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Higher Education in the International Digital Economy: Effects of Conflicting Copyright Regimes on Cross-Border Teaching

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Abstract

A survey of teachers in higher education who teach across borders shows that they experience, in all regions of the world, similar problems with inability to access materials for themselves or their students. They also find that they need to change course design, materials, or assignments because of perceived copyright-related problems. These problems can range from geographically restricted content to inaccessibly high-priced materials to contract limitations on access to library-purchased materials. Educators' most common copyright problems are not amenable to copyright exceptions for the most part, since their most common problem is access to material at all. This problem arises because of the nature of libraries' contract terms enabled by copyright, automated practices of applications and platforms, and institutional requirements. Further, educators are also generally poorly informed and poorly supported in understanding copyright, including educational exceptions and exceptions such as fair dealing or fair use. These challenges, both in law and in lack of education, limit the growth of globally accessible higher education.

Keywords: higher education, copyright, exceptions and limitations, teaching

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Introduction

This study investigated how teachers' experience with navigating copyright affects the work of cross-border teaching in higher education. This cross-border activity can occur because co-teachers work in different jurisdictions, because students are far-flung, or because universities have international branches, with different practices in different locations.

As the recent pandemic demonstrated, and as previous research has shown, pedagogy requires flexibility that tests existing copyright laws and institutional norms, including when dealing with online environments (Bonadio et al., 2022; Gilmour & Garcia, 2021; Hassan et al., 2020; Hudson 2022; Hudson & Wragg, 2020). However, relatively little research has been done about actual professorial practice in working across jurisdictions. This research, then, is guided by this question: How do teachers in higher education who work across borders experience obstacles to accomplishing their mission from copyright-related issues? We ask both what obstacles teachers encounter and also what they do when faced with them.

Copyright and Education

Limitations to the monopoly privilege that copyright provides are crucial to education in general. Authorizing a monopoly is a powerful censorship mechanism as well as an incentive to negotiate around creation. Every copyright regime has some exceptions and limitations, many of which can affect education (Cate & Samberg, 2021), and structural limitations have increasingly been eroded (Boyle, 1997, 2008). As the public domain has shrunk, exceptions have become more important to balance the monopoly force of copyright and maintain the capacity for cultural creation (Kaplan & Geik, 2005; Patterson & Lindberg, 1991).

While each nation typically has a welter of exceptions, some highly specific, three kinds are typical: educational exemptions, library exemptions, and general exemptions. The third category goes by such names as "fair use" (United States, Israel, South Korea, and some other states), "fair dealing" (Commonwealth countries), and "right of quotation" (many others; Flynn & Sag, 2020; Joyce et al., 2006). Teachers' work is affected by all three kinds.

Exceptions are sometimes treated as a simple substitute for structural limitations, although they are not easy to use. For instance, in two decisions, the US Supreme Court decided that fair use was a sufficiently vigorous exception to justify the lack of functional structural limitations on copyright's monopolies (*Eldred v. Ashcroft*, 2003; *Golan v. Holder*, 2012). When exceptions are built into daily practice (e.g., journalism, library work, teachers' classrooms), they often fade into the background of practice until new practices emerge to challenge them (as happened during the pandemic or around digital innovations, for instance). But the advent of new practices can pose interpretive challenges. When exceptions are specific—to the kind of activity, where it is conducted, or what kind of material is used—they can be particularly difficult to use. This is compounded when cultural creation and sharing happens across jurisdictions, as has been recognized by the World Intellectual Property Organization in its report on challenges to online distance education and research (Torres & Xalabarder, 2019).

Libraries' decisions around copyright are crucial for teachers, particularly for contracts made with vendors and alignment with teaching needs. Libraries, archives, and other memory institutions, leveraging their own exceptions and rights such as first sale under copyright, are stewards of some of the largest collections of copyrighted content in the world. Libraries are at the crux of information sharing—particularly in the education context—as they share information with both teachers and students and play a vital role in the acquisition of coursework, media, and academic literature. They are also often the front line on copyright issues.

And yet exceptions only deal with some of the problems created by copyright's inherent suppression of circulation. Exceptions have a major limitation because they apply to uses of existing material. They cannot apply where people cannot get access to the material or can only access it with permission. For instance, libraries routinely sign vendor contracts that include limitations that override copyright exceptions.

Libraries have to make hard decisions, because academic publishers have consolidated, raised prices, and benefited from the resulting high profit margins (Larivière et al., 2015). Vendors contractually tightly control access to e-books, which have enormous educational potential across borders of all kinds (Flynn et al., 2019; Sieghart, 2013), but which are leased rather than purchased (Giblin & Weatherall, 2015; Minčić-Obradović, 2011). E-book access is commonly limited by geography, number of users permitted to access at one time, and number of times a book may be accessed in total and only made available for limited time periods or number of uses. This often results, among other things, in discrepancies between the content that is available in different jurisdictions.

Sometimes illegal mechanisms can override copyright constraints. Some of the more prominent “academic pirates,” such as Sci-Hub, have managed to provide access to over two-thirds of the world's scholarly literature (Mohan & Gupta, 2022), and the proliferation of paywalls, high publisher prices, and other copyright barriers (Handke et al., 2021) drive people to use these illegal mechanisms more. Persistent pursuit of such sites has been a game of whack-a-mole worldwide, without successfully shutting down the options. Users, in contrast to providers, typically do not suffer penalties. This process, however, feeds a negative spiral of increased control measures on the part of commercial vendors to libraries, which then exacerbates the problems teachers have in teaching.

Copyright and Cross-Border Education

Teaching that reaches students across borders, and that involves collaboration between teachers in different parts of the world, has been identified as an area of possible economic growth. Over recent decades, there has been a worldwide increase in the mobility of educational professionals across different education levels and geographic regions. An abundance of scholarship details the conditions for migrant teachers. When adjusting to new educational contexts, migrant or cross-border teachers face challenges that range from conflicting administrative regulations to cultural problems related to pedagogy practices and different teaching values and expectations (e.g., Bense, 2016; Caravatti et al., 2021).

This international trend intensified with the COVID-19 pandemic. Online modalities attracted intense attention during this period and boosted the challenges faced by teachers when migrating to online platforms environments (Bonadio et al., 2022; Gilmour & Garcia, 2021; Hassan et al., 2020; Hudson, 2022; Hudson & Wragg, 2020).

Empirical studies reveal a general lack of knowledge and skills to handle online educational infrastructures, including in regard to copyright issues. In a survey by Hassan et al. (2020), most

teachers (74%) said that they address plagiarism and copyright issues when creating their online teaching content. They also agreed that creating e-content takes more time and effort than classroom teaching because creating the content requires more advance planning and the creation of more explicit wayfinding. The surge in online teaching has also fueled awareness of the need to support copyright literacy in online and hybrid learning situations (Gilmour & Garcia, 2021). A comparative analysis of copyright policies showed that in various jurisdictions, protection of copyright owners went beyond the requirements of international treaties (typically, those requiring harmonization with US and EU standards) and hampered the work of educators (Wahid & Azmi, 2012).

