

Exceptions for education

The Copyright Act allows the use of copyright works to facilitate teaching, learning and the creation of new knowledge – within certain limits. These limits relate to the technology used, the number of copies made, the purpose of the use and the availability of licences.

Conversation-starters:

- › How has the internet or other technologies impacted the way educational courses are delivered to students? How is copyright impacting on the delivery of these courses?
- › Can you provide an estimate of the revenue loss for authors whose copyright works are copied once by a teacher to use in a class? How does this conflict with the normal exploitation of their work?
- › When managing copyright compliance, what are your main challenges and why? How much money, effort and/or time is required on account of these challenges?

Notes recorded by workshop groups

Sub-topic	Theme	Feedback
How current exceptions for education work in light of new technologies	General comments	<ul style="list-style-type: none"> › [Technology has] fundamentally impacted [education] › [Regarding] technology change – [Copyright Act] is a huge barrier to “sensible” classroom use; results in complexity or disregard for the law › Existing Act doesn’t account for current technology and how it impacts on teaching /student engagement and interaction. (Higher education students less likely to attend lectures in person; resources available online to closed groups). › Educational exceptions – how is ‘educational institution’ determined? <ul style="list-style-type: none"> › Is it broad enough? › Needs to be less prescriptive › How broad should they be? Are they already too broad?
	Specific examples of the impact of technology	<ul style="list-style-type: none"> › Learning management systems are ubiquitous › Complexity of different formats (e.g. book, video) › Complexity of multiple uses / re-use needs › Some technologies can help, e.g. copyright automatic checking, but in education these systems are not sophisticated › Example of YouTube, which blocks content

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		<ul style="list-style-type: none"> › Open Educational Resources › Section 48 [of Act] is a good example of technology neutral drafting › It's easier to steal content (e.g. download an entire book) – law is the same; ease of obtaining content › Benefits of recorded lecture – [can account for] disabilities, fatigue, illness › Kortext – online text book model › Existing act doesn't account for current technology and its impacts on teaching /student engagement and interaction. › Higher education students less likely to attend lectures in person – resources available online to closed groups › Educational settings v Education providers = access to exceptions › Ease of sharing resources online between teachers and lecturers › Licence and agreements + access to resources › Ease of access and ability to share
	Challenges of sourcing and obtaining material	<ul style="list-style-type: none"> › Sources of information have changed/diversified, and it is difficult to ascertain the original source or contact the maker/creator › Producers of content – move away from selling blanket access to use-driven sales › Ease of sharing resources online between teachers and lecturers › Ease of access and ability to share
	Technology's impact on the educational culture	<ul style="list-style-type: none"> › The culture of referencing is declining – a change in who academics are and their background and understanding of plagiarism, copyright and the ethics of publishing › Demand from students / expectation of access to [lecturer/course] slides › Equity for students – access to content › Creators' primary source revenue model totally changed › Culture of sharing vs culture of protection
	Some comments related to formats	<ul style="list-style-type: none"> › Need for format shifting › Format neutrality for exceptions. Should cover the content, not the format presented › Make it consistent across formats. Abolish the 14 day rule › Seek format neutrality, i.e. reprographic vs non-reprographic
	Issues raised by the internet	<ul style="list-style-type: none"> › Copying for personal research – what's to stop the individual from sharing online with multiple people? › Once something is online – risk to creators whose works might be then disseminated widely › Offline vs online inconsistency – recorded lectures including copyright material

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<p>How exceptions affect authors, publishers, licensing organisations and rights-holders in general</p>	<p>Comments about the complexity of the Act</p>	<ul style="list-style-type: none"> › Confusion for content users; too complex for people currently – what is the difference between: <ul style="list-style-type: none"> › The law › Licences › Exceptions › Aim would be to remove intricacies and doubt › Make it easier for academics to understand the system › Education exceptions do not cater clearly and well for “non-formal” educational groups and learning › Education needed around limitations. Misunderstanding with plagiarism.
	<p>Modernising the Act</p>	<ul style="list-style-type: none"> › Use of simple concepts and modern concepts in law, e.g. “classroom” vs “learning environment” › Redefine education for copyright purposes? › [What is the] political background? › Impact of international trends › Section 44 issue › What degree of simplicity can you achieve through legislation alone? A trap to think one can simplify [through?] it › High school workbooks to get around predatory pricing › Educational exception definitions of “establishments” – should differentiate between large institutions (e.g. universities) and schools › Fair use <ul style="list-style-type: none"> › Is [?] to change legislative regime, or is it better educating and communicating? › Help if part of teacher training? › Help if NZ used process instituted by UIK IPO after their copyright review › IPONZ/MBIE as educational arm
	<p>Striking a balance amongst different interests</p>	<ul style="list-style-type: none"> › Balance money spent on licences, subscriptions, vs effort to ensure compliance; money lost to people not complying › How to protect local content creators/producers in a small market (e.g. Canadian education exceptions and potential negative impact on local publishers, therefore a risk to local content) › Need to ensure copying under the exceptions rule is still protecting the commercial creators › Archival institutions are stuck in the middle between access and copyright holders › How to be fair to copyright owners and users › How would commercial publishers respond if there were more exceptions for education? › Context of educational exceptions of parliamentary/judicial proceedings



