

# Copyright in the Scope of Education

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**Abstract:** Copyright is a legal term used to describe the rights that creators have over their works. Copyright grants the author a set of exclusive rights of protecting his personality in connection with his work (moral rights) and of exploiting the work (economic rights). In the context of education, copyright is important as copyrighted works used in course materials or lecturing, are often and common. When reproducing or distributing materials such as literature, publications, videos or music, lecturers need to understand the copyright of any material that is used. With this paper, we shall present the scope of copyright and its exceptions for the purpose of education. First, we shall explain the meaning and exceptions of copyright within the international legal framework agreed by the Bern Convention that set the standard of copyright and its exceptions. Further, we shall explain exceptions that affect teaching-related uses of copyrighted work and describe how respective issue is regulated within the legislature of the European Union.

**Keywords:** Copyright, e-education, Berne Convention

## 1. Introduction

Copyright is a form of intellectual property law that protects original works of authorship, as soon as an author fixes the work in a tangible form of expression, including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these are expressed. One may express ideas in writing or drawings and claim copyright in its description, but the copyright will not protect the idea itself as revealed in your written or artistic work. Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. By its nature, copyright belongs to the person who creates the copyrighted work, simply known as the author.

In general, copyright (or author's right) is a legal term used to describe the rights that creators have over their works. Copyright grants the author a set of exclusive rights of protecting his personality in connection with his work (moral rights) and of exploiting the work (economic rights). Moral rights would in principle be the right to claim authorship of the work and the right to object to any mutilation, deformation, or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation. Moral rights consist of and include, inter alia the right of first publication, the right of recognition and respect of the authorship, and the right to protect the reputation of the authorship and the author itself. On the other hand, economic rights consist of the right to reproduce, the right to distribute, the right to inform the public of the work and the right to process and transform it. A virtue of the copyright is the ability that all mentioned rights come into existence automatically with the expression of the author's work regardless of form. While moral rights could not be separated from the author, economic rights, on the other hand, are transferable under the consent of the author.

The use of copyrighted works in education providing course materials or in lecturing is often and common. When reproducing or distributing materials such as literature, publications, videos or music, lecturers need to understand the copyright of any material that is used.

Although copyright protection is strong and one should generally ask for a license or permission of the author, it is not unlimited, as legislators have constructed number of exceptions and limitations in using authors' work under specific conditions for specific purposes. One of such limitation is using copyrighted work for the purpose of education, both face to face and distance education. E-education revolves around the use of Information and Communication Technologies (ICT) to accelerate the achievement of education goals with the ability to apply ICT skills to access,

analyze, evaluate, integrate, present and communicate information; to create knowledge and new information; to enhance teaching and learning through communication and collaboration by using ICT; and function in knowledge society by using appropriate technology and mastering communication and collaboration skills (Natarajan, 2005).

The goal of this paper is to present the scope of copyright and its exceptions for the purpose of education. First, we shall explain the meaning and exceptions of copyright within the international legal framework agreed by the Bern Convention that set the standard of copyright and its exceptions. Further, we shall explain exceptions that affect teaching-related uses of copyrighted work and describe how respective issue is regulated within the legislature of the European Union.

## **2. Copyright and its Exceptions**

Notably, the UN Universal Declaration of Human Rights in Article 27 (2) recognizes the right of the author: "Everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

There are consequently differences between the national laws governing the terms of protection of copyright and related rights as each country has its own legislature creating legal differences and uncertainty, for both authors (right holders) and users.

However, much of the internationally recognized standards in the field of copyright are agreed upon and accepted by the countries that accepted and are contracting parties of the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, July 24, 1971, amended on September 28, 1979, Berne Convention). However, basic principles and legal standards in the field of copyright set by the Berne Convention are not effective until applied within the national legislature of each sovereign state signed by the Berne Convention. On the other hand, the community legal framework of the European Union additionally contributed to the development of respective copyright standards accepted within the EU legislature, which will be further explained in this paper.