The pandemic tested the capacities of institutions, and particularly academic libraries, to meet teaching needs (Norris et al., 2021). Libraries confronted in new ways the challenges created by vendor contracts that limit the kinds and range of uses. The pandemic prompted new library guidelines for the use of alternative copyright options for teaching materials such as films and other audiovisual content (Hudson, 2022). Institutions embraced in-house and open-access publishing (Hudson & Wragg, 2020). However, in doing so, copyright's inflexibility posed challenges for teachers, both within digital platforms and across countries (Bonadio et al., 2022).

In Europe, Jütte (2019) and Priora et al. (2022) showed there is much uncertainty about how copyright exemptions apply to cross-border contexts because of different users' perspectives and because of fragmented national implementations of the law. Other researchers have concluded that such uncertainty is harmful to the teaching mission, especially within developing countries (Wahid & Azmi, 2012).

Neither open educational resources (OER) nor existing exceptions, which vary from country to country, have provided substantive solutions to the obstacles to teaching across borders created by copyright. OER often includes copyrighted material, which then presents problems in distance education scenarios (Chen & Panda, 2013; Santosh & Panda, 2016). Even within the EU, the educational exception within the Directive on Copyright in the Digital Single Market does not provide legal certainty because it allows individual states to limit the terms (Jütte, 2019, p. 4–6).

This study is also relevant to the burgeoning area of empirical research in copyright studies more broadly. Copyright scholars have long debated the value and costs of long, strong, and typically (through treaties) internationally harmonized copyright for cultural production. While copyright-dependent industry interests have vociferously argued that copyright is a guardian of the fount of creativity, many legal scholars have argued that the inherent censorship aspects of copyright constrain innovation and cultural production (Boyle, 1997; Jaszi, 1994; Patterson & Lindberg, 1991; Tushnet, 2009). Others have shown that copyright has not been central to market success for creators (Bowrey, 2020), or for entire industries (Bollier, 2006; Westbrook, 1991). Artists' practices often respond to other priorities (Tushnet, 2007). Scholars have used laboratory experiments (e.g., Bechtold et al., 2016), ethnographies and interview work (e.g., Bowrey & Handler, 2014), and natural experiments (e.g., Aufderheide & Jaszi, 2018; Waldfogel, 2012) to address the entanglements between copyright limitations and cultural production in different locations. Empirical research has documented the constraining effects of the monopoly privileges granted by copyright and, inversely, the importance of exceptions and limitations to monopoly rights for creative production, as reviewed by Sprigman (2018).

To summarize, national differences in copyright exemptions, limits to copyright exemptions, and different interpretations of (or even ignorance about) copyright policies lead to problems in meeting the teaching mission. Libraries' vendor contracts can amplify problems, because vendors often build in geofencing or other restrictions limiting cross-border use. However, the literature

does not show evidence from the teachers themselves about how they experience these problems in doing their work and how they cope with them. Thus, we explored this question directly with teachers who work across national borders.

Methodology

This research relied on the results of a survey and in-depth interviews. Between March 15 and May 15, 2023, we ran a survey via the Qualtrics platform, assuring secure data storage. This study was approved by the American University Institutional Review Board (IRB), and answers were fully anonymized through Qualtrics. The survey consisted of a total of nine questions:

Q1: Do you teach or have you taught in higher education?

Q2: Do you teach, or have you taught, across national borders? For instance, co-teaching with someone in another country; teaching students located in different countries; and teaching for an institution based in one country, but at a location in another.

Q3: Have you ever encountered obstacles related to copyright because you were teaching across borders?

Q4: If yes or “not sure” to Q3, what problems have you encountered when teaching across borders? Choose all that apply.

Q5: How have you coped with the copyright challenges of working across borders? Select as many as apply.

Q6: Would you be willing to talk to us about your issues, or communicate via email?

Q7: Please share your email here, and we will follow up with you to see if you are interested in talking with us.

Q8: In which regions are you located when you teach or have you taught? (Choose as many as apply.)

Q9: In which regions do/have your students or co-teachers teach or learn? (Choose as many as apply.)

Respondents were recruited through the networks of Educational International, a Global Union Federation that represents organizations of teachers and other education employees. They were also recruited via emails to listservs of the professional organizations Association of Internet Researchers (AoIR), the International Communication Association (ICA), Library Futures, Authors Alliance, University Film and Video Association (UFVA), Access to Knowledge, and the academic networks IPProf-l, Cyberprof-l, and Righttoresearch. The authors also shared the survey with their own networks in the open-source social media Mastodon via aoir.social and scholar.social. Several of the listservs, as well as the social media, featured communication professionals, as teachers in various fields of communication are particularly dependent on current copyrighted material, and are usually aware that they are.

No specific demographic information was collected, as we observed current best-practices in survey design by minimizing collection of data that we did not intend to use. We did not develop research questions about race, gender, and age related to the effect categories on the problems teachers experience with copyright.

A total of 238 respondents started to take the survey, of whom 214 were eligible because they stated they had experience teaching across borders.

Interviews

Respondents were contacted for interviews if, in their survey responses, they provided their contact information in a survey question asking for an interview. A total of 27 individuals provided their email addresses, out of which 24 were valid (i.e., no bounce-back). Out of the 24 individuals whom we contacted, six responded to our multiple requests for follow-up, and those six were subsequently interviewed via Google Meet.

At the start of each interview, respondents were promised confidentiality. Respondents were asked for consent to record the interviews for temporary use (with the expectation that we would destroy the videos upon publication), as well as for consent to develop a transcript, kept in secure storage. Each interview began with a summary of the research project, our methodology, and the intended purpose of the research results.

The interviews were conducted as open-ended conversations, using a semi-structured protocol. The interviews began with gathering of background information, such as where the respondent teaches, the locations of their students, and the nature of their coursework. We asked respondents to expound on their survey responses and to describe the materials access and sharing problems that they faced, as well as explain challenges with designing appropriate assignments. We then asked how they coped with these problems and adapted their work to accommodate them. Finally, we asked what each respondent would do differently within their courses if they were not faced with such barriers.

Results

Survey respondents were free to choose which survey questions they wanted to answer. Moreover, for most multiple-answer questions in the survey, they could choose any number of answers that resonated with their own experience, so that we could determine how common different problems were. This option for response also accommodated the reality that they often experienced multiple issues and problems. Therefore, as we indicate below, for some questions the results and percentages reported in this study sometimes refer to the total number of answers to the question and not necessarily to the total number of respondents who chose to answer a particular survey question.

