



Access and Use of Teaching and Research Materials from A Copyright Perspective in Fiji and the Philippines

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September 2023



Education International
Internationale de l'Éducation
Internacional de la Educación
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Acknowledgements:

We also acknowledge the support from Education International - but especially that of Nikola Wachter & Gina Pancorbo.

We acknowledge the work and contributions made by the Education Unions in the Philippines and Fiji to ensure that the survey went out to the educators.

We acknowledge the work and contributions of the educators (both teaching and researchers) of the Philippines and Fiji, who, without their efforts, this report would not have eventuated.

Disclaimer:

The opinions in this report reflect the views of the authors and do not necessarily reflect those of the Education International or those of educators or researchers in the Philippines or Fiji.

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Education International represents organisations of teachers and other education employees across the globe. It is the world's largest federation of unions and associations, representing thirty million education employees in about four hundred organisations in one hundred and seventy countries and territories, across the globe. Education International unites teachers and education employees.

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Published by Education International -
September 2022

ISBN 978-92-95120-94-5 (PDF)

Executive Summary

High-quality teaching and learning environments are essential if an individual can achieve their full potential (Te Kāhui Tika Tangata Human Rights Commission, 2023). However, to achieve a high-quality education, educators need access to essential teaching resources. Fiji and the Philippines are considered countries with developing economies, and consequently, the money spent on education and research is lower than in wealthier countries. This is a serious problem on many levels, particularly for teaching and research outcomes, because educators need access to copyrighted material to undertake their mission.

Several questions arise from the above-mentioned challenge: How do institutions manage copyright practices? What are the tools and mechanisms used to instruct educators on copyright law? How are copyright practices applied in educator's teaching and research? Meanwhile, copyright law is becoming more important to educational institutions. This has perhaps never been more so than in the last decade, with ever-increasing new digital technologies providing greater access to copyright material. However, trying to fit the copyright legal framework into the existing educator practices in both Fiji and the Philippines continues to prove a challenge for those who want to protect their copyright rights and for educators who wish to gain access to up-to-date teaching resources and research materials.

This study fills the gap created by the lack of research on educators' perspectives on copyright protected resources in Fiji and the Philippines and identifies the challenges and strategies they undertake when confronted with material protected by copyright law. Some of the significant findings from this research include the following:

- **Most educational institutions have some form of institutional copyright policy, but only half of the institutions deliver some form of workshops that train educators on copyright law.** Consequently, less than 36% of educators reported attending some form of copyright training, which may indicate that the rest of the respondents never attended any form of copyright training.
- **Confusion over a workable approach to copyright law.** This was identified in two areas; how a valid copyright is established [and maintained], how infringement of that right occurs and what uses qualify as fair dealing or fair use. Most educators believed that an original work had to be registered to establish a copyright, but more importantly, if the educator believed no evident copyright existed, they used the material without restraint. Despite this, educators tried to comply with copyright law. Additionally, the educators believed that if they referenced the material, they were able to use any [or all] of the material for educational purposes by either embedding the material into their teaching materials, distributing the material to their students or colleagues, or making it available on a teaching platform (like Moodle for example).



- **Access to a wide variety of copyright material.** Educators use a wide variety of publicly or not publicly available materials in their work such as videos (including YouTube videos), music, illustrations, PPTS, journal articles, websites (including blogs), in addition to traditional textbooks. No specific question was made regarding the nature of the material, whether the material was open sourced, free to access, or copyright protected. Educational practitioners encountered challenges when attempting to reach different types of materials and resources extending beyond the traditional printed textbooks. Despite their genuine intent to foster students' growth, they were limited to materials solely geared towards exam preparation.
- **Many educators liked the idea of using videos for teaching and research but believed that these materials had no copyright restrictions on them.** This applied to platforms such as YouTube and Vimeo. Regardless, many educators found that the main challenges of sourcing teaching and research materials they wanted to use is that they had to be paid for (behind a paywall, for example), which limited the ability of teachers and researchers to get up-to-date, high-quality materials.
- **Educators encountered substantial obstacles in their teaching endeavours due to copyright constraints.** These obstacles limited both their resource options and instructional practices. Other than identifying that the expenses associated with copyrighted materials are often prohibitive to teachers, participants in this study reported to struggling with limited permissions that hindered their access to educational resources. The findings also revealed a degree of uncertainty, with one in five participants expressing uncertainty on whether copyright protections apply to certain materials, and, therefore, if they can use the material or not. A proportion of educators faced challenges in acquiring the necessary materials. Only 16% of respondents reported no copyright-related access issues.
- **This study highlights the ongoing challenges that educators face to legally access and use materials** that ignite and nurture students' growth. The financial burden often proves overwhelming, with educators personally bearing the costs. Despite their efforts to source valuable materials, they often find themselves navigating the intricate landscape of copyright law and regulations without the necessary institutional support, sometimes unaware of the implications of using such resources. Even though teachers might not have a good understanding of copyright laws and might even think that it is okay to copy entire materials, the findings suggest that educators tend to choose to share the material with students in ways that do not negatively affect the market for the original work. This reflects their emphasis on the educational intent behind using the material and the accessibility of its use.



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Introduction

The education climate is rapidly changing, and students have increasingly higher expectations regarding teaching and learning. Access to existing and new teaching/research materials is, in part, being used to meet this need whether by increased access to existing in-class teaching materials or by accessing out-of-class teaching resources – for example, from an organisation’s library (Fisher et al., 2013). It is assumed that educators¹ have access to and can use teaching/research materials as they need to; however, this is not always the case for educators in developing countries.

In wealthier countries, there is a heavy focus on developing evidence-informed teaching practices. However, there are two key challenges for educators from developing countries; firstly, providing educators with access to current educational research; and secondly, more importantly, the process of getting educators to engage with research so it makes real changes to their teaching practices (Flood et al., 2020). More importantly, access to up-to-date literature and teaching materials, to a large degree, determines the quality of primary, secondary and tertiary education (Lunenbergh et al., 2014, pp. 1-3)

This research fits into an international trend. Various regional case studies (such as those from Kenya (Mathangani Salome & Otike, 2018) and South Africa (Ddamulira Mujuzi, 2020) suggest copyright laws’ impact on educators from developing countries has received too little attention. Moreover, there seems to be a general assumption that, to a large degree, educators understand copyright laws. This makes sense given that often it is the educator who will make copies for a course they are teaching or for a class project. However, even educators in the wealthier countries struggle to understand copyright law. Studies have shown that educators and librarians in places such as Australia and the United States of America also fail to understand fundamental foundations of copyright law (Bay, 2001). Moreover, international treaties are complex, and the Courts have taken a stronger role in developing copyright law interpretation in recent years (Crews, 2005). Therefore, this research is relevant because there is little known about the knowledge of copyright laws by educators and the impact of copyright laws on the work of educators in developing countries such as Fiji and the Philippines.

The arrival of COVID-19 led the vast majority of educators to move from traditional face-to-face teaching to online. For all educators, the difficulty of this transition was compounded by the short window of time, limited support and resources, and a need for more technical skills and knowledge to create a socially-engaged online classroom experience (Studente, 2021). All educators wanted to make the online experience as effective as the face-to-face experience. As a result, there was a shift towards the use of video recordings, online shared technologies (such as OneNote and workbooks), and real-time interactive sessions (like Zoom or panopto, for example) (Ellis, 2021). All these materials come with some form of intellectual property (IP) protection. Consequently, the scope of intellectual property law limits and creates barriers for educators to create, develop, communicate and share knowledge in an IP-protected environment (Kapczynski, 2008).

¹ Educators for the purpose of this research project is defined broadly to include all those who facilitate learning. It includes all those who help students to acquire knowledge or competence in a formal education context, such as a high school or a tertiary institution. It also includes those who carry out research.

Context of this research

Education failure imposes a high cost on society (OCED, 2012), yet the current IP laws exacerbate educational inequities, especially for those who operate in developing countries. Furthermore, educators have the responsibility to comply with copyright laws. Hence, education entities that lack their educators' internal capacity or support will often fall foul of the IP regulations. Nevertheless, most teachers are expected to be content expert professionals on what is being taught while retaining a sense of research-informed teaching (Selwyn, 2021). In a broader context, copyright limitations on educators can hinder creativity, impede teaching excellence, and prevent education from thriving. Educators often base their understanding of copyright law on economic and political factors, rather than legal considerations (Walker, 1996). Furthermore, despite some educational entities securing agreements such as the Creative Commons Copyright License, tensions over copyright infringement by educators persist.

At best, current trends in education lend heavily to the digital use of technology by educators in the classroom; it has changed how learning takes place, how knowledge is communicated and how students expect to be taught (Selwyn, 2021). However, it has also made it easier and more convenient to side step copyright laws (Sample, 2016). However, educators must share knowledge efficiently and effectively in order to improve their students' understanding. This makes educators' access to educational materials important but little is discussed in the research to the extent that the use of their educational materials is not authorised or the time [wasted] needed to determine if they need to seek permission from a copyright holder (Walker, 1996). Therefore, IP discussions are often controversial due to the belief that creators have an inherent right to benefit from their creations. This results in educators in developing nations being at a disadvantage when IP laws are enforced.

Problem Statement

As the courts and IP regulators formulate and develop the IP legal framework and work together to further enforcement against IP infringers, educators from developing countries are notably disadvantaged. In addition, there needs to be more research establishing how educators from Fiji and the Philippines develop their teaching and research materials and the challenges they face. This research aims to fill this gap and contribute evidence-based knowledge regarding the role of IP and the accompanying behaviour for educators. We will also analyse the critical features determining educators' approaches when they need teaching and research materials. This study focuses on the professional behaviours of the community of educators as a whole in Fiji and the Philippines. Therefore, we do not draw conclusions about individual educators, although some of our findings touch upon this issue.



