

EDUCATIONAL RESOURCES DEVELOPMENT:
Mapping Copyright Exceptions and Limitations in Europe
Teresa Nobre, LL.M.

Creative Commons Project Open Educational Resources Policy in Europe
WORKING PAPER
July 2014



This working paper is an outcome of the Creative Commons project Open Educational Resources Policy in Europe. To know more about this project, visit <http://oerpolicy.eu>. To know more about Creative Commons, visit <http://creativecommons.org>.

The views and opinions expressed in this work are the sole responsibility of the author.



This working paper is licensed under a Creative Commons Attribution 4.0 International license. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0> or send a letter to Creative Commons, 444 Castro Street, Suite 900, Mountain View, California, 94041, USA

AUTHOR BIOGRAPHY

Teresa Nobre is an attorney-at-law based in Lisbon, Portugal. She is the co-project lead and the legal lead for Creative Commons Portugal. She holds a university degree in Law from the University of Lisbon Faculty of Law and a Master of Laws in Intellectual Property from the Munich Intellectual Property Law Center (Max Planck Institute for Innovation and Competition, University of Augsburg, Technische Universität München, George Washington University Law School).

WORKING PAPER

This is a working paper. Please do not rely solely on this work to assess the permissibility of the acts analyzed herein.

COMMENTS WELCOME

We invite stakeholders, namely local copyright lawyers and local experts in education, to provide us with the necessary input to interpret the legal information contained herein and update this work accordingly. Specifically, we invite stakeholders to inform us:

- if the relevant law provisions analyzed herein are updated;
- if the relevant law provisions analyzed herein are correctly translated;
- if there is any relevant law provision missing from the analysis; and
- if there is any local case law or specialized literature providing a different interpretation of the law provisions analyzed herein.

Please send your feedback and comments to Teresa Nobre at creativecommons.pt@gmail.com.

INTRODUCTION

When creating new educational resources – lesson plans, course syllabus, presentations, educational games, and other teaching and learning materials – teachers are often faced with the need to quote excerpts of or entire copyrighted works (e.g. works of art), to compile copyrighted works, and to translate or otherwise alter copyrighted works to the local needs of their students. However, assessing the permissibility of those acts is not simple and straightforward. The language used in copyright laws is sometimes vague or unclear, case law is in many countries practically inexistent and there is hardly any literature on the topic.

The difficulties increase in digital and online teaching environments. Certain acts which teachers are allowed to perform in face-to-face teaching may not be permitted in digital and online contexts. For example, teachers may be allowed to make teaching compilations and distribute them inside the classroom, but prohibited from uploading them to their schools' learning managements systems, to email them to their distance-learning students or to share them in online platforms. This is due either to inappropriate legislative techniques (i.e. the acts of exploitation foreseen in the legal provision do not include those that are necessary to use resources in digital formats or online) or to domestic policy decisions¹.

As a result, educational resources platforms, which know better than risking a copyright infringement claim, have been withholding all those educational resources created by teachers that pose interpretation problems as to whether the use of a certain copyrighted work in the resource is in compliance with the applicable laws². Teachers'

resources from areas of Knowledge where the use of copyrighted works is more imperative (e.g. Literature, Fine Arts, Music) are, therefore, unlikely to become widely available in such online platforms anytime soon.

Cross-border sharing of educational resources is also compromised at the outset due to the current differences between the national copyright laws, including within the European Union. Despite the fact that both the Berne Convention³ and the European Union Directive on Copyright and Related Rights in the Information Society⁴ provide for exceptions for educational activities with a fairly broad scope of application⁵, such provisions do not have a compulsory nature⁶ and national laws have implemented them narrowly, restricting in various and different ways the use of copyrighted works in educational resources. Therefore, disseminating educational resources that make use of copyrighted works across borders, namely through online platforms, is a high inherent risk level activity.

Ignoring the intricacies of the statutory exceptions and limitations to copyright, teachers have always used copyrighted works in ways that are not always covered by their national laws. One should not expect it to be different in digital and online contexts. For a long time now, teachers have been encouraged to use the information and

educational resources with copyrighted images in their platforms. This either because they had to take down such type of resources following complains from textbook publishers, or because they were advised by their legal counsels to not accept such resources in the first place.

³ See Berne Convention for the Protection of Literary and Artistic Works, adopted at Paris on September 9, 1886, as revised and amended ("Berne Convention" or "BC"). Available at: http://www.wipo.int/treaties/en/text.jsp?file_id=283698.

⁴ See Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society ("EUCD"). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0029>.

⁵ See article 10(2) BC and article 5(3)(a) EUCD.

⁶ As we will see later, only the quotation exception is mandatory for the member states of the BC and such countries may, nevertheless, impose more restrictive conditions when dealing with quotations in purely domestic situations.

¹ See Xalabarder, Raquel (2009), WIPO Study on Copyright Limitations and Exceptions for Educational Activities in North America, Europe, Caucasus, Central Asia and Israel, p.36. WIPO – Standing Committee on Copyright and Related Rights. SCCR/19/18. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=130393.

² People responsible for educational resources platforms in Portugal and Belgium have reported to us that there are only a few

communication technologies in education⁷ and to exchange educational resources online⁸. However, as far as we know, they have received little guidance as to how their local laws – not to mention third countries copyright laws – treat the different uses of copyrighted works for educational purposes.