Interviews universally reinforced conclusions from the survey. All interviewees are referred to here with they/them pronouns to protect identity.

Fifty-three survey respondents chose to disclose in which regions they are or have been located when they teach. The survey question asked respondents to choose all options that apply. From these 53 respondents, all five regions of the world are represented. (This survey used existing categories routinely employed by Education International.) Middle Eastern respondents could choose between the relevant regions—Africa, Europe, and Asia.

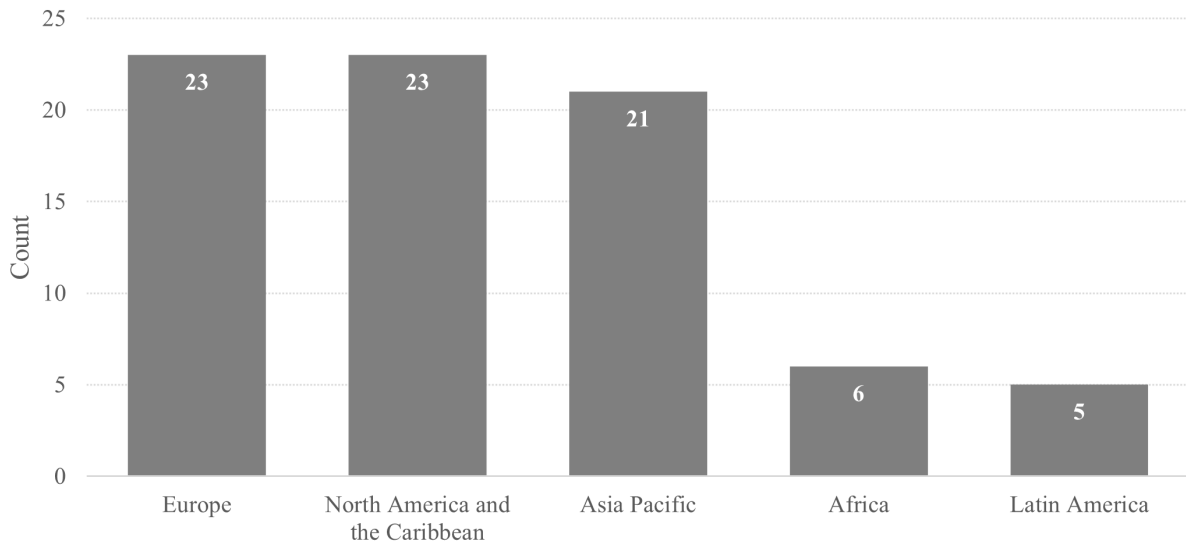


Figure 1 – Where respondents were located

Students and co-teachers are also located in all five regions, as seen among 52 survey respondents who chose to disclose this information. More students and co-teachers than respondents were situated in Asia and Latin America. The majority of cross-border teachers who took the survey were located in Europe or North America and the Caribbean, but the majority of students and co-teachers were located in Europe or Asia.

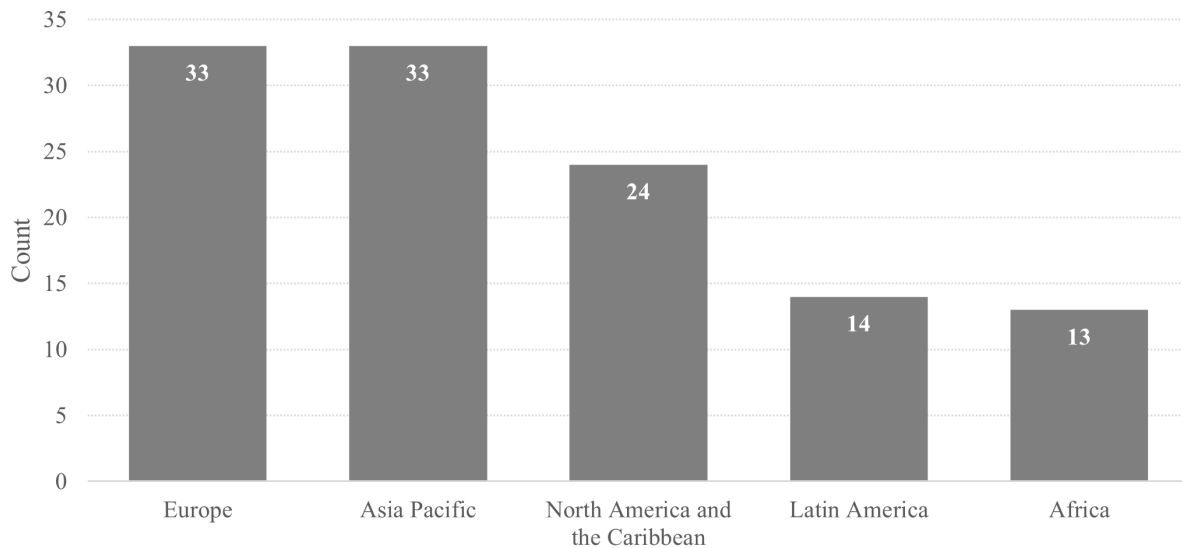


Figure 2 – Where students and co-teachers were located

Problems in cross-border teaching

About half of cross-border teachers reported copyright problems. Out of 157 respondents to that question, 51% reported either they had encountered copyright problems or were not sure if that was the case.