The Research Purpose and Objectives

There is an ever-increasing number of knowledge industries, and IP rights create a monopoly for that sector's owner(s). Internationally, the social mobilisation of groups challenging 'access to knowledge' (A2K) has resulted in discussions around possible treaties or model laws. Much of this is couched in the traditional knowledge and culture sector rather than that of teaching materials/resources (Kapczynski, 2008).

This research will focus on educators who are members of the teachers' unions in two countries, Fiji and the Philippines² and aims to:

- Capture a complete picture of the resources/materials accessed by educators.
- Document educators' assumptions about the IP material they are accessing.
- Identify the challenges/barriers the educators face; specifically, to uncover their new, existing, and unmet needs.
- Inform on the ways to enhance educator research needs

Methods

A qualitative research survey was developed using Qualtrics. The initial survey was constructed based on previous literature and published materials from an education stakeholder perspective. However, more than this is needed to ensure its validity from an educator and researcher perspective, so the initial survey was circulated to Education International management and the union leaders to seek endorsement of the validity of the questions asked. As experts on the topic, they were asked to carefully review the survey and assess if it covered copyright in an educational context. Based on that feedback, adjustments were made and then the survey was pilot tested by the union leaders (as they are a sample of the intended population). Apart from a few grammatical changes, no further changes were made. To reiterate, the survey was circulated to the members of the teachers' unions in both countries.

The survey initially asked the educators about themselves and their teaching situations (and environments). The educators and researchers were then invited to state what they understood about copyright exemptions for educators and the challenges they faced in their roles as educators and researchers. The survey was circulated online through the education union membership. There were sufficient opportunities throughout the survey for the educators and researchers to add comments as they completed the survey and to make final concluding remarks at the completion of the survey. Finally, the survey was distributed by the union members, and this proved to be a challenge. This is discussed further in the section below.

The survey respondents were then followed up with to see whether they would be interested in participating in a one-to-one depth interview. The interview questions were

² The educators will be accessed through the education unions or teacher unions in both countries.

semi-structured around the topic of copyright so the interviewee could explore their personal experience and encounters of copyright law in their positions as educators.

The findings reported here are analysed as a whole dataset, that is, including survey responses from both the Philippines and Fiji, due to low survey responses. A subsequent analysis was performed to identify any specific variations or highlights in the data generated by individual country's responses. Therefore, the bulk of the data analysis is based upon the entire set of data (Fiji and Philippines), with a subset of data reporting on differences between the two countries.

Scope and Limitations

This study focuses on educators, researchers, and the IP legal framework in relation to teaching and research materials. The educators are selected from the education union memberships in Fiji and the Philippines. There is no ranking of the educators; however, it is understood that the union membership includes those from early-learning institutions through to tertiary institutions.

This research investigation is subject to some limitations. The survey was distributed by the education unions, and this was challenging for them. The unions did not have access to up-to-date technology to allow easy distribution, so the response rate was low and slow. To improve the response rate the survey time was extended by an additional five weeks, an anonymous QR code was generated to place on notice boards and in meeting places of the educators and researchers. As a result, 23 further responses were received, making a total of 116. Regardless, there are sufficient responses to draw some conclusions (discussed in the findings). Unfortunately follow up interviews were also poorly responded to with only one person responding and agreeing to an interview. Despite this – the feedback is incorporated into this report.

Secondly, this research investigation is limited to two countries, Fiji and the Philippines, and therefore the findings cannot be generalised to all other countries in the Pacific or even developing countries elsewhere. Nevertheless, it is expected that that the findings will provide some understanding of how educators in both those countries are attempting to navigate the IP legal framework while they meet their teaching/research needs. Moreover, it is also acknowledged that both Fiji and the Philippines have non-English-speaking populations. However, it was not possible to translate the survey, or offer interpretation services to those respondents that might require them, so the survey was offered only in English.

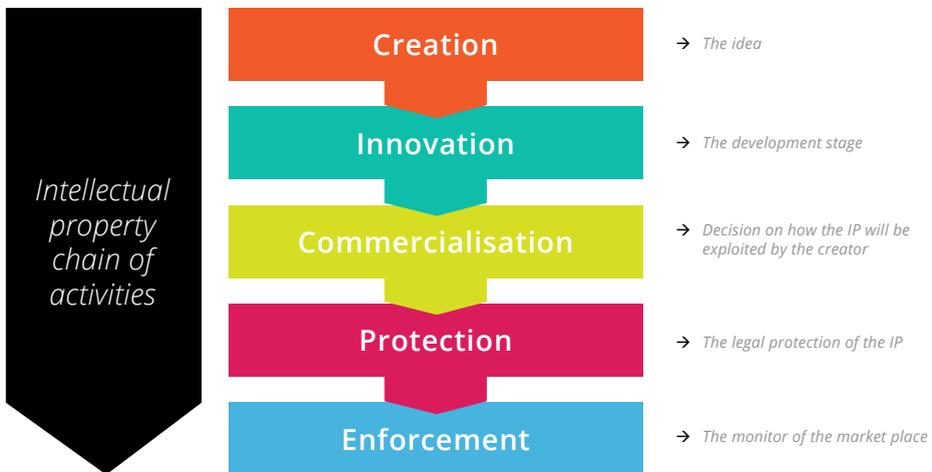
Finally, it is expected that the findings will provide some understanding of future research directions. After our final conclusions and discussions, we offer recommendations for IP changes to enhance educators teaching and research practices from Fiji and the Philippines.

Understanding Intellectual Property – The Legal Framework

Introduction

There are specific laws that protect intellectual property (IP). Depending on what the creation is, IP laws will set out the nature of those rights [and protections] and the duration of those rights. Generally, the various IP rights confer property rights, and most creators follow the same chain of activities to gain IP protections (See Figure 1.). However, where property is defined as something tangible (for example, personal or real property), IP is defined as intangible personal property. Consequently, IP can include copyright, industrial property (trademark, patents, industrial designs, layout designs, for example), confidential information such as trade secrets, geographical indicators, and plant variety rights. This study is limited to copyright.

Whether the work has a copyright symbol © or not makes no difference to copyright protections and for the most part, copyrighted materials on the internet have no copyright symbol. A basic principle of copyright is that as soon as the original work is created and becomes viewable by others (recorded in a material form or a fixed format), it is legally protected by copyright. There is no need to register a copyright in an original material, unlike that of a patent or a trademark.



Source: Dr Dara Dimitrov

Figure 1. Intellectual Property Chain of Activities

The creators of copyrighted works enjoy exclusive economic rights over their works,

which allow them to control the use of their works and earn income from others using their works. However, these exclusive rights are not unlimited. Copyright laws across the world often have mechanisms in place that support the use of protected works without the owner's permission in certain cases, namely for education, research and informational purposes. Depending on the jurisdiction, educational uses of copyrighted works without the owner's permission may be justified under exceptions and limitations to copyright, under fair dealing exceptions or fair use. It is important to note that as a result of the Pan-American Buenos Aires Convention (a copyright convention between Northern and Southern American countries) there is a definitive distinction between fair use and fair dealing. Fair use is notably a term used by civil law countries including the USA, Malaysia, the Philippines, and Singapore and relate to a defence of a copyright infringement. There are no exemptions under fair use, instead the courts look to see what the copied work was used for, the nature of the work, the amount that was used and the effect on the original work.

In contrast, fair dealing is a term often used in common law jurisdictions such as New Zealand, Australia, and Fiji. The copyright protections in these jurisdictions have exemptions of copyright material [without the permission of the creator] for the purposes of education, research, and private study. Generally national legislation in these common law countries will contain a list of circumstances which are considered to be fair dealing. Regardless, copyright legislation is the main way that a country will fulfil its obligations under the international copyright conventions.

The creators of IP enjoy exclusive economic rights that allow them to exploit their works commercially and earn income from others using their works. IP law prevents and protects IP products from the threat of competitors trying to grab a share of the market. Moreover, many companies will carry a substantial portion of their value in IP and will aggressively protect it from misappropriation (Burdon, 2007). The economic rationale is that IP rights reward innovation. The prospect of rewards in the form of exclusive rights provides incentives to creators [including inventors] and an incentive to companies to invest in research and development. Frequently the commercial exploitation is either through the issue of trading or licence to use, or the sale of the IP itself to another.

Technology, both breakthrough and emerging, has meant that much copyrighted materials can now be accessed anywhere in the world, as long as the user has access to the internet. Search engines facilitate the discovery and digitization of copyright-protected content, resulting in an exact replica of the original. This has led to cheaper storage options like memory sticks and compression technology reducing file sizes for easier downloading, copying, and storage. This is particularly true for movies, videos, and music. Additionally, fast internet speeds make file transfer quick, easy, and affordable.

Most industries are heavily reliant on copyright protection to protect their investments – including those industries that produce teaching materials and resources for educators. However, the same technology that makes access to teaching and research materials easier to find is used by educators in developing countries. The assumption that copyright does not apply to all works created or used in the teaching and research environment is hard to displace given the easy access via the internet. Consequently, whether the educators are accessing this material legally (by relying on copyright exceptions, fair dealing or fair use or by going through the proper channels to get permissions) or not, is



an area where there is little or no research.

