

Copyright and Education

in Africa, Asia-Pacific
and Latin-America and the Caribbean

Teresa Nobre
June 2019



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Internacional de la Educación
Bildungsinternationale

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Introduction

For educators, from early childhood education to higher education, it is essential to have the right to choose materials for teaching and learning, and to adapt them to address topical political and societal events and priorities (e.g. student interest, political developments, local specificities)¹. In order to do so, teachers often complement traditional teaching resources with materials such as news pieces, videos, images and other media that are often protected by copyright. While teachers in some countries benefit from broad and flexible copyright frameworks for education (i.e., copyright exceptions and limitations for educational purposes ²), other countries have outdated laws and force teachers to either refrain from using essential materials or let them work in legal grey zones. The dilemma of having to fulfil a public mission and to deliver on the right to education, but not having a supportive legal framework persists in the context of digital and non-digital educational uses, in-person and distance learning, synchronous (i.e., real-time teaching) and asynchronous (e.g., study, homework, class preparation, pre-recorded lessons) teaching and activities, and formal and non-formal education.

This study intends to demonstrate whether copyright exceptions and limitations for educational purposes are fit for everyday educational practices³. It accomplishes this purpose by analysing 10 teaching and learning activities that involve the use of copyright protected materials under the copyright laws of 10 African countries (Angola, Cameroon, Egypt, Ghana, Kenya, Morocco, Mozambique, Nigeria, Senegal and South Africa), 10 countries from the Asia-Pacific region (China, India, Indonesia, Iran, Japan, Malaysia, Nepal, Saudi Arabia, Thailand and Vietnam) and 10 countries from Latin America and the Caribbean (Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras and Mexico).

1 ILO/UNESCO Recommendation concerning the Status of Teachers (1996) & UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997). ILO & UNESCO. Retrieved from [wcms_493315.pdf \(ilo.org\)](https://www.ilo.org/wcmsp5/groups/public/-/dgreports/2d/rwcms_493315.pdf)

2 Exceptions and limitations to copyright protection for educational purposes refer to legal provisions Certain acts of exploitation that usually require the right owner's permission may, under circumstances specified in the law, be carried out without the owner's permission.

3 Several studies have analysed the national educational exceptions laid down in the copyright laws of countries across the world. Most recently, Seng, D. (2017). Updated Study And Additional Analysis Of Study On Copyright Limitations And Exceptions For Educational Activities, SCCR/35/5 REV. WIPO. Retrieved from https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=390249. The author has also previously analysed the fragmented landscape of provisions allowing for educational uses of protected works and other subject matter in Europe: Nobre, T. (2017). Copyright and Education in Europe: 15 Everyday Cases in 15 Countries. COMMUNIA. Retrieved from https://www.communia-association.org/wp-content/uploads/2017/05/15casesin15countries_FinalReport.pdf

This research was conducted in the context of the Regional Seminars on Libraries, Archives, Museums and Educational and Research Institutions in the Field of Copyright, organised by the World Intellectual Property Organization in Singapore, Nairobi and Santo Domingo between April and June 2019, with the objective “to analyse the situation of libraries, archives and museums as well as educational and research institutions, and areas for action, with respect to the limitations and exceptions regime and the specificities of the region”⁴.

Copyright exceptions and limitations for education purposes

Exceptions and limitations to copyright protection refer to cases where copyrighted materials may, under circumstances specified in the law, be carried out without the owner’s permission. Laws across the world permit the use of copyrighted materials without the owner’s permission for a variety of purposes, namely for educational purposes. The use of copyrighted material under a copyright exception or limitation requires, in some cases, that compensation be paid to the right owner; in others it is free of charge.

4 Action Plans on Limitations and Exceptions Through SCCR/39, SCCR/36/7, adopted by the Standing Committee on Copyright and Related Rights during the 36th Session, May 28 to June 1 2018. World Intellectual Property Organization. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_36/sccr_36_7.pdf.

Methodology

This report presents the findings of a legal study into copyright exceptions and limitations⁵ for educational purposes in 30 countries. The national copyright exceptions were analysed by resolving 10 hypothetical teaching and learning scenarios.

These everyday uses include (a) **in-person teaching and learning activities with copyrighted materials** (i.e. in legal terms, educational activities featuring non-tangible disseminations or communications of copyrighted works to the public when the communication originates from the same place and at the same time as the location of the public (classroom and school events)); (b) **remote teaching and learning activities with copyrighted materials** (i.e. in legal terms, educational activities covering the visualisation of online materials and remote ways of transmitting materials outside the classroom; and (c) **teachers' creation of educational materials**, based on existing copyrighted works, without commercial purposes.

The author carried out the legal analysis and resolved the hypothetical legal scenarios in all 30 countries except Brazil. Mariana Valente of Internet Lab analysed the relevant Brazilian provisions and resolved the 10 scenarios in Brazil in consultation with the author. The Karisma Foundation reviewed the author's legal analysis in Colombia. All the errors in this study are attributable solely to the author.

No case law was analysed. No licences were analysed, so educational uses permitted under a licensing scheme are not scrutinised in this publication.

The legal sources referred to in a global study on educational exceptions commissioned by the World Intellectual Property Organisation⁶ were used as guides to the legal provisions in most of the countries analysed. Nevertheless, the author did not limit herself to the specific legal provisions presented therein.

5 "Limitations" often refer to legal provisions that exclude certain subject matter from copyright protection; they can also be used to indicate that use is subject to compensation/remuneration. "Exceptions" are normally used to refer to uses exempted by law, either subject to compensation/remuneration or not; they can also be used to indicate just those uses that do not require any payment. In this report these terms will be used interchangeably for the purpose of simplicity.