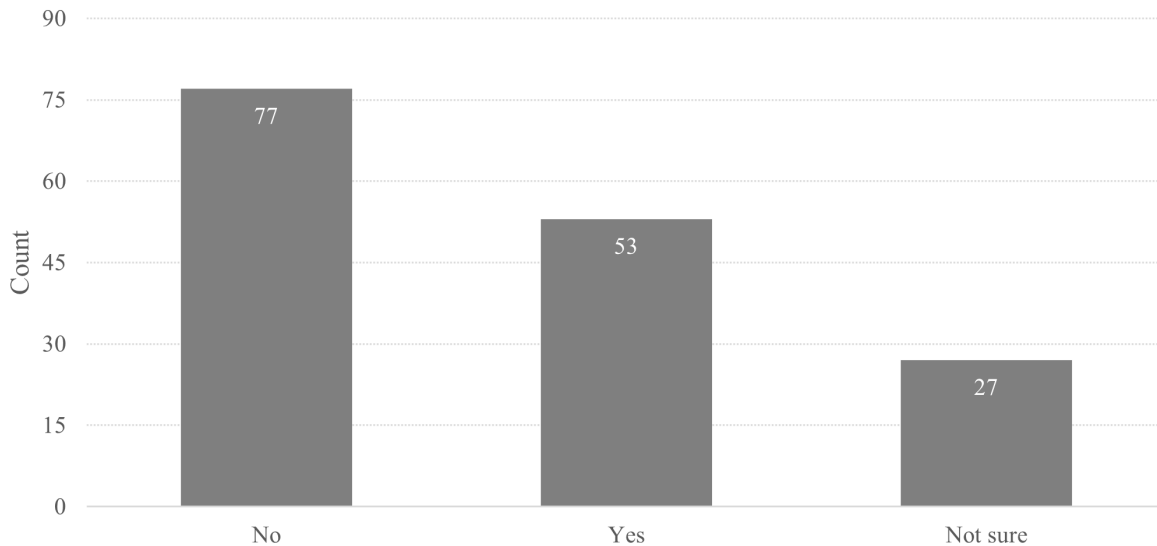


Figure 3 – Experience of copyright problems in cross-border teaching

When it comes to the types of problems they encounter, out of 146 respondents, people reported typically experiencing more than one challenge. The most common was about access to materials. Over half of the responses (aggregating answers in Table 1) registered that students or teachers could not access materials across borders. Access problems included their own incapacity to display teaching materials to students in another country (20%), libraries that impeded access (11%), problems when sharing materials (10%), or difficulties accessing material that is in a different country (11%).

Table 1 – Problems encountered with copyright (N=146)

Answer	%	Count
1. Can't show/display teaching materials in class to students in another country	19.86%	29
2. Costs were too high to purchase/license materials for use in another country	18.49%	27
3. Other (please explain)	15.07%	22
4. Library would not provide access to materials to teacher or students in another country	10.96%	16
5. Can't access teaching materials that are in another country	10.96%	16
6. Can't share teaching materials with international co-teacher or students	10.27%	15
7. Can't break encryption to quote from material because it is illegal in one of the countries involved	4.79%	7
8. Can't share student work outside course in one of the countries	4.11%	6
9. None	2.74%	4
10. Not sure	2.74%	4

The teachers' problems with copyright thus fell into several categories:

- Difficulty with access for the teachers, usually because the library does not have it (answer 2; 20%)
- Difficulty sharing material that the teacher can access across borders with either co-teachers or students (answers 1, 4, and 6; 42%)
- Trouble accessing or sharing material students or co-teachers can access elsewhere

- (answers 5 and 8; 15%)
- Difficulty sharing material that otherwise would be amenable to copyright exceptions because of automated copyright controls built into teaching platforms and applications (answer 7; 5% plus some comments under answer 3)
- Inability to use exceptions because of overriding anticircumvention policies (5%)

While these categories are shaped from selections the respondents chose, they did not substantially add to the provided options by using the category “other.” One respondent noted that students were infringing, potentially (“one student had the book and all the other students had photocopies”). Others repeated information in the named categories, for example, content being unavailable or blocked in different territories on various digital platforms such as YouTube. As well, people noted a lack of support from the university to help students and staff to figure out copyright.

We were able to analyze the same results by region, although we were limited in what we could explore because most regions included nations with very different characteristics. Across the regions, respondents seemed to be facing copyrights problems in similar proportions. The regional categories, while used by Education International for all its research, are not useful for drawing distinctions between, for instance, more and less industrialized nations or more and less copyrighted material producing nations. As well, teachers had often taught in multiple jurisdictions in their careers, and often had students in multiple jurisdictions, sometimes in the same time period, making it inadvisable to isolate any one of their experiences on a geographical basis. Finally, certain areas were overrepresented.

Coping with copyright problems

One hundred four respondents shared how they cope with the copyright challenges they face when teaching across borders. They could choose more than one option. One-fifth (21%) of responses indicated they try to ignore copyright problems in general. One respondent wrote, “While I teach how to navigate copyright / IP issues according to my home [deleted name of country] copyright law, I don’t concern myself too much with seeing how this relates to IP law elsewhere.” This shows both an awareness that different copyright regimes would affect the students’ work and a lack of obligation to consider it. For students producing work in the other country, the other country’s copyright law would of course be the relevant one to use. Very likely, within a classroom setting, even electronically, such work is not likely to be under scrutiny, but many students (for example, film, journalism, or creative writing students) produce work that will circulate in the world.

Table 2 – Coping mechanisms (N=104)

Answer	%	Count
I change the materials I use	37.50%	39
I ignore the problems	21.15%	22
Other	16.35%	17
I change the assignments I use	14.42%	15
I provide different assignments to people in different countries	7.69%	8
I have decided not to teach a particular course	1.92%	2
I decided to co-teach with someone in my own country	0.96%	1

Those who did not ignore copyright or who faced problems of access in spite of it found workarounds, to cope with not being able to use their first-choice material. Many respondents, however,



even when they were employing work-arounds to get access to materials for themselves and for students, had to change their teaching to accommodate copyright problems. The bulk of the survey responses (60%) reported some sort of adaptation of teaching. Teachers change the materials (38%) or the assignments they use (14%). They also provide different assignments to people in different countries (8%), necessarily involving more work. In a few cases (3%), teachers reported giving up, either by deciding not to teach a particular course (2%) or by giving up the idea of co-teaching with someone in a different country (1%).

Among respondents who answered “other,” teachers mentioned approaches “like showing a short extract of (copyrighted) content”—a statement that demonstrates a failure to understand any of the exceptions available to the teacher. Another mentioned asking the “library to purchase the materials when they can,” although this would not address the immediate problem, and assuming a financial burden (“I purchase materials for my personal collection and use them in class”). Some relied on colleagues, like one who “asked a colleague to download a video file and send it to me over email” (authors’ translation). Using open-access or Creative Commons–licensed materials was also mentioned.

Among the minority of respondents who provided written comments, a few also shared that they had committed what they understood to be copyright infringement. We deliberately avoided asking respondents specifically about actions they believed violated rules or laws to minimize any threat to our respondents, but a few volunteered this information anyway. When we asked interviewees about work-arounds, some of the common responses were: “We have ways” and “We make it work.” All of them divulged without reservation techniques that could infringe copyright. These work-arounds included sharing content among colleagues, using VPNs, copying online streams and then uploading them, or using a database such as LibGen or SciHub.

“We breached copyright rules to make the course work by providing PDFs to readings,” one survey respondent noted. Another wrote, “Students use VPN and illegal downloading services to access materials.” The widespread practice of photocopying or otherwise reproducing materials from one copy, especially among students, was also mentioned. One wrote,

Mostly I ignore the copyright laws and find ways to bypass systems. There are many ways (VPN + TOR + library passwords from overseas colleagues + Sci-Hub and other similar websites) to obtain and share materials that can’t easily be policed or traced.

These practices also include asking colleagues in other copyright jurisdictions to help them. One interviewee set up a Facebook group for their class, to share course readings by uploading PDFs to the group. They said the reason for this was that their university may have paid for a license to a specific text but that the university in which their students were located did not, and so they were otherwise unable to obtain access to it. A survey respondent wrote that they occasionally upload copyrighted films to Vimeo so that their students can access them, using Handbrake to break encryption on the film. They explained that, when looking for a film, they initially go through all the legal channels that are expected of them to try to make the works available.