The laws that protect ownership rights for creative works are specific to each country and international conventions provide mechanisms for recognising each other's copyright laws. Furthermore, it is the international conventions that often balance the public interest against private property rights in making copyrighted materials available to wider communities (see Appendix One for a list of the main copyright conventions). The intention is for copyright material to be usable without the legal risk of infringement. It is from this perspective that education and research exemptions arise. Most countries share common copyright exemptions for educators.

Educators and Copyright

Copyright law in most countries contains exemptions that allow educators to use copyrighted material in a limited manner without the author's permission. The limitations depend on the different types of copyright works and the country; as a result, many countries are signatories to the international conventions on copyright. The law looks particularly at who is using the work (educator/teacher/student), how much of the work is needed and for what purpose. This section discusses general information about copyright and how it affects educators. All educators, regardless of their location, have a need to use copyrighted materials in teaching and learning activities. These materials can include the following.

- Artistic works
- Electronic copying and works from the internet.
- Films
- Literary and dramatic works
- Music – scores
- Music – sound recordings
- Performances
- Radio and television broadcasts

A work susceptible to copyright can usually be used by educators if it is being used for lesson planning, instructional purposes (in the classroom) and used as part of private research/study. However, it is rare that a work can be used in its entirety; only part of a [literary] work can be used. Moreover, translation of the work into another language is prohibited as it is considered an adaptation of the work – which requires the copyright owner's permission.

In contrast, any copy of a work which falls under fair use principles found in civil countries will be subject to the following considerations:

1. The purpose of the copy
2. The nature of the work copied.
3. Whether the work could have been obtained at an ordinary commercial price
4. The effect of the copy on the potential market or value of the work
5. The amount and substantiality of the part of the work copied in relation to the whole work.

(Ministry of Education of New Zealand, 2023)

As previously discussed, fair dealing in common law countries, allows educators, *inter alia*, to make one copy for private study or research. However, 'copy' and its usage are often misunderstood (Katz, 2021; Prasad, 2012). While most have no difficulty understanding one copy, when applied to all the various applications used in education,



the understanding becomes murky. For example, it might be the case that educators believe that;

- A copy cannot be placed into a PPT which is subsequently uploaded to an intranet (like Canvas or Moodle for example),
- Students cannot be directed to make copies of the work,
- One copy can be made once every 14 days, but no other part of the work can be copied within that 14 day period,
- An image cannot be separated from the written work (like a graph from an article for example),
- 3% or 3 pages of a literary article or dramatic work (whichever is the greater) can be copied³ but not the whole work,
- There are no restrictions if the work is used in an examination setting.

(Copyright Licensing New Zealand, 2023)

When it comes to technology, the rules around copyright are not easy to navigate and while the international conventions provide some consistency, most educators are heavily reliant on their country's copyright law. Copyright can vary from country to country, and it is when a work is created in one country but used by educators in another country that often the confusion arises. In education, technology plays a significant role and has transformed most aspects (from entry to tertiary level)(Selwyn, 2021). As a result, it is not unusual for a work to be copied from the internet; this includes cases where the copy of the work is made by electronic means (like printing for example) or made in an electronic format (like saving to a hard drive of a PC for example). Moreover, placing the copy onto an intranet (like Moodle for example) is effectively authorising multiple copies of the work and this is only allowed in limited situations. For example, an educator can place an electronic copy onto an intranet for a specific course for a set group of students.

Websites and webpages can also be problematic because they are usually copyright protected for two main reasons. Firstly, the underlying code or computer language of the website is an original work and therefore protected by copyright law. Secondly the webpages generally contain original works (text, images or by typographical arrangement) which are also protected by copyright. As a result, it may be an infringement to copy even a part of a webpage. Educators can store a webpage for educational purposes provided that the webpage is referenced (both author and source of work) and the webpage is restricted to use by students and educators through a verification process (like a password for example). It is permitted to share a link to the website on an intranet (again restricting it to students in a class) but the contents cannot be altered in any way, and it must be referenced.

Films may be used by educators for instructional purposes (no charge is involved in this process), however, in some countries, films (whether they be DVD, purchased or hired) cannot be shown at any public event at the school or for any entertainment purposes to students. This restriction extends to any sort of fundraiser – even if the money raised will be for educational purposes. Less known is the copying from [paid] subscriptions

³ Unless the educational institution is a signatory to a CLL contract which allows 10% of the work or a whole chapter (whichever is greater).

such as YouTube premium or Netflix. The subscription contracts are standard form contracts which are used globally. The contracts contain terms and conditions which protect the copyrights of the films and only those films which contain the words '*Grant of permission for educational screenings*' or '*Educational Screen Permission*' can be used in school settings. Under some national legislations, broadcasts and internet transmissions have restrictions if they are to be used in the classroom because there are Screen rights which license the off-air use of these sorts of communications. Examples would include webinars or a person delivering a lecture from another organisation - these require permission, even for educators.

1. The impact of copyright law on educators

Access to education is both a right and a multiplier of rights (Tomasevski, 2003, p. 26) – a doctrine that has been long recognised in the *Universal Declaration of Human Rights* (1948), Article 26 which proclaims that *everyone* has a right to education.⁴ It is clearly understood that all teaching institutions are likely to require teaching and reading materials to deliver a quality education. Likewise, as the student progresses through the education system the cost of providing educational resources like textbooks, and access to databases, journals and [electronic] libraries also progressively increase. And while commercial publishers argue that they provide great flexibility via international copyright law for educators to achieve their educational goals, there remains some doubt about if this is true for developing countries.

Even educators working in developed countries have suffered from the limitations of copyright protections. For example, high ranking US universities have cancelled their subscriptions to Elsevier since 2003⁵, after failed negotiations with the commercial publisher - the common thread is that the publisher's prescriptions are becoming unreasonable expensive (Gaid, 2019). It is from this perspective, the situation for educators working in developing countries is much worse when they require access to educational and research materials. The financial resources in developing countries are more limited, they have less bargaining power vis-à-vis the commercial publishers and if the copyright material cannot be used, the access to up-to-date education materials and critical research is denied to those who need it most.

The copyright barriers notwithstanding, educators from developing countries have relied heavily on hardcopies of textbooks. However, this introduces another challenge, such as textbook availability and access (Frydenberg, 2007). Textbooks play a crucial role for teachers in developing nations. A hardcopy of a textbook provides educational structure for both the educator and the student. However, hardcopies of textbooks tend to be more expensive in developing countries which forces students to learn and educators to

4 To be meaningful to both communities and individuals, the first UN Special Rapporteur developed the **4As**: **Available** – Education is free, and there is adequate infrastructure and trained teachers able to support the delivery of education. **Accessible** – The education system is non-discriminatory and accessible to all, and positive steps are taken to include the most marginalised. **Acceptable** – The content of education is relevant, non-discriminatory and culturally appropriate, and of quality; schools are safe, and teachers are professional. **Adaptable** – Education evolves with the changing needs of society and challenges inequalities, such as gender discrimination; education adapts to suit locally specific needs and contexts. Tomasevski, K. (2003). *Education Denied: Costs and Remedies*. Zed Books.

5 Cornell University cancelled Elsevier Journal Package after failed negotiations in 2003, Harvard University in 2004 and more recently, University of California in 2019.



teach without relevant teaching materials (Isiko, 2012, p. 31). Thus the principal issue for some developing countries is not access to the internet but access to textbooks which are either unavailable because of cost or short supply (Isiko, 2012).

Using e-books has been investigated as an option, however these often come with greater challenges. E-textbooks have been available since the 1970s, but their accessibility was limited by the need for special readers and an internet connection, which made them expensive. Hence, the use of e-book textbooks is virtually non-existent in developing countries (Foster, 2009) and described as a novelty by some academics (Asunka, 2013). The copyright restrictions on an e-book make it impossible for students to 'share' a textbook or to sell/buy a second-hand textbook.

..the government supplies the textbooks. They would give each school a set of textbooks and that's it. You know one textbook per subject. That's how it works here. (Educator, Survey Respondent).

In conclusion, copyright law has a focus on the IP owners. However, educators are put at a disadvantage, especially those who live in places where financial resources are limited. Adherence to the copyright laws, though the moral and legal thing to do, limits the materials available for teaching. Thus, copyright misapplication and misinterpretation can hinder an educators' teaching and limit available teaching materials. Furthermore, it's challenging for educators to both understand copyright law and demonstrate lawful use of protected works to students.

2. Fiji and copyright laws

Fiji is a part of the Pacific and similarly, like many of the Pacific Islands shares a common law background with Australia, New Zealand, and United Kingdom. Unsurprisingly, Fiji's current Copyright Act (1999) aligns closely with its common law heritage and within the Fijian Intellectual Property Office there is a Copyright Enforcement Office (Tuffrey Huria, 2013). Section 35 of the Fijian Copyright Act (1999) specifically prevents copyright infringements and Fiji has been a member state of the Berne Convention, WIPO Conventions and TRIPS. It is a common law country; thus, the fair dealing applies to Fiji.

The primary tertiary institution in the Pacific region is the University of the South Pacific (USP) however there are some ten other nation states that align with the USP that also have their own copyright laws.⁶ USP complies with the Fijian Copyright Act (1999) however its educators and researchers may also have to navigate other nation state(s) legislation as well. USP also use Creative Commons Licences (six variations) which allows the educators and researchers to *distribute, remix, tweak, and build upon an author's work, even commercially* (University of South Pacific, 2023). However, needless to say that not every copyrighted material that educators and researchers need are licensed under a Creative Common License, and they still need to rely on the exemptions and restrictions found in the Fijian Copyright Act (1999).