Offering training sessions on such a complex and often imprecise legal matter is not an easy task, and most educational institutions probably lack the means to engage in such activities. Certainly, higher education institutions and faculty – namely because they have to deal constantly with the publication of academic works – are to some extent aware of their national copyright restrictions, they realize the problems that may arise from an inadequate use of copyrighted works and probably they have already adopted some guidelines regarding the use of protected works. But one should not assume that primary and secondary education schools and teachers enjoy the same level of awareness.

On the other hand, without a harmonized and complete treatment of education as an exception or limitation to copyright, use of copyrighted works in educational resources and cross-border dissemination, online and offline, of such resources will probably always be problematic, no matter how many copyright awareness actions are promoted at a local level.

To be sure, it is not realistic to consider that teachers or schools or educational resources platforms will be able to obtain from every author or rights holder of each and every copyrighted work they intend to use the necessary permission to carry on with such use.

⁷ The use of information and communication technologies (“ICT”) in education has been a key priority in most of the EU countries in the last decade: see Balanskat, A., Blamire, R., & Kefala, S.(2006), The ICT impact report: a review of studies of ICT impact on schools in Europe, p.2. European Schoolnet. Available at: http://colccti.colfinder.org/sites/default/files/ict_impact_report_0.pdf.

⁸ The European Schoolnet, a network of 30 European Ministries of Education, launched in 2002 the Learning Resources Exchange platform (available at: <http://reforschools.eun.org/>), a federation of repositories for educational content, which is now, reportedly, the largest open educational resources repository in Europe: see <http://www.eun.org/teaching/resources>. In 2013, the European Commission launched the Open Education Europa portal (available at: <http://www.openeducationeuropa.eu/>), a database of European educational resources, as part of its “Opening Up Education” initiative, an action plan to increase the use of digital resources, online learning tools and open educational resources: see http://europa.eu/rapid/press-release_IP-13-859_en.htm.

The rights clearance process is simply too burdensome⁹. Firstly, authors and rights holders are difficult to locate, and not every individual or institution has the time or the resources to engage in such searches. But even when the location is not a problem, the terms imposed, namely the payment terms, may make it impossible or excessively difficult for those users to be granted a license.

Additionally, extended collective licensing schemes, which are in place in a few European countries, have not proven to make things easier, as the collecting management organizations may offer restrictive agreements and in the worst-case scenario no agreement will be reached¹⁰. Not to mention that the licenses granted under such schemes also need to be negotiated between the relevant collecting management organizations and each of the interested beneficiaries or groups of beneficiaries. This means that certain beneficiaries – especially individuals and beneficiaries with lack of financial resources, including not-for-profit online resources platforms and many public schools throughout Europe – will almost certainly be left aside.

OBJECTIVE

The objective of this working paper is to provide a systematized overview of the national statutory limitations and exceptions to copyright¹¹ that coexist within the European territory and that have an impact in the development of educational resources, specifically: quotations exceptions, teaching compilations exceptions and other exceptions and

⁹ See McGeveran, W and Fisher, W (2006) ‘The Digital Learning Challenge: Obstacles to Educational Uses of Copyrighted Material in the Digital Age’, p. 76 ff. Berkman Center Research Publication No. 2006-09. Available at SSRN: <http://ssrn.com/abstract=923465>. See also Report on Copyright and Digital Distance Education (ID: CSD1866), U.S. Copyright Office, May, 1999, A report of the Register of Copyrights, p.iii. Available at: http://www.copyright.gov/reports/de_rprt.pdf.

¹⁰ See Green Paper, Copyright in the Knowledge Economy, Commission of the European Communities, COM(2008) 466/3, p.16. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0466:FIN:EN:PDF>

¹¹ “Limitations” often refer to legal provisions that exclude certain subject matters from the protection of copyright; it can also be used to indicate that the use is subject to remuneration. “Exceptions” is normally used to refer to uses exempted by law, either subject to remuneration or not; it can also be used to indicate solely those uses that are not subject to remuneration. In this working paper the terms will be used interchangeably, for purposes of simplicity.

limitations for educational activities dealing with inclusion of copyrighted works in original form in educational resources and alteration of copyrighted works for purposes of creating educational resources.

Our aim is to highlight the essential aspects of those limitations and exceptions, including:

- (i) if there is a statutory exception or limitation exempting the use;
- (ii) if the use is subject to the payment of any kind of remuneration or compensation to authors or right holders;
- (iii) if there is any limitation as to which forms (original, translated or otherwise altered) the works can be used;
- (iv) the nature of works that are covered by the exception or limitation;
- (v) the extent of works that is covered by the exception or limitation; and
- (vi) if there is any limitation to the acts of exploitation of the work allowed¹².

We expect to understand the obstacles faced by teachers in each of the countries analyzed, facilitate the comparison of the relevant national exceptions and limitations within the European territory by any interested parties and, hopefully, help teachers, schools and educational resources platforms identifying more easily which uses of copyrighted works are allowed in their countries for purposes of producing and disseminating educational resources.

By drawing attention to the practical consequences of the lack of a complete and harmonized treatment of education as a limitation to copyright, we also intend to make another call for action by policy makers¹³.

¹² We have used a structure somehow similar to the one used by Prof. Raquel Xalabarder: see Xalabarder, *op.cit.*, p.12.

