

COPYRIGHT AND EDUCATION IN EUROPE: 15 Everyday Cases in 15 Countries

Teresa Nobre, April 2017

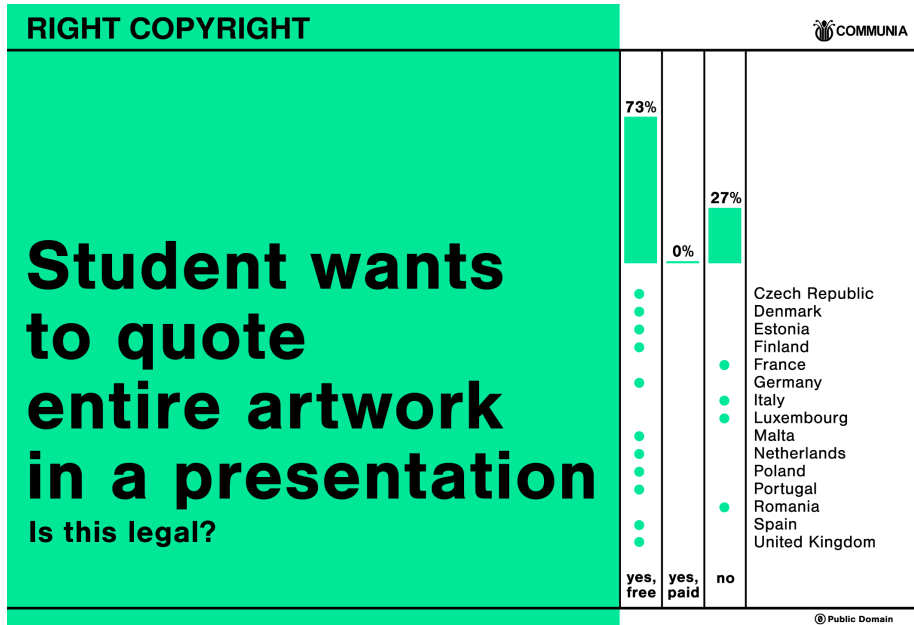
This is a summary of the study Copyright and Education in Europe: 15 everyday cases in 15 countries, which is available online at: <https://rightcopyright.eu/why-now/>

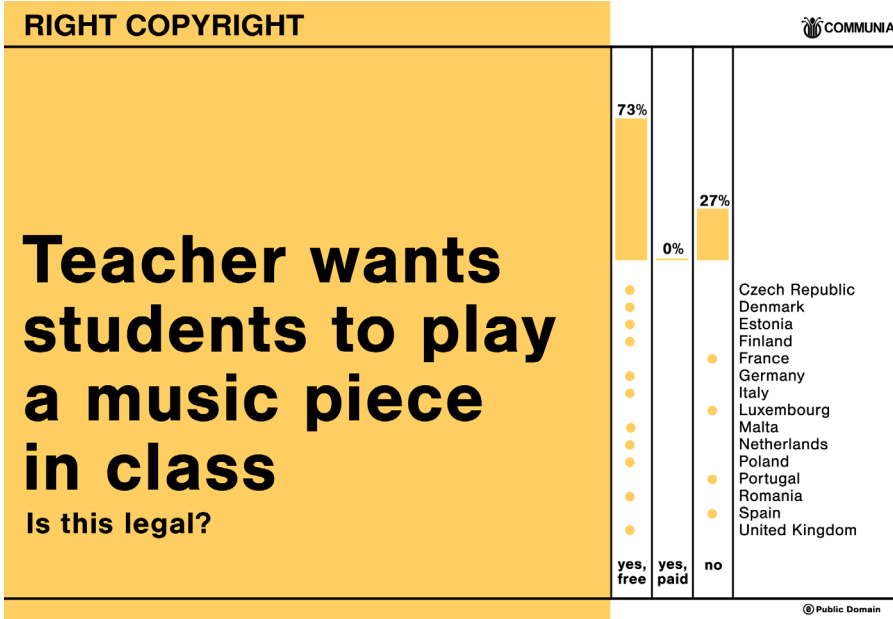
This study intends to demonstrate the impact exerted by narrow educational exceptions in everyday practices. It accomplishes this purpose by resolving 15 hypothetical educational scenarios involving the use of protected materials under the copyright laws of 15 European countries: the Czech Republic, Denmark, Estonia, Finland, France, Germany, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain and the United Kingdom.