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		<ul style="list-style-type: none"> › What are the Crown’s obligations under Te Tiriti? › Test case – University of Auckland vs CLL › NZ identity – having works (like school journal) available › Publisher reversion of rights to authors <ul style="list-style-type: none"> › “economic life” of work › Difficult thing to factor in › Viewing vs copying downloading
<p>How the exceptions impact on use of copyright works by education providers and their students</p>	<p>Comments about compliance and enforcement</p>	<ul style="list-style-type: none"> › How to measure the burden of checking for copyright infringement? Lots of man hours now spent on this in TEI and Polytechs › Education environment – trying to educate our educators or provide systems (which cost money) to ensure compliance › “It feels like we’re nit picking” – when we attempt to ensure compliance › Managing compliance <ul style="list-style-type: none"> › Lack of clarity for content that might be historical or no clear owner › Time, money involved tracking down copyright holders › How to make people “care” about copyrights › CLNZ licence – should it be compulsory for all schools? Education needs around limitations; misunderstanding with plagiarism › Impact of compliance [can be significant] › Expense of compliance › U.S. can’t rely on fair use – too uncertain › Effective enforcement, but flexible so not a chilling effect on goal of making works available and preserving culture › Ignorance vs conscious infringement › Valuing – “stealing” vs “using” › Education, changing behaviour › Copying for personal research: What’s to stop that individual from sharing online with multiple people? › Once something is ‘online’ – risk to creators whose works might be then disseminated widely › Need to make sure copying under the exceptions rule is still protecting the commercial creators › Lack of clarity for content that might be historical or no clear owner › Time and money involved tracking down copyright holders › How to make people “care” about copyright?



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		<ul style="list-style-type: none">› CLNZ licence – should it be compulsory for all schools?› Impact of compliance› Different media require different licences› Issues for educational organisations due to monopolistic control of content.
	Perceived barriers the Act presents to educational practice	<ul style="list-style-type: none">› As an educator, I’m attempting to innovate and engage with business but the law prevents this› The law is written with a classroom context and when we attempt to do something for our role as critic and conscience we cannot› Negative educational impact of lack of access to content› There are gaps in content (e.g. streaming) where neither law nor licence covers it› Transient use – it should be the reason for use rather than format› Issues for educational organisations due to monopolistic control of content› Copyright Act is only a small part of the issue› Performers’ rights have no exceptions – impact on students wanting to use clips in their assignments› If students can’t be present for course (e.g. because of disabilities), rights for online access may exclude their access and hence miss key content for which they have paid› Section 45 – limitations on screen licence options and use of content other than teaching film. Issue not only for tertiary but also at secondary and primary level› Why can a teacher copy more than a library?› Problem: legislative right to make a copy only [?] 14 days<ul style="list-style-type: none">› Limits on licences on provision of more than one copy at a time. Or costs of licences preventing this.› Should they only be accessed for non-commercial use?› Transparency over how institutions accessing exceptions is determined› Format neutrality for exceptions. Should cover the content, not the format presented in.› Is Copyright Act an appropriate vehicle to provide reasonable access to knowledge?› Risk for those who cannot afford to access.



