2018): Article 16(a) and (e)	http://derechodeautor.gov.co:8080/documents/10181/20095192/ http://derechodeautor.gov.co:8080/documents/10181/182597/	2018
Czech Republic	Zákon č. 121/2000 Sb. Zákon o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů (autorský zákon): Section 31(1) (c); Section 35(2); Section 38a; Section 78; Section 82; Section 86	https://www.zakonyprolidi.cz/cs/2000-121/zneni-20210227	2021
Ecuador	Código Orgánico de la Economía Social de Los Conocimientos, Creatividad e Innovación: Article 212 (1), (15), (17), (22), (23), (28) and (30); Article 213; Article 216	https://wipolex.wipo.int/es/text/439410	2016
Egypt	Law No. 82 of 2002 on the protection of intellectual property rights: Article 171(1), (4), (6), (7) and (9); Article 171(4); Article 173	https://wipolex.wipo.int/en/text/126540	2002
El Salvador	Ley de Propiedad Intelectual (Decreto Legislativo N° 604, de 15 de julio de 1993): Article 44(c); Art 45(c); Article 46; Article 49-C; Article 85(c)(4) and (d)	https://wipolex.wipo.int/en/text/455849	2017
Estonia	Copyright Act: Section 18/1; Section 19(1)(1), (2), (3) and (3/2); Section 22; Section 75(1)(2)	https://www.riigiteataja.ee/en/eli/ee/506042016003/consolide/current	2022
Fiji	Copyright Act, 1999: Section 41; Section 43; Section 44(1), (5) and (6); Section 45(1); Section 46; Section 47; Section 64(1) and (2); Section 75; Section 172; Section 173; Section 174; Section 181	https://wipolex.wipo.int/en/text/179081	2009
France	Code de la propriété intellectuelle: L.122-5(6.°) and L.211-3(5.°); L.122-5(3.°)(a); L.122-5(12.°) and L-122-5-4; L.211-3(3.°)(a); L.211-3(3.°)(e) and L.122-5-4	https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006069414/	2021
Germany	Urheberrechtsgesetz – UrhG: Section 44a; Section 51; Section 60a; Section 60b; Section 47; Section 52; Section 83; Section 85/4; Section 87/4; Section 94	http://www.gesetze-im-internet.de/englisch_urhg/	2021

Guatemala	<i>Law on Copyright and Related Rights (Decree No. 33-98): Article 63(b); Article 64(a); Article 66(d)</i>	https://wipolex.wipo.int/en/text/408729 ; https://wipolex.wipo.int/en/text/409068	2018
Honduras	<i>Ley del Derecho de Autor y de los Derechos Conexos (Decreto N° 4-99-E): Article 50; Article 56; Article 121(3); Article 123</i>	https://wipolex.wipo.int/en/text/234858	2006
Hungary	<i>1999. évi LXXVI. törvény a szerzői jogról: Section 34; Section 35(5) and (6); Section 38(1)(b); Section 68(2); Section 83(2)</i>	https://njt.hu/jogszabaly/1999-76-00-00	2021
India	<i>Copyright Act, 1957: Section 51(1)(b), (h), (j); Section 52(1)(a), (g), (i), (j); Section 39(a), (b) and (c)</i>	https://wipolex.wipo.int/en/text/390852	2012
Indonesia	<i>Law of the Republic of Indonesia No. 28 of 2014 on Copyright: Article 26(c) and (d); Article 44(1)(a) and (c); Article 49</i>	https://wipolex.wipo.int/en/text/578071	2014
Iran	<i>Act on the Protection of Authors, Composers and Artists Rights, 1970 (Copyright Law): Article 7; Article 8</i>	https://wipolex.wipo.int/en/text/197798	1970
	<i>Translation and Reproduction of Books, Periodical and Phonograms Act (December 26, 1973): Article 5</i>	https://wipolex.wipo.int/en/text/328141	1973
Italy	<i>Legge 22 aprile 1941 n. 633 Protezione del diritto d'autore e di altri diritti connessi al suo esercizio: Article 15; Article 68-bis; Article 70(1); Article 70(1-bis); Article 70-bis(1) and (4); Article 71-decies</i>	http://www.interlex.it/testi/l41_633.htm ; https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto .	2021
Kenya	<i>Copyright Act, 2001 (Act No. 12 of 2001): Second Schedule, Section A. paragraphs a), c), g); Second Schedule, Section B. paragraphs a), b), d) and e); Section 28(2); Section 29(i)</i>	https://wipolex.wipo.int/en/text/506085	2017
Malaysia	<i>Copyright Act, 1987 (Act No. 332): Section 9(4) and (5); Section 13(2)(a), (f), (ff), (g), (h), (i), (q), (k), (m); Section 15(2); Section 16(3)(b), (c) and (f)</i>	https://wipolex.wipo.int/en/text/195942 ; https://wipolex.wipo.int/en/text/347820	2012
Mexico	<i>Ley Federal del Derecho de Autor: Article 16.4; Article 148.I; Article 148.III; Article 149.III; Article 151.III; Article 151.IV</i>	https://wipolex.wipo.int/en/text/579009	2020
Morocco	<i>Loi N° 2-00 relative aux Droits D'Auteur et Droits Voisins: Article 13; Article 14; Article 15(a) and (b); Article 23(b); Article 54(c), (d) and (e)</i>	https://wipolex.wipo.int/en/text/567222	2014
Mozambique	<i>Lei N° 4/2001 de 27 de Fevereiro 2001 (Lei de Direitos de Autor): Article 10; Article 11(a) and (b); Article 19(b); Article 47(c) and (e)</i>	https://wipolex.wipo.int/en/text/180470	2001

Namibia	<p><i>Copyright and Neighbouring Rights Protection Act, 1994 (Act No. 6 of 1994): Section 15(1)(b); Section 15(3); Section 15(4); Section 15(9); Section 15(11); Section 16; Section 18(4); Section 19(1); Section 20; Section 21; Section 22; Section 22; Section 24</i></p> <p><i>Performers Protection Act: Section 8(c)</i></p>	https://wipolex.wipo.int/en/text/584515	2016
Nepal	<p><i>Copyright Act, 2059 (2002): Section 18(b); Section 18(a)</i></p>	https://wipolex.wipo.int/en/text/189128	2002
The Netherlands	<p><i>Auteurswet: Article 13(a); Article 15a; Article 12(5); Article 16</i></p> <p><i>Neighbouring Rights Act: Article 2(8); Article 10(b) and (e)</i></p>	https://wetten.overheid.nl/BWBR0001886/2021-06-07/	2021
Nigeria	<p><i>Copyright Act: Second Schedule, paragraphs a), f), h), j) and o); Section 7(2); Section 8(3)</i></p>	https://wipolex.wipo.int/en/text/268735	2004
Peru	<p><i>Ley sobre el Derecho de Autor (Decreto Legislativo N° 822): Article 41(c); Article 43(a); Article 44</i></p>	https://wipolex.wipo.int/en/text/506917	2018
Philippines	<p><i>Intellectual Property Code of the Philippines (Republic Act No. 8293): Section 184(b), (e), (f), (h), (i); Section 185(1); Section 205.2; Section 210; Section 212</i></p>	https://wipolex.wipo.int/en/text/488674	2015
Poland	<p><i>Act of 4 February 1994 on Copyrights and Related Rights: Article 27; Article 100</i></p>	https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19940240083/U/D19940083Lj.pdf	
Senegal	<p><i>Law No. 2008-09 of January 25, 2008, on Copyright and Related Rights: Article 42; Article 44; Article 89</i></p>	https://wipolex.wipo.int/en/text/243176	2008
South Africa	<p><i>Copyright Act, 1978 (Act No. 98 of 1978): Section 12(1)(b), (3), (4), (9) and (11); Section 15(4); Section 16(1); Section 17; Section 18; Section 18(1); Section 19A; Section 19B; Section 50(2) (c)</i></p>	https://wipolex.wipo.int/en/text/130429;	2002
Thailand	<p><i>Copyright Act B.E. 2537 (1994): Section 32(2), (6), (7) and (8); Section 33; Section 36; Section 53</i></p>	https://wipolex.wipo.int/en/text/570066	2018
United Kingdom	<p><i>Copyright, Designs and Patents Act 1988: Section 28A; Section 30; Section 32; Section 33, Section 34; Section 35; Section 36; Schedule 2(2A, 4, 5, 6, 6ZA)</i></p>	https://www.legislation.gov.uk/ukpga/1988/48/contents	2021
United States	<p><i>Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code: 17 USC 107; 110(2)</i></p>	https://www.copyright.gov/title17/title17.pdf	