Some teachers openly expressed caution and deliberate avoidance of work-arounds, sometimes out of concern for what their copyright choices may entail for the institutions they are working in and for. For instance, one respondent said:

[National] law [in a country in the Global South] allows for flexible use of copyrighted material for academic purposes and institutions; however, I am teaching here from [an institution in] another country and the material I am looking at sharing with colleagues and students is subject to this other country’s domestic law and more restrictive licensing terms. Out of

cautiousness and in order to prevent any unintended legal challenge for the academic institution in [other country], I avoid using that material when teaching there remotely.

More often than not, their university systems are stretched for resources and there is insufficient copyright advice available. One respondent stated:

University left students and staff to figure out copyright on their own. According to [national] copyright law, a lot of copying is LEGAL IN EDUCATION or RESEARCH (non-profit). Especially during COVID, with many international students (and staff) living in other jurisdictions this posed a problem that was never addressed and no support was offered.

Time and energy are not the only costs involved. Material costs can be involved, including personal ones. One interviewee stated that they have purchased films with their own money in order to upload and share it with their students because the film was not otherwise available from the library, and they did not want to direct students to Netflix, since some might not have an account available to them. Another survey respondent mentioned, “Currently, our library, which was once open to buying anything and everything because they were building a collection, now has a limited budget.”

Uncertainty and confusion about copyright are common. Out of those survey respondents who answered whether they have encountered copyright problems or not, almost a fifth (17%; $n = 27$) answered they were unsure about their own experience. Sometimes teachers reported copyright challenges such as national censorship blockages; censorship is, in actuality, usually a political policy choice. Conversely, some described contract terms as not related to copyright. In fact, of course, contract terms are enabled by copyright, which creates the value protected by the contract. Contracts that libraries sign with vendors are indeed grounded in copyright policy.

Discussion

The Problems

Teachers face a range of problems related to copyright, as this study has shown. The majority of respondents to the survey, as well as all the interviewees, reported having problems with copyright. Most of these problems concern access to and sharing of the original material, or contract terms, either of the university library’s license or of the teaching or sharing platform used. In some cases, exceptions could be useful in sharing materials, if copyright laws align, contracts allow it, and automated systems on platforms permit it. However, generally, applying exceptions would not address problems of access; most of the problems educators had were not solvable using educational, library, or fair use/fair dealing exceptions.

Some were problems of access because of library holdings; some were problems of access because of the limitations of platforms; some were problems of enforcement of one nation’s copyright policies in another via electronic platform policies. Overall, these are problems of control and circulation of material under copyright regimes that publishers have leveraged and that platform designers are building to minimize their own involvement in copyright issues.

Interestingly, often teachers do not identify the problems they experience, particularly problems with access, as copyright problems, even though they are caused by copyright policies. Figure 4 demonstrates the commonality of teachers’ experience at one remove from, but directly linked, to copyright policy.

For instance, teachers may experience problems with library access because of vendor contracts or low budgets to purchase copyrighted materials. For cross-border teachers, the costs of licensing

and purchase, a direct exploitation of copyright monopoly, get in their way. E-book access terms can be so limited that they are unworkable for cross-border teachers. In 19% of responses, teachers complained that materials were hypothetically available under copyright but not affordable to use in the country in which they taught or in which students needed to access the material (Table 1). Some respondents complained that textbook companies limited access to necessary worksheets to students in the country of licensing, while the respondents taught students in another. Their university's license did not cover other territories, and companies could detect access outside the territory authorized. They noted as well experiencing problems when "overseas students can't access materials through university databases." These are all problems related to the contract terms libraries agreed to with their vendors. Either libraries did not negotiate such terms, or vendors did not permit broad access (it is impossible to predict where future students may be located, for instance), or the price of global access would be out of reach.

Teachers' issues with copyright may also be experienced as problems with the terms of service or technological limitations of platforms. Automated bots searching out copyrighted material are notoriously bad at identifying copyrighted material or are unable to identify an exempted use of copyrighted material. Some respondents, including one interviewee complained of being blocked on platforms such as Zoom or proprietary learning-management software from using material under a legitimate copyright exemption. One wrote, "Film clips and images from certain streaming services are blocked/blacked out from Zoom even though the usage is educational fair use."¹ In a few instances (5%), people specifically reported not being permitted under law (e.g., under anticircumvention laws similar to the Digital Millennium Copyright Act) to break encryption on media that they wanted to access in order to employ user rights under an exemption (Table 1). In all these cases, it is probable that technological mechanisms—and in the case of DMCA-like laws, the law itself—go well beyond copyright in blocking the use of copyrighted material. Such mechanisms routinely overreach in their automated searches.

Teachers may also experience copyright-related problems with geo-blocking because of control over copyrighted material. In any case, their problems all go back to tight control over copyrighted materials, sometimes well beyond the requirements of copyright law itself.

Access problems are not caused by copyright alone, however. One common problem reported by the teachers, both in surveys and in interviews, is governments' national-level blocking of entire platforms, such as YouTube, for censorship or other reasons of the state, for example, privileging its own national platforms. This can happen on a temporary basis or be part of a permanent policy. As well, national governments exercise censorship in other ways; for instance, in South Korea, it is illegal to use any materials from North Korea in teaching.

How Teachers Dealt with Problems

With one fifth of respondents openly saying they ignored what they believed to be either institutional rules or a nation's laws, we saw a substantial minority of teachers who were willing to openly acknowledge that they did not consider copyright when executing their mission. Presumably, these people also found private workarounds to address the needs they experienced that led them to ignore copyright restrictions. Three respondents/interviewees also stated that they were able to "fly under the radar" in this way because their courses were comparatively small. Many more respons-

¹ This comment, in using the phrase "educational fair use," demonstrates a loose lay understanding of the law. In jurisdictions where fair use applies, educational and fair use exemptions are distinct, although both may legitimately apply in a teaching context. Fair use is easily imaginable in the scenario provided.

es, indeed the great majority—even from those who were willing to flout rules—involved reluctantly finding second-tier curriculum and materials.

Some teachers believed they were just too unimportant for someone to care: “I share/use the materials anyway and wait to see if anyone will sue me.” Others felt they were pioneering a technique that later would require better resources to be expanded. Some chose second-choice materials, redid assignments, or otherwise adapted their courses to provide what they believed to be an inferior experience. A few abandoned hope.

Why do teachers do the kind of adaptation that they do?