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

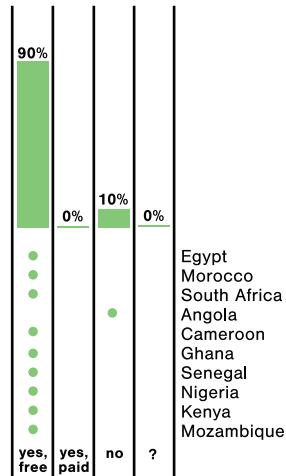


The results of the legal analysis performed for each scenario are presented in graphics. Countries that allow a specific use free of charge are marked with “Yes, free”, countries that make the use subject to compensation/remuneration are marked with “Yes, paid”, countries that do not allow a specific use are marked with “No”, and countries where legal uncertainty exists as to whether use is permitted or not are marked with a question mark “?”.

I. 10 educational scenarios in 10 countries in Africa

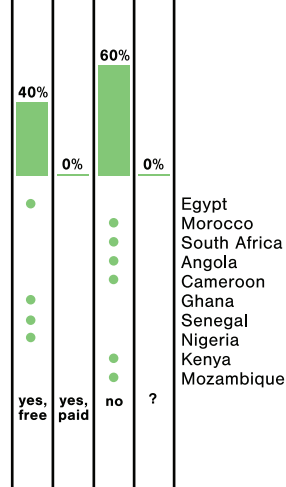
Student wants to quote entire artwork in a presentation

Is this legal?



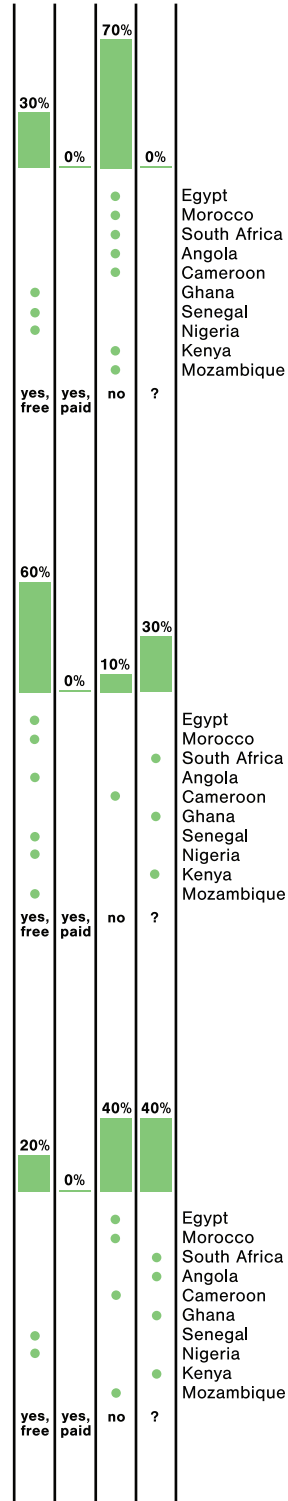
Teacher wants to scan pages from a textbook to show in class

Is this legal?



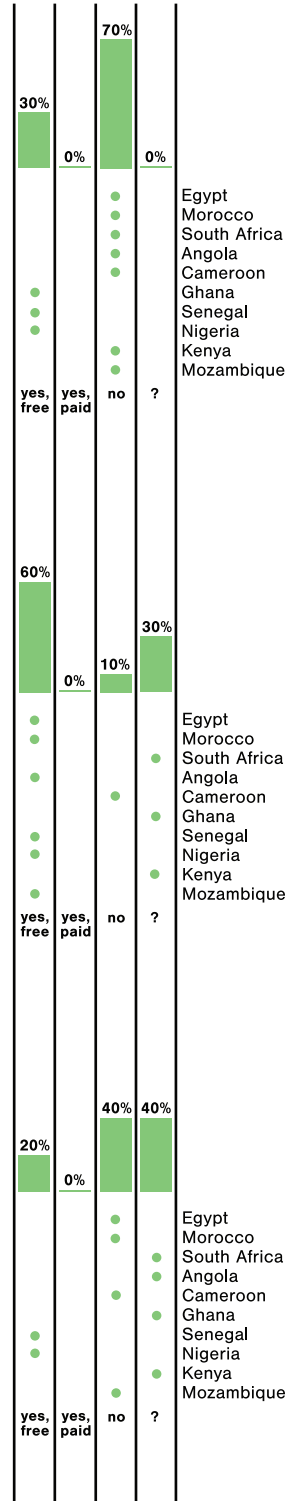
Teacher wants to record TV programme to show in class

Is this legal?



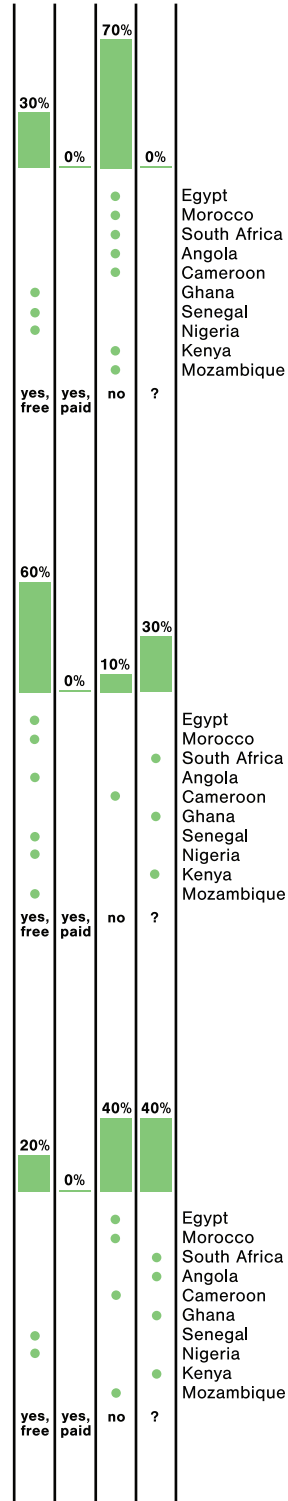
Teacher wants to screen and discuss a DVD in class

Is this legal?