Viet Nam	<i>Law No. 50/2005/QH11 of November 29, 2005, on Intellectual Property: Article 25(1)(a), (b), (d) and (g); Article 32(1)(d)</i>	https://wipolex.wipo.int/en/text/274445	2005
Zimbabwe	<i>Copyright and Neighbouring Rights Act (Chapter 26:05): Section 25(1), (2), (3), (4), (5) and (6); Section 29(1); Section 31; Section 32; Section 73(1)(a)</i>	https://wipolex.wipo.int/en/text/503729	2004

For Africa, Asia-Pacific, and Latin-America and the Caribbean, the author relied mostly on the original versions and/or translations (official and unofficial) that are publicly available on the WIPO LEX website, maintained by WIPO¹¹. For Europe and North America, the author relied on the versions of the laws that are publicly available on national repositories of laws. This means that the legal provisions analysed in this study are not necessarily the most recent versions of such provisions.

The author carried out the legal analysis and resolved the hypothetical legal scenarios in all 40 countries except Australia, the United States, and Poland, where national copyright experts analysed the relevant national copyright provisions and resolved the scenarios in consultation with the author.

The results of the legal analysis performed for each scenario are presented in graphics below:

- **Countries that allow a specific use free of charge are marked with “Yes, free”**
- **Countries that make the use subject to compensation/remuneration are marked with “Yes, paid”**
- **Countries that do not allow a specific use are marked with “No”**
- **Countries where legal uncertainty exists as to whether a use is permitted or not are marked with a question mark “?”**

Furthermore, the graphics also indicate where the uses permitted under the exception are subject to the condition of no licences being available in the market for the same uses.

The results presented in the graphics are not necessarily complete, for various reasons.

¹¹ Retrieved from: <https://wipolex.wipo.int>

Firstly, the provisions were analysed against hypothetical scenarios, which do not disclose all the relevant conditions of the activity. For instance, the precise extent to which the protected material is used or the duration of the activity are not conveyed. In addition, no assessment is made as to the effect of the use upon the potential market for the protected material. A case-by-case analysis, assessing these and other relevant factors that national courts might develop, would be needed to determine whether an activity such as the ones presented in these hypotheses is legal.

Secondly, the author performed a literal interpretation of the relevant copyright provisions (i.e., the legal provisions were interpreted according to the simple plain meaning conveyed by its grammatical construction). No national case law or jurisprudence were analysed.

Finally, the study focuses only on uses permitted under national copyright laws. No licences were analysed. This means that educational uses permitted under a licensing scheme are not scrutinised in this publication.

III. Providing activities remotely

This study features one radio-based and three online-based and remote teaching and learning scenarios that use protected materials for educational purposes:

- **Watching a short video in a live online class**
- **Looking at an image in a live online class**
- **Enacting a theatre play online for parents**
- **Reading a story in a radio-broadcasted class**

1. Live online classes and other events

The three educational scenarios presented in the figures below take place during a live-streamed online class using video conferencing platforms such as Zoom, Google Hangouts, Webex, or Microsoft Teams, which are only available and accessible at a specified time (for the duration of the video conference). Furthermore, it is assumed that all participants are located in the same country.

From a copyright perspective, two different acts or aspects need to be considered: (i) the teacher or the student shows or presents the protected material to the participants of the online stream¹² and (ii) the computer automatically makes a temporary copy of such material during the stream¹³.

¹² In legal terms, there is a non-tangible transmission/communication of the protected material to the public by wire or wireless means, where the public is not present at the place where the transmission/communication originates.

¹³ In legal terms, there is a temporary act of reproduction of the protected material, which is a transient or incidental part of a technological process and whose sole purpose is to enable a transmission of the protected material in a digital network. In the various hypotheses, it is assumed that the technical set-up only makes temporary copies of the content transmitted.

Communication at a distance

All the selected countries from the **Global North** allow the type of distance communication of protected materials for educational purposes that are required for the scenarios listed in the figures below. In some countries, however, these exceptions are subject to quantity limitations (i.e., how much of a work a teacher is allowed to use under the exception), which can prevent the viewing of an entire short video or an entire image during a live online class (see Figures 1 and 2 below).

Countries in the **Global South** do not, in general, perform well in the scenarios shown below, mostly because their educational exceptions do not cover the type of distance communication of protected materials that are needed for teachers to show materials during live online activities. There are some exceptions, nevertheless. Some countries have general educational exceptions that allow any uses of copyrighted materials and other protected materials (e.g., Malaysia, Indonesia, the Philippines, and Nigeria); others have specific exceptions covering educational communication beyond the premises of educational establishments (e.g., Ecuador and Senegal). In these countries, there are no obstacles to the scenarios envisioned below.

Temporary copies

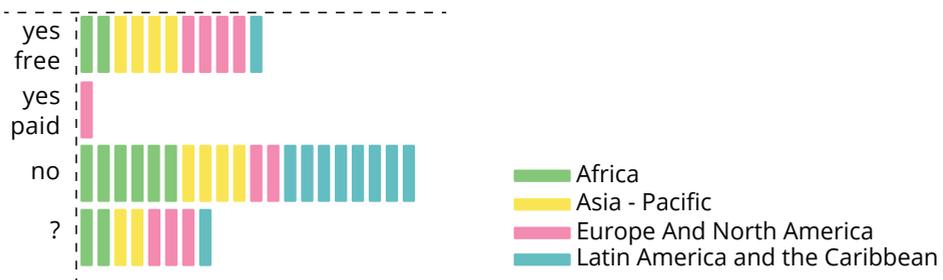
All the **European and North American countries** analysed permit these temporary and automatically-generated reproductions of protected materials whose sole purpose is to enable a technical transmission of those materials in a digital network¹⁴. In addition, they also allow reproductions made specifically for educational purposes.

Surprisingly, this research found that in a significant number of countries in **Asia-Pacific** (e.g., Fiji, Iran, Vietnam), **Africa** (e.g., Kenya, Namibia, South Africa), and **Latin America and the Caribbean** (e.g., Argentina, Brazil, and El Salvador), there are no copyright exceptions covering temporary files that are automatically copied by computers during the course of routine operations. That does not necessarily mean that temporary copies made during live online educational activities are not exempted. In fact, most countries have exceptions in place allowing reproductions that are specifically made for educational purposes. However, some

¹⁴ It should be highlighted that, up until recently, there was only one mandatory exception in the EU: an exception for the making of temporary copies of content transmitted in a network. See Article 5(1) of the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029>.

of those educational exceptions are subject to quantity limitations or to technological restrictions (e.g., a significant number of countries, particularly in Africa and in Latin America and the Caribbean, only cover so-called “reprographic reproductions”, without providing a definition for this term and thus casting doubts on the possibility to make digital copies under such provisions). Therefore, educational exceptions are not the best provisions to allow temporary reproductions automatically made by computers.

Figure 1. Teacher wants to show a short YouTube video in a live online class. Is it legal?