6 Cook Islands (Copyright Act 2014), Kiribati (Copyright Ordinance 1917), Marshall Islands (Unauthorised Copies of Recorded Materials Act 1991), Nauru (Copyright Act 2019), Nuie, Tokelau (NZ Copyright Act 1994), Samoa (Copyright Act 1998), Solomon Islands (Copyright Act 1996), Tonga (Copyright Act 2002), Tuvalu (Copyright Act 1917) and Vanuatu (Copyright and Related Rights Act 2000).

While there has been literature that looks at the IP issues of traditional knowledge and culture, and the genetic biodiversity of the Pacific region (for example see South Pacific Commission, 2002) there has been less literature that has addressed the issues faced by educators and researchers from the region when accessing copyrighted materials. Moreover, there have been campaigns to strengthen copyright awareness in some of the Pacific nation states (McComb, 2016). Yet, to date there has been little enforcement in the Pacific region for copyright infringements, even though there is an awareness of widespread copyright infringement within the Pacific communities (Radadroka, 2021; Testino, 2019). For example, lawyer Natalie Raikadroka made a podcast about the issues of copyright infringement in Fiji and the lack of enforcement (Radadroka, 2021). Moreover, there is some confusion over what fair dealing (which applies to Fiji) means in practical terms.

3. Philippines and copyright laws

The Philippines has the legal provisions to protect copyright with comprehensive provisions within the Act, the Republic Act No. 8293 of 1997. Aspects of copyright expected by international law and international copyright instruments are covered by the legislation. However, recognition of the importance of IP law is influenced by the colonial import into the Philippines. The earliest copyright law was introduced by the Spanish in 1879 which changed to US copyright law when the territory was ceded to the USA, and in 1924 enacted its own copyright law Act (Lim, 2001). Currently, copyright in the Philippines is governed under the Republic Act No. 8293.⁷ It is an Act that prescribes the Intellectual Property Code and establishes the Intellectual Property Office. It was enacted in 1997 and remains enforceable today.

Part 4 of the Act covers copyright and declares that copyrightable works are protected from the moment of their creation. Copyright lasts during the lifetime of the author plus 50 years after the author's death. This term of protection also applies to posthumous works. In the case of joint authorship, the economic rights shall be protected during the lifetime of the last surviving author plus 50 years after such author's death.

The Act has provision (section 184) for copyright works providing that they are for teaching purposes and are compatible with 'fair use' provisions as long as the source and the name of the author, if appearing in the work, are mentioned. Fair use of a copyrighted work for teaching is permissible under 'fair use' including multiple copies being assessed about: *"(a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; (b) The nature of the copyrighted work; (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (d) The effect of the use upon the potential market for or value of the copyrighted work"* (Section 185 of the Act).

The copyright law in the Philippines is generally in line with other nations and international law. Though these laws may comply with international law, they are not benefiting children and their education. At elementary/primary and high school/secondary schools, students in the Philippines do not have access to sufficient publicly funded textbooks

7 See: <https://www.officialgazette.gov.ph/1997/06/06/republic-act-no-8293/>



and resources and many families cannot afford the cost of books themselves (3D Trade - Human Rights - Equitable Economy, 2009). The same applies to college and university level courses where textbooks can be well out of reach for many students, yet there are *“stiff penalties for infringement and the law does not distinguish between individual and corporate infringements”* (3D Trade-Human rights-Equitable Economy, 2009).



Methodology

This research adopts a mixed-method approach combining qualitative and quantitative methods. This approach is appropriate for this research because it is unlikely that a purely quantitative method would adequately capture the range of in-depth issues related to educators in developing countries.



Results and Analysis

To recapitulate, this study set out to capture a complete picture of the resources/ materials accessed by educators, document educator's assumptions about the IP material they are accessing, identify the challenges/barriers the educators face and inform about ways to enhance educator research needs. To address these objectives, a survey was conducted and circulated to educators in Fiji and the Philippines. This section presents the results gathered from the survey.

1. The demographic information of the respondents

In the demographic section of the survey, the respondents were asked to answer eight questions. The majority of the respondents came from the Philippines (63%) while the remainder came from Fiji (35%) – there was 2% who came from elsewhere. Overall, across the total dataset the cohort was composed of 76% female and 21% male educators (1 preferred not to say). However, in the Philippines, 84% of respondents were female and 16% male, whereas in Fiji 64% of respondents were female and 36% male.

All respondents had completed some form of tertiary education (Bachelor's degree 20%, Master's degree 55%, PhD 18% - the remainder composed of post graduate diploma (1%), diploma (1%), other composed of Professors, education doctorates (5%)). The majority of respondents from Fiji were from the tertiary sector (70%) as opposed to 27% in the Philippines. Consequently, there is a higher representation of educators with PhD qualifications from Fiji (28%) compared to the Philippines (12%).



Figure 2. Qualification of the Respondents

The following question then asked the respondents what their role was in education; the majority of the cohort was split between teaching students (47%) and those who did both teaching and researching (42%). There was a significantly lesser number of respondents who carried out research alone (5%) and those who were supporting or administrative staff (6%). If the respondent carried out research alone– they were then asked how

long they had worked in just research. For these respondents, most had been working between 4 to 6 years.

In the Philippines cohort, 66% [42] teach students, 31% [20] teach students and carry out research, whereas in the Fijian cohort 61% teach students and carry out research, while 14% only teach students. This aligns with the finding that the Fijian cohort primarily arise from the tertiary sector.

The next question in the demographic section asked the respondent to which group of educators they belonged to. The largest number came from the university/tertiary sector (42%), followed by high school (19%) and elementary/primary school teachers (14%). There were also respondents working as non-teaching staff and in libraries (other 7%). In the Philippines cohort, 27% of respondents were university teachers, while in the Fijian cohort, 70% were university or tertiary educators.

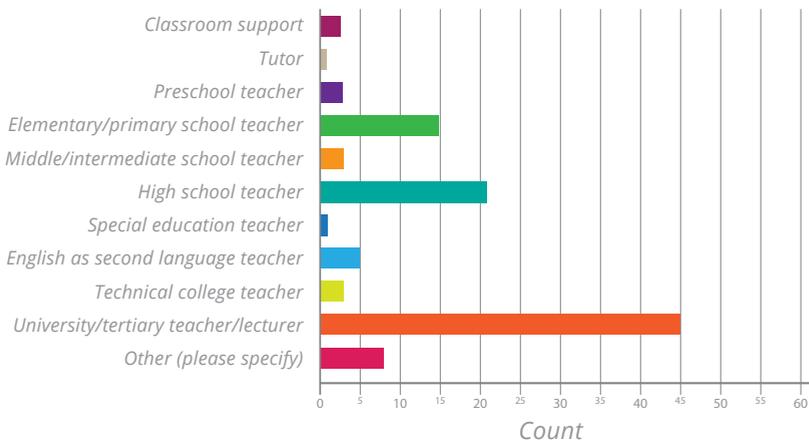


Figure 3. The educator group the respondent belonged to

The final question in the demographic section asked the respondent how long they had been teaching. Across the cohorts, the majority of educators had been teaching for more than 20 years (36%), with the next significant groups teaching for 11-15 years (21%), 16-20 years (18%), and 6-10 years (17%). Only 7% had been teaching for less than 6 years. However, in the Fijian cohort alone, the majority of respondents have taught for between 4-6 years.

2. The students and the teaching situation of the respondents

The next section explored the teaching situation of the respondents, who they were teaching and where. The majority of the respondents were the main teacher for their students (78%), with a smaller number working as part of a team (20%) or providing admin support to students (2%).

Across the two cohorts, most of the educators were in a metropolitan setting (51%) or a regional setting (26%). There were some individuals who worked solely remotely. (online



and face-to-face (16%) while a much smaller group worked in a rural setting (4%).

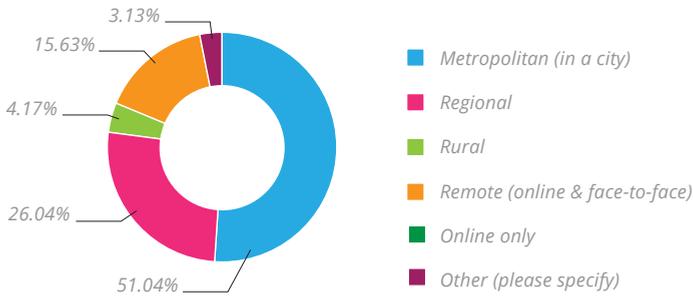


Figure 4. Institutional Location

In the Philippines however, 69% taught in a metropolitan setting, while in the Fijian context the majority, 66%, taught in a regional setting, and only 20% in a metropolitan setting.

When asked about the subjects they were teaching, the cohort was split over 4 main topic areas: STEM subjects (22%), arts, humanities & languages (24%), English language (26%) and to a lesser degree, business (11%). The remainder of the educators covered a range of subjects; physical education (3%), foreign languages (3%), geography (4%), fine arts (1%) and life skills (6%). In the Fijian cohort a higher proportion taught in STEM (32%) as opposed to 26% in the Philippines.