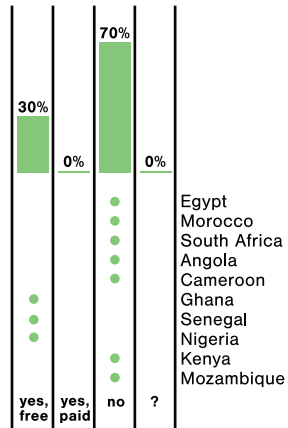
Teacher wants to show and discuss an online video in class

Is this legal?



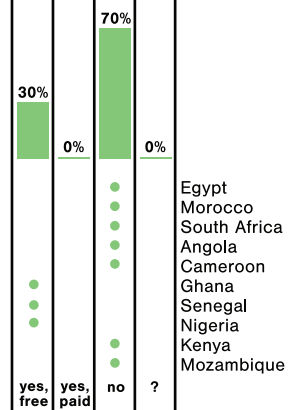
Teacher wants to email reading materials to students

Is this legal?



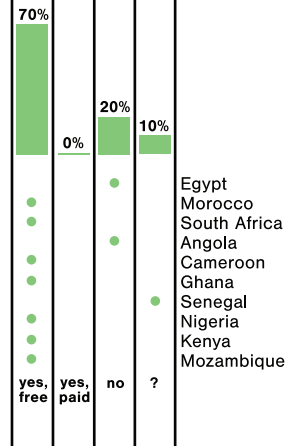
Teacher wants to share an article on the school's network

Is this legal?



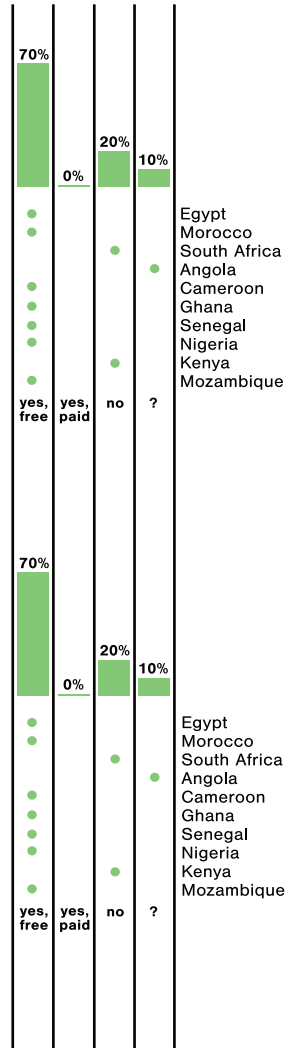
Teacher wants to compile novel chapters for use in class

Is this legal?



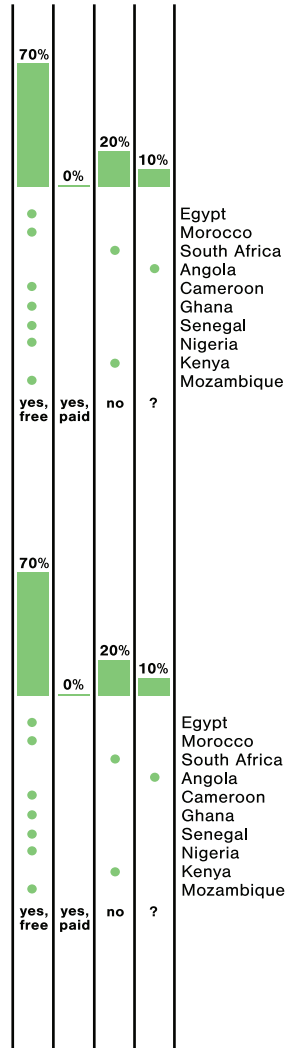
Teacher wants students to play a music piece in class

Is this legal?



Students want to perform a theatrical play in a school event

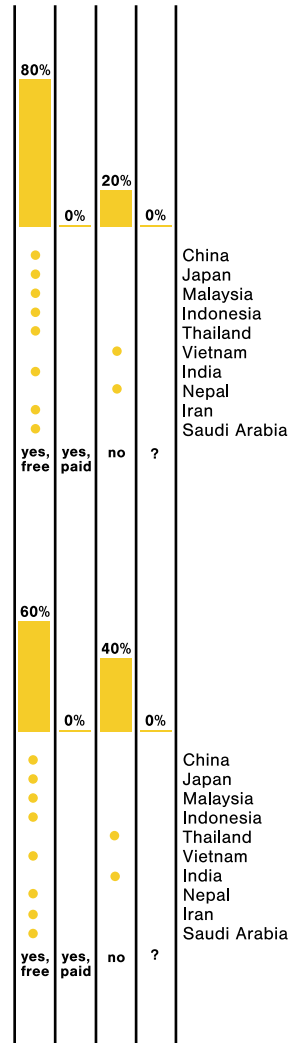
Is this legal?