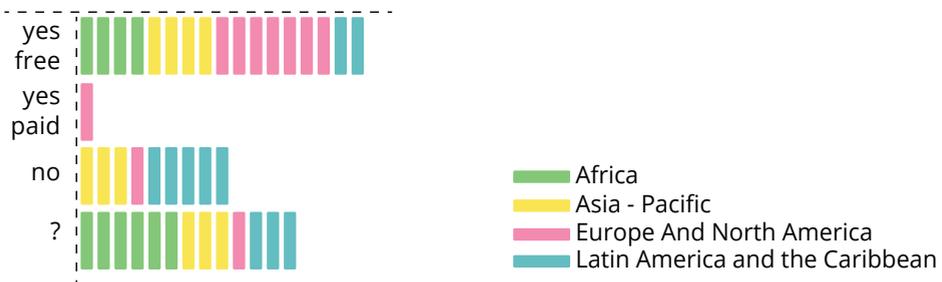


As mentioned above, all of the **Global North** countries under analysis have exceptions in place covering the types of uses required to show copyrighted works and other protected materials in a live online class. The reason for some of these countries not performing well in this scenario is that their national exceptions limit the extent to which a protected material can be used without permission from the copyright owner. It should be noted, however, that some countries, such as Germany or The Netherlands, limit the extent to which most materials can be used under their education exceptions, but still protect the right to use images (e.g., artwork and photographs), short works (e.g., short poems or videos), and individual works (e.g., individual articles from periodicals), therefore permitting the uses foreseen in the scenarios shown above. The only countries that prevent the type of use contained in this scenario are those that only allow educational uses of extracts or parts of protected materials, without differentiating between the different categories of protected materials¹⁵.

¹⁵ It should be noted that, in the EU, the right of communication to the public of copyrighted works, by wire or wireless means, is harmonised. This means that the national laws of EU Member States have to be interpreted in a uniform way, taking into account case law of the Court of Justice of the European Union, which has developed criteria to assess whether an act of communication constitutes public communication under EU law. One of such criteria is that the potential beneficiaries of the communication must constitute an indeterminate and fairly large number of recipients. Yet, it is not clear

Countries in the **Global South** do not, in general, perform well in this scenario, mostly because their educational exceptions do not cover the type of distance communication of protected materials that are needed for teachers to show materials during live online activities. In addition, several countries do not exempt temporary copies (e.g., a temporary file of an online video that is automatically copied by the computer in order to play smoothly), which are an integral and essential part of the technological processes involved in viewing copyright material on the internet.

Figure 2. Teacher wants to show an image in a live online class. Is it legal?



Almost all of the countries, across the different regions, perform well in this scenario. This is not necessarily because their educational exceptions cover this activity, but because this type of use can fall under the scope of protection of their quotation exceptions.

The act of quoting, which is important for the purposes of discussion, criticism, and creation of educational materials, is one of the few activities that is covered by a mandatory exception to copyright under the international legal framework¹⁶. For this reason, the act of quotation is permitted in almost all of the countries analysed (only two countries observed in this study, Nepal and Honduras, lack a copyright exception covering quotations of protected materials).

Countries that respect the scope of protection granted to the right of

if a class of students qualifies as such. Assessing this and the other criteria is a complex exercise, and there is no case law dealing with a similar act of use by a similar type of user. One can therefore consider that, in the EU countries that do not cover this scenario under their educational exceptions, there is legal uncertainty as to whether these uses are allowed or not. Nonetheless, the author has not labelled those countries with legal uncertainty.

¹⁶ See Article 10(1) of the Berne Convention for the Protection of Literary and Artistic Works, adopted in Paris on 9 September 1886, as revised and amended. Retrieved from: http://www.wipo.int/treaties/en/text.jsp?file_id=283698

quotation by international law¹⁷ allow anyone to make quotations from any categories of works to the extent required by the purpose¹⁸, provided that the quotation is compatible with fair practice. This means that, even if those countries' educational exceptions are too narrow to cover the use of an entire image in class, such use can still be possible under the quotation exception.

This being said, not all of the national laws have broad and flexible quotation exceptions in place. For instance, some countries require the quotation to be incorporated in another material (e.g., Guatemala, Morocco, and Mozambique), which could limit quotations made by simply showing the material during a live online class. Other laws do not include artistic works in the list of materials that can be quoted (e.g., Argentina, Mexico, Namibia, South Africa, and Zimbabwe). Finally, some countries limit the extent to which a material can be quoted (e.g., Brazil, Cameroon, Chile, El Salvador, France, Italy, and Thailand)¹⁹, which can also prevent the quotation of entire images.

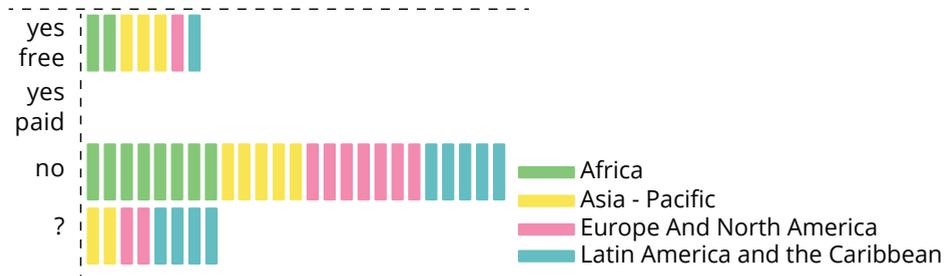
Finally, it should also be noted that some common law countries have fair dealing exceptions and those provisions could have a role to play, when their educational and quotation exceptions are too narrow to cover the type of use envisioned in this particular scenario. Most fair dealing exceptions observed in this study (e.g., Namibia, South Africa, and Zimbabwe) only allow uses of protected materials for purposes of criticism and review. In those cases, the fair dealing exceptions could only work as a fall-back solution for showing an image in class if there was an element of criticism or review behind such use, which the hypothetical scenario does not clarify. Hence, in those countries, the author considered that there was legal uncertainty as to the possibility of undertaking this activity.

17 Article 10(1) of the Berne Convention mandates that "It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries".

18 In all the countries examined, quotations are only allowed to the extent required by the purpose. This implies that the extent to which a work can be quoted is to be determined on a case-by-case basis. As a general rule, for a quotation to be considered fair, the extent to which protected materials may be quoted is limited. However, a material can be quoted in its entirety provided that the degree of use is consistent with the permitted purpose. In other words, the use of an entire image is possible under a quotation exception that respects the international standard. That is a common understanding with regards to the quotation exception stipulated by Article 10(1) of the Berne Convention for the Protection of Literary and Artistic Works, adopted in Paris on 9 September 1886, as revised and amended (hereinafter "Berne Convention"). See Ricketson, S. (2017). WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment, SCCR/9/7. World Intellectual Property Organization. Retrieved from: http://www.wipo.int/edocs/mdocs/copyright/en/sccr_9/sccr_9_7.pdf.

19 Some countries narrowed the scope of the quotation exception by inserting wording that explicitly (e.g., Italy expressly states that one can only quote a part of a work ("parti di opera") or implicitly (e.g., France uses expressions that suggest that one cannot quote an entire work: "courtes citations" ("short citations")) imposes an extent limitation. This means that, unless a proper provision is in place to exempt the quotation of entire artworks, such works can only be partially quoted and, consequently, the exception is of little use for such types of indivisible works.

Figure 3. Teacher wants students to enact a theatre play online for parents. Is it legal?



The vast majority of countries do not perform well in this scenario. In the **Global North**, there are two main obstacles:

- Some national educational exceptions are subject to quantity limitations that prevent the use of an entire theatre play.
- Several of these exceptions require that any online educational uses must take place through secure electronic environments accessible only to the teachers and students of the educational establishment²⁰. Thus, they exclude parents from the possibility of attending such events.

In the **Global South**, online school performances are not permitted in general. This is due to many countries not having educational exceptions in place for distance communication of protected materials, which are needed to use materials during live online activities.

