

LIMITATIONS AND EXCEPTIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS

This chart is designed to serve as a useful tool to provide a structure to discuss the substance of each topic, drawing on the many resources before the Committee. This will allow the Committee to have an evidence-based discussion respecting different views, understanding that the goal is not to guide the discussion toward any particular or undesired outcome but instead to lead to a better understanding of the topics and of their actual relevance to the discussions and the intended outcome.

Study on Limitations and Exceptions for Educational Activities by Professor Seng (document SCCR/33/6)			
No	Topic	Executive Summary (document SCCR/33/6, pages 2 – 4)	Concluding Observation (document SCCR/33/6, pages 49 – 51)
1	Private/Personal Use	Any discussion of educational limitations and exceptions will be incomplete without proper consideration being given to the private or personal use provisions [...].	The significance of the private or personal use provisions as they relate to personal instruction is demonstrated not only by the large numbers of these provisions and their varied implementations, but also their nexus to educational instruction. In general, it appears that with respect to the economic impact stemming from such uses, including use for educational purposes, efforts have been made to attempt to ameliorate that impact with a combination of the robust preclusion of certain categories of works from private or personal uses and the imposition of levies on recording media and reprographic equipment.
2	Quotations	Any discussion of educational limitations and exceptions will be incomplete without proper consideration being given to [...] the quotation provisions. Quotations [...] provisions receive generally uniform implementation in member states, both by way of their general acceptance in the national legislation of member states that have these provisions, and also in their implementational details. Remuneration is generally not required in relation to quotations [...].	Quotations [...] are provisions that are generally quite uniformly implemented in (some) member states, both by way of their general acceptance in the national legislation of member states, and also in their implementational details. No remuneration is generally prescribed for quotations [...].
3	Educational Reproduction	The implementation of limitations and exceptions for educational reproductions [...] are considerably varied. The stated purposes, behind these provisions, however, are generally clear (for teaching, education, instruction, science and research). For educational reproductions, the primary restriction is that the reproductions not be conducted for commercial gain or advantage, or the unavailability of a commercial licence or lack of awareness of its availability for educational reproduction. To the extent that the scope of the reproduction right is contingent on the availability and scope of commercial licences, this is a matter that has to be investigated further as it is beyond the scope of this study. The reproduction provisions also prescribe qualitative and quantitative limits and restrictions placed on educational reproductions. For the most part, educational reproduction [...] provisions do not attract the payment of equitable remuneration to the authors and rightholders. However, while educational reproduction provisions that do prescribe equitable remuneration are primarily directed at the making of multiple copies, [...]. On the issue of online distance learning, very few member states have specifically provided for sui generis provisions that explicitly address the distribution of online content for instructional purposes. However, this does not mean that other member states do not have provisions that address the issue. But whether or not member states' "communication to the public" or "making available" rights encompass the online dissemination of digital content is largely a matter for substantive legal treatment in the respective member states. In addition, online distance learning will invariably engage in some form of reproduction of the source works that are being communicated, by virtue of the fact that the electronic medium is involved; provisions that enable online distance learning will also have to take this issue into consideration.	There are wide and varied implementations of limitations and exceptions for educational reproductions, [...]. The purposes behind these provisions are generally clear (generally for teaching, education, instruction, science and research). For educational reproductions, the primary restriction is that the reproductions not be conducted for commercial gain or advantage, or the unavailability of a commercial licence or lack of awareness of its availability for educational reproduction. To the extent that the scope of the reproduction right is contingent on the availability and scope of commercial licences, this is a matter that has to be investigated further as it is beyond the scope of this study. The reproduction provisions also prescribe qualitative and quantitative limits and restrictions placed on educational reproductions. For the most part, educational reproduction [...] provisions do not attract the payment of equitable remuneration to authors and rightholders. However, educational reproduction provisions that do prescribe equitable remuneration are primarily directed at the making of multiple copies, the use of reprographic equipment and the reproduction of source works by third parties. Furthermore, on the issue of online distance learning, very few member states have specifically provided for sui generis provisions that explicitly address the distribution of online content for instructional purposes. However, this does not mean that other member states do not have provisions that do not address the issue. But whether or not member states' "communication to the public" or "making available" rights encompass the online dissemination of digital content is largely a matter for the substantive legal treatment in the respective member states. In addition, online distance learning will invariably engage in some form of reproduction of the source works that are being communicated, by virtue of the fact that the electronic medium is involved, provisions that enable online distance learning will also have to take this issue into consideration.
4	Educational Publications/Anthologies/Compilations/Composite Works	[...] educational publications [...] provisions receive generally uniform implementation in member states, both by way of their general acceptance in the national legislation of member states that have these provisions, and also in their implementational details. [...] some member states have enacted provisions to prescribe remuneration for source works incorporated into educational publications. Nonetheless, as these categories of provisions are not as widely implemented as the other categories, there is room for member states who have not implemented such provisions to reform their national legislation accordingly.	[...] educational publications [...] are provisions that are generally quite uniformly implemented in (some) member states, both by way of their general acceptance in the national legislation of member states, and also in their implementational details. [...] As for educational publications, subject to the generally prescribed limits of the extent to which source works may be used for educational collections, no remuneration is required of the publishers as well, although there is a not insubstantial number of member states that have enacted provisions to require remuneration on behalf of the authors whose works have been used.
5	School	[...] school performances provisions receive generally uniform implementation in	[...] school performances are provisions that are generally quite uniformly implemented in (some) member