II. 10 educational scenarios in 10 countries in Asia-Pacific

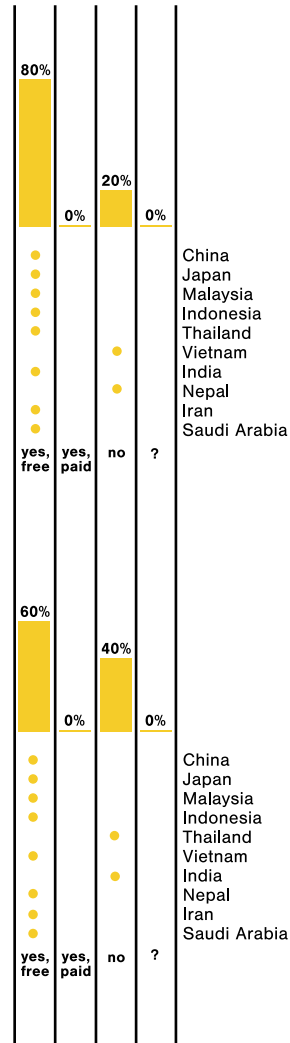
Student wants to quote entire artwork in a presentation

Is this legal?



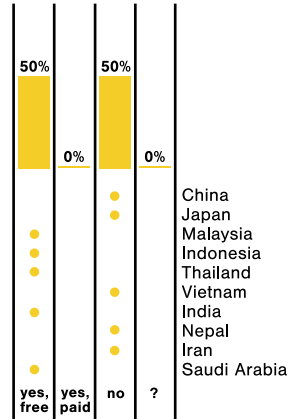
Teacher wants to scan pages from a textbook to show in class

Is this legal?



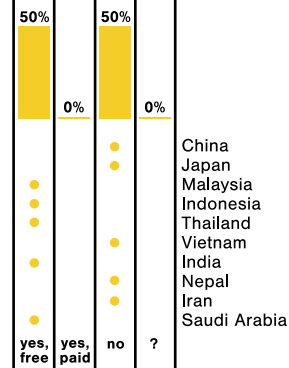
Teacher wants to record TV programme to show in class

Is this legal?



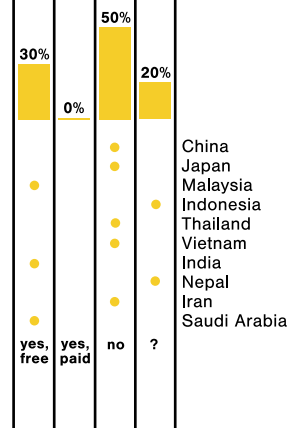
Teacher wants to screen and discuss a DVD in class

Is this legal?



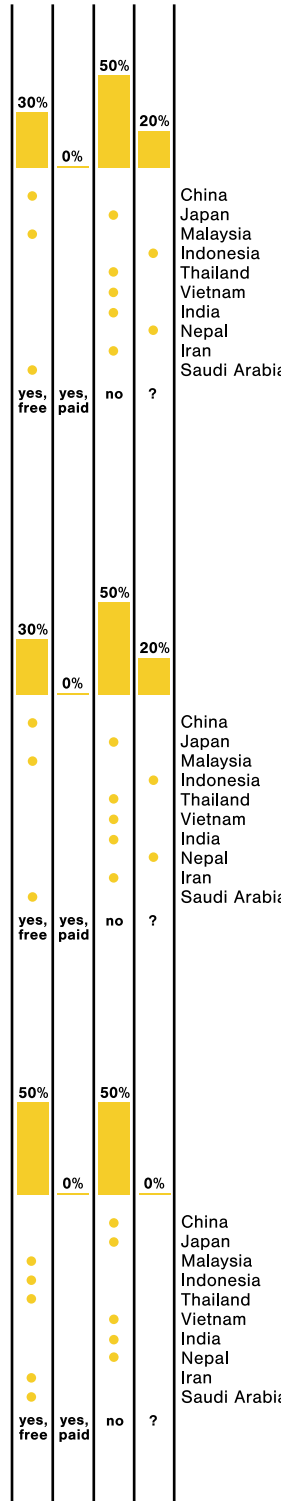
Teacher wants to show and discuss an online video in class

Is this legal?



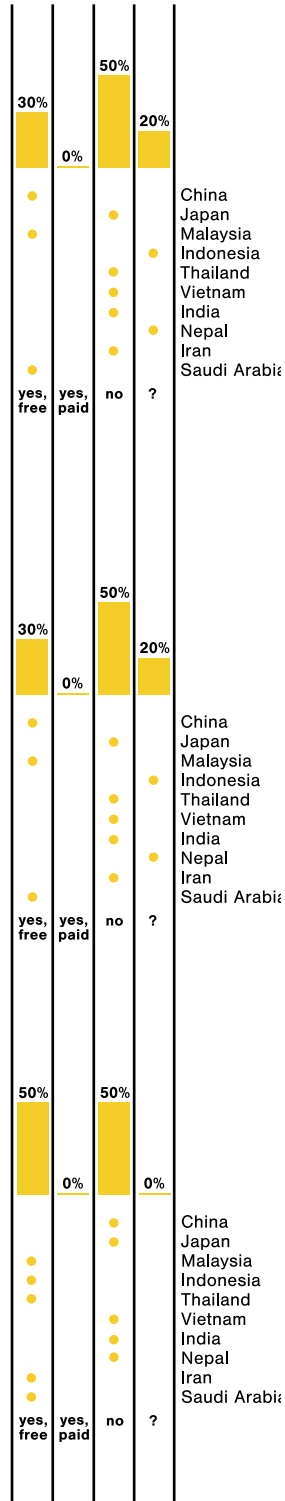
Teacher wants to email reading materials to students

Is this legal?



