

Limitations and Exceptions in Copyright Law for Educational Activities: A Typology Analysis

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Background

- Daniel Seng, WIPO Study on the Copyright Exceptions on the Copyright Exceptions for the Benefit of Educational Activities for Asia and Australia (SCCR/19/7), Oct. 26, 2009
- Daniel Seng, WIPO Draft Study on Copyright Limitations and Exceptions for Educational Activities (SCCR/32/4), May 9, 2016
- Daniel Seng, WIPO Study on Copyright Limitations and Exceptions for Educational Activities (SCCR/33/6), Nov. 9, 2016
- Daniel Seng, WIPO Updated Study and Additional Analysis of Study on Copyright Limitations and Exceptions for Educational Activities (SCCR/35/5/Rev), Nov. 10, 2017

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What is "Education"?

- Universal Declaration of Human Rights, Article 26(1)
 - "Everyone has the right to education"
- Article 10(2), Berne Convention
 - "to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice"
- Stockholm Conference 1967
 - Education, scientific and scholastic purposes
 - Teaching, research and instruction in schools, research institutes, institutes of higher learning
 - Teaching, research and instruction in private and at all levels

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Three Models of Education & Learning

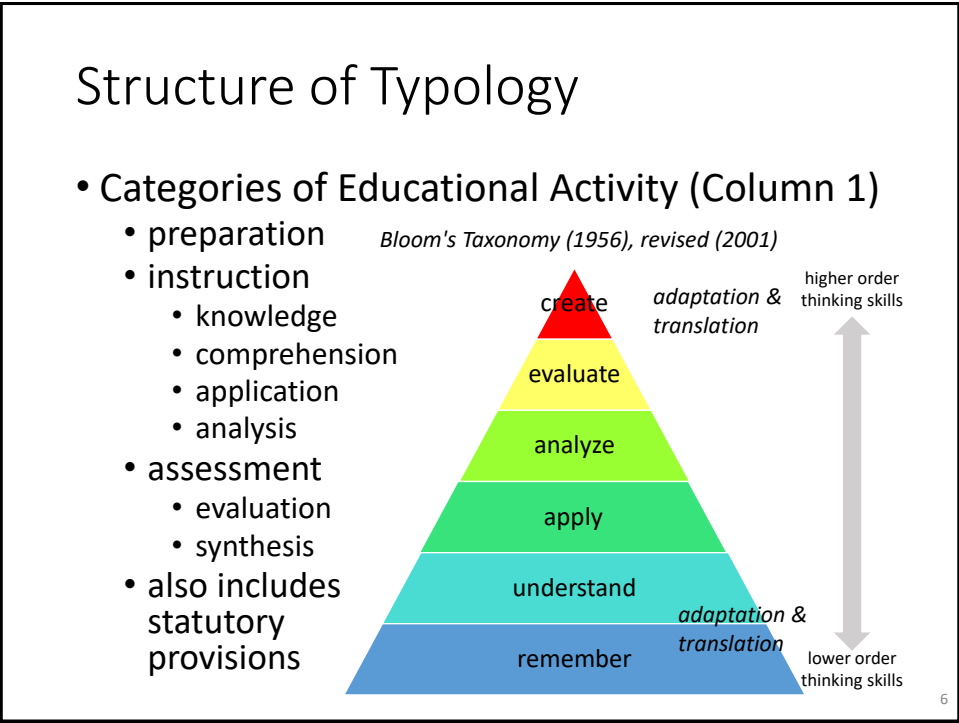
- Model
 - collectivist: teacher-centric
 - individualistic: student-centric
- Delivery
 - on-site: teaching and research conducted on-premises
 - off-site: teaching and research conducted off-premises
- Synchronicity
 - synchronous: direct-interaction, face-to-face delivery
 - asynchronous delivery: indirect-interaction, correspondence or online delivery mechanisms

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Types of Educational and Research Activities	
Access by Individuals • individualist • on-site and off-site • asynchronous & synchronous (e.g. peer learning)	Access by Educational and Research Institutions • collectivist • on-site • synchronous
Adaptation & Translation	
Online Courses • individualist • off-site • primarily asynchronous (synchronous option is also possible)	Distance Learning • individualist (on collectivist basis) • off-site • asynchronous (with synchronous option)

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Structure of Typology

- Owner's Rights Implicated (Column 2)
 - copyright and neighbouring rights affected
- Elements of Statutory Limitations and Exceptions (Column 3)
 - scope of works: types of works applicable (or not applicable)
 - purpose of use: purpose(s) of limitations and exceptions
 - conditions of use: conditions to qualify for limitations and exceptions (three-step test/elements not included)

