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# Copyright Limitations for Academic Activities

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**Prof. Raquel Xalabarder**

Universitat Oberta de Catalunya – UOC

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# International instruments

- **Art.10.2 BC:** use *by way of illustration* in publications, broadcasts or ...recordings for teaching
  - **Art.15.1(d) RC:** use solely *for the purposes of teaching* // **Art.15.2 RC:** extend BC ones
  - **Art.10.1 BC:** quotations (mandatory nature)
  - ‘Minor reservations’ (Brussels 1948)
  - **Art.9.2 BC:** “three-step-test”
    - also in digital contexts **Art.10 WCT, Art.16 WPPT**
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# International instruments

## **Open:**

- All works and subject matter
- All acts of exploitation (including translation)

## **Neutral:**

- Technologically neutral: also online uses

## **Flexible:**

- Educational purposes (instruction, making of compilations and recordings)
  - To the extent justified by the purpose
  - Compatible with fair practice ...and three-step-test!
  - Remuneration: not required, but allowed
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# EUCD 2001 and National laws

- Art.5.3(a) EUCD 2001: *use for the sole purpose of **illustration for teaching** or scientific research ...to the **extent justified** by the **non-commercial purpose** to be achieved (+three-step-test, art.5.5)*
- *Reprod. (Distrib.), Public communication, MAO*
  - *Non-commercial nature of the activity*
  - *Org. structure, means of funding not decisive*
  - **Exempted educational uses remain a matter for domestic laws ... and domestic laws are not so generous!**
  - **Divergence in national laws**
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# National laws : multiple limitations

- **Educational uses:**
    - Teaching (lectures, exams, debates, work in class, etc)
    - Compilations for teaching / educational use
    - School events
  - **Quotations** → works commented, debated, analysed...
  - **Private Copy/Use** → students' copies?
  - **Fair Use/Dealing** (Common law systems)
  - **Library uses**
    - *Loopholes* (and overlaps) among exempted uses: preservation, research... why not teaching purposes?
    - Online libraries “discriminated”
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# National laws: **Educational uses**

## **Heterogeneous solutions:**

- **Purposes:** education, teaching, instruction, lessons, examinations (... multiple technological contexts)
  - **Exempted acts:** photocopying, performance, reproduction, distribution, broadcast, making available online (intranet), translation, digitization?
  - **Works covered:** all kind of works v. some works
  - **Benefiting institutions:** public, non-profit, all levels?
  - **Scope:** flexible (extent necessary, fair practice) or limited (as to amount, number of copies)
  - **Remuneration:** required, allowed, for free
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# National laws: EU / EEA

## ■ Any use

- Cyprus, Czechia, Estonia, Latvia, Liechtenstein, Poland, Switzerland
  - *Online uses ? Translations ?* (Poland, Cyprus?)

## ■ Reproduction (distribution), public com., making available online

- Belgium, France, Germany, Italy, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, (Spain?)
  - *Translation:* Malta, Netherlands, Belgium? Lux.?

## ■ Reproduction (distribution), performance → F2F contexts

- Austria, Bulgaria, Greece, Hungary, Lithuania, Slovenia, Spain

## ■ Extended collective licensing (cover online uses)

- Finland, Denmark, Iceland, Norway, Sweden
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# National laws