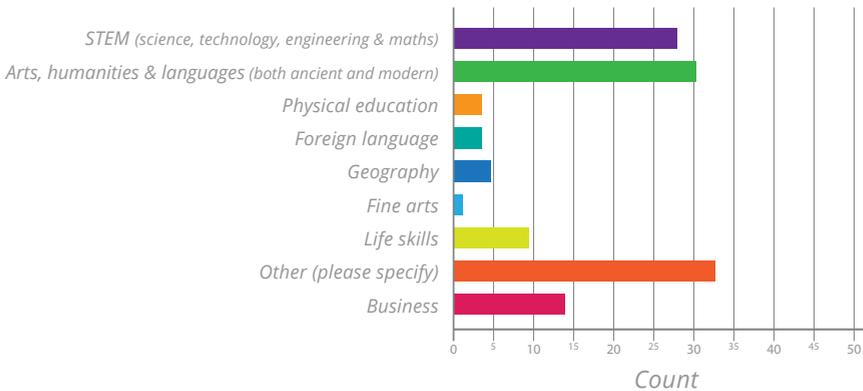


Figure 5. Subjects taught by the educators.

When asked about the gender of the students the respondents worked with, (41%) were female, (39%) were transgender/nonbinary/intersex and (20%) were male. These results seem out of proportion to generally recognised populations therefore we consider that this may not be accurately reflecting classroom gender diversity. The educator respondents, particularly from the tertiary sector may have been unsure about the gender of respondents so recorded transgender/nonbinary/intersex by default.

The survey also included a question as to whether the educators taught students with disabilities. It was found that most of the educators are teaching students with some form of disability (60%); however, most classes had less than 5 students with a disability (80%). One educator taught only students with disabilities while 7% of respondents had no students with a disability.

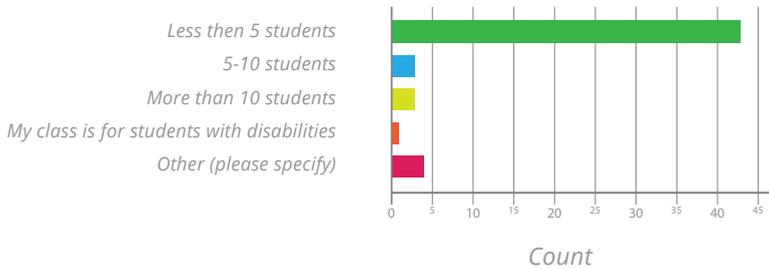


Figure 6. Students in educators' class with disabilities across the cohorts

The question following on from that asked the educators about the size of their classes; the majority had class sizes of over 31 students. In the Philippines cohort, 14% of respondents reported that they had more than 50 students in a class, while in the Fijian cohort, 52% reported that they had more than 50 students in a class. This would be in keeping with the fact in Fiji most respondents are tertiary educators, therefore it was not surprising to find that more than half of the students were over 18 years of age. There was a higher proportion of primary school students (aged under 12) in the Philippines cohort (23%).

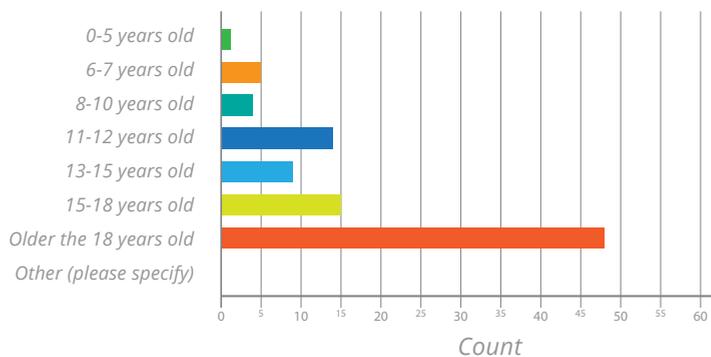


Figure 7. The average age of the students educators teach across the cohorts.



3. Copyright Understanding of the Educators

a. Copyright in educational institutions

The following section looked at what the educators understood about copyright law in the institution they worked in. Across both cohorts, 82% of the respondents were aware that their institution had a copyright policy, however 13% were not sure if there was a copyright policy and 2% indicated that there was no copyright policy. Despite this finding, 86% of respondents believe it was essential for every educational institution to have a policy, 4% thought it was a beneficial document but not necessary, 4% thought it was not essential or beneficial and 6% had no opinion on a copyright policy. Consequently, nearly half (47%) of the respondents attended a copyright workshop at their institution, over a third (34%) did not and almost a fifth (19%) were not sure if their institution offered workshops.

This aligns with the response of our interviewee who was asked what was known about copyright law, and how they might explain it to a lay person and answered:

So, so, so basically, it is not a subject that is of common knowledge, copyright law. I reviewed our laws here and the Act of 1999. 1999, it's way too old... it is not common knowledge. So, when we are talking about this with teachers, it's a foreign subject – really complicated. Yeah (Educator Interview, Fiji)

When asked if there was training provided at the Interviewee's Institution (a large tertiary-based institution in Fiji) the interviewee replied:

No, no, not at all. Not that I'm aware of. We flagged this (before), and we received no response. Uh year. Prior to that meeting (we) had written to the ministry and now.. ..made a submission that the university is to take the lead, as I explained (Educator Interview, Fiji)

The interviewee further reported that their entity operated in 12 countries in the Pacific and only four have some form of copyright law. The interviewee reported that the Ministry of Education or the Government should be driving this.

This is my view, I think for government, it would be the Ministry of Education who would be driving this. Yeah, I think that's strategically that would be the ideal place to be, which I know there's nothing there on copyright....So just to give an example so maybe two years ago now during COVID, you know the materials because we are a small island nation that is not as fully established in so many ways. The materials pushed online are basically pulled from everywhere. You, yeah, there is no (oversight). And the people are oblivious to copyright. Basically, there's no guidance from anywhere that you know on the use of materials when you're pulling. And we also found in the textbooks that was pushed to be written. You know that we have our own. And all these things were taken from Google, with no proper referencing of anything, so you know. We don't have Laws to take people to task for such acts. So yeah, I think that's the situation we are in (Educator Interview, Fiji)

Across both cohorts, educators tended to report that they kept up to date with the latest research and accessed it via similar sources. In the Philippines, 26% of educators

reported to reading academic journal articles that publish new findings on the internet, and the number is only slightly lower in Fiji where it stands at 23%. In the Philippines, 18% of educators attended conferences, and 13% in Fiji did the same. Similar results were reported for both Philippines and Fijian cohorts around reading news articles, networking with other educators, and reading books, reports, or printed materials. Importantly both cohorts reported low rates of educational institutional library access to the latest databases (13% in Philippines and 14% in Fiji). This potentially reflects the educator's difficulty accessing the latest evidence-based information.

This was further reinforced by our interviewee. They reported that most primary and secondary schools in Fiji would not have access to journal articles or online resources of any type.

We have access because the university subscribes, you know to this. And so yeah, there's a system in place for accessing journal articles, but not in the schools and not in the education system here. [The Educator further reported that the primary source educators used in Fiji was the textbook] *Basically, using the textbook that's provided. That's that's all that happens. Everything is driven by the textbook (Educator Interview, Fiji)*

b. Copyright training

Across the cohorts, a third of respondents reported their institutions did not provide any copyright workshops or training (33% in Philippines, 35% in Fiji). In the Philippines, more than half the respondents (55.6%) reported training was provided, and about a third of respondents from Fiji did the same. Interestingly, in Fiji, 32% of respondents did not know if training was provided (12% in Philippines). Despite this the educators were aware they should be making some reference to where the materials they used was being sourced.

The frequency of the workshops was also addressed; the majority of the respondents in the Philippines (55%) attended a workshop every year (none in Fiji), 40% in Fiji attended workshops every two years (7% in the Philippines). Avoidance of workshop attendance is higher in Fiji (20%) versus the Philippines cohorts (3%). Across the cohorts around 10% of respondents reported that they had never been to a copyright workshop.

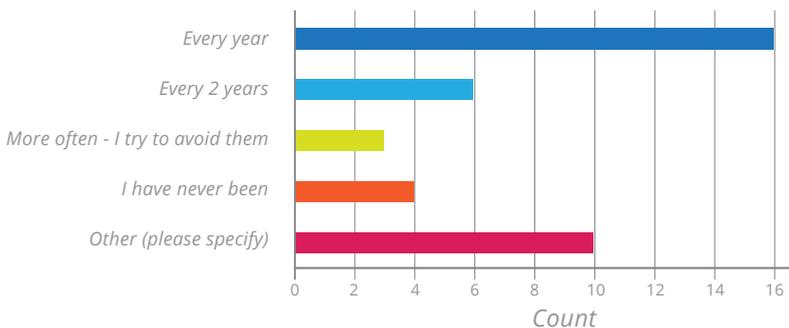


Figure 8. The frequency of attending a copyright or training workshop.

The question following that asked the educators which materials they access in their roles, it was clear that they accessed a broad range of materials via the internet, databases and printed materials.

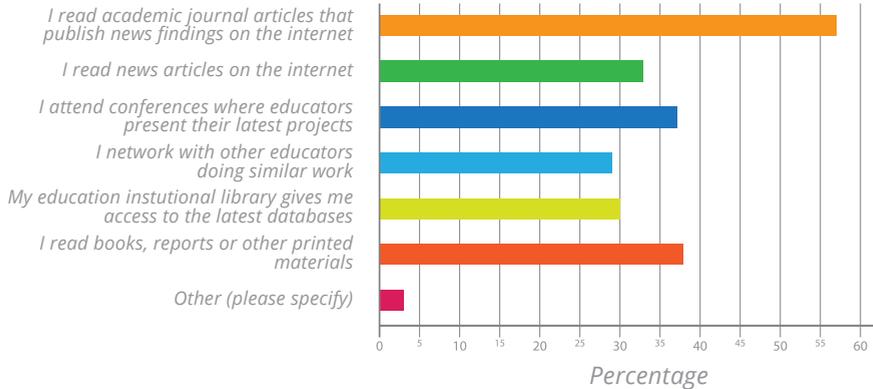


Figure 9. How educators stay up to date with current materials.

c. Copyright in the education context

This section provided the respondents with a matrix of different scenarios to test whether the respondents knew when a work was protected by copyright. When asked if a work had to be registered to be protected, across the cohorts, 83% of respondents said yes.

