

Education
International

**Copyright limitations and
exceptions for the use of
digital materials in teaching
and learning environments**

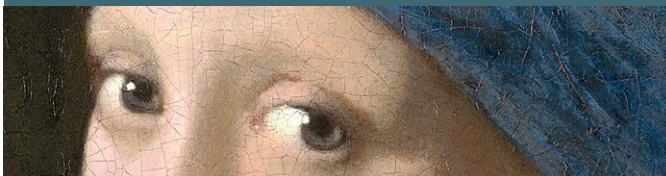
POLICY BRIEF



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Education International is the Global Union Federation that brings together teacher unions from across the world representing more than 32 million teachers, researchers and education support personnel. Learning from the [Marrakesh Treaty](#), we do believe that an international instrument for copyright exceptions and limitations for education and research purposes is needed not only to enable national level reforms, but also to address the rapidly increasing educational and research exchanges across borders.

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While education remains an undeniable key factor in the quest for socioeconomic development and sustainable growth at international and local levels, copyright laws tend to remain an obstacle to it. The experience of the Covid-19 pandemic has served as a wake-up call within the educational sector on the range of barriers copyrights may place in the way of teachers and the need to simultaneously help teachers comply with the law while improving the law to function better in the online educational environment.

To understand how to overcome this impasse, a growing number of research efforts have been put forward to collect **empirical data about copyright-related difficulties faced by teachers when engaging with digital tools.**

Empirical studies conducted across over 16 countries (Biernat et al; Dimitrov et al; Escudero; Graham et al; Iguana et al; Jütte et al; Mbodj; Muriel-Torrado et al; Nafuna Nandain et al; Nobre; Sims) and one global survey (Aufderheide et al) consistently demonstrate that **the perception and application of current copyright laws, to a meaningful extent, prevent teachers from fully tapping the potential of the digital environment.**

In particular, teachers face copyright obstacles in their uses of digital materials and their online cross-border teaching activities. The data collected show that **significant portions of teachers across the world are:**

1. **Unable to access digital materials of their choice** due to copyright protection constraints;
2. **Unable or reluctant to carry out specific uses of digital materials**, such as sharing with their students, adapting, and making it accessible for students located in foreign countries;
3. **Lacking sufficient knowledge or awareness** to navigate the complex copyright legal frameworks applying to their professional use of the digital environment.
4. **Developing coping mechanisms** of relinquishment of innovative teaching practices (so-called chilling effects) or deliberate avoidance of copyright rules.

The collection and examination of a broad range of empirical data – besides proving an essential exercise for policymaking – unveils the **urgent need to intervene on current copyright laws to fine-tune them with teachers' needs.**

Policy interventions are recommended to enhance, respectively, **copyright fragmentation and copyright effectiveness.**

INTRODUCTION: EDUCATION AND EVOLVING COPYRIGHT RULES

Among the many transformations the global community has been pursuing in virtue of its common policy agenda, fostering education consistently remains a key priority. The critical role played by education in building socioeconomic development and sustainable growth has been a long-standing beacon in international policymaking. Recently, the UN Sustainable Development Goals identified the specific objective of ensuring inclusive, equitable, quality education, and promoting lifelong learning opportunities for all to contrast worrisome global trends regarding basic literacy and school completion (UN 2023).

While committing itself to the promotion of education, the international community also recognizes the need to protect the interests of authors and those creating educational materials (Art.27(2) Universal Declaration of Human Rights; Art.15(1) International Covenant on Economic, Social and Cultural Rights). This implies that the promotion of education cannot ignore copyright protection.

The vast majority of countries across the world embraced the view that copyright should not be a burden for teachers and students. In this vein, they introduced specific mechanisms in their legal systems – so-called copyright limitations & exceptions – that permit the use of copyrighted works for educational purposes, without the need to seek authorization by the respective authors. To date, most studies have been focusing on the myriad of differences across national legislations regulating such educational copyright limitations & exceptions (eg Nobre 2022; Seng 2021, 2017; Xalabarder 2009). In fact, each country features its own rules on *who* can legally use *what*, to what *extent*, and for which specific uses to facilitate teaching and learning activities within its national territory.

The advent of the Internet exacerbated this legal fragmentation. National copyright laws had not expressly foreseen the use of digital technologies to retrieve and share educational materials. At the same time, teachers and students started experiencing the Internet as the new classroom environment, challenging the national dimension of copyright rules and finding in the Covid-19 pandemic a decisive impulse for online cross-border learning.