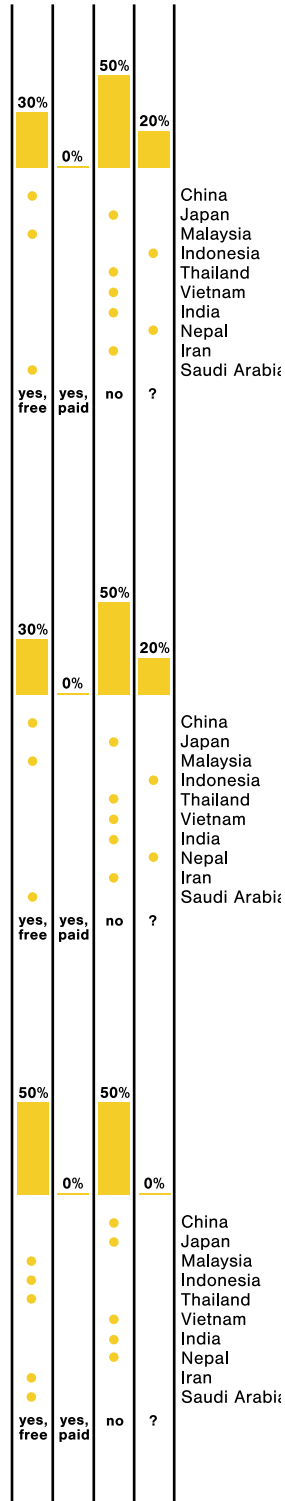
Teacher wants to share an article on the school's network

Is this legal?



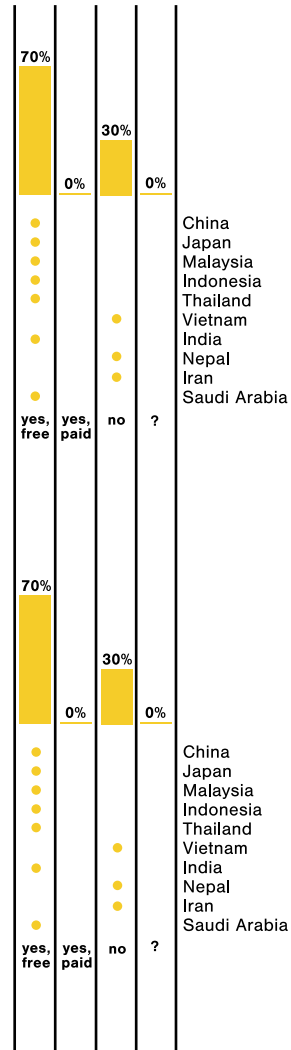
Teacher wants to compile novel chapters for use in class

Is this legal?



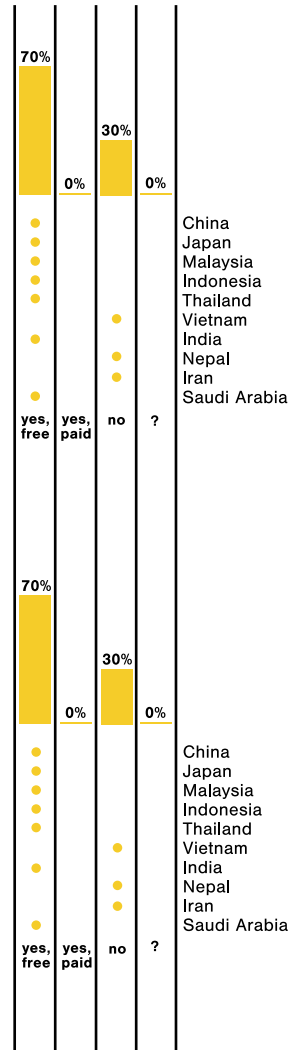
Teacher wants students to play a music piece in class

Is this legal?



Students want to perform a theatrical play in a school event

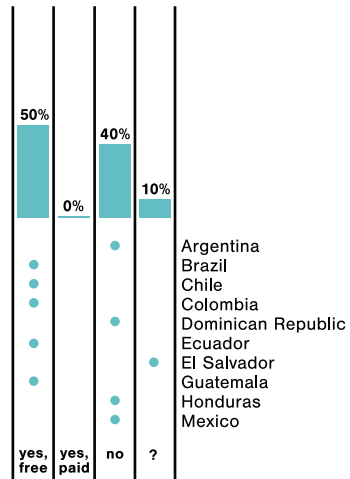
Is this legal?



III. 10 educational scenarios in 10 countries in Latin-America and the Caribbean

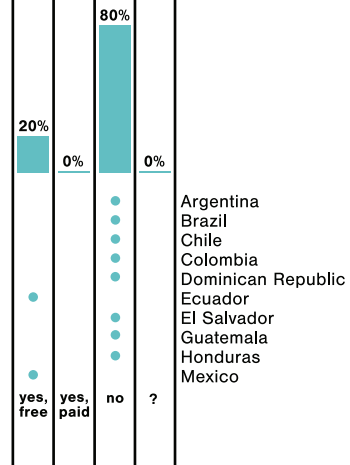
Student wants to quote entire artwork in a presentation

Is this legal?