This aligned with the subsequent statement which asked the respondents if they believed copyright did not automatically apply to a piece of original work; the respondents were divided; 39% believed not, while 48% believed yes. When asked if the original work was improved upon (by the respondent adding to the original work), 61% of the respondents believed that the improved work no longer had any copyright protections. Yet, when asked if a work was recorded (in a film or fixed format for example), 34% believed it had no copyright protections, 49% believed that it had, while 17% did not know.

We must acknowledge where we copy our resources. ANYWAY nothing is original (Educator, Survey Respondent)

When the work was published to a webpage, the majority of respondents (57%) believed it was copyright protected, a quarter (25%) said it wasn't and around a fifth (18%) did not know. Equally, when a work was published on YouTube, the majority of respondents (58%) believe it was copyright protected, just under a quarter (23%) believed it wasn't and slightly less than a fifth (19%) did not know.

Most of my answers is "I don't know" because I don't have idea, but there are cases that the file we need to use is already restricted and some are not (we need to use the full version and not the free trial), but I would be very happy if I will learn new things about copyright. (Educator, Survey Respondent)

When considering the differences between the cohorts, there was more clarity in Fiji than in the Philippines regarding the creation of copyright, but this was still low. For example, 20% of the Fijian cohort (4% in the Philippines) reported correctly, that an author/creator does not need to register a piece of original work to get copyright protection.

This section established that it seemed a significant number of educators were unsure whether the work was protected by copyright or not. Even though previous paragraphs suggested training was provided, the messaging was not clearly understood by the educators.

d. Copyright in the research context

This section provided the respondents with a matrix of different scenarios to test whether the respondents understood permissible copy acts during research activities. Across both cohort's similar numbers were reported. Three quarters of the respondents (75%) believed they could legally download a digital copy of a work from the internet for their own use, while about a fifth (19%) believed they could not and 5% of the respondents did not know. The majority (61%) also believed they could not download a digital copy and distribute it to their students, while over a third (34%) believed they could and 5% did not know. When it came to sending or receiving a digital copy via email, the respondents were fairly evenly split, as 41% believed they could not, while 46% believed they could and 13% did not know. Moreover, the majority of respondents (69%) believed it was ok to receive a digital copy of a work that had been shared to a teaching team, while over a fifth (21%) did not, and 10% did not know. Over half of the respondents (53%) believed it was ok to upload a digital copy to their institution's online platform, over a third (36%) did not and 11% did not know. Again, the Fijian cohort (50%) had more clarity than the Philippines cohort (28%) when recognising that uploading digital copies of a work to their Institutions online platform contravenes copyright.

Like the above section, the respondents of the survey demonstrate that knowledge of what is and is not permissible with copyright works is limited. It is clear from the data that more support is required for both teaching and research regarding copyright law and permitted activity.

e. Fair dealing versus fair use

This section explored what the respondents understood by fair dealing versus fair use. From the outset, the respondents were split between knowing the difference; 47% understood the difference while 53% did not. The following matrixes tested the respondent's knowledge on both concepts. Interestingly when analysing the two

cohorts separately, the respondents from the Philippines reported more clarity in understanding the terms of 'fair dealing' versus 'fair use', than those from Fiji.

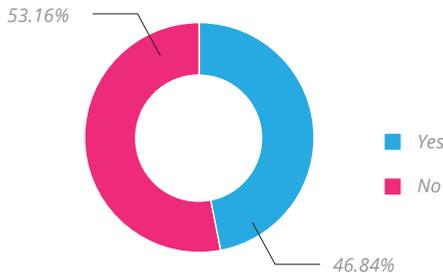


Figure 10. Knowledge of Fair Dealing versus Fair Use

There are many useful teaching and learning materials that aid our journey as teachers. However, (you should) always make the practice of giving credit to the creator/author of the content you use. (Educator, Survey Respondent)

Fair Use: Across the cohorts similar results were reported. The majority of respondents (59%) believed it was ok to copy a whole work for lesson planning, while over a third (35%) thought it was not and a further 6% did not know. Over half of the Fijian cohort (56%) correctly reported that it was not ok to copy a whole book, while only 29% of the Philippines cohort did the same. The vast majority (69%) of the Philippines cohort reported incorrectly that it was ok to copy a whole book if it was referenced, and more than a third of respondents in Fiji (37%) felt the same. Both cohorts were sure about their positioning on this response (their 'don't know' response was low).

With regard to distributing work, the majority of respondents (63%) believed it was not ok to distribute a copy of a work to their students, while just under a third (32%) thought it was and 4% did not know. Moreover, the vast majority of respondents (85%) believed it was ok to take a copy of a work if the author was acknowledged, only 10% said it was not, while 4% did not know.

Their knowledge of 'fair use' indicated that they still held a belief that if referenced it is ok to copy a whole book within the fair use context, which is not correct and contravenes copyright law.

Fair dealing: Almost all of the respondents (95%) thought it was ok to use a short excerpt of a work in their own professional development if referenced, only 3% thought it wasn't, while the same number (3%) did not know. Moreover, the vast majority of respondents (86%) believed it was ok to copy 10% of a work as long as it was referenced properly, only 10% said that it wasn't, while 4% did not know. When it comes to an entire copy of a work which was not monetised but referenced properly, 41% of respondents thought it was ok, almost half (47%) believed it was not and 12% did not know. Finally, when asked about a work found on an internet sharing website and was appropriately referenced, most of the respondents (80%) believed it was ok to use the work, 14% believed it was not and 6% did not know.

f. Perceptions of copyright

When the respondents were asked about the Copyright Licensing Ltd (CLL), 43% of the respondents had never heard of it, under a third (28%) had heard of it but believed it did not apply to them, 14% worked in an institution but did not understand what it was, and the same number (14%) understood what it was but their institution did not have one. Notably, a larger proportion of the Fijian cohort reported that they knew nothing about CLL (67%) than the Philippines cohort (31%) despite similar number of respondents answering this question across the cohort.

The following questions in the matrix tested what the respondents understood about using a work in their teaching. Responses were similar across the two cohorts, therefore we have reported percentages overall. Most of the respondents (68%) believed they could copy material from a video to use in their classes. There were only just under a fourth (22%) believed they could not share such work in class with 10% who responded that they did not know. When it came to photographs, maps and illustrations (applied to any source they respondent was using for copy purposes - not limited to digital), the majority of respondents (74%) believed they could use the work, about a fifth (19%) believed they couldn't, and (6%) did not know. Similarly, 78% of respondents believed they could embed short videos into their teaching materials, a sixth (15%) believed they could not and (6%) did not know. When it came to circulating a student's work to other colleagues and other students, 72% of respondents believed they could not, 18% believed they could, while 10% did not know. Finally, the last statement asked the respondents to consider whether they could embed a hyperlink into a PPT for teaching purposes; the vast majority (85%) believed they could, 9% believed that they couldn't and 6% did not know.

I am not sure what you mean by 'copy' – I would suggest my students read it online. (Educator, Survey Respondent)

The next matrix asked the respondents to consider which acts were permissible when they found a useful textbook (print copy or online). Across the two cohorts, 37% of respondents believed they could copy a chapter, while 43% believed they could ask the students to copy what they needed, fewer thought they could copy the whole book (7%), and 13% believed they could use what they needed for educational purposes, reference the book but still use it, copy what they needed and suggest the students source it. When it came to a workbook, most (38%) of the respondents copy the worksheets they need from the book, while a third (33%) will copy the format to make their own worksheet. To a lesser degree, the educators will ask the students to copy the worksheet themselves (7%) or copy the whole workbook (3%). Just under a sixth (13%) of the respondents did none of the offered statements, while (6%) thought referencing the work allowed the copying of the work. Across the two cohorts the only reported difference was in the 'I do not do any of the above' response. In the Philippines cohort this response was given by 6% of educators participating in the survey, versus 25% in Fiji. This aligns with the interview from Fiji that reports that Fijian educators primarily work from textbooks.

...in Fiji, so they are directed by the number of classes that they do. So basically, they would be teaching 38 periods out of 45. So, you see they are always in the



classroom Yeah. So, I mean realistically speaking, what energy is left for them to do? Anything else, you know to be creative and so 'Oh I would like to search for more resources' Our resources are very limited. In terms of how they can. Well first of all to research for 'additional resources to be used in teaching that support the system is not there. (Educator Interview, Fiji)

The next matrices looked at recording works and how the educators used them in their work. Across both cohorts, most of the respondents either embedded a video into a PPT (28%) or placed a link into a PPT (26%). Some played the video in class off the internet (17%), while others shared the video link to the students via an email (11%). Some of the respondents also shared the video onto a teaching platform for other educators to use. Only 3% thought it was ok to use the work if they acknowledged the creator.

When it came to music, the outcomes were very similar to video recordings. Across the two cohorts, a quarter of respondents (25%) embedded the music into a PPT or placed a link to the music in a PPT (28%) or played the music off the internet in class (19%). Some respondents sent the link to the music to students via an email (8%), while others shared the music onto a teaching platform for other educators to use. Again only 2% thought it was ok to use the music if they acknowledged the creator.

g. The barriers and challenges that educators face with copyright.