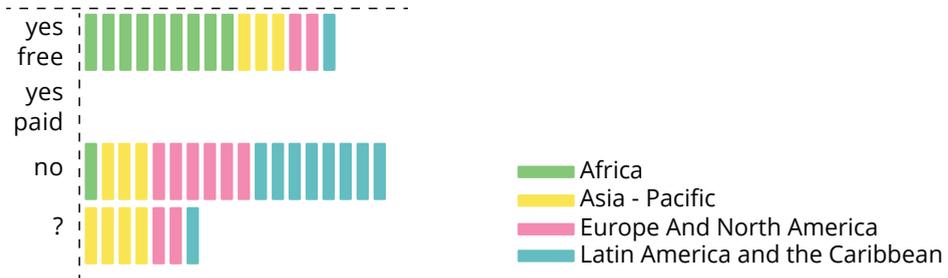
2. Radio-broadcasted classes

The remote scenario presented below takes place via radio broadcasting, therefore it only involves one act of use, from a copyright perspective:

- **The act of broadcasting protected materials**

²⁰ In the EU, these exceptions follow the regional minimum standard, which only requires Member States to permit distance uses that take place "through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff". See Article 5 of the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0790#d1e40-92-1>.

Figure 4. Teacher wants to read a story in a radio broadcasted class. Is it legal?



All of the selected countries from **Europe and North America** allow educational broadcasts. However, as mentioned before, some national educational exceptions have quantity limitations in place that prevent the use of an entire literary work. In addition, several of these exceptions only allow distance uses that are made through a secure electronic environment that is accessible only by teachers and students, thereby creating an obstacle to a radio broadcast that is in principle available to anyone.

The situation in **Asia-Pacific** and in **Latin America and the Caribbean** is not favourable either. The existing exceptions do not cover the act of broadcasting; or are subject to quantity limitations and therefore prevent the use of an entire literary work; or limit the types of users that can have access to the protected materials (e.g., teachers, students, but not parents); or are subject to physical limitations (e.g., the broadcast would only be allowed on the premises of the educational establishment and cannot be accessed remotely from home).

In **Africa**, nevertheless, nearly all of the legal frameworks analysed are supportive of uses of protected materials during radio-broadcasted classes. This is because most have been influenced by the educational exception prototype contained in the Tunis Model Law on Copyright for Developing Countries (1976)²¹, which specifically exempts “the utilization of a work by way of illustration in ... broadcasts”²².

21 The Tunis Model Law on Copyright for Developing Countries was adopted by the Committee of Governmental Experts convened by the Tunisian Government in Tunis from 23 February to 2 March 1976, with the assistance of WIPO and UNESCO. Retrieved from:

<https://www.wipo.int/publications/en/details.jsp?id=3177&plang=FR>

22 See Section 7(i)(c).



IV. Sharing third-party materials remotely

This study features three online-based scenarios, where third-party materials that are protected by copyright or other related rights are sent to the students, by the teacher, for the purposes of supporting and complementing teaching and learning activities:

- **Sharing an individual article through a school's closed network**
- **Emailing a news article as part of homework**
- **Sharing a diagram on a messaging app**

In these scenarios, the following acts of use take place: the act of making the protected materials available to the students on demand, and the act of making permanent reproductions of the protected materials, both during the upload of the materials by the teacher (e.g., storing the file in an online education platform or email) and at the download of the materials by the students (e.g., storing the file on the student's computer). Like in the previous section, it is assumed that all participants are located in the same country.

All of the selected countries from the **Global North** allow the types of educational reproductions and communication on demand²³ that are required in these scenarios. However, some have restrictions in place as to the extent to which a protected material can be used under an exception. Where some national copyright exceptions, despite being subject to quantity limitations, respect the right to use artistic works and individual articles in their entirety, others only allow educational uses of extracts or parts of protected materials, regardless of the nature of the material. This poses an obstacle to the uses foreseen in the scenarios below.

²³ In legal terms, there is a non-tangible transmission/communication of the protected material to the public by wire or wireless means, where the public is not present at the place where the transmission/communication originates and where the protected material is made available to members of the public in such a way that they may access them from a place and at a time individually chosen by them (on demand).

An interesting difference that emerged from the analysis of these remote uses in Europe is that, while some countries (e.g., France and The Netherlands) require the payment of a remuneration for all educational uses that go beyond a mere quotation, others (most notably Germany) make a clear differentiation between the types of educational uses that only involve a temporary copy of the material (such as automatically-generated copies in relation to live streaming), which can be made for free, and those that involve the making of a permanent copy (such as those contained in this section and in the following one), which typically require remuneration to be paid, unless they can be covered by the quotation exception.

The situation in most of the selected countries in the **Global South** is either not favourable or not clear in relation to the scenarios in Figures 5, 6, and 7 below. Most countries have exceptions in place allowing reproductions for educational purposes. However, in a significant number of countries, particularly in Africa, Latin America and the Caribbean, it is not clear if digital reproductions are permitted. In addition, and as explained in the previous section, many countries in the Global South do not have educational exceptions in place that would allow teachers to make available protected materials to students on demand.

Figure 5. Teacher wants to post an article on a platform used only by her class. Is it legal?

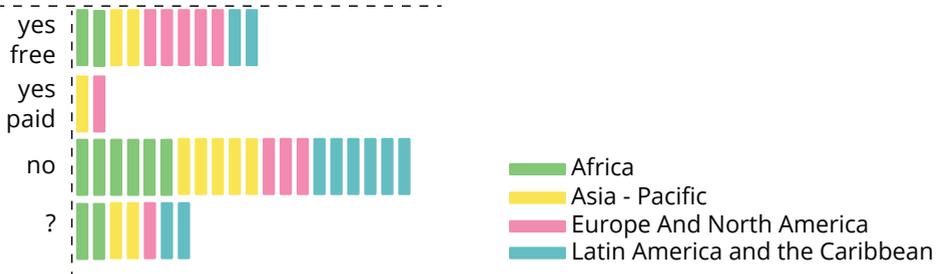


Figure 6. Teacher wants to email her students a news article as part of homework. Is it legal?

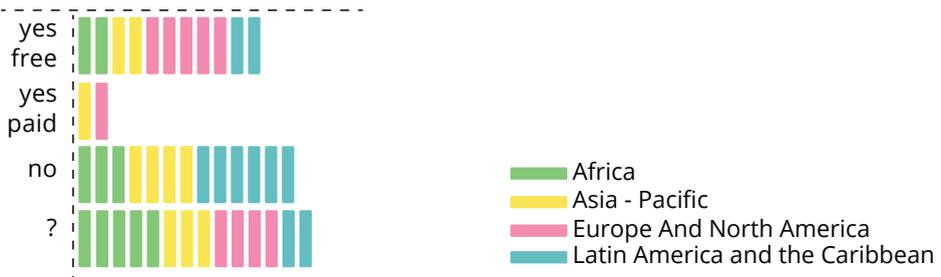
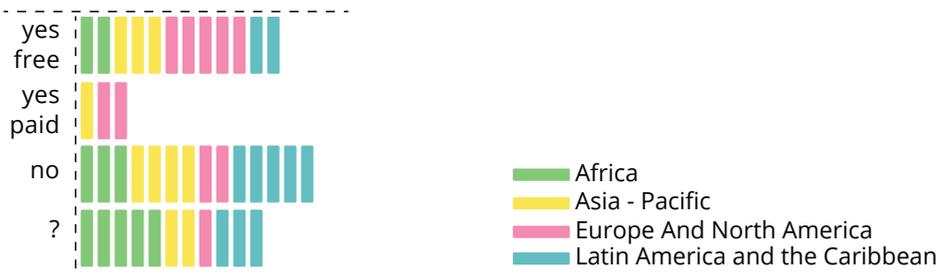


Figure 7. Teacher wants to share a diagram with her students on a messaging app. Is it legal?