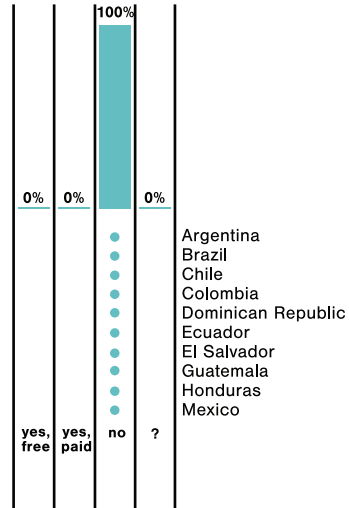
Teacher wants to scan pages from a textbook to show in class

Is this legal?



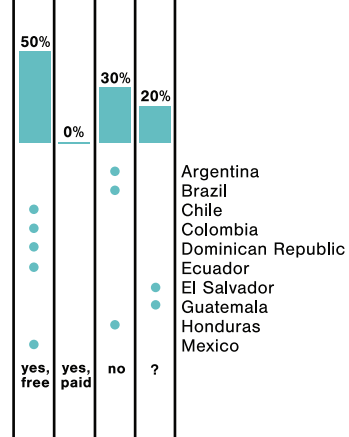
Teacher wants to record TV programme to show in class

Is this legal?



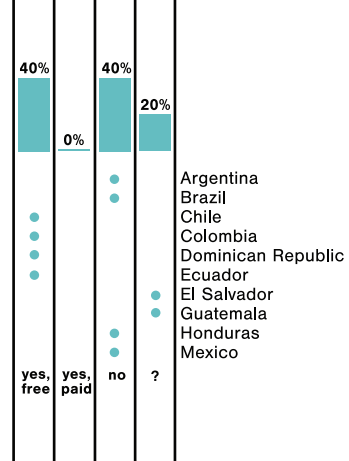
Teacher wants to screen and discuss a DVD in class

Is this legal?



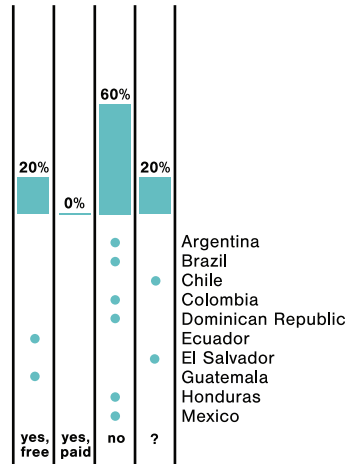
Teacher wants to show and discuss an online video in class

Is this legal?



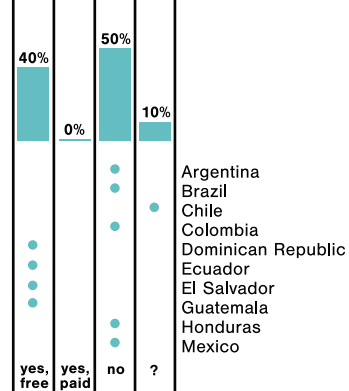
Teacher wants to email reading materials to students

Is this legal?



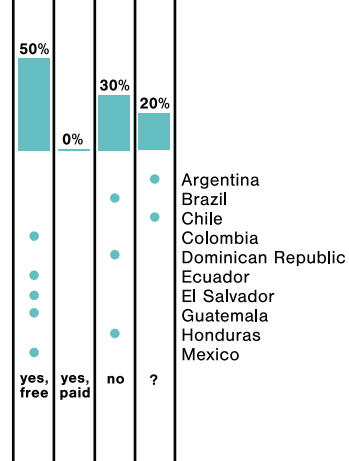
Teacher wants to share an article on the school's network

Is this legal?



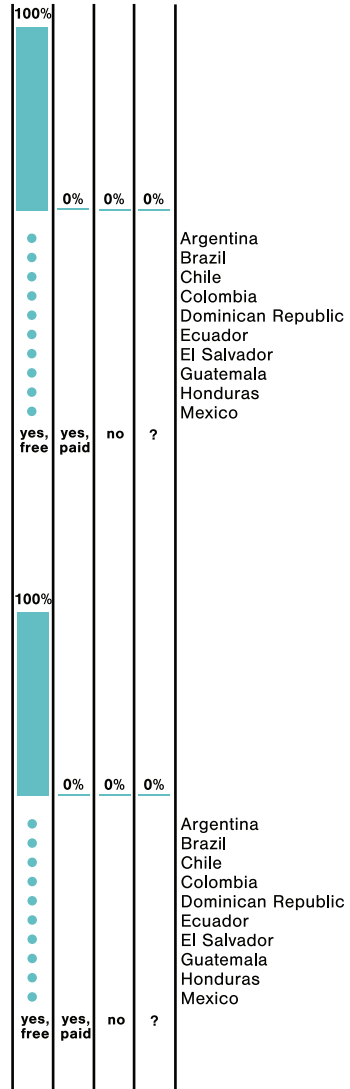
Teacher wants to compile novel chapters for use in class

Is this legal?



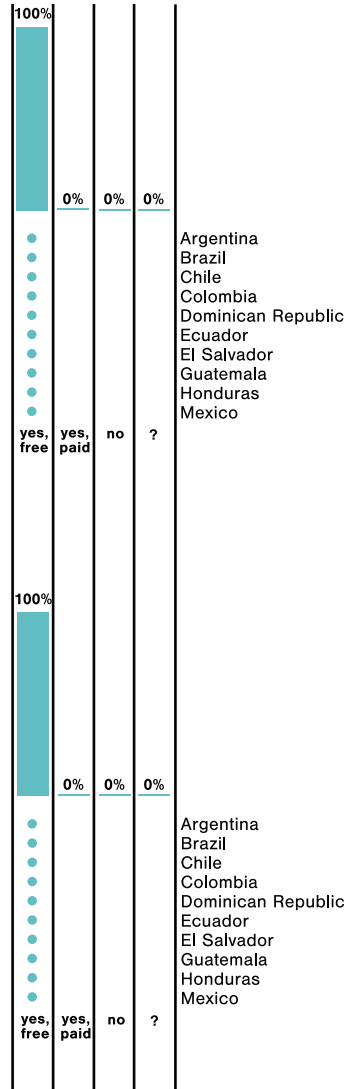
Teacher wants students to play a music piece in class

Is this legal?