¹³ On February 18th 2014, Creative Commons organized a debate in the European Parliament on "Really Open Education. Domestic Policies for Open Educational Resources", hosted by Róza Gráfin von Thun und Hohenstein, MEP, where we presented some of the preliminary results contained herein and discussed the consequences of the fragmentation of solutions with regards to education: see <http://oerpolicy.eu/really-open-education-reflections-from-cc-policy-debate/>. In the response submitted by Creative Commons leads in Europe to the 'Public consultation on the review of the EU copyright rules', run by the EU Commission through its Internal Market and Services Directorate, we have stressed the need for more robust and flexible exceptions and limitations throughout the region, especially regarding transformative uses in

This report has a European focus. We have divided the national laws of the European countries in two groups: the first group, composed by the national laws of the member states of the European Union ("EU")¹⁴, the national laws of the member states of the European Economic Area ("EEA")¹⁵ and the national laws of Switzerland; and the second group, composed by the national laws of the remaining European countries¹⁶.

DISTINGUISHING PREVIOUS STUDIES

There is at least one study on copyright limitations and exceptions for educational activities, which provides an in-deep analysis of the national laws in Europe¹⁷. However, the length of the study and its descriptive nature may make it difficult for readers to get a quick overview of all the national laws and easily compare them all. As we said, enhancing readers (including teachers and policymakers) understanding of the topic is one of our main aims.

We have, nonetheless, used the above-mentioned study as a guide to the relevant national provisions and – although there are a few points of divergence between the results presented in the study and our findings – it was an important source of interpretation for those national provisions. Not least because the study does a brief analysis of the limitations and exceptions for educational activities under the international treaties and under the EUCD¹⁸, which we do not deal with in this working paper, but that are essential to put the national provisions into context.

general and educational uses in particular (available at: http://wiki.creativecommons.org/images/1/12/EU_Consultation_-_CC_Europe_response_final.pdf)

¹⁴ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

¹⁵ EU member states, Iceland, Liechtenstein, Norway.

¹⁶ Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia, Kazakhstan, Macedonia, Moldova, Monaco, Montenegro, Russia, San Marino, Serbia, Turkey, Ukraine, Vatican City State.

¹⁷ See Xalabarder, *op.cit.*.

¹⁸ For an analysis of the scope of limitations and exceptions for educational activities under the BC and other international instruments, see Xalabarder, *op.cit.*, pp. 13-32. For an overview of art. 5(3)(a) EUCD, see Xalabarder, *op.cit.*, p. 62-66.

We have also taken into account other research publication on teaching exceptions and limitations, where European national law provisions are to some extent reviewed¹⁹, as well as other study commissioned by WIPO on copyright exceptions and limitations that analyses the provisions of the international treaties²⁰.

METHODOLOGY

No local case law or local legal doctrines were analyzed. We have focused only on the national law provisions, using the non-official translations of the national laws available online, mainly in the WIPO Lex section of the World Intellectual Property website²¹. A compilation of all the relevant national law provisions analyzed by us will be made available in connection with this working paper²².

We were not able to locate updated versions of the original and/or translated copyright statutes of four countries, specifically: Belarus, Macedonia, Moldova, San Marino and Vatican City. No results are, therefore, shown with regards to those countries.

Our analysis concentrates solely on the legal provisions dealing with exceptions and limitations to the rights granted under copyright laws over literary and artistic works. Provisions dealing with related subject matter (performances, phonograms and broadcasts) were not analyzed herein, not only due to time-limitations, but also because the treatment offered by the national laws regarding neighboring rights is similar or sometimes even broader in scope than that made available to users of subject matter protected by author's rights²³.

Also due to time-limitations, we have not studied the provisions dealing with exceptions and limitations for educational activities regarding computer programs and databases. Computer programs are protected under copyright law as literary works²⁴, but the limitations and exceptions applicable to computer programs do not always coincide with those applicable to literary works. It would be interesting to understand and compare those differences at a local level. Databases are protected under copyright and under a sui generis right in the EU²⁵, and the Database Directive provides for exceptions to such rights for the purpose of illustration for teaching²⁶. It would also be interesting to see how the member states of the EU have implemented the exceptions foreseen in the Database Directive, including if they have provided for the same limitations and exceptions to copyright authorized under their national laws with regards to databases.

The results of our analysis are presented in Yes/No format comparative tables. Unclear situations are marked appropriately and short comments have been inserted in the Excel version of the tables²⁷.

In the countries where there are overlapping exceptions (e.g. a quotation done in an educational resource may be exempted under specific quotation exceptions and under general exceptions for educational activities or under several specific quotation exceptions), the results shown on the tables are those of the legal provision with a broader scope of application²⁸. In all such cases, it is possible

¹⁹ See Ernst, Silke and Hausermann, Saniel M. (2006), Teaching Exceptions in European Copyright Law – Important Policy Questions Remain. Berkman Center Research Publication No. 2006-10. Available at SSRN: <http://ssrn.com/abstract=925950>.

²⁰ See Ricketson, Sam (2003), WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment. SCCR/9/7. Available at: http://www.wipo.int/edocs/mdocs/copyright/en/sscr_9/sscr_9_7.pdf.

²¹ See <http://www.wipo.int/wipolex/en/index.jsp>.