	Performances	member states, both by way of their general acceptance in the national legislation of member states that have these provisions, and also in their implementational details. Remuneration is generally not required in relation to [...] school performances, [...].	states, both by way of their general acceptance in the national legislation of member states, and also in their implementational details. No remuneration is generally prescribed for [...] school performances.
6	Educational Broadcasts/Communications/Recordings	<p>The implementation of limitations and exceptions for [...] educational broadcasts, communications, and recordings, are considerably varied. The stated purposes, behind these provisions, however, are generally clear (for teaching, education, instruction, science and research). [...] the broadcast, communications and recordings provisions exhibit a larger spectrum of implementational variations, as few member states use the “by way of illustration” language or even its variations in Article 10(2) of the Berne Convention to formulate their educational broadcasts, communications and recordings provisions.</p> <p>For the most part, [...] broadcast, communications and recordings provisions do not attract the payment of equitable remuneration to the authors and rightholders. However, [...] the use of reprographic equipment and the reproduction of source works by third parties, no such clear patterns have been observed in relation to the provisions requiring equitable remuneration for educational broadcasts, communications and recordings.</p> <p>On the issue of online distance learning, very few member states have specifically provided for sui generis provisions that explicitly address the distribution of online content for instructional purposes. However, this does not mean that other member states do not have provisions that address the issue. But whether or not member states’ “communication to the public” or “making available” rights encompass the online dissemination of digital content is largely a matter for substantive legal treatment in the respective member states. In addition, online distance learning will invariably engage in some form of reproduction of the source works that are being communicated, by virtue of the fact that the electronic medium is involved; provisions that enable online distance learning will also have to take this issue into consideration.</p>	<p>There are wide and varied implementations of limitations and exceptions for [...] educational broadcasts, communications, and recordings. The purposes behind these provisions are generally clear (generally for teaching, education, instruction, science and research).</p> <p>The broadcast, communications and recordings provisions exhibit a larger spectrum of implementational variations. Provisions in member states’ legislation may refer to not just “communication” or “broadcast”, but also “recording”, “fixation”, “filming”, “making available” or even “performance”, “use” or “anything”. Interestingly, notwithstanding the language of Article 10(2) of the Berne Convention, relatively few member states have used the “by way of illustration” language or its variations to formulate their educational broadcasts, communications and recordings provisions. The conditions, qualitative and quantitative limits and restrictions that are placed are also quite varied. With a view to enabling online distance learning and yet managing the potential for online infringement, some member states additionally have linked the availability of source works online with the implementation of technological measures.</p> <p>For the most part, [...] broadcast, communications and recordings provisions do not attract the payment of equitable remuneration to authors and rightholders. However, educational reproduction provisions that do prescribe equitable remuneration are primarily directed at the making of multiple copies, the use of reprographic equipment and the reproduction of source works by third parties. No such clear patterns have been observed in relation to the provisions requiring equitable remuneration for educational broadcasts, communications and recordings.</p> <p>Furthermore, on the issue of online distance learning, very few member states have specifically provided for sui generis provisions that explicitly address the distribution of online content for instructional purposes. However, this does not mean that other member states do not have provisions that do not address the issue. But whether or not member states’ “communication to the public” or “making available” rights encompass the online dissemination of digital content is largely a matter for the substantive legal treatment in the respective member states. In addition, online distance learning will invariably engage in some form of reproduction of the source works that are being communicated, by virtue of the fact that the electronic medium is involved, provisions that enable online distance learning will also have to take this issue into consideration.</p>
7	Compulsory Licences for Educational Reproductions and Translations		There are only 77 provisions in 37 member states that provide for compulsory licences for educational purposes. While most of these provisions generally comport with the detailed prescriptions in Articles II and III of the Berne Convention Appendix, for the current period, only six member states have renewed their Article I declaration under the Appendix. In this regard, a further investigation into whether the other member states have actively utilized these provisions in their legislation will be most instructive.
8	TPM/RMI Exceptions for Educational Purposes	The reason why member states have not renewed their Article I declarations under the Appendix should be investigated. At the same time, the enactment of provisions in member states’ national legislation to provide for exceptions to the protection of TPM and RMI, either directly or indirectly for educational purposes, demonstrates an interesting trend.	A sizeable number of member states have enacted provisions in national legislation to provide for restrictions to the protection of TPM and RMI. Some of the purposes of these provisions include teaching, private or personal use, making educational purchase or acquisition decisions, encryption research, security testing, and interoperability. Other provisions restrict TPM and RMI to protect and preserve the legitimate access to the works and to enable the full realization and use of the limitations and exceptions in national legislation, including the educational provisions discussed above. These qualifications to the general TPM and RMI protection provisions are an interesting trend in the international jurisprudence in this area.
No Topic Document SCCR/26/4 PROV.			
9	Orphan works		
10	Contracts		
11	Importation and Exportation (cross-border issue)		
12	Limitation of Liability for Educational Institutions		