Against this background, the Internet represents not only a challenge for copyright laws, but also a remarkable opportunity for education. Teachers as well as students can engage with an entire World Wide Web of materials and rely on digital technologies to enhance the access, inclusiveness, quality, and diversity of their activities. For this reason, several countries are modernizing their legal systems to make sure that digital works and digital uses are included in their copyright limitations & exceptions. Nevertheless, an increasing body of empirical studies and scientific inquiries seem to suggest

that teachers across the world still struggle with several aspects related to their compliance with copyright laws – urging a closer look at the data currently available and preliminary evidence-based conclusions.

EVIDENCE COLLECTED FROM TEACHERS THROUGH EI STUDIES

Education International commissioned several empirical studies which closely examine the ways in which teachers search for and select digital materials for their educational activities, the challenges they face while accessing and using them, and their perception and knowledge about the compliance with copyright rules during such activities. Some of the studies examine these same legal problems also within the specific scenario of distance, online, and cross-border teaching.

The geographical and jurisdictional scope covered by the country-focused studies includes Fiji, Kenya, Philippines, and Senegal. One commissioned study (Aufderheide et al) was conducted via an online survey of global outreach and the partial demographic data show respondents' rates from the European, American, Asian, and African continents. The studies were conducted by different authors, following sound research methodologies varying from surveys to semi-structured interviews to focus group discussions. The numbers of respondents for each study make for meaningful empirical data, even though not statistically representative.

All studies share the common objective to investigate to what extent copyright laws are still posing obstacles and/or excessive burdens on teachers. This gets translated into two typologies of questions that were asked to the teachers-respondents:

- Whether/how copyright hinders their uses of digital materials
- Whether/how copyright hinders their online cross-border teaching activities

To this common core of empirical inquiry, some studies add questions regarding the respondents' awareness and knowledge on copyright rules as well as their coping mechanisms to overcome the copyright problems affecting their teaching activities.

OTHER RELEVANT STUDIES AND SCIENTIFIC DATA

The state of the art on the empirics of copyright limitations & exceptions in teaching environments consists of numerous other academic and policy studies, which embrace at least 12 more countries (Canada, Czechia, Germany, Greece, Italy, Netherlands, Spain, Poland, Portugal, Slovenia, United Kingdom, United States).

The selected studies adding to the data collected by EI maintain the focus on the impact of copyright in educational settings. In some cases, the teachers' perspectives are complemented by data collected from students, librarians, and information management experts.

SUMMARY ANALYSIS OF THE EMPIRICAL DATA AVAILABLE TO DATE

All scrutinized studies stem from a common research hypothesis: Despite the complex legal frameworks of limitations & exceptions, **copyright laws still pose obstacles to teachers, preventing them from tapping the potential of the digital environment.** The data collected sufficiently and consistently demonstrate this hypothesis.

The studies provide specific insights into specific difficulties faced by the respondents. The main convergences can be categorized into three most pressing copyright problems that persist for teachers:

1. Difficult access to digital materials

The first significant problem emerging from the examined studies is the **teachers' inability to access the digital materials they wish, due to copyright protection constraints.** Respondents often name technological restrictions, prohibitive costs of access, limited access in quantity or time, and the uncertainty about the lawfulness of the source of access to the material as the main specific causes (Aufderheide et al; Biernat et al; Dimitrov et al; Igudia et al; Nafuna Nandain et al).

2. Difficult use of digital materials and risk of copyright infringements

The second main problem emerging from the studies lies in the **impediments that teachers identify in carrying out specific uses of digital materials protected by copyright.** Despite teachers being familiar with the digital environment and regularly surfing the web to prepare and deliver their activities, several problems arise pertaining

to the teachers' impossibility to display selected materials or include video contents in their educational resources, their uncertainty about the lawfulness of their sharing of materials via platforms or email servers, their uncertainty about the permitted quantity of materials to be used, and their reluctance to engage in certain specific uses due to copyright enforcement mechanisms and notification of copyright infringements (Aufderheide et al; Biernat et al; Graham et al; Jütte et al; Mbodj; Muriel-Torrado et al; Nafuna Nandain et al).