In such an uncertain and potentially risk-taking scenario, what values are being upheld so that teachers keep trying to deal with the copyright challenges they face? Meeting their own mission appears crucial to choices when teachers decide to go “under the radar.” One communications teacher explained in interview that they chose these options because they are “deeply committed to these films being available, and finding ways to do it. If these films aren’t findable, they won’t be found, and we’ll lose entire eras and subgenres.” One survey respondent noted that

if it gets to a point if something is unavailable due to geography or lack of ownership, I will [find a work-around]. Because it means the scholarship and analysis of that text will otherwise be unachievable. If we can’t analyze questions or look deeply, it means we can’t question society—and that’s the space I work in.

The respondent thus faced challenges both because of geographical barriers (we presume geofencing, but there could also be barriers because a website was blocked in the relevant country) and because their university did not provide access to the material. This experience shows the range of issues that a teacher can face in creating even one teaching module.

Another survey respondent wrote:

With films and broadcast content, it is often necessary just to decide not to use the resource, or rely on asking the students to watch it in their own time if they can. Sometimes a risk-managed approach like showing a short extract of such content may feel justifiable for educational purposes.

Of particular interest in this response is that this respondent described what is probably a routine exercise of a relevant copyright exception as “a risk-managed approach.” This indicates lack of education on the use of copyright exceptions in educational settings.

Another respondent expressed a radical critique of the consequences of copyright law in general because of the ways it violates a teacher’s mission to foster knowledge:

Scholarship and my students come first. I work in a underdeveloped, non-Western context where libraries do not have the resources to get journal and database access. Moreover, I consider the typical copyright period for artistic and academic material (usually 70-plus years) immoral. Consider, in contrast, the relatively short period of protection (about 20 or 30 years) for discoveries by pharmaceutical companies. It has never been adequately explained to me why a pharmaceutical company can recover many hundred millions in expenses in such a short period, but why access to an out-of-press book from someone long dead should be restricted. ... To give a concrete example, a central database for both my research and teaching is the HathiTrust Digital Library.² However, most poor universities do

² HathiTrust Digital Library (HDL) is a large-scale collaborative repository of digital content from about 80 research libraries in the United States, Canada, and Europe. It includes works from those collections digitized via Google Books and the Internet Archive digitization initiatives, as well as content digitized locally by libraries. All its

not have (and presumably cannot afford) access. Also, HathiTrust uses geoblocking, meaning that it is possible to access more materials if one is based in the United States. Copyright is thus reinforcing existing inequalities. Also, frustratingly, many of the electronic texts with restricted access held by HathiTrust are actually no longer covered by copyright. I can only presume that there are no resources at HathiTrust to check the copyright status of each text, meaning—I can only guess—that HathiTrust has erred on the side of caution and blocked materials that have not been checked. I give financial support to the Internet Archive in the hope that it might one day enable global access to the resources restricted by for-profit institutions.

The idea that copyright reinforces existing inequalities in the teaching environment, especially across borders and in non-Western contexts, resonated with other respondents too. Whether teachers were wary, cautious, resigned, entrepreneurial, or politically motivated around copyright policy, they commonly put their students' education above all else. They were resentful about being forced to find work-arounds, to make second-best choices, and to forego rewarding pedagogical experiences.

What are the implications of the obstacles teachers encounter?

The results of the survey clearly show that only in a minority of cases did teachers say that they chose to find work-arounds, legal or not, to their copyright problems. Often, they were stuck with second-choice options, more labor, and wasted time on a project that could not go forward. And even teachers who chose work-arounds often had to settle for less. In all these cases, as the teachers were acutely aware, the loss was not only their individual loss, but a loss to individual student experience in that course and, more importantly still, to the development of truly cross-border pedagogy.

The copyright problems reported, as seen in the Results section, limit the resources available to teachers and students and, furthermore, may also impede creativity. They keep teachers from motivating students to do their best work. For instance, one respondent mentioned, "We teach how to get around [copyright], and most projects do have to be clearable [according to the Global North country] IP law, but we have some archive-based projects where we relax this in order not to stifle creativity." Not everyone thinks they can afford to relax their copyright standards, and not everyone even has that choice. These problems prompt some teachers, however reluctantly, to harmonize their teaching—and make their payments—to the more restrictive environment, as seen in the Results section. Teachers may avoid what would be their first choices for teaching because of copyright constraints, thus limiting their full teaching potential. They may have to settle for second- or third-choice materials and take valuable time to find them.

Whatever their choices, teachers who work across borders told us that their work-arounds require extra time and effort, not always with the same results as their first choice would have had.

contents are accessible to members of the collaborating institutions. The library's contents are also fully searchable, with only snippets displayed to the general public in the case of copyrighted works. The general public may access public-domain materials in full. Digital access to full texts of copyrighted works is provided as well to patrons with print disabilities certified by a partner institution. Copyright status of the holdings is determined by the work's bibliographic information. Access for the general public depends in part on the user's IP address, which is taken into consideration in calculating the work's status in different copyright regimes. For other purposes, for instance computational or nonconsumptive use (analyzing large bodies of text for patterns, not for the specific work), US copyright law is the default.

For instance, one respondent mentioned, “It is not so much that there are barriers/problems, it is the fact that it is so time-consuming to clear and also to check that there are no tech issues in student access.” An interviewee stated that one of the biggest “costs” to the teacher was time spent searching for alternative course content because their first choice was blocked due to copyright restrictions.

When asked what would be different for them if not presented with these copyright barriers, many respondents responded that they would save substantial time from either searching for alternative content or finding work-arounds. Students may also share some of this extra labor burden and face the difficult choice whether to potentially infringe copyright. This both increases student labor and inhibits their learning mission. One respondent extended these perceived effects to their students, explaining that “it would make students’ lives easier” if certain films weren’t blocked in the students’ countries.

Conclusion

Copyright, in some form, is very present in the minds of the teachers we contacted, although they often experience those problems as lack of material, as frustration with platforms, and with differences in customs in different jurisdictions. They also lack information about copyright, as well as support in finding out more about it or problem-solving. Even if they did understand the affordances of their own copyright law, however, it might not address their access problems, and they might well discover disjunctures with copyright law in the regions they teach in or into. They experience frustration, the necessity to change course design or selected materials, and the need to change course assignments. They sometimes choose to do or permit activities that they believe may violate the law, out of a commitment to their pedagogical mission.

Such cautiousness and risk-taking cost teachers and students not only their teaching creativity and content options but also time and energy. Just navigating what types of content they can or cannot introduce to their cross-border students adds to their teaching workload. Moreover, teachers do not always have the support they need to understand their rights and limits when it comes to sharing material with their cross-border students.

The results of the survey and interviews reinforce previous conclusions in the literature and provide experiential detail on the costs to the educational experience, both from a teaching and a learning side. As documented above, teachers experience copyright confusion, lack of support, lack of proper library access from their own institutions, prohibitive pricing, and technical blocking.