V. Sharing materials that include third-party materials remotely

This study features three scenarios that involve third-party materials that are protected by copyright or other related rights and that are sent to the students by the teacher as part of educational exercises, teaching activities, or examinations:

- **Emailing a pre-recorded class with music excerpts**
- **Mailing a worksheet with textbook excerpts**
- **Inserting a photograph into an online examination**

In all these scenarios, the teacher has created teaching materials by using copyright-protected third-party materials before sharing them with the students. In the scenarios shown below in Figures 8 and 10, the materials are sent to the students by online means, therefore there is an act of making the protected materials available to the students on demand. In addition, permanent reproductions are made when the materials are uploaded or downloaded. In the scenario in Figure 9, a paper copy of the materials are sent to the students, therefore an act of permanent reproduction, followed by an act of distribution of said copies²⁴, occurs. Like in the previous sections, in these scenarios it is assumed that all participants are located in the same country.

It should be underlined that the types of uses envisioned in these scenarios can fall under the quotation exception. As already mentioned, only two countries in this study (Nepal and Honduras) lack a copyright exception covering quotations of protected materials. The act of quoting is permitted in the rest of the countries analysed and it is normally drafted in a broad way that allows the use of the protected material in another material (e.g., new teaching and learning materials) and the subsequent acts of sharing the material with students. There are exceptions, of course. For instance, the quotation exception in Fiji only covers the act of copying while the quotation exception in Colombia only

²⁴ In legal terms, there is a distribution of tangible articles incorporating the original or copies of the protected materials, that takes place by sale, donation, exchange, or other transfer of ownership.

covers quotes by transcription. In these countries, teachers would not be able to rely solely on the quotation exception; in order to share the materials with students, they would need national education exceptions covering those acts.

In **Europe and North America**, most countries perform well in all quotation scenarios since their quotation exceptions follow the international standard for the protection of the quotation right. France and Italy only allow quotations of parts of works, posing obstacles to the quotation of entire photographs in an examination.

In **Latin America and the Caribbean**, the main obstacle relates to the lack of exceptions applicable to materials protected by related rights. In order for a teacher to be able to use an excerpt of a music recording in a pre-recorded class, she needs not only an exception applicable to copyrighted works (to cover the musical work itself) but also an exception applicable to materials protected by related rights (to cover the musical performance and the recording of such performance).

In **Africa**, almost all of the countries analysed perform particularly well in the scenarios listed Figures 8, 9, and 10 below. This is because most have well-designed quotation exceptions in place that cover any types of works (not only text-based works, but also artworks, musical works, cinematographic works, etc.) to the extent needed for the purpose (including quotations of entire works, when that is consistent with the permitted purpose), and also because they were influenced by the educational exception prototype contained in the Tunis Model Law on Copyright for Developing Countries (1976), which specifically exempts “the utilization of a work by way of illustration in publications, broadcasts or sound or visual recordings for teaching, to the extent justified by the purpose”.

Figure 8. Teacher wants to email her students a pre-recorded class with short music excerpts. Is it legal?

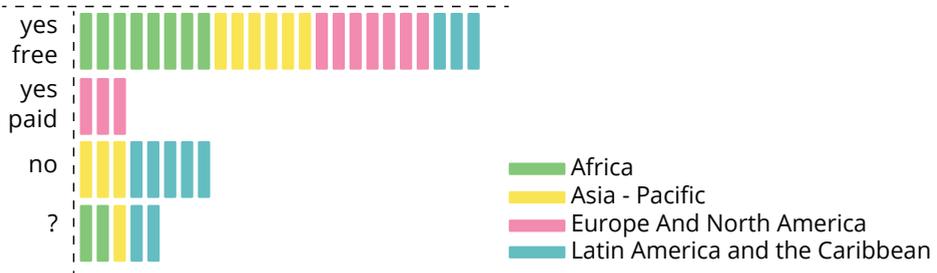


Figure 9. Teacher wants to mail her students a worksheet with short textbook excerpts. Is it legal?

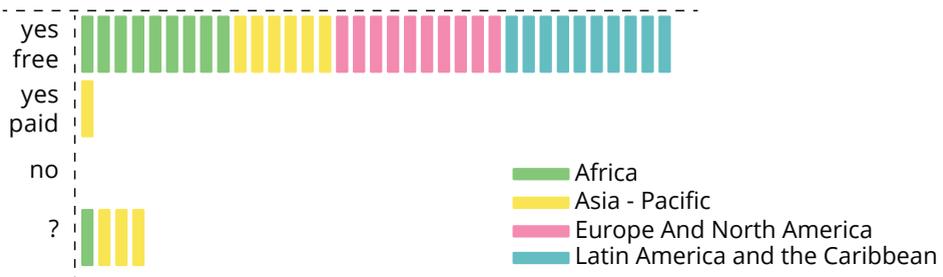
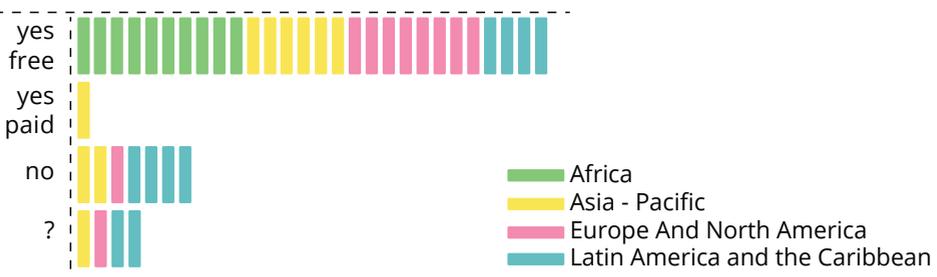


Figure 10. Teacher wants to insert a photograph in an online examination for her students. Is it legal?





VI. Conclusion

Access to knowledge is an important aspect of the right to education. Digital transformations have facilitated increasing opportunities to access and use diverse sources of information and materials for teaching and learning from early childhood education to higher education. Unfortunately, overly restrictive and outdated copyright laws force teachers to work in legal grey zones. This is true for the use of copyright-protected materials in classrooms, but particularly in digital and remote teaching and learning environments. The upsurge of digital education during the COVID-19 pandemic has shed further light on the inadequacies of legal frameworks for access, use, and re-use of copyrighted materials and other protected materials for educational purposes. With schools forced into closure almost overnight, more teachers than ever were confronted with the barriers imposed by inadequate copyright laws to provide for quality teaching and learning. As schools have started to reopen, continue in hybrid formats, or are forced to move to distance education due to incidents such as war or natural disasters, digitally-supported education and remote teaching and learning remain important features of education systems.

This comparative study sheds light on the status of copyright legislation for education around the world in the digital age. It provides insights into the shortcomings of certain legislative approaches to copyright exceptions for education and provides recommendations on the way forward. It does so by analysing 10 digital and remote teaching and learning scenarios that involve the use of copyrighted materials and other protected materials under the copyright laws of 40 Africa, Asia-Pacific, Europe and North America, and Latin America and the Caribbean.

This study's findings indicate that, currently, national copyright laws are not always fit for teaching in the 21st Century. More so, the current landscape of copyright legislation creates unnecessary and harmful legal barriers to the professional freedom and autonomy of teachers, the quality of education, and the achievement of the right to education.

In the majority of countries from the Global North analysed in this study, national copyright laws permit teachers and students to use protected materials in live-streamed online classes (i.e., synchronous use), as well as to provide students with on-demand materials and lessons by email or on secured online platforms (i.e., asynchronous use). In addition, they support the creation and sharing of educational materials that include third-party materials. In the majority of countries, teachers and students only need permission from copyright owners to use copyrighted works and other protected materials when they want to use entire works other than short works, artistic works, or individual articles.