Students want to perform a theatrical play in a school event

Is this legal?



Conclusion

Materials Available for Educational Use

A wide spectrum of copyrighted works and other protected subject matter⁷, coming from a variety of sources (e.g., short videos uploaded by individuals to social media platforms, newspaper articles and cultural heritage collections) beyond the conventional field of educational publications (e.g., textbooks and other curated teaching and learning material), can be used as educational resources. As learning and teaching style, as well as educational environments, are constantly evolving it is impossible to categorise only certain pieces of content as “educational”.

Therefore, this study takes a holistic approach to teaching and learning and includes the use of different types of copyrighted works and other subject matter: literary works (individual articles, chapters from novels, and parts of textbooks), audio-visual materials (TV programme and film), musical works, artworks and dramatic works.

This study's findings indicate that not all protected materials are treated equally by educational exceptions across the world. Most of the copyright exceptions analysed in this study cover the use of any “work” without enumeration. This means that all categories of works (e.g. literary works, artistic works, dramatic works) can be used under such legal provisions.

However, some countries enumerate the categories of works that are covered by the exception. In the latter situation, there are some cases where not all categories of works protected by the national law are included, therefore falling outside the scope of the exception. Furthermore, within the group of countries analysed, one country (Chile) has an educational exception that specifically excludes the use of certain types of literary works (school textbooks and university manuals).

Several countries, while not expressly limiting the types of works covered by the educational exception, contain other restrictions that create obstacles for educators to use certain works when teaching. The most

⁷ Copyrighted works” refers to literary and artistic creations that are protected by copyright, such as books, musical works, paintings and sculptures, audio-visual works and theatre plays, whereas “other protected subject matter” refers to materials that are protected by a copyright-like property right (so called “related rights” or “neighbouring rights”), such as performances, sound recordings, film fixations, TV and radio broadcasts.

common restriction is the extent or degree to which a work can be used for educational purposes: some laws include quantity limitations (i.e., how much of a work a teacher is allowed to use) without safeguarding the use of indivisible works (e.g., artworks and photographs) and short works (e.g., single articles and short poems) in their entirety. In other cases, format restrictions prevent the use of a variety of works, e.g., in Colombia and Dominican Republic quotations are permitted by means of transcription, which consequently restricts the types of works that can be used under such quotation exceptions (e.g., inserting an image of a painting in a presentation would not be possible).

Finally, in some countries of Latin America and the Caribbean (e.g., Argentina, Guatemala, Peru) there are exceptions applicable to copyrighted works, but no exceptions applicable to subject matter protected by neighbouring rights, which prevents the use of materials that are protected by both copyright and neighbouring rights (e.g., teachers cannot show films or play recorded music for teaching purposes)⁸.

In sum, countries with educational exceptions that are open to any categories of copyrighted works and that apply to all types of subject matter protected by neighbouring rights provide more freedom to their educational communities when selecting which materials to use in teaching and learning activities. Likewise, countries that do not specify a priori the proportion of a work that can be used under the educational exception pose less obstacles to the use of a variety of materials as educational resources⁹.

In-person Educational Practices

This study presented three in-person educational uses of copyright protected works and other subject matter¹⁰: a public performance of a piece of music in a classroom, a public performance of a dramatic work in a school event and the screening of a film in a classroom.

8 "Copyright" refers to the exclusive rights of the owners of literary and artistic creations, whereas "neighbouring rights" or "related rights" refers to the exclusive rights of performers, phonogram producers, film producers, broadcast organisations and other beneficiaries of copyright-like property rights. See previous footnote.

9 As a rule, the use of a work in its entirety is not permitted under educational exceptions to copyright, as that would conflict with the normal exploitation of the work and would unreasonably prejudice the legitimate interests of the author. However, assessing what is a reasonable proportion of protected content that can be used under an education exception requires both a quantitative and qualitative assessment. Therefore, fixing percentages in the law, instead of making a case-by-case assessment, can lead to unfair situations. This is particularly the case when the law does not safeguard the use of entire indivisible works (a photograph, a painting, a sculpture), short works (a short poem, a short essay, a short video), and articles taken from periodicals, newspapers and anthologies.

10 In these scenarios the act of communication of the work originates from the same place and at the same time as the location of the public.

The legal analysis done to resolve these hypothetical cases shows that performances, recitations and displays of copyright-protected works and other subject matter are permitted in most of the countries analysed under general educational exceptions or specific exceptions that cover public performance of works for educational purposes.

Stage and musical performances in educational establishments are allowed by the vast majority of copyright laws analysed: only 5 out of the 30 selected laws (Iran, Kenya, Nepal, South Africa and Vietnam) did not have legal provisions permitting a student to play a piece of music in a classroom or group of students to perform a dramatic work in a school event.

It is worth noting that some of the Latin American countries analysed (e.g. Chile, Colombia, Mexico) do not need educational exceptions to copyright to make music or theatrical performance in class, because in those countries public performances, recitations or displays that are made in the context of an educational activity are not deemed copyright-protected acts. Similar to what occurs in some national copyright laws in Europe, those activities are simply excluded from the scope of copyright protection, which provides greater legal certainty for educators and learners.