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	The functions of educational institutes in the copyright area	<ul style="list-style-type: none">› We [universities] run like a business but our aim is not commerce› Change is constant for course delivery› How is “educational institution” determined? Is it broad enough? Needs to be less prescriptive› Exceptions – should they only be access for non-commercial use?› Exceptions – How broad should they be? Are they already too broad?› Transparency over how institutions are accessing exceptions, [how use of exceptions by institutions] are determined› [Discussing what is an educational provider] Educational settings vs. educational providers, and access to exceptions› Is the Copyright Act an appropriate vehicle to provide reasonable access to knowledge?› Complexity of academic publishing and research sector› Do educators know how to protect their copyright? Act is one thing, licences are different› Collaborative research projects – across universities, across countries – Copyright Act doesn’t facilitate this?› Universities charging by commercialisation of research› Teachers do not recognise application of commissioning rule<ul style="list-style-type: none">› Issues when teachers in one school – school boards and tertiary institutions can waive this› Creative Commons licensing also available› Education required in this area by HR staff at point of employment, Copyright Officers of institution
	Matters related to the process of using copyright	<ul style="list-style-type: none">› Educators create content which is then sold back to educational institutions› Have to strip out content, e.g. images from slides, or only store audio from lectures› Student created content is different to lecturer or educator created content› How to measure use is contentious. Is it number of students on a course or the number of accesses to the content› Use same percentage measure as print in film use› U.S. Senate bill to make tertiary institutions use open source› Some academics want as wide of use as possible› [In schools] multiple copyrights – education projects, children› School journal falls into category of works (with orphan works) where too hard to trace rights holders and clear copyright› Media monitors – PCMA› Copyright hub in UK – has it succeeded?



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	<p>Comments pertaining to licensing in the sector</p>	<ul style="list-style-type: none"> › The crossover between licence and law, e.g. Pearson vs Rangitoto High School › Do not have a statutory licence which everyone has to have (too restrictive) › Licensors try to cover the “gaps” [in ability to use works in education where Copyright Act doesn’t address] › Licences and legislation mix is very complex › Issue of whether to contract out of statutory exceptions [through the use of licences] › Discussed benefits of blanket licences for simplicity purposes › Licence agreements and access to resources [can be a challenge, or can overcome shortcomings in legislation] › Different media require different licences › Option of licencing – how practical is it to seek a licence; is it fair? Licencing may not be fair › Big percentage of university library budget spent on licences › “Building a generation of criminals” <ul style="list-style-type: none"> › Licences [?] › Education of broader public and teaching profession › Funds available for licences should licences even be available › Contracts trumping copyright law <ul style="list-style-type: none"> › UK law contains some sections where contracts may not trump rights provided in X, Y, Z sections › High school workbooks to get around predatory pricing › Licencing environment impacts › Licencing as a solution?
	<p>Notes on something to keep</p>	<ul style="list-style-type: none"> › Do have exceptions, e.g. 3%, so institutions aren’t over-burdened with admin › Efficiency gains of exceptions for education
	<p>Financial-related implications</p>	<ul style="list-style-type: none"> › Lost revenue in schools <ul style="list-style-type: none"> › Unlicensed schools and copying/disseminating of information › Difficult to quantify lost revenue through school channels, but potential knock ons to exports too › Reluctance to spend on text books by students › Canadian experience – Education exceptions was catastrophic for publishers, authors and the availability of locally-created content for students



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		<ul style="list-style-type: none"> › Current legislation already covers the revenue question › Academics who are authors are not necessarily motivated by money › Legal v licence solutions. Purchased information; not easily transferrable for other educational uses › Should “content” be covered by the law, regardless of format or how it is delivered/accessed? › 3% [copying exception] isn’t practically workable › Legislation needs to account for what we don’t know; future proof › Risk for those who cannot afford to access › UniversitiesNZ figures re money universities bring to NZ – anything that makes education more efficient. Opportunity cost through the non-use of copyright. › Unlicensed schools + copying /disseminating information › Difficult to quantify lost revenues through school channels. But potential knock-on to export too. › Reluctance to spend on text-books by students › Canadian experience: education exceptions were catastrophic for publishers, authors and the availability of locally-created content for students. › Current legislation already covers the revenue questions › Academics who are authors are not necessarily motivated by money › Legal v licence solutions: purchased information is not easily transferable for other educational use. › Should ‘content’ be covered by the law regardless of format or how it’s delivered/accessed › 3% isn’t practically workable › Legislation needs to account for what we don’t know. Future-proof. › Creators’ primary source revenue model totally changed.
	<p>Copyright Tribunal</p>	<ul style="list-style-type: none"> › Is Copyright Tribunal working – question of access to justice; publishers would prefer a small claims tribunal › If few cases taken, does it mean Tribunal is not working well?