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Structure of Typology

- Elements for Ongoing Consideration (Column 4)
 - differences in implementational details
 - unresolved issues or matters
 - comprising:
 - rights implicated – additional rights excepted
 - scope of works – to include or exclude certain classes of works
 - conditions – variations in operative conditions
 - beneficiary – characteristics or identity (e.g. public entity)
 - licences – scope and as condition of limitation or exception
 - remuneration – free, levy or equitable remuneration
 - liability – direct or indirect, of educational institution, research centre, staff, instructors, students, contractors etc.
 - TPM/RMI flexibilities – accessibility of TPM/RMI flexibilities; otherwise limitation or exception restricted

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Access by Individuals

- Individual-centric model of learning
- Focus on higher-order skills – experiential learning
- Instructor plays facilitative role
- Educational Activities:
 - access, copy, download
 - search, review
 - quote, use, illustrate
 - rehearse, record, present
 - screen, stage, perform
 - analyze, comment, critique, summarize
 - share, adapt, apply

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Access by Individuals

- Statutory Provisions
 - private/personal use
 - quotations
 - performance for educational purposes
- Rights Implicated
 - reproduction, communication (inc. making available), adaptation, translation, performance
 - (except publication/distribution)
 - circumvention/alteration of TPM/RMI

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Access by Individuals

- Elements of Limitations and Exceptions: scope

- private/personal use
 - exclude works of visual art, architecture, computer programs, digital databases, sheet music
- quotations
 - exclude architecture, computer programs
- performances
 - exclude single use works, computer programs, sheet music

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Access by Individuals

- Elements of Limitations and Exceptions: purpose

- private/personal use
 - private or personal use
 - research, study, performance, appreciation
 - use exclusively within family/domestic gathering
- quotations
 - commentary, criticism, science, teaching, illustration, research, etc.
- performances
 - educational activities, instruction, training

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Access by Individuals

- Elements of Limitations and Exceptions: conditions
 - private/personal use
 - use to be fair; in family circle; not for collective use
 - not distributed or communicated
 - no commercial purpose
 - reproduction by own means
 - reprographic reproduction
 - reproduction only by handwriting or typing
 - copy to be destroyed
 - quotations
 - amount justifiable to achieve purpose or compatible with fair practice
 - attribution as to source, author
 - performances
 - audience of teachers, pupils, relatives etc.
 - no entrance fee
 - attribution as to source, author

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Access by Individuals

- Elements for Ongoing Consideration
 - private/personal use
 - rights implicated: limited to "reproduction" or to also include "communication" or all forms of private or personal "use"
 - beneficiary: to also include a legal person
 - beneficiary: allow for authorization of third party
 - remuneration: free, or levies
 - TPM/RMI flexibilities for natural person
 - quotations
 - rights implicated: to include translation, adaptation
 - TPM/RMI flexibilities
 - performances
 - rights implicated: to include communication, making available
 - conditions: to include performance by staff, instructor or third party
 - TPM/RMI flexibilities

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Access by Educational and Research Institutions

- Teacher-centric model of learning
- Focus on information and knowledge transfer with fixed and systematic curriculum
- Instructor plays vital role
- Educational Activities:
 - preparation of instructional materials: copy, store, collate, review, convert, digitize, adapt, bypass TPM/RMI
 - instruction: extract, copy, present, distribute, compile (e.g. coursepacks)
 - assessment: quote, extract, copy, distribute

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Access by Educational and Research Institutions

- Statutory Provisions
 - quotations
 - limited copy reproductions for educational purposes
 - multiple copy reproductions for educational purposes
- Rights Implicated
 - reproduction
 - communication (including making available), performance, circumvention/alteration of TPM/RMI

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Access by Educational and Research Institutions

- Elements of Limitations and Exceptions: scope
 - quotations (as above)
 - limited copy reproduction
 - exclude architecture, computer programs, sheet music
 - exclude single use works, educational "consumables"
 - multiple copy reproduction
 - as above

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Access by Educational and Research Institutions

- Elements of Limitations and Exceptions: purpose
 - quotations (as above)
 - limited copy reproduction
 - *educational, pedagogical, scientific, research purpose
 - *critical thinking, cultural purposes, commentary, presentation, training (professional or vocational)
 - *illustration for instruction or teaching and/or scientific research
 - *face-to-face teaching, instruction or discussion
 - in the course of instruction or preparation
 - research or (private) study
 - examination
 - multiple copy reproduction
 - as above (marked with *)

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Access by Educational and Research Institutions

- Elements of Limitations and Exceptions: conditions
 - quotations (as above)
 - limited copy reproduction
 - *no financial gain; no commercial purpose
 - compatible with fair practice, fair use/dealing
 - *copy at teacher's individual request; spontaneous copy
 - *copy carried out by education/research institution
 - *copy carried out by instructor or student or staff
 - no reprographic copy
 - *no collective licence available (which institution is/should be aware)
 - copy may not be published or used commercially or transferred
 - *attribution as to source, author
 - multiple copy reproduction
 - as above (marked with *)