In sum, countries that put educational performances out of copyright offer the best legal framework for educational activities such as playing, acting, dancing or otherwise performing copyrighted works in class. Teachers in those countries do not need to worry about whether these activities comply with the conditions of specific education exceptions (e.g., the proportion of the work that can be performed in class).

Remote Educational Practices

This study features three remote educational uses of protected works and other subject matter¹¹: **visualising an online video, emailing reading materials and sharing an individual article through a school's closed network.**

The study shows that in most countries analysed there is no legal certainty for teachers both for showing audio-visual materials in class that are freely available online and sharing educational materials online

¹¹ In these scenarios there is a communication of the work to the public by wire or wireless means, where the public is not present at the place where the communication originates.

(via email, the cloud, chatrooms, and closed networks). A significant number of national copyright laws across the three regions lack educational exceptions covering the acts of communication at a distance (e.g. live online class) and on-demand (e.g. sharing recorded lessons by email), and several do not even exempt temporary reproductions (e.g. temporary file of an online video that is automatically copied by the computer in order to play smoothly), which are an integral and essential part of the technological processes involved in viewing copyright material on the internet.

In sum, countries with general educational exceptions that are open to any uses of copyrighted materials and other subject matter (e.g. Indonesia, Malaysia, Nigeria) or with specific exceptions covering educational communications beyond the premises of educational establishments (e.g. Ecuador, India, Senegal) perform better in remote education scenarios.

Creation of Educational Materials

Two acts of use that are essential for the creation of educational materials based on existing copyrighted works were analysed in this study: **quoting an artwork in a presentation and compiling novel chapters to use in class.**

The act of quoting, which is important for purposes of discussion, criticism and creation of educational materials, is one of the few activities that is covered by a mandatory exception to copyright under the international legal framework¹². For this reason, the act of quotation is permitted in almost all of the countries analysed. The analysis done in this study shows, however, that not all of the national laws respect the scope of protection granted to quotations by international law¹³. In 7 of those countries (Angola, Argentina, Dominican Republic, Honduras, Mexico, Nepal and Vietnam) restrictions as to the types of works that are covered by the exception or the extent to which a work may be quoted prevent the quotation of an entire artwork for educational purposes.

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

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

The act of compiling copyright-protected materials by a teacher for use in class is not expressly covered by the copyright laws of 10 of the countries analysed (Angola, Brazil, China, Dominican Republic, Egypt, Honduras, India, Japan, Nepal, Vietnam). In addition, in Argentina and Chile the exceptions are subject to quantity limitations that may pose obstacles to the compilation of entire chapters of a book. It is also worth noting that in China and Japan, there are educational exceptions allowing the use of copyrighted materials in authorised textbooks, but not in teacher-created materials.

Finally, it should be highlighted that, in Africa, the majority of countries analysed perform particularly well in these scenarios. This is because most have well-designed quotation exceptions in place, and also because they were influenced by the educational exception prototype contained in the Tunis Model Law on Copyright for Developing Countries (1976)¹⁴, which specifically exempts teaching compilations.

In sum, countries with quotation exceptions in place that follow the international standard perform better in all quotation scenarios, as they allow quotations of any types of works (not only text-based works, but also artworks, musical works, cinematographic works, etc) to the extent needed to the purpose (including quotations of entire works, when that is consistent with the permitted purpose). When it comes to non-commercial teaching compilations done by teachers to support students in their learning process, the countries that provide for a better legal framework are those with general educational exceptions that are open to any uses of copyrighted materials and other subject matter, as well as those that have followed closely the educational exception prototype contained in the Tunis Model Law on Copyright for Developing Countries.

Way forward

National laws across the world do not always provide for exceptions and limitations to copyright that support necessary access, use and reuse of copyright protected works and other subject matter for educational purposes.

¹⁴ The Tunis Model Law on Copyright for Developing Countries was adopted by the Committee of Governmental Experts convened by the Tunisian Government in Tunis from February 23 to March 2, 1976, with the assistance of WIPO and UNESCO. Retrieved from: <https://www.wipo.int/publications/en/details.jsp?id=3177&plang=FR>.

The scenarios analysed in this research show that, unless national copyright laws are substantially amended, many countries across the world will be stuck with narrow copyright exceptions that will curtail the academic freedom of teachers to choose materials, adapt materials, and ultimately undermine quality teaching and learning.

While this research only included some aspects of digitally supported and remote education it already becomes clear that this is a particular area of concern and will require further investigation. Furthermore, it will be important to conduct further research into understanding how teachers are working with materials and what their challenges are to ensure that copyright exceptions are designed based on the everyday teaching experiences and needs of the profession.

In addition, it will be important to give more thought to legal reforms at the international level. A non-binding instrument, designed to assist countries in reforming their copyright laws to incorporate the public interests related with access to education and to adapt their educational exceptions to the digital and online environments, could be a good starting point. Soft laws are an important vehicle in the process of reaching an international consensus on controversial issues, and the Tunis Model Law on Copyright for Developing Countries specifically has smoothed the process of developing proper exceptions and limitations for educational purposes in countries that have implemented the solutions contained in that model law. This can be seen particularly in the Africa region, where the language used in many national educational exceptions can be traced back to the prototype educational exception included in that soft law. However, dating from the 70s, the language used in the Tunis Model Law does not address digital uses and therefore is no longer fit for modern education.

In parallel, policy makers at a regional and international level should make an effort to agree on a minimum set of exceptions and limitations for educational purposes and on cross-border solutions for online uses.



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