The teaching and research materials are in a format no longer used (Educator, Survey Respondent)

Educators found it difficult to access materials and resources beyond the provided materials. Despite educators desiring to help the minds of the students grow, all they were given was material for exam preparation. The interviewee further elaborated on this:

When in high school, it's really, it's no additional material like what we are talking about here. It's like questions for them to answer and prepare for the exam. Not about expanding their ideas, their knowledge base. No, it's really textbook driven. Additional resources is basically questions and answers questions really for them to answer in the class. Yeah, and that (all). And we can be printing like a whole lot of that, you know, but really not to subsidise learning or, you know, new information (Educator Interview, Fiji)

The Educator reported that the onus is on the Educator to identify any additional or supplementary materials, but that additional resource is usually itself, only a textbook provided by a grant.

So here, the government would supply the textbooks. So they would give each school a set of textbooks, and that's it. You know, one textbook for each subject. That's how it works here. So, it's no(thing) additional. So, the onus is on the teachers themselves, right. So if they feel that 'Oh, this is a very useful textbook, we would like to use that as supplementary or additional resources' Then the school buys it through the grant, the grant that comes, so they make a request, and yeah, it's purchased, but only purchased for the teacher's use. (Educator Interview, Fiji)

Educators faced significant barriers and challenges in teaching due to the copyright restrictions (See Figure 11). These restrictions reduced what resources they could use for teaching and how they taught. As the two cohorts, from Fiji and the Philippines, were very similar the aggregate of percentages recorded in this section.

About a fifth of respondents (21%) found the costs of copyright material prohibitive. Moreover, a further 22% found that restrictions (limited permissions) placed on works limited access to the resources for the educators. The data indicated that there was also confusion as to whether to use material (20%) or getting access to material the required (17%). Only a sixth of respondents (16%) faced no copyright access issues.

Hard to get: Not knowing where to find the material for teaching (for example the material is not in my library, not possible to buy, not possible to download or record (Educator, Survey Respondent)

In contrast, when the respondents were asked if their institution provides teaching and resource or teaching materials, 42% responded almost always and 26% said that that is often the case. Fewer respondents reported to receiving teaching and resources sometimes (20%), and a further 8% noted that they seldom provided with teaching materials and resources.

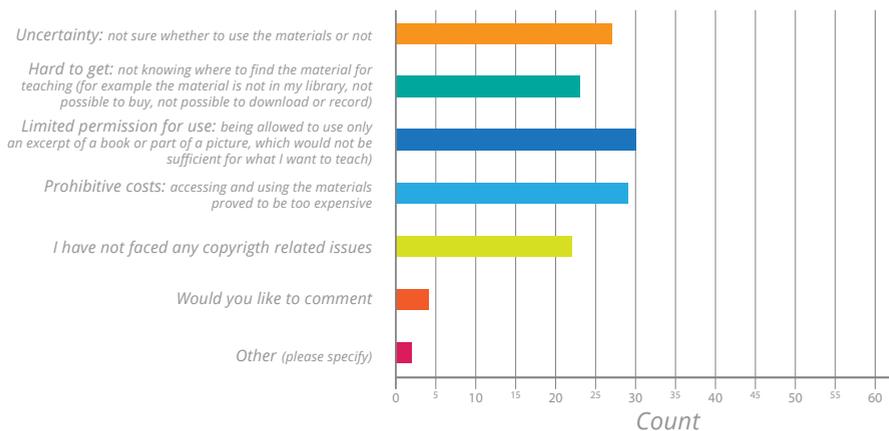


Figure 11. Challenges faced by educators

When quizzed about why they thought they did not receive teaching resources, about a quarter of respondents (24%) believed the materials were out of date, and the same number of educators thought the cost was prohibitive (24%). Over a fifth (21%) did not receive relevant teaching and research resources. A few respondents noted that the materials were not in a format they could use (9%) or a language that they understood (6%).

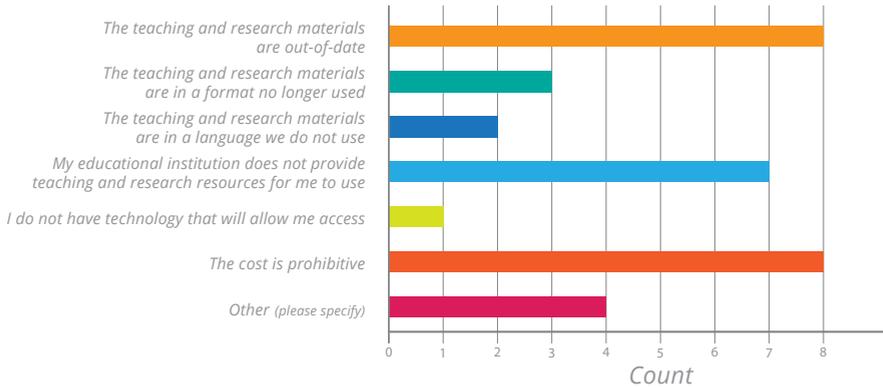


Figure 12. Why educators believe their institutions do not provide resources

Decisions on copyright were not always simple. Educators had to make careful and sometimes critical decision on the use of materials for teaching their classes especially when permissible resources are scarce. One survey respondent reported that they made copyright decisions of a contextual basis. Use of copyright works outside of permissible usage was carefully thought through and judgements made in accordance with necessity.

It was evident the educators had concerns about access to the materials they needed, as the vast majority of respondents (67%) stated that they sometimes encountered difficulty accessing the materials they needed to use, while about a sixth (14%) faced difficulties often. There was a smaller core group that never faced this difficulty (16%), while at the other extreme, 3% always faced difficulties. “As seen in Figure 13, many believed access was restricted because payment was required (48%), or they did not know how to get access (12%) or even where (16%). Few encountered technological difficulties with no access to a computer (2%), but more importantly the internet connection was unreliable for about a fifth of respondents (19%) overall, with greater unreliability reported in Philippines (26%) than in Fiji (3%).

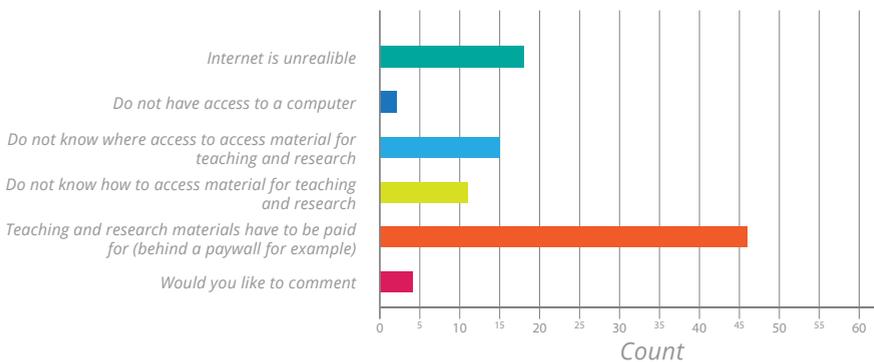


Figure 13. Why educators believe they face difficulties

For most of the educators in the survey, creation of their own materials was an option that many undertook, with about a third (32%) undertaking this task often, while others sometimes created their own materials (43%). A core group undertook creating their own materials consistently (17%), with less than 8% rarely or never creating their own teaching and research resources.

When asked where the educators were accessing their teaching and research materials, about a sixth of respondents (14%) were taking the material from websites, 12% from textbooks and 12% from articles. However, the educators were also accessing materials from platforms such as YouTube (10%), videos off the internet (9%) and PPT sharing platforms (8%). While some had access through their institution's library (11%), fewer were using their institution's online platforms (5%) and other colleagues work (5%), with local bookshops ranking the lowest (3%). When asked how the educators used the information, it was clear that material was either used as supplementary reading for students (21%) or played in class (21%). Reading in textbooks (13%), printed material handouts (11%) and illustrative materials (14%) were also widely used by the educators. However, audio was also used (9%) as well as materials given as homework (10%).

Educators typically shared the material with their students via an internet link (26%), via an institution's intranet (23%) or on a screen during class (20%). Fewer provided handouts to their students (13%), while less than 5% used an individual device. When asked how often the educators shared the material, most shared 2 days a week (28%) or 1 day a week (25%). Others shared materials more frequently, such as 3 days a week (17%), 4 days a week (14%), 5 days a week (10%) and the least (6%) less frequently.

When asked what the educators do when they come across obvious copyright obstacles, responses were the same across the two cohorts in Fiji and the Philippines. The majority of respondents (68%) refrain from using the material, while 17% comply by paying. Few (7%) respondents stated that they overlook the copyright obstacles, while others try other ways to get around the copyright obstacles (8%).

This section indicates that educators are struggling to legally provide materials that will stimulate and develop the students' knowledge. The cost is often prohibitive and usually falls on their pockets personally. They are attempting to gather useful material wherever possible yet knowing (or sometimes not) that using such materials are not permissible under current copyright law and regulations.



Discussion

This study revealed that the respondents were nearly all tertiary educated and belonged to the tertiary sector (the majority at university level) with fewer (but equally split) in high schools and elemental/primary schools. Thus, this established that the educators were well trained and educated. It was also notable from the data that many of the educators who responded were very experienced and often had larger class sizes (more than 31 students at least). Furthermore, most of the respondents taught in either metropolitan or regional settings.