The Berne Convention lays down only minimum terms of protection of the rights, namely the life of the author and 50 years after his death, leaving the Contracting States freedom to grant longer terms. Notably, according to the Article 1 (1) of Directive 2006/116/EC: "The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention, shall run for the life of the author and 70 years after his death, irrespective of the date when the work is lawfully made available to the public".

Some limitations are adopted based on major public interest considerations, some others are founded on the defence of fundamental rights and freedoms; the promotion of education is one of them. The public interest in using copyright protected works is particularly compelling in respect of education, which is not only a public good, but is a prerequisite for other public goods, such as the development of skills necessary for both the economy and the state, and an informed and empowered citizenry (Papadopoulou, 2010). E-Education for its purpose requires learning materials that are copyright protected, thus it is required to seek a license from the author or to rely on existing legislative exceptions and limitations.

Further in the paper relevant copyright exceptions or limitations in using copyrighted works for the purpose of educational activities through e-education are presented, by analyzing the international legal framework (Berne Convention) and relevant provisions of the community legal framework of the European Union.

## **3. Exceptions That Affect Teaching Related Uses of Copyrighted Work**

The Berne Convention, concluded in 1886, was revised in Paris in 1896 and in Berlin in 1908, completed at Berne in 1914, revised in Rome in 1928, in Brussels in 1948, in Stockholm in 1967 and in Paris in 1971, and was amended in 1979 set the standard of copyright and its exceptions (Paris Act, July 24, 1971, amended on September 28, 1979, the Berne Convention).

The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works and are outlined in Articles 9(2) (reproduction in certain special cases), Article 10 (quotations and use of works by way of illustration for teaching purposes), Article 10bis (reproduction

of newspaper or similar articles and use of works to report current events) and Article 11bis(3) (ephemeral recordings for broadcasting purposes).

Therefore, Berne Convention provides two exceptions that affect teaching-related uses of copyrighted work.

### *3.1 Exception for Quotations (Article 10 (1))*

Although it does not refer solely to teaching it represents one of two mentioned exceptions for using copyrighted work: “It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries” (Article 10 (1) of the Paris Act, July 24, 1971, amended on September 28, 1979, the Berne Convention).

Meaning of “fair practice” is the condition of quotations system. The practice is “fair” when quotations are used in support of the ideas expressed by the person quoting, when quotations are used to illustrate someone’s views to criticize someone else’s work and generally speaking, when quotations do not merely substitute for the use of the work that has been quoted from (Drier, Drier/Hugenholtz, 2006). This exception is not restricted to certain, prescribed uses, thus can be used for any purpose, as long as they are used within the stipulated provision, as well as for the purpose of education.

### *3.2 Use of Works for Teaching Purposes (Article 10 (2))*

“It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, 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” (Article 10 (2) of the Paris Act, July 24, 1971, amended on September 28, 1979, the Berne Convention)).

A relevant exception regulating the use of copyrighted works for teaching purposes is not mandatory for the members of the Berne Convention but could be a matter of national legislature. Therefore, it only sets the limits under which such regulation may be introduced within a specific legislature.

Additional requirements for the use of copyrighted works should be a) “to the extent justified by the purpose” – meaning that the amount of work used should not be more than necessary in order to complete its purpose and b) “compatible with the fair practice” – should not conflict with the normal exploitation of the work for its used purpose and the legitimate interest of the author.

Therefore, respective limitation allows teachers at all levels of education to incorporate selections of copyrighted works as an illustration using e-learning tools, under the condition that the use is compatible with fair practice.

### *3.3 Indication of Source and Author (Article 10 (3))*

“Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon” (Article 10 (3) of the Paris Act, July 24, 1971, amended on September 28, 1979, the Berne Convention).

In accordance with Article 10 (3) where the use of copyrighted works is made in accordance with the exception for teaching or quotation, the name of the author and the source should be mentioned.