In almost all of the EU countries analysed in this study, this favourable framework for education can be attributed to the 2019 EU-wide copyright reform²⁵, which made it mandatory for EU Member States to introduce in their laws an educational exception giving educators and learners at educational institutions the freedom to use copyrighted materials in digital and cross-border teaching and learning activities²⁶. The United Kingdom also modernised its copyright exceptions for educational purposes in 2014²⁷, which explains why it supports most remote education scenarios outlined in this study. Finally, in the United States, the education community relies on general “fair use” provisions when extending long-standing practices into new digital settings, and the flexibility granted by this general open clause explains the positive answers encountered for most of the scenarios.

In the Global South, the legal framework for education is not as favourable to online-based and digitally-supported education. A significant number of national copyright laws across the three regions lack educational exceptions covering the acts of communication at a distance (e.g., showing protected materials during a live online class, where both the teacher and their students are located in their respective homes) and on demand (e.g., sharing recorded lessons and reading materials by email or through the school’s online platform) needed to undertake such activities.

25 Before the reform, many EU Member States did not have proper educational exceptions in place to support digitally-supported and remote education. See Nobre, T. (2017). Copyright and Education in Europe: 15 Everyday Cases in 15 Countries. COMMUNIA. Retrieved from: https://www.communia-association.org/wp-content/uploads/2017/05/15casesin15countries_FinalReport.pdf.

26 See Article 5 of the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0790#d1e40-92-1>.

27 See the Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014. Retrieved from: <https://www.legislation.gov.uk/uksi/2014/1372/contents/made>.

Several countries do not even exempt temporary copies of protected materials (e.g., a temporary file of an online video that is automatically copied by the computer in order to play smoothly), which are an integral and essential part of the technological processes involved in viewing copyright material on the internet. Furthermore, while most countries have exceptions in place allowing teachers to copy copyrighted materials for educational purposes, in a significant number of laws, particularly in Africa and in Latin America and the Caribbean, it is not clear if digital reproductions are permitted.

There are some special cases. According to the research, some countries in these regions have general educational exceptions that allow any uses of copyrighted materials and other protected materials (e.g., Malaysia, Indonesia, the Philippines, and Nigeria). Others have specific exceptions covering educational communication beyond the premises of educational establishments (e.g., Ecuador and Senegal). In these countries, there are no obstacles to most synchronous and asynchronous uses of copyrighted materials analysed herein.

In addition, in Africa, where almost all of the countries analysed were influenced by the Tunis Model Law on Copyright for Developing Countries (1976), there is another exception allowing “the utilization of a work by way of illustration in publications, broadcasts or sound or visual recordings for teaching, to the extent justified by the purpose”²⁸. This exception potentially covers radio and TV-based education, as well as uses that require using third-party material in another material and that go beyond a mere quotation.

In the remaining countries, however, the only exceptions that are clearly applicable to digitally-supported and remote educational activities are the quotation exceptions. These exceptions, when drafted in broad and flexible terms, have the potential to cover not only uses that require using third-party material in another material (e.g., inserting excerpts of protected materials in worksheets and examinations and then sharing those educational materials with students by online means or through other remote communication channels), but also some essential uses that take place during a synchronous education activity (e.g., showing an image in a live online class). Nevertheless, these exceptions are not enough to cover other essential uses that take place during digitally-supported and remote education. For instance, a quotation exception would not allow a teacher to share reading materials on demand with

²⁸ See Section 7(i)(c) of the Tunis Model Law on Copyright for Developing Countries. Retrieved from: <https://www.wipo.int/publications/en/details.jsp?id=3177&plang=FR>

their students through online means, nor would it be adequate to cover acts of reading aloud a literary work in a remote class.

It should also be noted that some common law countries have fair dealing exceptions and those provisions could also have a role to play in permitting certain educational activities, when their national educational and quotation exceptions are too narrow. Most fair dealing exceptions observed in this study (e.g., India, Namibia, South Africa, and Zimbabwe) do not cover educational purposes within the list of purposes permitted under such provisions. Nevertheless, they all allow uses of protected materials for the purposes of criticism and review, which are present in many educational uses of protected materials.

Finally, it should be highlighted that, for the purpose of simplicity, these scenarios assume that all participants are located in the same country. However, teaching collaborations, online courses and other activities that involve the use of protected materials between students and teachers located in different countries are also a reality in today's education. In 2019 the EU adopted a legal solution to enable educational cross-border activities between all EU member states. **However, exchanges of protected materials beyond EU borders as well as across countries located in other regions of the world would trigger the application of multiple copyright laws, making it practically impossible for educators to engage in such cross-border activities.**

In conclusion, countries with broader, more flexible, and technologically neutral exceptions are better equipped to facilitate remote and digitally-supported education and empower teachers to make use of their academic freedom to choose and adapt materials essential for the provision of quality education for all.

Overall, educators and students from Africa and from Latin America and the Caribbean and, to a lesser extent, Asia-Pacific, are particularly disadvantaged in contrast to many of the countries in the Global North that have copyright legislation in place that is fit for the digital age. In addition, internationally agreed model laws such as the Tunis Model Law on Copyright for Developing Countries, as well as regional instruments for mandatory exceptions for education such as the one adopted by the EU in 2019, play an important role in national copyright laws.

Way forward

National copyright reforms for education

The scenarios analysed in this research show that national copyright exceptions are not always fit for digitally-supported and remote education. While this research only included 40 countries, it shows that, unless national copyright laws are substantially amended, education communities across the world will be stuck with narrow educational exceptions that will ultimately undermine quality teaching and learning in a digital and online environment. Strong public legislation for public interest activities such as education are urgently needed. National policy makers should focus on revising their copyright laws to ensure that they have flexible and broad copyright exceptions in place that stay relevant as innovation advances and regardless of the means of teaching and learning. This should be done in consultation with teachers and their representatives to ensure that it supports teaching and learning. Today, educational exceptions need to be technology neutral and need to allow a diversity of digital and analogue uses of all categories of protected materials, for non-commercial educational purposes, without limiting the activities to the premises of educational establishments and protecting the uses permitted from contractual and technological overrides.

Research on digital and remote educational practices

The lack of a modern and supportive copyright framework can be an obstacle to deliver on the right to education, particularly in the context of digital educational uses and distance learning. It will be important to conduct further research into understanding how teachers are working with materials and what their challenges are to ensure that copyright exceptions are designed based on daily teaching experiences.

International models fit for modern education

Soft laws are an important vehicle in the process of reaching an international consensus on controversial issues. It will be important to give more thought to legal reforms at the international level and a non-binding instrument could be a good starting point. This instrument could be designed to assist countries in reforming their copyright laws to incorporate the public interests related with access to education and to adapt their educational exceptions to the digital and online environments.



Convergence of national legal frameworks for education

Policy makers at an international level should make an effort to agree on an international binding instrument to ensure that the education community can enjoy a minimum set of rights to use copyrighted and other protected materials for educational purposes everywhere. This will substantially reduce the legal uncertainty and risks posed to educators, learners, and other participants of educational activities, including in a cross-border environment.

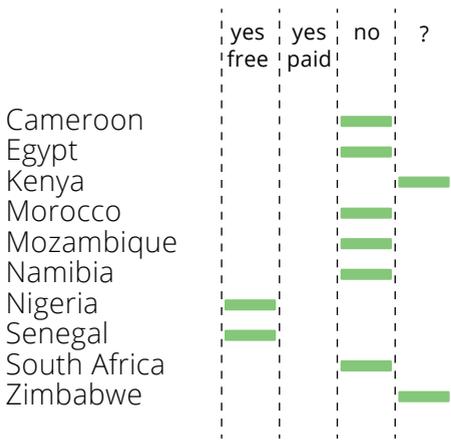
Solutions for cross-border educational uses

Legal solutions should be explored, at bilateral and multilateral levels, to deal specifically with certain cross-border uses of protected materials for educational purposes that are essential for education communities.