This has direct and profound effects on their work, impeding their mission and limiting their ability to share success. Expansive copyright in any one jurisdiction, as well as conflicting copyright regimes, limit the quality of teaching, as shown by teachers’ need to use personal work-arounds, change curriculum, and abandon projects. It necessarily inhibits the growth of the sector, since personal work-arounds cannot be shared publicly, and substandard pedagogy is unlikely to inspire adoption.

Copyright policy is inevitably entangled in questions of how to access and share pedagogical resources. If teachers who work across borders have more reliable access to materials, more confidence in their pedagogical choices, and better access to resources, they could do better, more efficient work meeting their pedagogical mission.

Whatever measures are taken to improve the options for teachers who work across borders, the voice of teachers themselves will be crucial to any changes, at an institutional or a governmental level. Teachers are the frontline implementers of the educational mission, and the educational mis-

sion is at stake when copyright impedes teachers' work. Pedagogy that can lower educational inequity across national borders is in jeopardy when copyright impedes the work of teachers teaching across borders.

Limitations

The survey was limited by the number of respondents, as well as our inability to verify whether they reported accurately the realities of teaching across borders. Because we are dealing with a sensitive legal issue, we presume some respondents may have been hesitant, even with our promise of anonymity in the survey and confidentiality in the interview, to mention actions that might be technically illegal, such as sharing copyright-protected content widely with students. We also did not investigate in what ways the teachers' cross-border experiences are different from their experience, or that of others like them, solely within their own territories. Certainly, the access problems they encounter could well occur in a single-nation experience as much as across jurisdictions. Further studies could gather information from a wider pool of respondents, provide comparisons between single-jurisdiction and multiple-jurisdiction teaching, and obtain more demographic and experiential data to provide comparisons among subgroups.

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References

- Aufderheide, P., & Jaszi, P. (2018). *Reclaiming fair use: How to put balance back in copyright* (2nd ed.). The University of Chicago Press.
- Bechtold, S., Buccafusco, C., & Sprigman, C. J. (2016). Innovation heuristics: Experiments on sequential creativity in intellectual property. *Indiana Law Journal*, 91(4), 1251–1493. <https://www.repository.law.indiana.edu/ilj/vol91/iss4/5/>
- Bense, K. (2016). International teacher mobility and migration: A review and synthesis of the current empirical research and literature. *Educational Research Review*, 17, 37–49, <https://doi.org/10.1016/j.edurev.2015.12.001>
- Bollier, D. (2006). *Ready to share: Fashion & the ownership of creativity*. Norman Lear Center Press.
- Bonadio, E., Contardi, M., & Tanwar, A. (2022). Copyright and teaching in times of pandemic. *European Intellectual Property Review*. Advance online publication. <http://dx.doi.org/10.2139/ssrn.4251220>
- Bowrey, K. (2020). *Copyright, creativity, big media & cultural value: Incorporating the author*. Routledge Books.
- Bowrey, K., & Handler, M. (Eds.) (2014). *Law and creativity in the age of the entertainment franchise*. Cambridge University Press.
- Boyle, J. (1997). *Shamans, software, and spleens: Law and the construction of the information society*. Harvard University Press.
- Boyle, J. (2008). *The public domain: enclosing the commons of the mind*. Yale University Press. <http://libros.metabiblioteca.org/handle/001/269>
- Cate, B., & Samberg, R. (2021). Privacy. In S. Althaus, D. Bamman, S. Benson, B. Butler, B. Cate, K. <https://doi.org/10.17161/jcel.v7i2.21653>

- K. Courtney, S. Flynn, M. Gould, C. Hennesy, E. Dickson Koehl, T. Padilla, S. Reardon, M. Sag, R. Samber, B. L. Schofield, M. Senseney, T. Vollmer, & G. Worthey (Eds.), *Building legal literacies for text data mining* (pp. 154–168). University of California, Berkeley. <https://doi.org/10.48451/S1159P>
- Caravatti, M. L., Lederer, S. M., Lupico, A., & Van Meter, N. (2021, December 13). *Getting teacher mobility & migration right*. Education International. <https://www.ei-ie.org/en/item/25652:getting-teacher-migration-and-mobility-right>
- Chen, Q., & Panda, S. (2013). Needs for and utilization of OER in distance education: A Chinese survey. *Educational Media International*, 50(2), 77–92, <https://doi.org/10.1080/09523987.2013.795324>
- Eldred v. Ashcroft, 537 U.S. 186 (2003). <https://supreme.justia.com/cases/federal/us/537/186/>
- Flynn, J., Giblin, R., & Petitjean, F. (2019). What happens when books enter the public domain? Testing copyright's under use hypothesis across Australia, New Zealand, the United States and Canada. *University of New South Wales Law Journal*, 42(4), Article 8. <https://ssrn.com/abstract=3401684>
- Flynn, S., & Sag, M. (2020). International and cross-border copyright. In S. Althaus, D. Bamman, S. Benson, B. Butler, B. Cate, K. K. Courtney, S. Flynn, M. Gould, C. Hennesy, E. Dickson Koehl, T. Padilla, S. Reardon, M. Sag, R. Samber, B. L. Schofield, M. Senseney, T. Vollmer, & G. Worthey (Eds.), *Building legal literacies for text data mining* (pp. 41–99). University of California Berkeley.
- Giblin, R., & Weatherall, K. (2015). At the intersection of public service and the market: Libraries and the future of lending. *Australian Intellectual Property Journal*, 26(4). <http://ssrn.com/abstract=2647705>
- Gilmour, A., & Garcia, I. B. (2021). The challenges of copyright education and the Covid-19 pandemic as a catalyst for change. *Journal of Learning Development in Higher Education*, 22. <https://doi.org/10.47408/jldhe.vi22.806>
- Golan v. Holder, 132 S. Ct. 873 (2012). <https://www.law.cornell.edu/supremecourt/text/10-545>
- Handke, C., Guibault, L., & Vallbé, J. J. (2021). Copyright's impact on data mining in academic research. *Managerial and Decision Economics*, 42(8), 1999–2016. <https://doi.org/10.1002/mde.3354>
- Hassan, M. M., Mirza, T., & Hussain, M. W. (2020). A critical review by teachers on the online teaching-learning during the COVID-19. *International Journal of Education and Management Engineering*, 10(8), 17–27. <https://doi.org/10.5815/ijeme.2020.05.03>
- Hudson, E. (2022, February 24). *Updated copyright guidance for using films, audiovisual works and images in online teaching: Beyond the COVID pandemic*. <https://dx.doi.org/10.2139/ssrn.4042770>
- Hudson, E., & Wragg, P. (2020). Proposals for copyright law and education during the COVID-19 pandemic. *Northern Ireland Legal Quarterly* OA35, 71(4), <http://dx.doi.org/10.2139/ssrn.3617720>
- Jaszi, P. (1994). On the author effect: contemporary copyright and collective creativity. In P. Jaszi & M. Woodmansee (Eds.), *The construction of authorship: Textual appropriation in law and literature*. Duke University Press.
- Joyce, C., Leaffer, M., Jaszi, P., & Ochoa, T. (2006). *Copyright law* (7th ed.). LexisNexis.
- Jütte, B. J. (2019). Uneducating copyright – Member states can choose between “full legal certainty” and patchworked licensing schemes for digital and cross-border teaching activities. *European*

