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# Document for Commonwealth Countries on Copyright Matters in Education

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COMMONWEALTH of LEARNING

# Document for Commonwealth Countries on Copyright Matters in Education

## Current situation in copyright in education

In view of the contemporary scenario where a complex arrangement of international treaties and agreements govern intellectual property, and where countries are under pressure to adopt stricter copyright laws through Free Trade Agreements, countries could benefit from conducting an audit of copyright laws to ensure that they take advantage of flexibilities in international agreements to safeguard and enhance access to learning content. In the event that domestic copyright laws do not take advantage of these flexibilities, it is possible to secure technical support from other Commonwealth countries to incorporate those flexibilities when negotiating agreements, revising or enacting new laws.

Educational institutions are creators, publishers and consumers of information. They recognise the important role that copyright plays in education and that a balance needs to be struck between the interests of creators and consumers.

Countries need to ensure that learning content is made available across the broadest base possible as part of their focus on achieving the Millennium Development Goals. Access to information and knowledge is crucial to the development of creative minds who contribute to national economies. Where restrictive copyright laws exist, these should be addressed as part of the drive to maximise literacy and increase accessibility to information and knowledge to improve standards of living for all.

While challenges are still experienced with existing copyright laws, new challenges are emerging as new technologies emerge. Copyright laws need to be sufficiently flexible to accommodate technological developments.

The differences between distance learning and traditional education are no longer very distinct and copyright laws need to address them in the digital environment.

## Matters to consider for Commonwealth countries

Extended exceptions for education in educational institutions, and for literacy and adult basic education programmes, need to be examined under the "Three-step test" contained in the relevant international treaties such as the Berne convention, TRIPS and the WIPO Copyright Treaty. According to this test limitations and exceptions must:

1. be confined to certain special cases;
2. not conflict with the normal exploitation of the work; and
3. not unreasonably prejudice the legitimate interests of the author.

Translations, adaptations and conversions into different formats, e.g. Braille or digitization, need to be considered to facilitate access to information. There is a strong case for a milestone clause, which allows translation and adaptation rights to automatically transfer into the public domain, in view of the empirically evidenced lack of commercial interest in exploiting these rights.

All legal systems should strictly adhere to the "minimum standard" scope of copyright protection of the applicable international treaties by confining protection to works listed in the relevant international treaties as well as confining protection to rights granted in those treaties.

Moreover, legislators should ensure that they take advantage of the exceptions and limitations to copyright that international agreements permit and that are necessary for a fair education policy.

These include:

**A. Access for persons with sensory disabilities**

Copyright legislation should allow – and facilitate – the adaptation of educational material to different formats to make it accessible to persons with sensory disabilities.

**B. Parallel importing in special circumstances**

Governments should have the power to allow for parallel importing of copyrighted material if educational needs make this necessary. If for instance, the price of a learning material in country X is substantially less than in country Y, then country Y must have a legal provision that allows importing the learning material from country X.

**C. Access to untraceable or unobtainable works ("orphan works")**

Copyright legislation should allow for copying for educational purposes where the permission of the copyright holder cannot be obtained or where the work is not available in that market.

**D. Distance Learning**

The convergence of telecommunications, publishing, broadcasting and computing, is creating a media environment with enormous implications for flexible learning, and mass higher education and training, including through programmes of distance education. The cross-border nature of information flows provides compelling justification for harmonizing a set of minimum limitations and exceptions for all education, including distance education. In order to take full advantage of new technologies in the delivery of education, flexible learning and face-to-face classroom instruction, it is necessary to ensure that educators have sufficient rights to use works.

**E. Copyright Term**

The copyright term should not exceed the minimum duration of copyright protection required by the relevant international treaties.

**F. Government Documents**

Works created by government employees and by contractors conducting essential public functions should be made available in the public domain, except under exceptional circumstances of confidentiality, as protected by law.

**G. Quotation**

An exception for quotations should include provisions both for the benefit of freedom of expression and dissemination of knowledge. As few restrictions as possible should be introduced regarding:

- ways quotations can be made;
- types of works that can be quoted;
- length of a quotation;
- purpose of the quotation.

**H. Teaching, multiple copies / use of videos, recorded materials and other multimedia**

Copyright legislation should allow for a reasonable number of copies to be made of copyrighted material and for its inclusion in course packs for teaching. Moreover the use of a whole work for teaching purposes should be permitted and the types and forms of the utilisation for teaching should not be limited in any way.

**I. Fair Dealing**

Copyright legislation should include a Fair Dealing ("fair use") provision as a universal limitation on the exclusive rights granted to copyright holders in order to safeguard socially important endeavours and to promote future development, especially regarding education and scientific progress. Such limitation shall explicitly include:

- Research;
- Private use;
- Criticism;
- Review;
- Report current events;
- Education, which shall extend to learning, teaching, study and assessment.

**J. Educational Use of the Internet**

Copyright infringement is of key concern to educators and authorities across Commonwealth countries. The educational sector believes that clarity and balance in the Copyright Act must be vigorously championed, such that under the circumstances described in the proposed educational use of the Internet amendment, copyright infringement is eliminated and that every student and teacher can be assured of timely and fair access to Internet materials.

To this end, Governments are urged to adopt an **educational use of the Internet amendment** to their Copyright Acts to permit the educational use of publicly available Internet materials.

The proposed education amendment should be limited in scope, in two respects:

1. It should apply exclusively to **participants in a programme of learning** under the authority of an educational institution. For example, the proposed amendment would permit students to use publicly available Internet materials by incorporating text or images in homework assignments, performing music or plays on-line for their peers, exchanging materials with teachers or peers, or re-posting a work on a restricted-access course Web site. Students and educators would be required to cite the source of the Internet materials that they use.

2. It should apply strictly to the use of **publicly available materials** on the Internet. Publicly available materials are those posted on-line by content creators and copyright owners without any technological protection measures, such as a password, encryption system, or similar technologies intended to limit access or distribution.

**K. Contracts, Technological Protection Measures and Copyright**

With emergence of new technology in the digital environment, for example, electronic databases, but also digital content of any kind, copyright owners protect access to learning material by technological protection measures (TPMs), circumvention of which is criminalized. TPMs erode traditional fair dealing (fair use) exceptions and limitations identified above, in ways that restrict access to information by the general public.

Governments are advised through legislation to discourage private contracts involving copyright products and services that override the above exceptions limitations and the fair dealing doctrine.

In addition, the legal protection of TPMs should be kept to a minimum. Hence, no anti-circumvention provisions should be adopted in countries which have not yet acceded to the so-called WIPO Internet Treaties (WCT and WPPT). WCT/WPPT member states, however, should adopt anti-circumvention provisions with the least impact on existing exceptions and limitations. After all, the WCT only requires protection against the actual circumvention of TPMs that restrict acts which are not authorized by the authors concerned or permitted by law.

**I. Access to publicly funded information**

- Governments should facilitate public access to information held by public bodies and private bodies that are conducting public business. This should include laws and regulations to provide for legal procedures for access to information based on the principles of openness and transparency.

**J. Affordable dispute resolution**

Copyright legislation should contain mechanisms for fair, affordable and quick resolution of disputes that arise out of the interpretation and application of copyright law, similar to how the Uniform Domain-Name Dispute-Resolution Policy (UDRP) resolves domain disputes.

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