There was an equity issue for the educators. Nearly all the respondents were teaching at least one student with disabilities however most of the students were over the age of 18 – which was in keeping that most of the respondents were university lecturers. Having students with a disability provides significant challenges, but these challenges are made worse when accessibility to resources or formats are not suitable. These issues of equity for students with disabilities have impact in more affluent countries but are more pronounced in less well-off nations. It is more likely to find that students with disabilities in developing countries are denied access to a reasonable education because educators suffer from a paucity of resources (Hegarty, 2019).

Educators aim to provide the most relevant and up-to-date form of materials to teach their classes (Education, 2014, p. 5). Moreover, most of the educators are core subject teachers that require specific materials in their field (Finkel, 2020). The limitation of what access they have to materials and what can be shared with students can impact on the quality of education for the students. It can leave students at a disadvantage and prevent them from equal achievement with peers from other countries. Yet it is evident that many of the educators were often using outdated textbooks while other core materials, such as workbooks were in short supply. Educators also indicated the need for up-to-date materials to prepare for the classes, share with their students and inform their teaching. Thus, the respondents in this research showed the educators used a variety of non-educational materials in their classrooms – such as videos off the internet and PPT sharing platforms for example. This was a typical of most of the respondents in this research. It was noted by Dratler in 1991 that *photocopying for educational purposes is perhaps the most significant educational copyright issue in modern times* (Dratler, 1991, pp. 23-24). The results of this research show that for many countries this situation has not changed.

A central issue was the educators understanding of copyright and how it applied to them in the education setting. When the respondents were tested on what they understood about copyright, it was clear there was some confusion as to how copyright applied. This was evident when the majority believe that a work had to be registered to be copyright yet when asked whether copyright automatically applied to a work, the respondents were also most evenly split between yes it did and no it did not. The majority of respondents believed that if they took a copyright work and further improved or adapted the work, then copyright did not apply. This finding reinforces that respondents believe they cannot effectively educate without infringing on copyrighted materials. Moreover, many educators faced unrealistic limits set by copyright law.

Although many respondents worked in institutions with some form of copyright policy and training, these were not always regular and not so well attended. This aligned with the finding that there was some uncertainty held by a smaller number of respondents as to whether their institution held a copyright policy. Without knowing what a copyright infringement entails, many educators assume the educational practice of copying copyrighted material without the owner's permissions is legitimate. As part of their daily work, many respondents in this study typically shared material with their students electronically. The educator is providing educational materials to their students while saving their institution money at the same time. Moreover, many educators would argue that they could not possibly afford or be expected to gain access to the educational materials they need unless they copied the material. However, many respondents felt that their administrators were aware of copyright issues faced by educators, yet did nothing, despite their institution's policies.

The findings from the data indicate that educators do not consider materials from different sources as having different or no copyright protections with some examples of this being webpages and YouTube videos. Furthermore, it was unclear whether educational institutions were taking their responsibility to safeguard the educators from copyright infringement appropriately. There was a misbelief that maps or photographs for example were not copyright protected. It was also believed that showing video clips in class was acceptable and did not breach copyright laws. Furthermore, using the internet to find teaching materials was an easy choice for many time-poor educators. Adding more demands on educators' time and energy away from teaching would be counterproductive.

Educators were regularly sharing the teaching materials with their students and colleagues via some form of internet link, their institution's intranet or on a screen during class. Very few respondents provided a printed handout however most educators shared the material at least two [2] days a week via other means. Educators were attempting to find ways to support students access to materials; many of these decisions appeared to be based on economic reasons (students could not afford access any other way). From this perspective, any copyright infringement by the educators is not market-motivated but rather an educational service. This stance signals that the educators felt the copyright owners were (or should be) unaffected by the dissemination of copyrighted material in the education context. Compliance from this perspective seems unrealistic for educators in Fiji and the Philippines.

In the research context, respondents appear to understand copyright more clearly. Most understood they could access a work for their own research and private use (without distribution to their students). However, there was confusion about whether the educator could share a copy of the work via an email (send or receive) with almost half unsure if they could and a significant proportion just didn't know. This was reiterated when asked if the work could be distributed to a teaching team or shared on their institution's online platform. Again, there were significant numbers who just didn't know.

Another issue that indicated confusion regarded fair dealing and fair use. Fair dealing and fair use are copyright concepts that are used mostly in common law countries (like New Zealand and Fiji for example). Considering most of the respondents were from the Philippines, one would consider that there would be a generally good understanding of fair use. In terms of fair use, most respondents understood that a work could be used for



lesson planning, and that the entire work should not be distributed to students. However, the respondents were confused as to whether they could take a copy of the whole work (like a book) for themselves and whether they could monetise the copy in a transaction to students (like a book of readings for example). Moreover, the majority of the respondents believed it was ok to take a work from an internet source and use it if it was referenced properly. When considering the understanding of fair dealing, the majority thought it was ok to use a short excerpt of a work in their own professional development if it was referenced. In fact, most thought that if the work was properly referenced, they could use as much or as little as they liked.

Many educators had not heard of the licensing bodies such as Copyright Licensing Ltd to enable students access to copyright materials. While copyright restricts use of or sharing or protected material, licencing agreements provide lawful use or access within certain restrictions. However, such agreements usually cost significant money, and though not clear from this data, would be prohibitive for countries with limited resources. So this finding would be impractical to apply to Fiji and the Philippines, as the education sector in both countries face significant economic challenges.

The barriers and challenges which educators faced with copyright were significant. Cost and access to materials was a factor that came up repeatedly in this section. Many educators found the costs prohibitive and as a result were unable to access up-to-date teaching and research materials both for their knowledge and to improve their teaching. It was also clear that if the educators found a work on the internet (either on a website, or something similar) they were often uncertain as to whether copyright protections applied. Despite the fact that some of their institutions provided teaching and research materials, it appeared that the internet was the go-to place of preference for most of the educators. Some believed that their institution was supplying out-of-date materials, while others believed that they were supplied with irrelevant materials (either in context, format or language). Technology was a problem for some respondents (less than 20% of the cohort).

Glossary

Artistic Works include graphic works, such as a painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut, print or similar work, photographs, sculptures, collages, or models and works of architecture, being a building (any fixed structure) and any other work of artistic craftsmanship.

Author means the creator of the work. A work may have more than one author, in which case they are “joint authors”.

Copy means reproducing or recording the work in any material form, and includes, in relation to:

- a literary, dramatic, musical or artistic work, storing the work in any medium by any means;
- an artistic work, marking a copy in 3 dimensions of a 2-dimensional work and making a copy in 2 dimensions of a 3-dimensional work;
- a film, television broadcast or cable programme, making a photograph of a whole or a substantial part of any image forming part of the film, television broadcast or cable programme.

Education is defined by level, type or what it achieves. The right to an education is both a human right and multiplier in relation to all other rights (Tomasevski, 2003).

Educational institutions are all public tertiary institutions and non-profit private or government training establishments. Private tertiary institutions (for-profit) are NOT included in this definition.

Infringement of copyright is for any person to do any of these acts in relation to a copyright work, without permission from the owner of copyright in that work.

Literary work is any work that is written, spoken, or sung, provided it is recorded (in writing or otherwise), such as the words of a book, poem, magazine or newspaper article, speech, song, computer program, table and compilation, and which is not a dramatic work or a musical work. These works include texts appearing in books, magazines, newspapers, other forms of printed or electronic publications, and on websites. They could be stories, articles, poems, letters, reports, and so on.

Owner means the person or entity that owns copyright in the work. Typically, the author(s) are the first owner of the copyright in a work, however if the work is created in the course of employment, then the employer is the owner of the work.



Restricted acts related to copyright law include the following:

- copy the *work*
- issue copies of the work to the public (whether by sale or otherwise)
- perform, play, or show, the work in public
- broadcast the work or include the work in a cable programme service
- make an adaptation of the *work*
- authorise another to do any one of the above things.

Work means an original work in which copyright subsists under the Copyright Act 1994 (NZ).

User means a person who wishes to or does one of the *restricted acts* in relation to a copyright work.

(Ministry of Education, 2023)

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Appendix

There are two main international treaties which require signatory countries to provide automatic copyright protection for all original material (once they are recorded in a material form or a fixed format).

Firstly, the *Berne Convention for the Protection of Literary and Artistic Works* (Berne Convention), a multilateral convention created in 1886 in Paris, provides protection for creators such as authors, musicians, poets, painters and any such artistic works but also extends to any scientific expressions. The copyright protection of the Berne Convention controls how a creator's works are used, by whom and on what terms. The Berne Convention requires all signatory countries to recognise copyright ownerships from other countries and states that once created in a fixed medium, copyright protection is automatic and lasts during the life and 50 years after the death of the creator. The only exception to the 50 years is photographic work [25 years] and cinematographic works [50 years after the first showing to the public]. However, signatory countries can determine the maximum duration of protection for each copyright.

The *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS), also a multilateral agreement, contains copyright provisions which align with the Berne Convention. To some extent, TRIPS usurped the Universal Copyright Convention [1952] (UCC) which was developed as an alternative to the copyright protections established by the Berne Convention. Signatory countries who want to comply with the World Trade Organisation (WTO) will comply with TRIPS rather than with UCC, thus, to some extent making UCC membership redundant.

Finally, there is also the *Rome Convention* (for the protection of Performers, Producers of Phonograms & Broadcasting Organisations) which provides some exemptions for educators and researchers. However, in the case of the Rome Convention, the national law must provide the exemptions to copyright and artistic works first (World Intellectual Property Organisation, 1961) Therefore, this convention is not as widely recognised.





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September 2023



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Published by Education International

- September 2023

ISBN 978-92-95120-94-5 (PDF)