²² Available at: <http://oerpolicy.eu>.

²³ National laws address this issue in 3 different ways: by including related subject matter under the exceptions applicable to works; by applying the exceptions to author's rights *mutatis mutandis* to related rights; or by means of specific exceptions that use the same wording of the legal provisions applicable to works or that have similar or broader scopes of application. See Xalabarder, op.cit, pp. 122-123.

²⁴ See art. 4 of the WIPO Copyright Treaty, adopted in Geneva on December 20, 1996 (available at: http://www.wipo.int/treaties/en/text.jsp?file_id=295166). See also art. 1 of the Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0250:EN:HTML>).

²⁵ See Council Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ("Database Directive"). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31996L0009>.

²⁶ See art. 6(2) and art. 9 of the Database Directive.

²⁷ Available at: <http://oerpolicy.eu>.

²⁸ We consider that it is more useful for teachers and other would-be beneficiaries with no legal background to see the most-favorable solution offered by each national law for a certain category of acts (e.g. quotations) than to present the results per legal provision (e.g. specific quotation exception). We understand, though, that this option is more risky, because it is far more complex to interpret a combination of legal provisions than to interpret each provision individually.

to see the different solutions provided by the national laws in the comments section of the Excel version of the tables.

Without prejudice to the preceding paragraph, in the countries where there are no specific or general exceptions or limitations covering teaching compilations and alterations of copyrighted works for purposes of creating educational resources, and where, therefore, such uses can only be exempted to the extent they qualify as quotations, we have considered that the specific use was not exempted²⁹. In the Excel version of the tables, we have inserted a comment in order to refer the readers to the specific quotation provisions of such domestic laws.

The categories displayed on the tables refer to the essential and more easily comparable aspects of the selected limitations and exceptions. We have also tried to insert comments in the Excel version of the tables for each and every situation where further requirements and conditions other than the obligation to attribute the author and the work (e.g. specific purposes, limited beneficiaries, time-limits, etc.) apply to a certain exception or limitation. However, due the amount and complexity of the data analyzed, readers should not rely solely on the displayed data and the integrated comments to assess the permissibility of the acts analyzed herein.

²⁹ We consider that it would be misleading to proceed differently, because although the quotation exceptions tend to be flexible and may be fundamental to exempt many uses not foreseen in general teaching exceptions or in other specific exceptions – see Xalabarder, *op.cit.*, pp.105-10 –, a case-by-case approach is essential in those cases.

All the domestic copyright laws analyzed herein permit quotations of copyrighted works without compensation³⁰. Quotations done in educational resources may be exempted under specific quotation exceptions and/or under broader limitations and exceptions for educational activities.

1. EU member states, EEA member states and Switzerland

In the first group of countries analyzed, some of the quotation exceptions provided by the national laws are not limited to any specific purpose, while others constrain the quotations to specific purposes (e.g. criticism or review). Within those law provisions that allow quotations only for limited purposes, only a few do not expressly list educational purposes amongst the permitted purposes. Nevertheless, it is considered that such purposes are included in such provisions³¹.

As shown in Table 1, the great majority of the quotations exceptions provided by this first group of countries do not make any restriction as to the nature of the works covered. In general, domestic laws only require that the works have been made available to the public³². Just 4 countries opt for specifying which kinds of works can be quoted, potentially excluding – perhaps inadvertently – some kinds of works.

Nonetheless, 56,3% of the national laws analyzed delineate the amount or extent to which a copyrighted work can be quoted. To be clear, in all the countries examined, quotations are only allowed

to the extent required by the purpose³³. By definition, the extent to which a copyrighted work may be quoted is already limited. That does not mean that a work cannot be quoted in its entirety, provided that the amount of the use is consistent with the permitted purpose³⁴. However, some national lawmakers have decided not to let the quantity to which a work can be quoted to be determined by courts on a case-by-case basis; they have, instead, narrowed the scope of the exception by inserting an extent limitation. This means that, unless a proper provision is in place to exempt the quotation of entire short works (e.g. short articles or short poems) and entire works of art, such works can only be partially quoted and, consequently, the exception is of little use for those kinds of works³⁵. Such is the case with almost all of the national legislations that impose a limit to the extent of the quotations: 40,6% do not exempt the quotation of entire short works and 37,5% do not allow the quotation of entire works of art.

Most of the law provisions in this group do not specify the acts of exploitation exempted by law nor the forms in which the works can be used. They only refer to the act of quoting the work (“to quote” or “to use”). In the absence of further limitations, we have followed the predominant understanding and considered that such provisions include any acts of exploitation, namely translation, upload, transmission and download of the quoted works³⁶. In summary,

³⁰ The exemption of quotations is mandatory for the member states of the BC, which are obliged to allow any of the uses exempted by art.10(1) of the BC when protecting foreign works and authors. National laws that offer quotations exceptions with a narrower scope of application are only applicable to domestic works and authors. See Xalabarder, *op.cit.*, p.110.

³¹ See Xalabarder, *op. cit.*, pp.106-107.

³² Some law provisions use the same expression as the BC and the EUCD – “lawfully made available to the public” (see art. 10(1) BC and art. 5(3)(d) EUCD); others do not. But as a rule they all mention that the copyrighted works must have been made public, through publishing or otherwise.