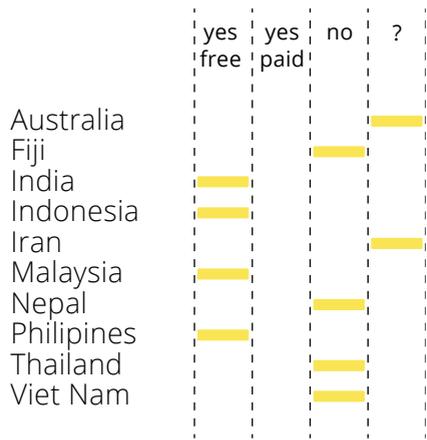
VII. Annex: Teaching and learning scenarios. Analysis by country.

Figure 1.1 Teacher wants to show a short YouTube video in a live online class. Is it legal?

Africa



Asia-Pacific



Europe and North America

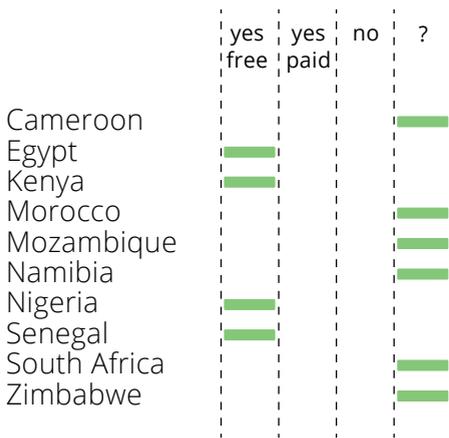


Latin America and the Caribbean

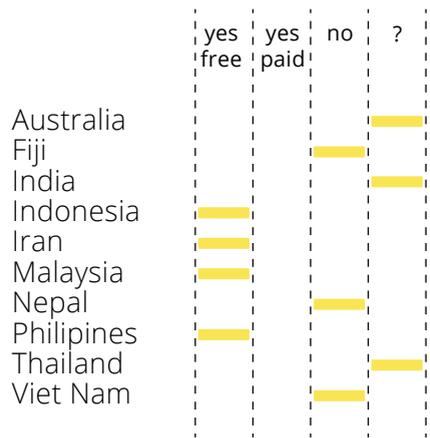


Figure 2.1 Teacher wants to show an image in a live online class. Is it legal?

Africa



Asia-Pacific



Europe and North America

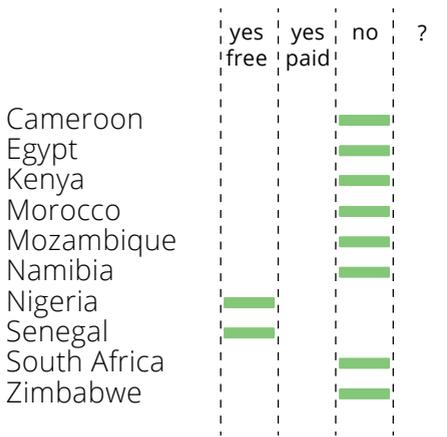


Latin America and the Caribbean

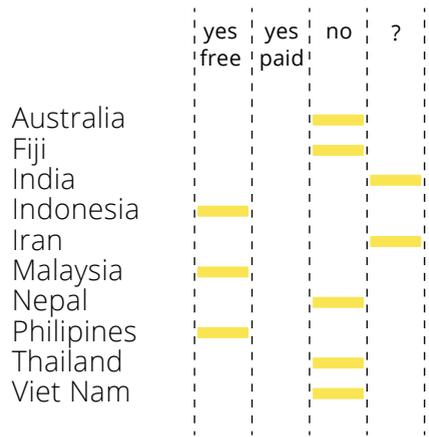


Figure 3.1 Teacher wants students to enact a theatre play online for parents. Is it legal?

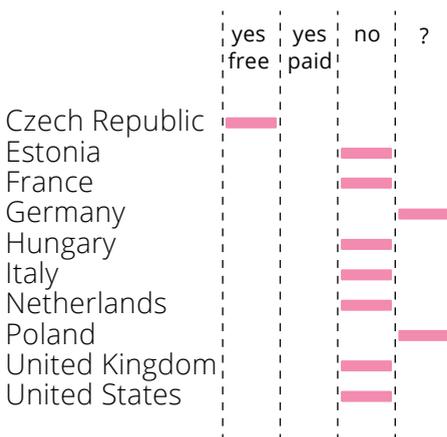
Africa



Asia-Pacific



Europe and North America

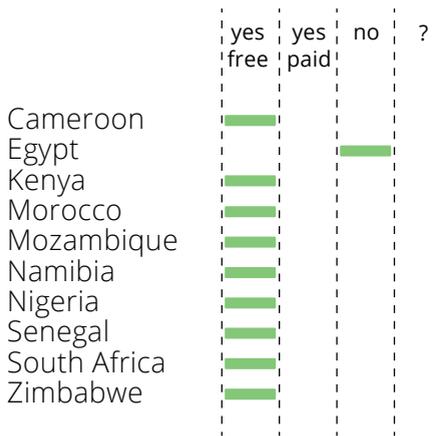


Latin America and the Caribbean



Figure 4.1 Teacher wants to read a story in a radio broadcasted class. Is it legal?

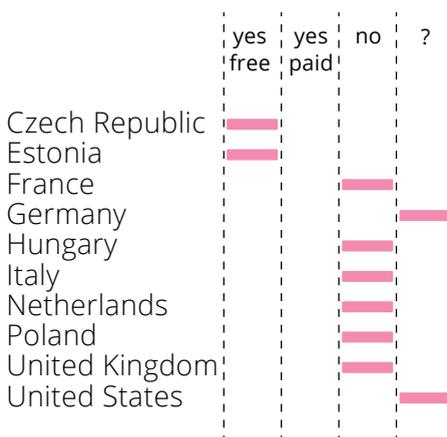
Africa



Asia-Pacific



Europe and North America

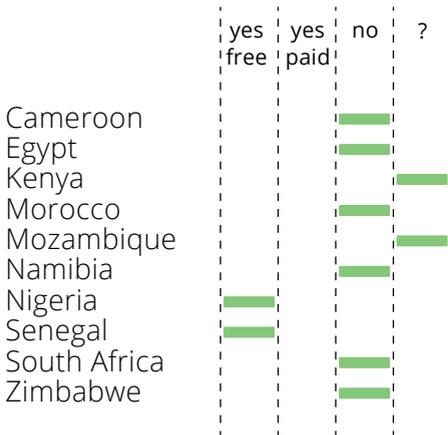


Latin America and the Caribbean

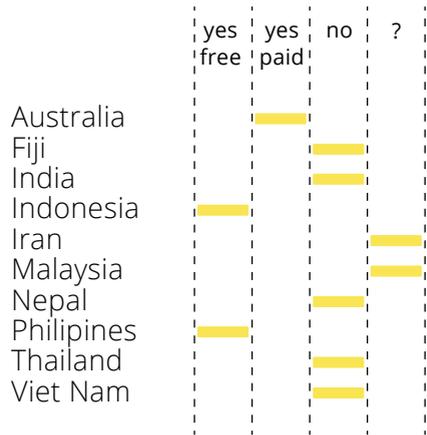


Figure 5.1 Teacher wants to post an article on a platform used only by her class. Is it legal?