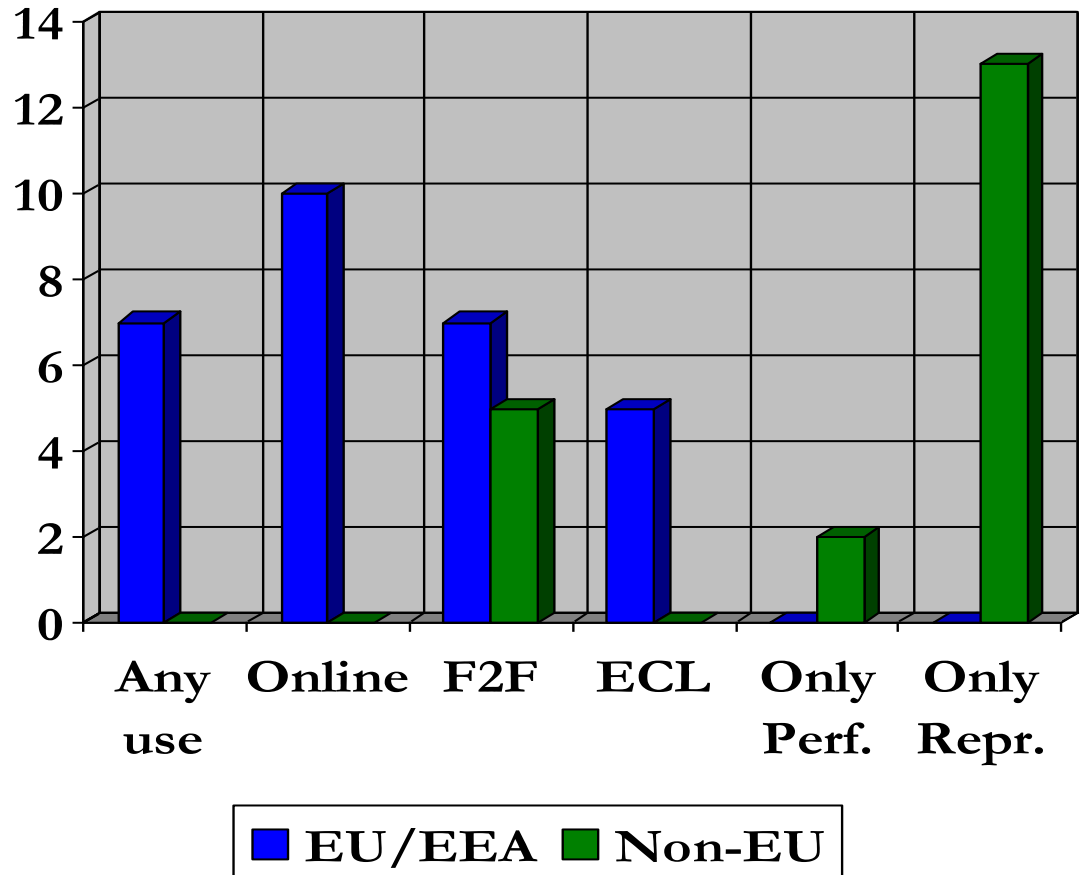
## EU/EEA:

Any use: 7

Specific acts,  
including online: 10

Perf. & Reprod.: 7

F2F + Ext. Col. Lic.: 5





# National laws

## ■ Beneficiaries

- educational establishments, schools, universities, etc.
  - Overlapping with library limitations? Gaps with library limitations?
- non-commercial purposes v. non-commercial institutions?
- elementary, secondary, university, official degrees, 'adult' education?

## ■ Nature and extent of works

- Specific restrictions (# copies, %, fragments, isolated, exclusions ...)
- Lawfully disclosed works (to extent justified by purpose)

## ■ Remuneration

- 5 countries require it: Belgium, France, Germany, Switzerland, Netherlands (**statutory compulsory license**)
- 3 are silent: Luxembourg, Portugal, Italy
- The rest, non-remunerated (teaching uses allowed for free)

## ■ Further requirements

- fair practice, **three-step-test**, name and source indicated
  - limited recipients (for online uses: access control)
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# National laws: Netherlands

## Art.16:

1. Reproduction or publication of parts of a literary, scientific or artistic work exclusively for use as illustrations for teaching purposes, so far as justified by the intended and noncommercial purpose will not be regarded as an infringement of copyright, provided that:
  - 1o. the work from which the part is taken has been published lawfully;
  - 2o. the adoption is in accordance with what might reasonably be accepted under the rules of social custom;
  - 3o. the provisions of Article 25 have been observed;
  - 4o. so far as reasonably possible the source, including the author's name, has been clearly indicated; and
  - 5o. a fair payment is made to the author or his right-holders.
2. In the case of a short work or a work as referred to in article 10, paragraph 1, sub 6°, 9°. Or 11°, the entire work may be taken over for the same purpose and subject to the same conditions.
4. The provisions of this article shall also apply where the reproduction is in a language other than the original.