- Intellectual Property Review*. Advance online publication. <https://ssrn.com/abstract=3432311>
- Kaplan, B., & Geik, I. C. (2005). *An unhurried view of copyright, republished (and with contributions from friends)*. LexisNexis Matthew Bender.
- Larivière, V., Haustein, S., & Mongeon, P. (2015). The oligopoly of academic publishers in the digital era. *PLoS ONE*, 10(6). <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0127502>
- Minčić-Obradović, K. (2011). *E-books in academic libraries*. Chandos Publishing.
- Mohan, M. R., & Gupta, A. (2022). Right to research and copyright law: From photocopying to shadow libraries. *NYU Journal of Intellectual Property & Entertainment Law*, 11(3), 249–304. <http://dx.doi.org/10.2139/ssrn.3930041>
- Norris, S., Duff, S., & Gause, R. (2021). Rapid response: Developing a suite of copyright support services and resources at the University of Central Florida during the COVID-19 pandemic. *Journal of Copyright in Education & Librarianship*, 5(1). <https://doi.org/10.17161/jcel.v5i1.15133>
- Patterson, L. R., & Lindberg, S. W. (1991). *The nature of copyright: A law of users' rights*. University of Georgia Press.
- Piora, G., Jütte, B. J., & Mezei, P. (2022). Copyright and digital teaching exceptions in the EU: Legislative developments and implementation models of Art. 5 CDSM Directive. *II – International Review of Intellectual Property and Competition Law*, 53, 543–566. <https://link.springer.com/article/10.1007/s40319-022-01179-6>
- Santosh, S., & Panda, S. (2016). Use of open educational resources in distance education – Opportunities and challenges in Indian scenario. *Staff and Educational Development International*, 20(1), 39–54.
- Sieghart, W. (2013, March). *An independent review of e-lending in public libraries in England*. Department for Culture, Media and Sport. <https://www.gov.uk/government/publications/an-independent-review-of-e-lending-in-public-libraries-in-england>
- Sprigman, C. J. (2018). Copyright and creative incentives: What we know (and don't). *Houston Law Review*, 55(2), 451–478. <https://ssrn.com/abstract=3095740>
- Torres, M., & Xalabarder, R. (2019). *Interim report on practices and challenges in relation to online distance education and research activities*. World Intellectual Property Organization. https://www.wipo.int/meetings/en/details.jsp?meeting_id=53646
- Tushnet, R. (2009). Economies of desire: Fair use and marketplace assumptions. *William and Mary Law Review*, 51, 513–546. <https://scholarship.law.georgetown.edu/facpub/22>
- Tushnet, R. (2007). Payment in credit: Copyright law and subcultural creativity. *Law and Contemporary Problems*, 70(2), 135–174.
- Wahid, R., & Azmi, I. M. A. G. (2012). Comparative study on copyright exception for teaching purposes: Australia, Malaysia and the United Kingdom. *Journal of International Studies*, 8, 31–45. <https://e-journal.uum.edu.my/index.php/jis/article/view/7925>
- Waldfoegel, J. (2012). Copyright protection, technological change, and the quality of new products: Evidence from recorded music since Napster. *Journal of Law & Economics*, 55(4), 715–740. <https://doi.org/10.1086/665824>
- Westbrook, R. B. (1991). *John Dewey and American democracy*. Cornell University Press.

APPENDIX

Hypothetical situations

Our respondents and interviewees deserve the anonymity we promised them, so in this report we have eschewed providing specific details about any one teacher's situation. Here, in order to draw appropriately from their experience, we provide synthetic scenarios based on what we heard from teachers.

Scenario One: Missing a Crucial Piece

Peter Pedagogue works in a country in the Global South for an institution in the Global North. He teaches Introduction to Biology online to students in various countries. As he is required to do for this required course, he uses a textbook assigned by his teaching unit to all teachers of the course. His students have access to the textbook inside the learning management system they all use. But some of them can't get access to the interactive, multimedia, online worksheets and tutorials, given the country they are from. The textbook manufacturer also locks out anyone using a commercial VPN.

Scenario Two: It Was Working Fine Until....

Tamar Teacherly produces weekly course modules from her home office in a country in the Global North. Her course attracts students from Global North and South. Her political science lectures are full of news clips, audio and video from press conferences, and excerpts from articles—all illustrating her arguments about the interrelationships between diplomacy and journalism. But she has discovered that the online platform she uses has an automatic detection system for copyrighted material and blocks the clips and excerpts from showing up. Professor Teacherly is no hacker, and no techie. And her institution doesn't offer her any help, either.

Scenario Three: So Near and Yet So Far

Fred Frankly works in the Global South, in a different country from the institution for which he works, which is also in the Global South. His job is to teach history to undergrads who sign up from various locations. He uses segments from documentary films and sometimes whole films in his teaching, and some of them are only available on streaming services. In some countries where his students are, these platforms are not available. The government in some of those countries frowns on—and can detect—use of VPNs.

Scenario Four: But It's on Netflix!

Petra Professor teaches in a country in the Global South for an institution in the Global North. She teaches a course on contemporary media to students in the Global South. She often finds the students cannot access the films she wants to show them because the films are only available from streaming services in the Global North. Although some of her students have accounts for this streaming service, the service's offerings in their country do not include what Petra wants to show.

Scenario Five: But It's in the Library!

Isha Instructor works from a branch campus located in the Global North for a university that is in a different country in the Global North. Her students are located in several countries. The sociology publications that Isha wants to share with her students are only hosted on the main campus's

platform and cannot be accessed by the students in the other country because the university did not include such terms in its license agreement. Isha does not want to break the law or encourage her students to break the law.

Scenario Six: It Was a Great Idea

Taika Tester and Gary Grader work in two different countries, one in the Global North and one in the Global South. They have developed an innovative, collaborative curriculum to study cross-cultural international studies, focusing on conflict resolution. Their institutions have very different learning platforms, library resources, and copyright laws. While their universities are excited about the idea of collaboration, the professors' efforts to find ways to work together in practice, using their universities' own platforms, have been futile. A lot of the time, they can't even find someone who can answer their questions. They have resorted to widely shared commercial platforms such as Facebook to hold class discussions and share materials both among the teachers and with the students. So far, no one in either professor's institution has complained. Even so, their experiment has not been replicated because they are reluctant to publicize their methods for fear they might be doing something that is technically wrong.