³³ Domestic laws use formulas equal or similar to the BC – “provided that (...) their extent does not exceed that justified by the purpose” (see art. 10(1) BC – or to the EUCD – “to the extent required by the specific purpose” (see art. 5(3)(d)EUCD).

³⁴ That is the common understanding with regards to the quotation exception provided by art. 10(1) BC. See Ricketson, *op.cit.*, p.12. See also Xalabarder, *op.cit.*, p.19.

³⁵ Short works and works of art (as well as other visual works) are the subject matter that could be more adversely affected by extent-limitations. That is why we have chosen to focus our attention on them. It should be noted, however, that some national laws that impose specific limits as to the amount of works that can be quoted (or otherwise used), also exempt the use of other subject matters in their entirety (e.g. music).

³⁶ See Ricketson, *op.cit.*, p.12. See also Xalabarder, *op. cit.*, p.18. It should be noted that a significant percentage of the national laws examined expressly allow alterations made in connection with the permitted use. Therefore, we did not rely solely on the absence of further limitations to conclude that the works could be quoted in both original and translated forms.

only 1 of the countries within this group does not permit copyrighted works to be quoted either in their original form or in translated form, and only 2

countries do not allow online uses of the educational resources that contain quotations of copyrighted works.

EU/EEA countries and Switzerland	Does the law permit it?	For free?	In which forms can works be quoted?		What kinds of works can be quoted?					To what extent can works be quoted?			Which acts of use are permitted?		Other limitations
			Any	Translated	Any	Works of Art	Video	Music	Textbooks	Any	Entire Short Works	Entire Works of Art	Any	Online Uses	
Austria	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Belgium	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bulgaria	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Croatia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Cyprus	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Czech Republic	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Estonia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Finland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Greece	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iceland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ireland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Latvia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Liechtenstein	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Malta	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Netherlands	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Norway	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Poland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Portugal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Slovakia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Spain	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Sweden	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Switzerland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
United Kingdom	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
32	32	32	28	31	28	32	31	32	32	18	19	20	26	29	31

Table 1. To quote copyrighted works in educational resources: EU member states, EEA member states and Switzerland

Yes	No
Yes? (Unclear)	No? (Unclear)

2. Remaining European countries

Within the second group of countries examined, nearly all the countries limit the quotations to a specific purpose, and the majority uses the formula “for scientific, research, polemic, critical and informational purposes”. As is the case with the first

group of countries, educational uses are considered exempted by all those legal provisions³⁷.

³⁷ See Xalabarder, op.cit., p.107.

As Table 2 shows, there is no limitation as to the nature of the works covered by the exceptions provided by the national laws belonging to this group. However, a large part of the legal provisions examined – 75% – restrict the extent to which copyrighted works can be quoted, limiting in practice the kinds of works that can be quoted. In fact, only 41,7% permit the quotations of entire works of art and solely 33,3% allow shorts works to be quoted in their entirety.

With regards to the acts of exploitation covered by the quotations exceptions present in the laws of these countries, the situation is very similar to the one found in the first group of countries. Nearly all

the laws are silent, being the silent interpreted as including any acts of exploitation. Some of these domestic laws do expressly mention which rights are exempted and in which forms can the copyrighted works be quoted. In those cases it is possible to conclude with certainty whether the right of translation or the rights necessary to use the educational resource in digital and online contexts are permitted or not. In short, only 2 countries within this group do not foresee the possibility of copyrighted works being quoted both in original and translated forms and only 1 country does not exempt the acts required to proceed with an online exploitation of an educational resource that contains a quotation of a copyrighted work.

Remaining European countries	Does the law permit it?	For free?	In which forms can works be quoted?		What kinds of works can be quoted?					To what extent can works be quoted?			Which acts of use are permitted?		Other limitations	
			Any	Translated	Any	Works of Art	Video	Music	Textbooks	Any	Entire Short Works	Entire Images	Any	Online Uses		
Albania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Andorra	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	
Armenia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Azerbaijan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Belarus	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	
Bosnia and Herzegovina	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Kazakhstan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Macedonia	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	
Moldova	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	
Montenegro	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Russia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
San Marino	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	
Serbia	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Turkey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Ukraine	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Vatican City	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	
17/12	12	12	10	10	12	12	12	12	12	12	3	4	5	10	11	12

Table 2. To quote copyrighted works in educational resources: remaining European countries

Yes	No
Yes? (Unclear)	No? (Unclear)
No Source Available	

The making of compilations for educational purposes is exempted by the majority of the national laws in the European territory through specific teaching compilations exceptions and limitations and/or through general exceptions and limitations for educational activities.

1. EU member states, EEA member states and Switzerland

In this group, there are 4 countries that do not exempt teaching compilations. Only to the extent the use of the copyrighted works in the compilations qualifies as a quotation can the same be exempted.

The vast majority of the countries exempt teaching compilations through specific teaching compilations exceptions and limitations. However, a significant percentage of such legal provisions seem to have been designed to deal only with commercial publications for teaching, and not with the sort of non-commercial compilations that teachers routinely do (i.e., the typical compilation of materials that students receive before attending a new course)³⁸.

In fact, as shown in Table 3, 62,5% of the countries in this group exempt the making of teaching compilations through compensated limitations (legal licenses subject to collective management, extended collective licenses or otherwise³⁹). Evidently, the payment of a remuneration is a condition that is not easily achievable by every school or by every non-commercial online platform, not to mention individual users, such as the participants in informal education activities.