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# National laws: Cyprus

**7.—(1) Copyright in a scientific, literary, musical or artistic work or a cinematograph film or photograph shall consist in the exclusive right to control the doing in the Republic of any of the following acts: the reproduction in any form, sale, rental, distribution, lending, advertising, exhibiting in public, the communication to the public, the broadcasting, the translation, adaptation and any other arrangement, of the whole work or a substantial part thereof:**

**Provided that copyright in any such work shall not include the right to control—**

- (j) any use made of a work by such public libraries, non-commercial collection and documentation centres and scientific institutions as may be prescribed, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;**
  - (r) Any use of works, to the extent justified by the non-commercial purpose to be achieved**
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# National laws: Spain

- (1) It shall be lawful to include in one's own work fragments of the works of others, whether of written, sound or audiovisual character, and also to include isolated works of three-dimensional, photographic, figurative or comparable art character, provided that the works concerned have already been disclosed and that they are included by way of quotation or for analysis, comment or critical assessment. Such use may only be made for teaching or research purposes and to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work shall be stated.
- (2) Professors of official education will require no authorization by the author to perform acts of reproduction, distribution and communication to the public of small fragments of works or of isolated works of art, or of photographic or figurative nature, excluding textbooks and university treatises, when such acts are done only for purposes of illustration of their educational activities in the classrooms, to the extent justified by the non-commercial purpose and provided that the works have been previously disclosed and that –unless it proves impossible- the name of the author and the source are included. The former paragraph does not include the reproduction, distribution and communication to the public of compilations or collections of fragments of works or of isolated works of art, or of photographic or figurative nature.

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# National laws: UKCA

- **Non-reprographic copying** for instruction
  - **Anything done** for purposes of examination
  - **Performance, playing, showing** for instruction (not online)
  - **Making recordings** of broadcasts and cable programs for later educational use (failing licensing scheme)
  - **Reprographic copying** (of 'passages', percentages) for instruction (failing licensing scheme) → digitization allowed under license
  - Making of **teaching anthologies** for use at educational establishments (very restricted)
  - All of them: **provided it is *fair dealing*, for free** (remuneration only under licensing schemes)
  - **Voluntary licensing systems in place** (cover online uses)
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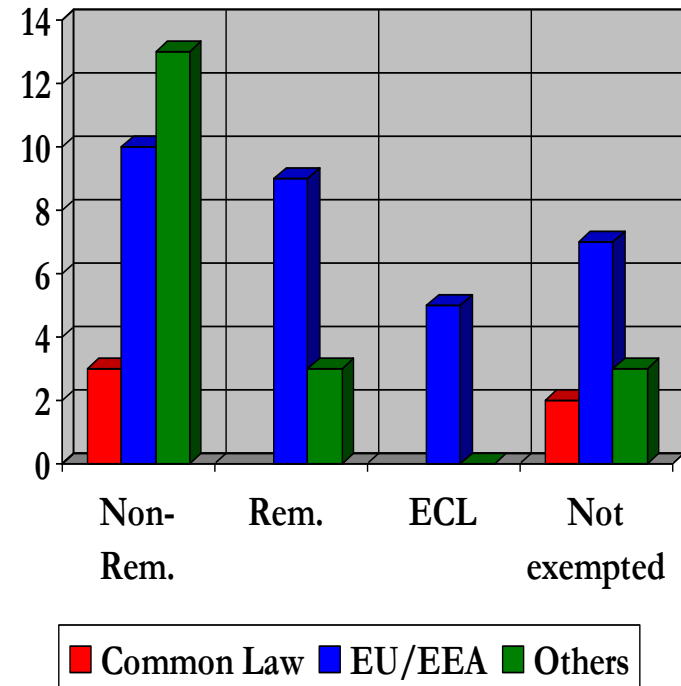
# National laws: Teaching Compilations

## Common Law Countries

- **3 non-remunerated:** Canada, UK, Ireland
- **Not exempted in 2 countries:** USA, Israel