I. Materials available for educational uses

This study's findings indicate that not all copyrighted works are treated equally in the context of education. Some educational exceptions exclude the use of certain types of works (textbooks and

academic books in France and Germany, dramatic works and cinematographic works in Denmark and Finland and musical scores in France and Spain). Other laws contain restrictions in relation to the extent or degree to which a work can be used for educational purposes, thus creating obstacles to the use of entire works, namely short works (e.g. individual articles, short videos and short poems) and images (e.g. artworks, photographs and other visual works). Finally, several legal provisions only permit educational uses of "published works", thus potentially excluding the use of works made available to the public by ephemeral or transient means that do not involve the making of copies of the work, such as performance, exhibition and broadcasting.





II. Traditional Educational Practices

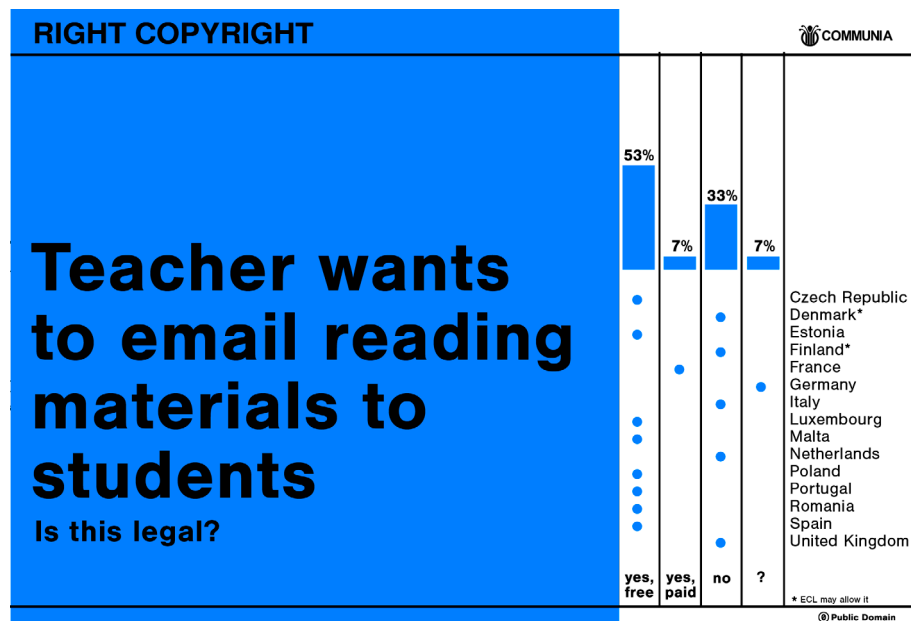
Performances, recitations and displays of protected works and other subject matter are permitted in most of the countries analysed under general educational exceptions. However, extent restrictions in France, Luxembourg, Portugal and Spain, and the

exclusion of certain types of works from the scope of the exception in Denmark, Finland, France and Spain hinder the performance of an entire piece of music and/or a dramatic work and/or the screening of an entire film in class.

Italy, Germany (through case law), the Netherlands, and the United Kingdom do not consider performances, recitations or displays made in the context of an educational activity to be public performances. In other words, those activities are excluded from the scope of copyright protection, and educators and learners in these countries do not have to worry about the extent of use, the payment of compensation/remuneration, or compliance with the three-step test.

III. Modern Educational Practices

Most of the countries under analysis permit the acts of use involved in classroom visualization of materials that are freely available online. This activity may even be permitted in all of the 15 countries considering the interpretation given by the Court of Justice of