In addition, a small number of these domestic laws further narrow the scope of application of their exceptions and limitations, by defining the purpose or the entities that shall benefit from the exception or

limitation in ways that may exclude other would-be beneficiaries (e.g. "for instructional use in schools"). With regards to the kinds of works that can be compiled, the scenario in this first group is completely different from the one found for the same group in relation to the quotations exceptions: 39,3% of the countries that exempt teaching compilations have not implemented the type of open-ended clauses that the EUCD foresees, which exempt all types of works. Further, 35,7% have inserted extent limitations without properly excluding the compilation of entire works of art, while 21,4% do not permit the compilation of short works in their entirety.

More worrying is the fact that a great number of national laws pertaining to this group of countries – 39,3% – is not exempting online uses of teaching compilations⁴⁰. This is either because the legal provisions specifically limit the use of the compilations to face-to-face teaching or because the rights listed in the legal provisions – intentionally or not – do not include all the rights necessary to use and share the teaching compilations online.

2. Remaining European countries

All the national laws that we had access to in this second group of countries exempt teaching compilations, using wording similar to section 7(i)(c) of the Tunis Model Law on Copyright for Developing Countries (1976)⁴¹. As shown in Table 4, uncompensated exceptions for teaching compilations are the rule; only 3 domestic laws (among the 12 examined) require compensation. Hardly any of these law provisions detail the nature of the works that may be compiled. However, more than half impose an extent limitation, with 50% not allowing

³⁸ Reference is made in art. 10(2) of the BC to "publications" and such reference has been interpreted as including teaching compilations. See Xalabarder, *op.cit.*, pp.14-15.

³⁹ For an analysis of the remuneration schemes per group of countries, see Xalabarder, *op.cit.*, pp.101-103.

⁴⁰ Recognized academics have shown some reserve with regards to the inclusion of digital teaching compilations in the scope of application of art. 10(2) of the BC. See Prof. Ricketson and Prof. Ginsburg cited by Xalabarder, *op.cit.*, pp.14-15, footnote 23.

⁴¹ The Tunis Model Law on Copyright 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. Available at: http://portal.unesco.org/culture/en/files/31318/11866635053tunis_model_law_en-web.pdf/tunis_model_law_en-web.pdf.

the compilation of entire short works and 33,3% not permitting entire works of art to be compiled. The largest part adopts the “any use” formula, permitting translations, online uses and any other acts of exploitation of the copyrighted works in the

teaching compilations. Within those that specify the rights covered by the exemption, just 2 do not permit translations of the copyrighted works and only 3 do not exempt the use of the compiled works in online teaching contexts.

EU/EEA countries and Switzerland	Does the law permit it?	For free?	In which forms can works be compiled?		What kinds of works can be compiled?					To what extent can works be compiled?			Which acts of use are permitted?		Other limitations
			Any	Translated	Any	Works of Art	Video	Music	Textbooks	Any	Entire Short Works	Entire Works of Art	Any	Online Uses	
Austria	Yes	No	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Belgium	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bulgaria	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Croatia	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Cyprus	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Czech Republic	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Estonia	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Finland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
France	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Germany	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Greece	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iceland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ireland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Italy	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Latvia	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Liechtenstein	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Malta	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Netherlands	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Norway	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Poland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Portugal	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Romania	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Slovakia	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Slovenia	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Spain	N/A	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Sweden	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Switzerland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
United Kingdom	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
32	28	12	20	20	17	22	18	26	21	8	22	18	13	17	28

Table 3. To compile copyrighted works in teaching compilations: EU member states, EEA member states and Switzerland

Yes	No
Yes? (Unclear)	No? (Unclear)
No Source Available	

Remaining European countries	Does the law permit it?	For free?	In which forms can works be compiled?		What kinds of works can be compiled?					To what extent can works be compiled?			Which acts of use are permitted?		Other limitations
			Any	Translated	Any	Works of Art	Video	Music	Textbooks	Any	Entire Short Works	Entire Works of Art	Any	Online Uses	
Albania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Andorra	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Armenia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Azerbaijan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Belarus	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Bosnia and Herzegovina	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Georgia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Kazakhstan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Macedonia	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Moldova	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Montenegro	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Russia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
San Marino	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Serbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Turkey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ukraine	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vatican City	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No
17/12	12	9	10	10	9	12	11	12	12	5	6	8	8	9	11

Table 4. To compile copyrighted works in teaching compilations: remaining European Countries

Yes	No
Yes? (Unclear)	No? (Unclear)
No Source Available	

In the context of education, specifically for the purposes of creating new educational resources (other than teaching compilations), it is extremely advantageous to have the possibility of lawfully using pre-existing copyrighted works, namely pre-existing copyrighted educational materials, in ways that go beyond mere quotations.