## EU/EEA:

- **8 (10) non-remunerated:** Bulgaria, Czechia, Cyprus, Greece, Hungary, Latvia, Lithuania, Romania (UK, Ireland)
- **9 remunerated:** Austria, Estonia, Germany, Italy, Nether., Poland, Portugal, Slovenia, Belgium (upon author's death)
- **5 with extended collective license:** Denmark, Finland, Norway, Sweden, Iceland
- **Not exempted in 7 countries:** France, Liecht., Lux., Malta, Slovakia, Spain, Switzerland



## OTHERS (Non-EU/EEA):

- **13 non-remunerated:** Albania (incl. translation), Andorra (only reprod.), Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkey?, Ukraine, Uzbekistan,
- **3 remunerated:** Bosnia & Herz., Macedonia, Croatia (only reprod.)
- **Not exempted in 3 countries:** Moldova, Montenegro, Serbia

# National laws: **School Events**

## **Common Law Countries**

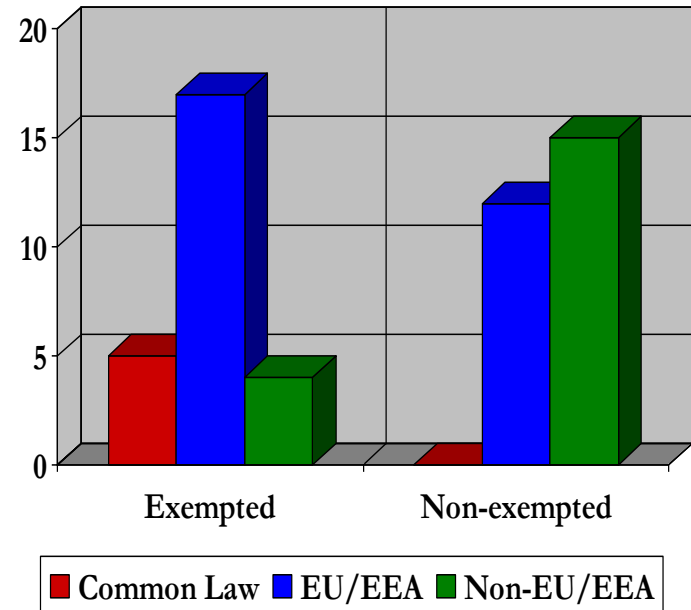
- **All 5 exempted:** USA, Canada, UK, Ireland, Israel

## **EU/EEA:**

- **17 exempted:** Belgium, Bulgaria, Czechia, Estonia, Germany, Greece, Hungary, Latvia, Poland, Romania, Slovakia, Slovenia, Denmark, Iceland, Finland, Norway, Sweden.

## **Non EU/EEA:**

- **4 exempted:** Armenia, Bosnia & Herz., Croatia, Macedonia



# Voluntary Licensing

**For all non-exempted uses → voluntary licensing**

- **Collective licensing:**
    - Fully voluntary, “stirred” by legislator (UK), extended (Nordic countries)
    - Practical difficulties:
      - CMO’s insufficient mandate of rights (ultimately voluntary)
      - Difficult to enforce (users not willing to accept them)
  - **Individual licensing** - Practical difficulties:
    - identifying & locating owner
    - timely responses, exorbitant prices (fear of downstream uses, insensitive to needs of education)
  - **Unbalanced interests?**
    - Denial of license (right to prohibit use of a work for teaching purposes) → Should (to what extent) authors’ exclusive rights prevail over education?
    - DRMs and licensing terms further restricting educational uses? → We must be vigilant on how these practices evolve and ensure teaching exceptions remain effective
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# Conclusions

- Fragmented, insufficient, non-uniform national solutions
  - Online teaching uses discriminated (not all national legislators are sensitive to needs of online education)  
→ Exceptions should be technology-neutral (under different conditions)
  - Voluntary licensing schemes (and DRMs) can hardly find the right “balance” between interests at stake
  - Education is a strong public interest → Exceptions and limitations should be a matter of strict public policy (addressed by the law)
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