## **4. Copyright and its Exceptions Within European Union**

### *4.1 Directive 2001/29/EC on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society*

Directive 2001/29/EC concerns the legal protection of copyright and related rights in the framework of EU internal market. The provisions of the Article 2 of the Directive 2001/29/EC stipulate that the

Member States shall provide the exclusive right to authorize or prohibit direct or indirect, temporary, or permanent reproduction by any means and in any form, in whole or in part copyrighted work. Regardless of a high level of protection, Article 5 of the Directive 2001/29/EC introduces broad list of optional limitations and exceptions for use of copyrighted works, meaning that Member States are not allowed to introduce any other limitation into their national legislation apart from the listed in the Article 5. Nonetheless, education is one of the stipulated exceptions as in accordance with the Preamble (Recital 14) of the Directive 2001/29/EC: “This 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” (Recital 14 of the Directive 2001/29/EC).

#### *4.1.1 Exception for the Purposes of Education (Article 5(3)(a))*

“Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases: (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved” (Article 5(3)(a)) of the Directive 2001/29/EC)).

Relevant exception regulating the use of copyrighted works for the sole purpose of illustration for teaching or scientific research is not mandatory, as Member States should implement it within the sole legislature.

On the other hand, respective Article 5(3)(a) does not define category (universities, schools etc.) or nature of educational establishment (private or public, profit or non-profit etc.) that can use the respective exception. Although, Recital 42 of the Directive 2001/29/EC could clarify this by elaborating: “When applying the exception or limitation for non-commercial educational and scientific research purposes, including distance learning, the non-commercial nature of the activity in question should be determined by that activity as such. The organizational structure and the means of funding of the establishment concerned are not the decisive factors in this respect.” Therefore, the non-commercial nature of education activity is the mere purpose of respective exception regardless of the organization structure or funding policy of the educational institution itself.

Related to the above, another condition to legally use the respective exception is to properly indicate the source and author's name.

In the end, an exception for the purpose of education is an optional one, so some Member States implemented it, e.g. Croatia (Copyright Act, Official Gazette 111/2021), while other legislatures define it differently.

#### *4.2 Directive 2019/790 of the European Parliament and of the Council on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC society*

Directive 2019/790/EU lays down the rules which aim to harmonize further EU law applicable to copyright and related rights in the framework of the internal market, considering digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights. Furthermore, it introduces a new term “text and data mining” which refers to any automated analytical technique aimed at analyzing text and data in digital form to generate information which includes but is not limited to patterns, trends and correlations. Furthermore, the use of works and other subject matter in digital and cross-border teaching activities is stipulated as well.

##### *4.2.1 Exception or Limitation for Text and Data Mining (Article 4)*

Member States shall provide for an exception or limitation to the copyrighted works for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining. Such made reproductions and extractions may be retained for as long as is necessary for the purposes of text and data mining.

##### *4.2.2 Use of Works and Other Subject Matter in Digital and Cross-border Teaching Activities (Article 5)*

Member States shall provide for an exception or limitation to the copyrighted works to allow the digital use of works and other subject matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, on condition that such use: a) takes place under the responsibility of an educational establishment, on its premises or at other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff, b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

As the respective provisions are mandatory, all Member States should have implemented them and harmonize their legislature with respective provisions by June 7, 2021 (Article 29 of the Directive 2019/790/EU).

## 5. Conclusions

Copyright is not only legal but also a civilization standard affecting both the author and the user. It protects the author's rights and sets the standards for using copyright-protected work by the user. Giving such protection encourages the author's creativity but should not be unlimited and thus an obstacle for using copyrighted works by others. Copyright protection should remain strong, but legislators have constructed number of exceptions and limitations in using copyrighted works under specific conditions for specific purposes, such as education.

Exceptions for the purposes of education whether regulated within the international legal framework or as a part of the community legal framework of the European Union (only for EU Members applicable) could be applied in the national legislature of each sovereign state. As with any other international legal framework subject, its optional character opens the possibility for differences and diversity in national legislature regulating such matters. Therefore, differences in national legislature result in legal uncertainty. It would be of interest to seek uniform solutions to achieve harmonized legislature in providing a high level of legal certainty. Even more, having in mind constant change and implementation of modern methods for the purpose of improvement of education, legal science should also take advantage of current momentum and adapt to new trends and requirements.

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