As we saw, quotation exceptions are essential not only in countries lacking other specific or general exceptions and limitations for educational activities or with very restrictive exceptions or limitations for educational activities, but everywhere. This is because, as a matter of rule, quotation exceptions are more flexible and open than other exceptions and limitations⁴² and also because they are uncompensated exceptions. However, by imposing specific extent limitations, a significant number of national laws have narrowed the kinds of works that can be covered by such exceptions. Moreover, because the concept of quotation implies a certain limitation to the extent to which a work can be quoted, many beneficiaries do not realize that – if the purpose justifies it – they can (provided that no specific extent limitations are imposed by their laws) use works in their entirety by way of a quotation. In addition, beneficiaries do not seem to be generally aware that audio, visual and audiovisual works are subject matter covered by the quotation exceptions.

For all these reasons, an exception that clearly and specifically permits the inclusion of an entire copyrighted work in an educational resource is extremely beneficial for the development of new educational resources. Yet, unfortunately, the number of countries that provide for flexible non-compensated exceptions that cover such use is not encouraging, at least in the countries belonging to the first group of countries examined (EU member states, EEA member states and Switzerland).

Besides that, it is utterly essential for the educational community to have the possibility to create new educational resources derived from or

based upon copyrighted works. Indeed, the number of high-profile platforms and databases dedicated to the educational community suggests that the amount of educational resources publicly available is rising. The potential of reuse of such educational resources is, therefore, enormous. In spite of that, the right to translate or otherwise alter a copyrighted work, namely a copyrighted educational resource, for the purposes of creating a new educational resource, is exempted by only a few national laws in the European territory.

The right to use copyrighted works in original form in educational resources and/or to alter copyrighted works for purposes of creating educational resources is provided by general exceptions and limitations for educational activities and/or through fair dealing provisions.

1. EU member states, EEA member states and Switzerland

68,8% of the domestic laws in this first group of countries provide, to some extent, for the right to include copyrighted works in original form in educational resources, while the right to alter copyrighted works for purposes of creating educational resources is foreseen by 59,4% of such laws.

A closer look at such exceptions reveals, however, that a handful of those legal provisions have a very narrow scope of application: the specific purposes or the limits to the types of educational resources where copyrighted works can be used (mainly tests or other examination-related resources) make such provisions far less interesting.

As shown in Table 5, within those countries that permit the use of copyrighted works in their original forms in (some) educational resources for (some) educational purposes, 63,6% provide for non-compensated exceptions. The number is much lower with regards to those countries that permit works to be used in both forms (original and altered): 36,8%.

⁴² See Xalabarder, op.cit., pp. 105-106.

Likewise to the provisions exempting the use of copyrighted works in teaching compilations, the subject matter covered by these provisions is limited as to its nature and as to its extent. 31,8% of the countries belonging to this first group of countries, which foresee these other uses of copyrighted works in educational resources, do not permit works of art to be used entirely nor videos to be used partially.

Subsequent online dissemination of educational resources that make use of copyrighted works in the ways foreseen in these national exemptions is, once again, restricted by some of them: 27,3% do not have explicitly or implicitly included, among the rights granted, the rights necessary to use copyrighted works and, consequently, the educational resources that incorporate them in digital and online contexts.

EU/EEA countries and Switzerland	Does the law permit it?	For free?	In which forms can works be used?		What kinds of works can be used?					To what extent can works be used?			Which acts of use are permitted?		Other limitations
			Any	Translations	Any	Works of Art	Video	Music	Textbooks	Any	Entire Short Works	Entire Works of Art	Any	Online Uses	
Austria	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Belgium	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bulgaria	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Croatia	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Cyprus	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Czech Republic	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Estonia	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Finland	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
France	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Germany	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Greece	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iceland	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Ireland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Italy	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Latvia	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Lithuania	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Liechtenstein	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Malta	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Netherlands	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Norway	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Poland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Portugal	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Romania	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Slovakia	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Slovenia	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Spain	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Sweden	No	No	No	No	No	No	No	No	No	No	No	No	No	No	N/A
Switzerland	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
United Kingdom	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
32	22	14	19	20	14	19	15	17	20	12	21	15	11	16	22

Table 5. To otherwise use copyrighted works in educational resources: EU member states, EEA member states and Switzerland

Yes	No
Yes? (Unclear)	No? (Unclear)

2. Remaining European countries

As shown in Table 6, in this second group of countries, the situation is much more favorable to the use of pre-existing copyrighted works in ways that go beyond mere quotations for purposes of creating new educational resources (other than compilations). Only 3 countries do not exempt such uses and nearly all the remaining countries exempt those further uses of copyrighted works in educational resources under the same exceptions or limitations that cover the making of teaching compilations.

Solely 1 of the national laws pertaining to this second group subjects the exemption to the payment of a compensation, and the uses covered by such laws permit the beneficiaries not only to incorporate the

copyrighted works in the educational resources in their original forms, but also to alter the copyrighted works; just 2 countries do not allow so.

As seen with regards to the compilations, there are barely any limits as to the nature of the works covered by the exception, but the extent to which works can be used is subject to restrictions, with just over half of these laws allowing short works to be used in their entirety.

Online dissemination of the copyrighted works and of the resources where they are used is foreseen in all but 2 of these domestic laws.