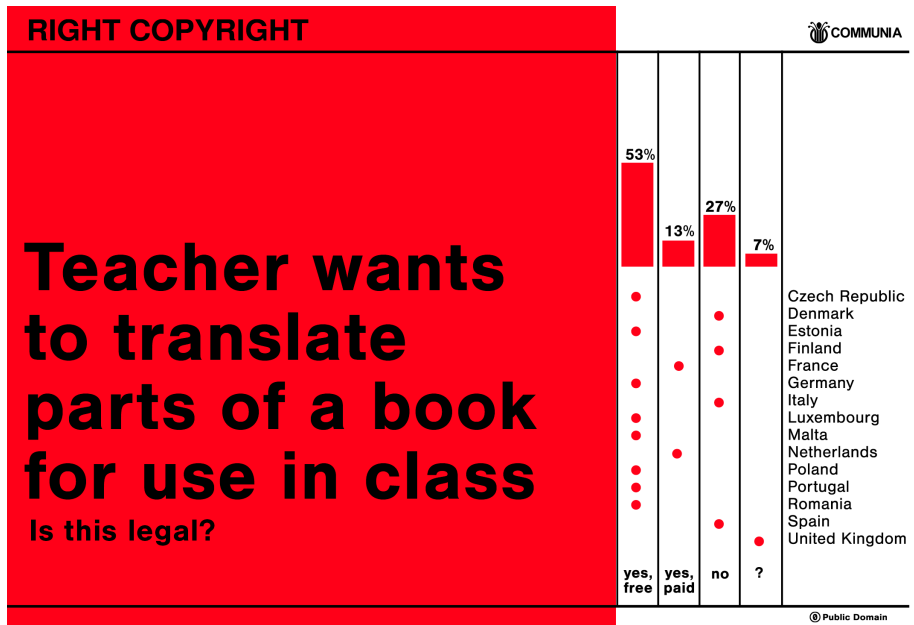


the European Union on the scope of application of the harmonized right of communication to the public. However, since EU case law is not clear-cut, a cautious approach was adopted and uses were analysed in light of the existing national copyright exceptions. The study shows that countries that differentiate between public performances and public communications may offer different solutions depending on whether the visualization of materials is made through a website or a DVD.

The legal standing of sharing educational materials via email, the cloud, chatrooms, etc. is not entirely clear in some of the countries under analysis, though most of them allow the use of these means of communication. When it comes to sharing resources through online platforms, only Spain and the United Kingdom expressly require such use to be made through a closed/secure electronic network, accessible only by students and teachers from a given educational establishment.

IV. Creation of Educational Materials

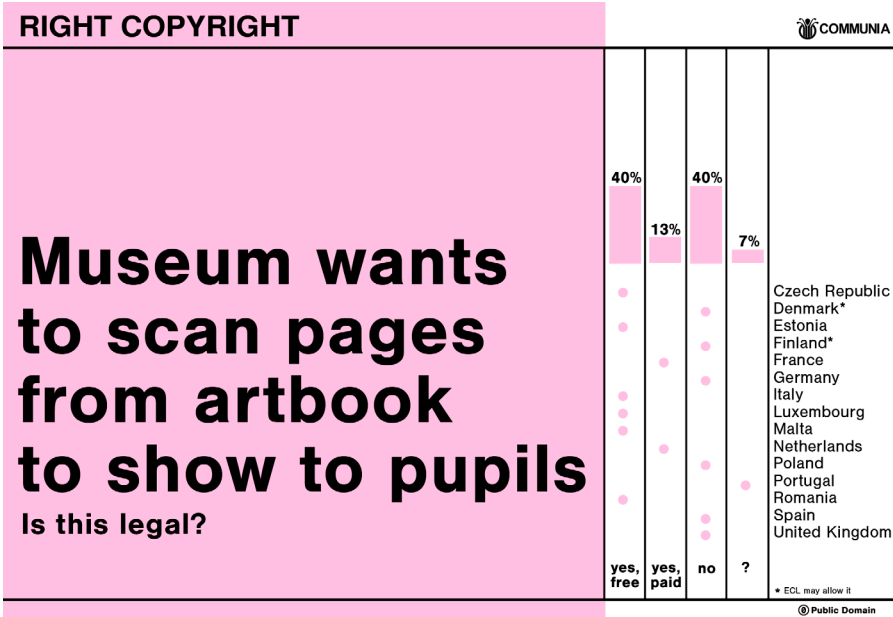
Compilations are only prohibited in Spain. Nevertheless, many countries do not draw a distinction between a set of materials created by a teacher and a publication intended for commercial use, requiring compensation/remuneration to be remitted in both cases.



Denmark, Finland, Italy and Spain are the only countries in the selected group that do not have legal provisions in their national laws permitting translations or other adaptations of protected works and other subject matter for educational purposes.

V. Non-Formal Education

The majority of the countries under analysis does not discriminate against the person or entity running the educational activity, focusing solely on the educational purpose of the use. However, a significant number of them only allows educational uses if they are made



by schools or other formal educational establishments. In Germany, Italy, Poland, Portugal, Romania, Spain and the United Kingdom, museums, libraries and other providers of non-commercial education must therefore ask for permission before making certain uses of protected materials in their educational programmes.

Conclusion

In sum, the countries analysed do not always provide for exceptions and limitations to copyright that support necessary access, use and reuse of protected works and other subject matter in the context of digital and non-digital educational activities developed by teachers and students in educational establishments. In addition, several countries fail to embrace the fact that education is now conducted in various locations by a multitude of institutions and learners.

Four main obstacles to traditional and modern ways of using protected works and other subject matter in an educational context were identified in the national laws of the 15 countries analysed: act of use; type of user; type of work; and extension of work.

These scenarios show that, unless substantial legal changes are implemented, several European countries will be stuck with narrow copyright exceptions that will continue to curtail educational practices at various levels and across borders.