

Interim Report on practices and challenges in online distance education and research activities

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Goal: how the copyright legal framework operates

- **Exceptions and Limitations (E&L) in national laws**
- **Licensing schemes available – mostly, collective (CMO)**

Scope:

- **Case studies to identify relevant stakeholders** (territorial diversity, common law / civil law, developed / developing)
- **Universities:** F2F, online, research centres, MOOCs & OER
- **Questionnaires & Interviews with academics and CMO**
- **Desk research (literature)**

Findings

- **Non-uniform, insufficient, E&L** for online teaching and research (narrower than analogue uses)
- **Licensing systems not available everywhere**, for all works, variety of licenses (CMOs, individual...)
- **Territorial solutions unfit** for online uses (cross-borders)
- **Low awareness** by academics / **Reluctance** to license (and mandate rights to CMO) by owners

Exceptions and Limitations

- **National laws** provide for E&L for teaching and research
- Far from homogeneous – **no uniformity**
- Only **F2F, analogue** uses exempted
- **Online uses** exempted, narrower than F2F
- **Restrictive & intricate solutions** (highly lobbied) – difficult to understand and enforce, difficult to integrate with other E&L, technological obsolescence
- Online use requires uniform treatment of exempted acts
- Higher risk of downstream infringements
- Insufficient coverage (not all works)
- More flexibility needed (# of pages, %)

Exceptions and Limitations

- **Purposes:** illustration for teaching, school, classroom use, lessons, lectures, instruction, exams, etc.
- **Exempted acts:** reproduction (photocopying), distribution, performance, communication to public, making available... translations? digitization?
- **Beneficiaries:** all educational levels? (schools, universities), non-profit / for-profit,
- **Individual users:** teachers, students, researchers, staff
- **Kind of works:** any works? Publications,
- **Amount of works:** 10%, 15 pages, 1 image, etc.
- **Free or Remunerated:** if so, collective licensing?

Art.10 (2) Berne Convention

- *Illustration for teaching*
- *To the extent justified by the purpose*
- *Compatible with fair practice*

- **Open, flexible and tech neutral**
- **Any acts of exploitation**
- **All kind of works**
- **All levels of teaching (BC Appendix)**
- **Remuneration... not required but possible**

Art.10 (1) Berne Convention

- ***Quotations***

(scientific, critical, information, educational purposes)

- *To the extent justified by the purpose*
- *Compatible with fair practice*

- **Open, flexible and tech neutral**

- **Any acts of exploitation**

- **All kind of works**

- **Mandatory**

Challenges

- **Awareness**, understanding of ©
- **Lack of guidance**, guidelines not always available
- **Misconceptions**: off-line = online, 10% always allowed, as long as non-commercial, library-licensed material
- **Legal uncertainty** about **scope of exempted uses**: unclear language, insufficient scope, applicable law
- Exempted uses **prevented by DRM, contract terms**

Licensing

No uniform solution

Licensing systems and availability vary widely

- In some countries, **collective licensing** fully operational (specially IFRROs – not so much: audiovisual, music)
- In others, **CMOs not yet operational**
- **Different licensing models:** voluntary license (CMO mandates), statutory license (under E&L), ECL, “incentivized” voluntary licensing (UK)
- Market, economic, cultural (language) circumstances

Licensing of Publications

- A **blanket license** for online uses of repertoire (reciprocal representation agreements)
- **+ Additional (transactional) license** beyond blanket license, for works not in repertoire, etc
- Copying, scanning, printing, storing, making available ...in **secure network** (not course-packs)
- Extension allowed varies (10% - 20%)
- In a few countries, pay-per-use licenses for course-packs & e-reserves

Licensing Challenges

- Identifying and locating the author / owner
- Obtaining a timely response (if any), Excessive price, Restrictive Terms
- CMO often seen as last resource
- CMO not operational everywhere, for all kind of contents
- No mandate of rights to CMO (concerns about infringement risks)
- Availability of licensing – compulsory v. voluntary licensing
- RROs v. other contents!
- Compatibility between licenses (CMO, Database), loops, gaps

Territorial challenges

- Students, researchers located in different countries
- Materials obtained from sources “abroad”
- Which law applies online? Territoriality principle
 - different scope of E&L
 - legal uncertainty
- Difficulties in identifying & locating owners from other countries
- Collective licensing is territorial-based

Attempts to overcome territoriality

→ Licensing based on access to intranet, rather than territory

- And apply one national law, one license
- “branch campuses” licensed separately by other RROs

→ “Legal fiction”: teaching takes place in one country only

- Only one E&L apply (one national law) + licensing

Conclusions

Complex issue, Current scenario far from optimal

- Legal uncertainty about exempted uses (national E&L), applicable law
- Insufficient collective licensing, not everywhere, not for all contents
- Deterring development & quality of online teaching and research
- Loss of revenues opportunities for authors and owners

Not one single solution?

Simple, flexible E&L & Functional licensing systems

OER & MOOCs

A completely different scenario

- Materials created ex novo
- Cannot be exempted under E&L
- Recommended: public domain, CC licensed,
- Authorization required: worldwide, no time restrictions
- OER materials subject to CC licensing

- CMO not in a position to grant world-wide licenses
- Blanket licenses are not useful for OER / MOOCs
- Transactional licensing by copyright owners



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