Remaining European countries	Does the law permit it?	For free?	In which forms can works be used?		What kinds of works can be used?					To what extent can works be used?			Which acts of use are permitted?		Other limitations	
			Any	Translated	Any	Works of Art	Video	Music	Textbooks	Any	Entire Short Works	Entire Works of Art	Any	Online Uses		
Albania																N/A
Andorra																Yes
Armenia																Yes
Azerbaijan																Yes
Belarus																
Bosnia and Herzegovina																Yes
Georgia																Yes
Kazakhstan																Yes
Macedonia																
Moldova																
Montenegro																N/A
Russia																Yes
San Marino																
Serbia																N/A
Turkey																Yes
Ukraine																Yes
Vatican City																
17,12	9	8	7	7	7	9	9	9	9	5	5	6	6	7		9

Table 6. To otherwise use copyrighted works in educational resources: remaining European Countries

Yes	No
Yes? (Unclear)	No? (Unclear)
No Source Available	

The legal scenario presented herein is quite discouraging for the development and dissemination – across Europe – of educational resources that make use of copyrighted works. Apart from the quotations, which have a more or less similar treatment within the first and second group of countries analyzed, all the other exceptions and limitations dealing with uses of protected works in new works for educational purposes are a patchwork of different solutions, even, or particularly, within the EU. In reality, despite the fact that a directive has been enacted to harmonize the legal framework on copyright and related rights at Community level, domestic treatment of education within the EU is far more different than that encountered outside the EU.

In the preamble of EUCD one can read that “(t)his Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching”⁴³. That is certainly a commendable intent. However, as we saw, such an objective cannot be reached with merely optional provisions on exceptions and limitations.

The reason why the situation of education with regards to copyright is more encouraging in the countries belonging to the second group analyzed that within the EU is because most of those laws have implemented the solutions contained in a model law discussed and approved at an international level. In that case, a non-binding instrument, designed to assist developing countries in reforming their laws in a way consistent with their international obligations under the BC, was all that was needed to get lawmakers to incorporate in their copyright laws the public interests related with access to education.

For that, we could not be more in agreement with the recent call for a revision of the Tunis Model Law,

made by other experts in the field⁴⁴. Soft laws are an important vehicle in the process of reaching an international consensus on controversial issues, and the Tunis Model Law specifically has smoothed the process of developing proper exceptions and limitations for educational purposes in those countries outside the EU that have implemented the solutions contained in that model law.

In parallel, policy makers at a regional and international levels should make an effort to agree on a minimum set of exceptions and limitations for educational purposes, as claimed by many experts for a long time now⁴⁵. As we saw, without a proper harmonization at regional and international levels, i.e. without mandatory exceptions or limitations fully exempting education from copyright and related rights, the right balance of interests within the copyright system will never be reached at a national level.

Teachers may well be informed about the limits of their copyright laws and be encouraged to use in their resources exclusively copyrighted works that are licensed under an open license⁴⁶. Teachers may as well be told about the benefits of producing open educational resources, by licensing their own resources with open licenses too⁴⁷, so that other

⁴⁴ See the Knowledge Ecology International (KEI) intervention to the twelfth session of the WIPO's Committee on Development and Intellectual Property (CDIP), available at: <http://keionline.org/node/1828>. See also the Intellectual Property Watch report of the side event to the WIPO Standing Committee on Copyright and Related Rights (SCCR), held by KEI on April 29th 2013, entitled “The Tunis Model Law on Copyright for Developing Countries: Is it Time for an Update?”, available at: <http://www.ip-watch.org/2014/05/01/at-wipo-soft-law-presented-as-a-solution-in-international-copyright-law/>.

⁴⁵ For example, educational purposes form part of the initial list of global minimum exceptions and limitations to copyright proposed by Prof. Ruth L. Okediji within the framework of the ICTSD Project on Intellectual Property Rights and Sustainable Development: see Okediji, Ruth L. (2006) ‘The International Copyright System: Limitations, Exceptions and Public Interest Considerations for Developing Countries in the Digital Environment’, p.21. UNCTAD - ICTSD Project on IPRs and Sustainable Development Series, Issue Paper 15. Available at: http://www.unctad.org/en/docs/iteipc200610_en.pdf.

⁴⁶ See the Open Knowledge Foundation definition of “open”, available at <http://opendefinition.org/od/>.

⁴⁷ Licensing educational resources with an open license is a condition for the resource to be considered an open educational resource (“OER”), according to definition of the Cape Town Open

⁴³ See fourteenth recital in the preamble to the EUCD.

teachers all over the world can lawfully translate and otherwise localize such resources to meet the needs of their students. All those training actions and awareness initiatives could not be more supported by us. Definitely, without adequate statutory exceptions or limitations for educational purposes implemented in each and every national law in the world, open licenses are vital for the development and dissemination of educational resources. But for as long as literary and artistic works are protected by copyright, there will always be an obligation and duty of teachers towards society to use copyrighted works, namely works which are not licensed under open licenses, for purposes of teaching their students⁴⁸. Considering that no matter how well crafted a public licensing model is, it can never fully achieve what a full set of open-ended and flexible statutory exceptions and limitations for educational purposes can⁴⁹, we have to conclude that only with a legal reform in place can we see an end to this balkanization of legal solutions and treat education as it deserves to be treated – as an exception to copyright and related rights.

Education Declaration. Available at:
<http://www.capetowndeclaration.org/read-the-declaration>.

⁴⁸ See Xalabarder, op.cit., p.136.

⁴⁹ See Creative Commons' policy statement in support of a copyright reform around the world to strengthen users rights dated of October 16th, 2013. Available at:
<https://creativecommons.org/about/reform>.