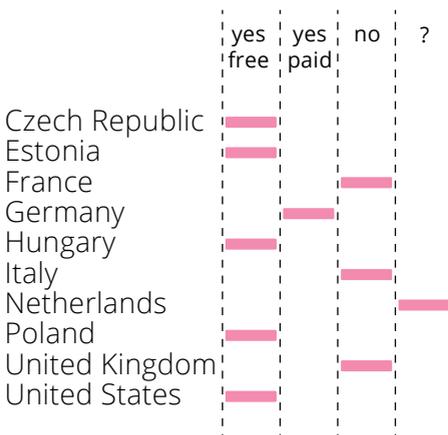
Africa



Asia-Pacific



Europe and North America

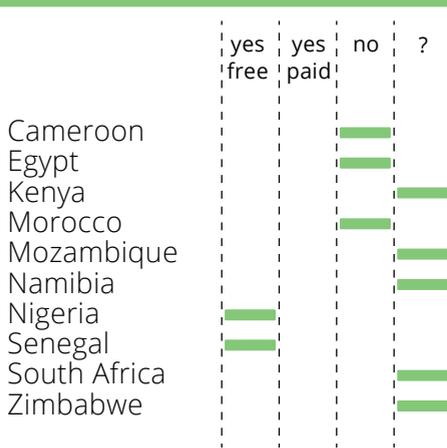


Latin America and the Caribbean



Figure 6.1 Teacher wants to email her students a news article as part of homework. Is it legal?

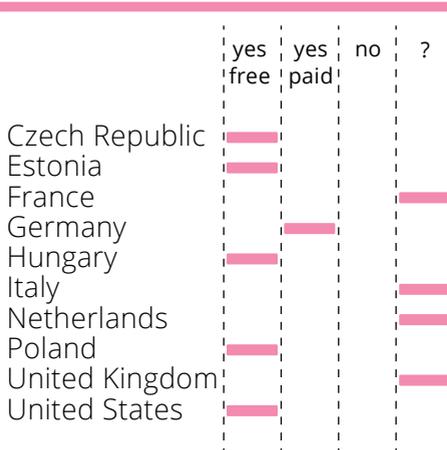
Africa



Asia-Pacific



Europe and North America

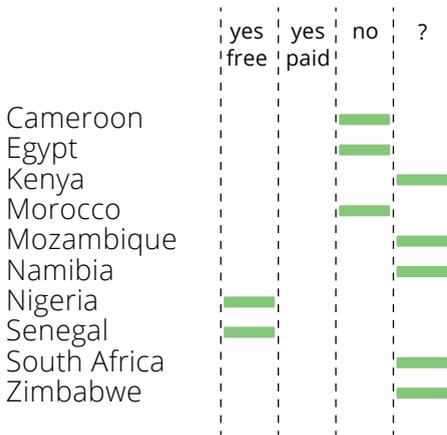


Latin America and the Caribbean

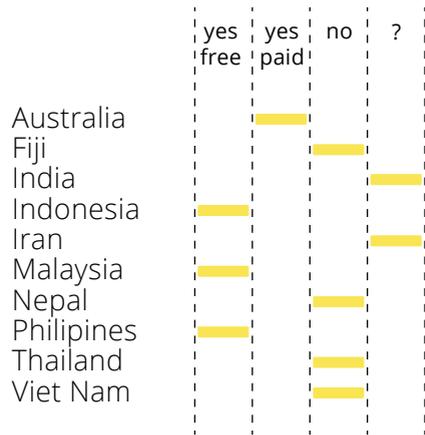


Figure 7.1 Teacher wants to share a diagram with her students on a messaging app. Is it legal?

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Europe and North America

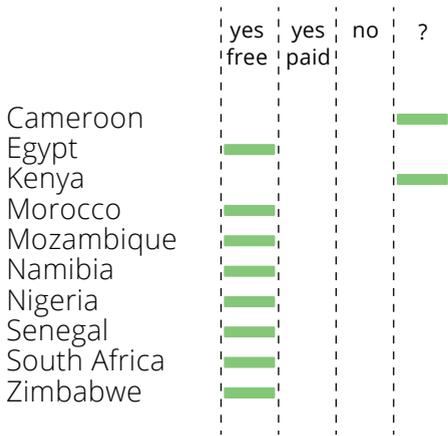


Latin America and the Caribbean

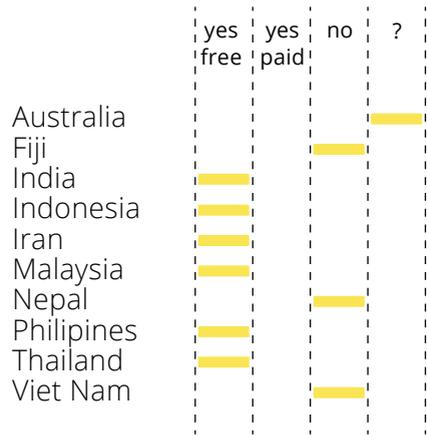


Figure 8.1 Teacher wants to email her students a pre-recorded class with short music excerpts. Is it legal?

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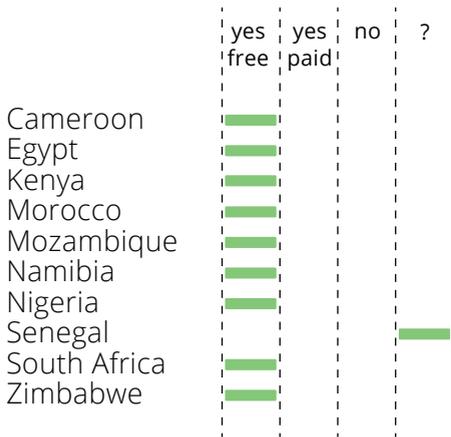
Latin America and the Caribbean



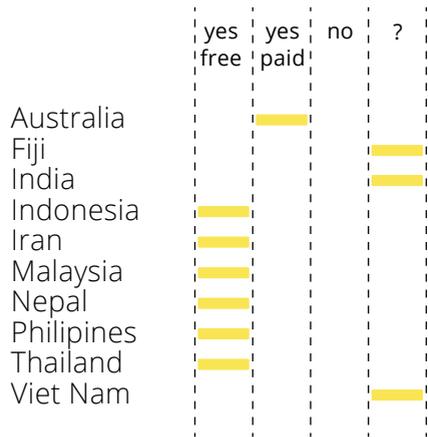
*Subject to License Availability

Figure 9.1 Teacher wants to mail her students a worksheet with short textbook excerpts. Is it legal?

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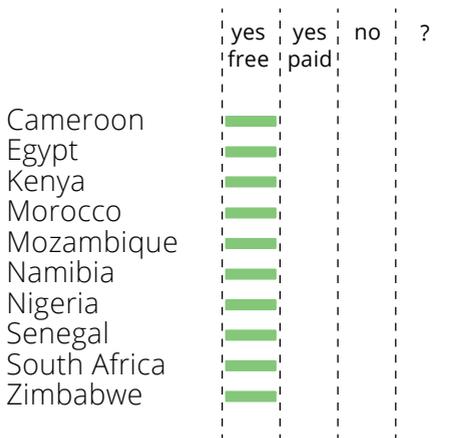


Latin America and the Caribbean

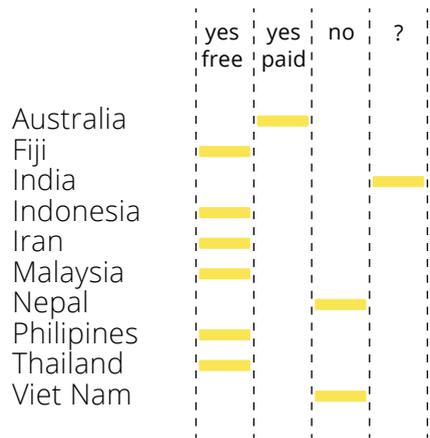


Figure 10.1 Teacher wants to insert a photograph in an online examination for her students. Is it legal?

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Is it legal? Education and Copyright in the Digital Age

Teresa Nobre
May 2022



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Internationale de l'Éducation
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Head office

5 bd du Roi Albert II
1210 Brussels, Belgium
Tel +32-2 224 0611
headoffice@ei-ie.org
www.ei-ie.org
[#unite4ed](https://twitter.com/unite4ed)

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Cover picture: Portrait of African American female teacher holding laptop in the class at school, Wavebreakmedia, 2021.

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