One additional result is the pattern of misinterpretation that emerges from the lack of copyright indications/symbols on digital materials available online, which often leads teachers to use them freely and without limitation (Biernat et al; Dimitrov et al; Graham et al; Igudia et al; Jütte et al).

i. Specific case: Uses in the online classroom

Several studies consistently demonstrate the presence of specific problems arising in contexts of online cross-border teaching activities. Among the examples most frequently cited by the respondents is the teachers' inability to share digital materials with students or co-teachers located in foreign countries and related chilling effects due to the uncertainty about the application of national or foreign copyright rules (Aufderheide et al; Biernat et al; Muriel-Torrado et al).

ii. Specific case: Adaptations

In several studies, respondents raise concerns regarding their adaptations of digital materials for the purpose of their teaching activities and/or the specific needs of their students. The vast majority, if not all, surveyed teachers confirm to engage in alterations, modifications, and adaptations of contents to fit the specific topic, purpose or task inside their teaching activities is something that the vast (see, in particular, Biernat et al; Sims). However, a meaningful degree of uncertainty emerges regarding the extent to which these adaptations are lawful. This proves to be a concern especially among teachers with disabilities and/or teachers with students with disabilities in their classrooms (Aufderheide et al; Dimitrov et al; Mbodj; Nafuna Nandain et al).

3. **Lack of awareness or knowledge on copyright limitations & exceptions**

All examined studies highlight that one of the most uniform patterns across the respondents is the evidence of their low degree of knowledge and/or awareness about copyright laws and regulations on permitted uses of copyright materials. Further reinforcing this takeaway, significant percentages indicating uncertainty or doubts are a constant presence throughout all studies. In some cases, respondents indicate the desire to receive ad hoc copyright training from their educational institutions (Jütte et al).

The last consideration that can be drawn from the empirical research efforts here under analysis relates to the inquiry into **coping mechanisms** developed by teachers to overcome copyright problems. The data show that institutional solutions in the form of university regulations and ad hoc guidance on best practices are mentioned only once (Nafuna Nandain et al). The majority of the analyzed studies feature a significant portion of teachers opting for technological and collegial workaround strategies, deliberate avoidance of copyright rules, or declaring to have given up in the past or currently refraining from some activities (e.g., sharing digital materials with students, co-teaching, innovative assignments, cross-border activities) due to copyright obstacles (Aufderheide et al; Dimitrov et al; Mbodj; Nafuna Nandain et al; Sims).

CONCLUSIONS AND RECOMMENDATIONS

The first conclusion stemming from the **examination of the empirical studies** is of methodological character. Such exercise proved a **sound, viable, and highly useful exercise** to unveil and solidly reconstruct some features of the impact of a complex legal discipline, such as copyright law, within educational settings at global scale.

The second conclusion speaks more directly to the results of the study. The main takeaway well resonates with the policy goal set by the international community in UN SDG 4 to achieve **inclusive, equitable, quality, and lifelong education for all**. Such a protection and enhancement of educational environments and opportunities inevitably passes through the need to respect the interests of copyright holders who create the materials used by teachers.

When such authors are not the teachers themselves, **educators need to enjoy legal protection, incentives, and certainty regarding the uses of digital materials in the physical as well as online classroom**. The elements emerging from the analysis above show some consistent patterns where teachers, on the contrary, drift apart from the potential of digital technologies.

In light of the conducted analysis, it is therefore recommended to:

- I. Continue the efforts to collect and monitor empirical data on the impact of copyright laws across national educational environments.**

Research efforts of this kind help build a global, updated, evidence-based overview of how copyright laws benefit and hinder teachers in their work, thus shedding light on important policy adjustments the sector may need.

II. Intervene on current copyright legal frameworks to overcome legal fragmentation, enabling the use of copyright materials via online and cross-border activities.

In the specific case of copyright limitations & exceptions, what the international, supranational, and national legislations currently permit seem not to correspond to a facilitation nor encouragement of uses of educational materials via online classroom environments. Teachers are afraid, uncertain, and reluctant to use and share third-party materials when their teaching activities reach students and colleagues in different countries. Harmonizing national copyright rules and implementing one teaching or educational exception at the international level would significantly help overcome this issue.

III. Intervene on current copyright legal frameworks to enhance legal effectiveness, identifying an optimal scope to essential and ancillary uses that teachers are permitted to do while engaging with digital tools.

Both inside and outside the online classroom environment, what the current legal frameworks permit teachers to freely use for their activities does not seem to correspond to a real encouragement, guidance, and support of the legislation towards teachers. The obscure and complex nature of copyright limitations & exceptions for teaching purposes remain a key factual obstacle. This can be solved by way of policy and legislative interventions aimed not only at modernizing the language of the old offline-looking provisions but also at re-defining the scope of such provisions, to make sure that these reflect and meet the teachers' real needs.

One meaningful way to envision such an intervention would be to ensure that the copyright legal systems clearly identifies which are the core permitted uses that teachers can rely on, using digital contents without restraint (essential uses for teaching), and which are the additional free uses that teachers can perform with digital contents as long as they comply with certain conditions (ancillary uses).

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