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Access by Educational and Research Institutions

- Elements for Ongoing Consideration
 - quotations (as above)
 - limited copy reproduction
 - *scope: include digital works
 - *rights implicated: include communication (and making available)
 - *beneficiary: include education-support institutions
 - *beneficiary: allow for authorization of third party
 - *remuneration: free, or levies on media, reprographic equipment
 - conditions: extent of copying and frequency
 - *conditions: unavailability or limitations in licence as prerequisite
 - *conditions/licences: overriding licence terms and conditions
 - *liability: indirect liability of institutions, intermediaries
 - *TPM/RMI flexibilities for educational/research institutions
 - multiple copy reproduction
 - as above (marked with *)
 - conditions/licences: unaffordable or limited licences (e.g. no ad hoc reproductions, uses; no digital copying; only some types of works; only national licences)
 - conditions/licences: difficulty of administrative compliance

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Distance Learning

- Learning w/o face-to-face instruction
- Disseminate information and instruction via mail, fax, telecoms, broadcast
- Educational Activities:
 - preparation & distribution of teaching materials in print form, audio, audiovisual recordings, telecoms, broadcast
 - instruction via broadcast, telecoms, audiovisual recordings
 - synchronous instruction via long-distance telecoms e.g. audio, audiovisual
 - assessments and answers in print form, recordings, distributed and collated

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Distance Learning

- Statutory Provisions
 - recording, broadcast, communication of educational materials
 - multiple copy reproductions for educational purposes
- Rights Implicated
 - communication, reproduction, distribution
 - performance, circumvention/alteration of TPM/RMI

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Distance Learning

- Elements of Limitations and Exceptions: scope
 - recording, broadcast, communication
 - exclude architecture, computer programs, cable programme exclusives, public stage performances
 - exclude single use works, educational "consumables"
 - multiple copy reproduction (as above)
 - as above

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Distance Learning

- Elements of Limitations and Exceptions: purpose
 - recording, broadcast, communication
 - educational, pedagogical, scientific, research purpose
 - critical thinking, cultural purposes, commentary, presentation, training (professional or vocational)
 - illustration for instruction or teaching and/or scientific research
 - distance learning, external study course, correspondence course, communication for teaching purposes, time-deferred instruction, to support or supplement classroom/face-to-face teaching or instruction
 - examination
 - multiple copy reproduction (as above)

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Distance Learning

- Elements of Limitations and Exceptions: conditions
 - recording, broadcast, communication
 - no financial gain; no commercial purpose
 - compatible with fair practice, fair use/dealing
 - +communication within educational premises
 - +communication initiated from educational premises
 - participants limited to enrolled students or under school authority
 - no collective licence available (which institution is/should be aware)
 - +communication, performance or display directly related to or of material assistance to teaching
 - distributed recording may not be used for any other purpose
 - attribution as to source, author
 - multiple copy reproduction (as above)

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Distance Learning

- Elements for Ongoing Consideration
 - recording, broadcast, communication
 - scope of works: include digital works
 - *rights implicated: include making available (e-copies) & distribution of works (physical copies)
 - *beneficiary: include profit-oriented, education-affiliated learning providers, external study institutes, adult-education institutions, vocation centres
 - *beneficiary: include overseas correspondent students
 - *beneficiary: authorize third party to produce & disseminate e.g. cinematographer, producer etc.
 - *remuneration: free, media levies, reprographic equipment
 - *conditions: unavailability or limitations in licence (e.g. only on campus; no cross-border licence)
 - *conditions/licences: overriding licence terms and conditions
 - *liability: indirect liability of institutions, intermediaries e.g. broadcasters, distributors
 - *TPM/RMI flexibilities for educational/research institutions
 - multiple copy reproduction
 - as above (marked with *)

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Online Courses

- Distance learning free of constraints of physical correspondence and limitations of unidirectional communications
- Materials available for near immediate access & distribution
- Engagement and collaboration, synchronously and asynchronously, individually or in groups, immediate or time-delayed
- Access is electronic, anytime and anywhere
- Educational Activities:
 - preparation, collation, conversion, digitization, storing, uploading of materials
 - instruction: asynchronous – pre-recorded e.g. flipped classrooms, webinars, portals, SPOCs, MOOCs
 - instruction: synchronous or "live" e.g. video, web conferencing, live-streaming, telerobotics, SPOCs, SMOCs
 - instruction: collaborating, sharing, reviewing, presentating online
 - instruction via designated terminals, computers, mobile devices
 - assessment online, instant feedback

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Online Courses

- Statutory Provisions
 - recording, broadcast, communication of educational materials
 - multiple copy reproductions for educational purposes
- Rights Implicated
 - communication (inc. making available), reproduction
 - distribution, performance, circumvention/alteration of TPM/RMI

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Online Courses

- Elements of Limitations and Exceptions: scope
 - recording, broadcast, communication
 - exclude architecture, computer programs, cable programme exclusives, public stage performances
 - exclude single use works, educational "consumables"
 - multiple copy reproduction (as above)
 - as above

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Online Courses

- Elements of Limitations and Exceptions: purpose
 - recording, broadcast, communication
 - educational, pedagogical, scientific, research purpose
 - critical thinking, cultural purposes, commentary, presentation, training (professional or vocational)
 - illustration for instruction or teaching and/or scientific research
 - synchronous face-to-face teaching via online medium
 - distance learning, external study course, correspondence course, communication for teaching purposes, time-deferred instruction, to support or supplement classroom/face-to-face teaching or instruction
 - examination
 - multiple copy reproduction (as above)

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Online Courses

- Elements of Limitations and Exceptions: conditions
 - recording, broadcast, communication
 - no financial gain; no commercial purpose
 - compatible with fair practice, fair use, fair dealing
 - +communication within educational premises
 - +communication initiated from educational premises or on designated terminals in establishments, or on secure/closed networks, or via email
 - participants limited to enrolled students or under school authority
 - no collective licence available (which institution is/should be aware)
 - +communication, performance or display directly related to or of material assistance to teaching
 - recording may not be used for any other purpose
 - attribution as to source, author
 - multiple copy reproduction (as above)

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Online Courses

- Elements for Ongoing Consideration
 - recording, broadcast, communication
 - scope of works: include computer programs, databases
 - *rights implicated: include making available of works *with* reproduction of works (dissemination of e-copies)
 - *beneficiary: include profit-oriented, education-affiliated learning providers, external study institutes, adult-education institutions, vocation centres, SPOC, SSOC, SMOC, MOOC providers
 - *beneficiary: include correspondent students *and* participants (not necessarily students)
 - *beneficiary: include students and participants from *overseas*
 - *beneficiary: authorize third party to produce & disseminate online courses e.g. developer, programmer, designer etc.
 - *remuneration: free, media levies, reprographic equipment
 - *conditions: unavailability or limitations in licence (e.g. no dissemination, communication outside campus, no cross-border licence)
 - *conditions/licences: overriding licence terms and conditions
 - *liability: indirect liability of institutions, intermediaries (e.g. platform operators, service providers)
 - *TPM/RMI flexibilities for educational/research institutions
 - multiple copy reproduction
 - as above (marked with *)

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Adaptations and Translations

- Education instruction and research may entail or necessitate:
 - translating source materials from one language into another
 - rearrangements or transformations
 - changes from one format to another
- Assessments and evaluations may also require similar adaptations or translations

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Adaptations and Translations

- Statutory Provisions
 - private or personal use
 - quotations
 - performance
 - limited copy reproductions for educational purposes
 - multiple copy reproductions for educational purposes
 - recording, broadcast, communication of educational materials
- Rights Implicated
 - reproduction, adaptation, communication (including making available), circumvention/alteration of TPM/RMI

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Adaptations and Translations

- Elements of Limitations and Exceptions: scope

- exclude works of visual art, architecture, computer programs, cable programmes, digital databases, sheet music, audio, audio-visual works

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Adaptations and Translations

- Elements of Limitations and Exceptions: purpose

- educational, pedagogical, scientific, research purpose
- illustration for instruction or teaching and/or scientific research
- commentary, criticism, science, teaching, illustration, research, etc.
- private or personal use

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Adaptations and Translations

- Elements of Limitations and Exceptions: conditions

- no financial gain; no commercial purpose
- compatible with fair practice, fair use, fair dealing
- needs of a natural person
- no collective licence available (which institution is/should be aware)
- adaptation may not be used for any other purpose e.g. transferred to another
- attribution as to source, author

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Adaptations and Translations

- Elements for Ongoing Consideration

- scope of works: limited to only original works or include original works and their adaptations and translations, or broad "use"
- *beneficiary: authorize third party e.g. translator, programmer, developer
- *remuneration: free, media levies, equitable remuneration
- *conditions: unavailability or limitations in licence (e.g. no further adaptation or translation, no ad hoc per-use licence)
- *conditions/licences: overriding licence terms and conditions
- *TPM/RMI flexibilities for educational/research institutions

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Conclusions

- Typology as a record of issues, balance of priorities & adopted policy approaches towards different facets of educational and research activities
- Use of typology as recipe for formulating similar limitations & exceptions, for upgrading/revising existing limitations & exceptions, and for drafting educational and research licences
- Scope, purpose and conditions reflect different views and policy solutions
- Resolving outstanding elements requires a comprehensive appreciation of role and importance of educational and research activities
- Also requires holistic understanding of varying mechanisms of copyright law

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Thank You

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