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An Empirical View of the Extent of the Use of the Education Exception to Copyright^{*1}

Abstract. The article is based on a study commissioned by the Ministry of Justice entitled ‘Extent of Use of Educational Exceptions of Copyright’. The presumed rationale for this is that holders of rights are not compensated for the use of copyright works and subject matter of related rights under the educational exception. In turn, holders of rights would like to be compensated for such use. Therefore, the results of this study, which reveal what is being used and to what extent, can serve as one of the legal policy inputs for addressing the issue.

The study was based on a survey. When drafting the questionnaire, it had to be taken into account that it was not answered by copyright experts, but by the staff of the educational institution. For this reason, a specific use was asked. The definition of an educational institution was based on subsection 3 (2) of the Republic of Estonia Education Act, according to which educational institutions are above all preschool education institutions, basic schools, upper secondary schools, vocational educational institutions, institutions of professional higher education, universities, hobby schools and continuing education institutions, including the research and methodology institutions which provide services to them.

Depending on the specialty, very old works whose copyright has expired (more than 70 years after the death of the author) may also be used. Mapping the use of such works was not the aim of this study, which was also emphasised in the questionnaire.

This study looked at copyright awareness, form and volume of copying, etc. in relation to literary and reference works, photographs, musical works, and audiovisual works. The authors of the study found that the surveyed works are the most widely used in educational institutions.

The results of the study were further verified through focus group interviews. Further input for the interpretation of the results was also obtained from the copyright training provided to the questionnaire respondents.

Keywords: copyright, educational exception, educational institution

¹ This article is based on a report commissioned by the Estonian Ministry of Justice in light of the authors’ Estonian-language paper representing the results of a survey of the extent of education-based exceptions’ use in relation to copyright and reporting on associated methodology. The paper, published by the University of Tartu in 2022, was available via <<https://www.just.ee/uuringud>> as of 24 April 2023.

1. Introduction

The issue of the educational exception^{*2} arising from Estonia's Copyright Act^{*3} has been addressed in *Juridica* on several occasions. In 2020, the journal printed the article 'Students and Copyright'^{*4}, which opens the system of copyright exceptions for fuller examination from a student perspective. This was followed by a paper whose title translates to 'The Educational Exception in Copyright Law'^{*5}, presenting in-depth analysis of the legal framework of the educational exception (including the EU directives on which that exception has its foundations). This article is not intended to repeat the analysis published in the previous papers. Neither does it take them as a position of departure. To fulfil its purpose as a stand-alone work that does not require reading the articles referred to above, we must briefly discuss the legal framing of the educational exception, in the next section, to ensure a common basis for understanding. Then, we can directly address the aim for the article: to provide an empirical perspective on the use of the educational exception – i.e., what is actually happening in the field of education in relation to it – and to explain what this could mean in the context of potential amendments to copyright law. Legal analysis of the educational exception is not the main focus of the article.

This paper is anchored in a study commissioned by the Ministry of Justice under the title 'Extent of Use of Educational Exceptions of Copyright'. The presumed rationale for reviewing the matter is that rightholders, who are not compensated for the use of copyrighted works and matter subject to related rights under the educational exception^{*6}, would like to receive compensation for such use. By revealing what is actually being used and to what extent, the results of this study could serve as one of the inputs for legal policy addressing the issue.

The study was based on a survey.^{*7} When drafting the questionnaire, the researchers had to take into account that the respondents would be not copyright experts but staff of educational institutions. For this reason, it probed specific uses. As for sampling, the definition of an educational institution was based on the language of Subsection 3 (2) of the Republic of Estonia's Education Act^{*8}, according to which educational institutions are, above all else, preschool child care institutions, basic schools, upper secondary schools, vocational educational institutions, institutions of professional higher education, universities, hobby schools and continuing education institutions, including the research and methodology institutions which provide services to them.

This study looked at copyright awareness, the form and volume of copying, etc. in relation to literary and reference works, photographs, musical works, and audiovisual works. At this point, one might ask what considerations led to considering the use of these types of works specifically. Professional experience in the field of education played an important role in the choice of works: the researchers carrying out the study chose to concentrate on the types of material most widely used in educational institutions. It should be noted that some fields of study refer to very old works, whose copyright has expired (with more than 70 years having passed since the death of the author).^{*9} As the questionnaire emphasised, mapping the use of such works was not aligned with the aim of this study.

Further supporting the validity of the study's results, the researchers employed focus-group interviews for verification purposes.

² The exceptions furnished by copyright rules that allow the use of copyrighted works (e.g., books, images, and music) and related rights objects (performances, phonograms, etc.) for purposes of education. While speaking of educational exceptions in the plural would be more accurate technically – since copyright law establishes several restrictions supporting use for educational purposes – we have opted for the term 'educational exception' to express an umbrella concept that covers all the limitations (exceptions) made to copyright for education-related purposes.

³ RT I 1992, 49, 615; RT I, 29.6.2022, 2.

⁴ A Kelli and others, 'Students and Copyright' [2020](5) *Juridica* 378.

⁵ K Nemvalts and A Kelli, 'Hariduserand autoriõigused' [2021](10) *Juridica* 705. The title, in Estonian, translates to 'The Educational Exception in Copyright Law'.

⁶ At the same time, remuneration for reprographic reproduction of a work (see s 27¹ of the Copyright Act) extends to the reproduction of a work for educational and scientific purposes in a correspondingly motivated volume within educational and research institutions (see cl 19 (1) 3) of the Copyright Act).

⁷ The questionnaire used in the survey is annexed to the study report; see A Kelli, Ä Leijen, and M Pedaste (n 1).

⁸ RT I 1992, 12, 192; RT I, 15.3.2022, 1.

⁹ According to the general rules of copyright law, copyright is valid for the remainder of the creator's lifetime and for 70 years after the creator's death (see sub-s 38 (1)).

2. The education-based exception to copyright

The questionnaire for the study of the extent of using the education-based exception was prepared in consideration of the specific exceptions made for educational purposes via the Copyright Act. The educational exception to copyright (formed of these limitations) is based on several copyright rules.^{*10} Section 19 of the Copyright Act sets out three cases to which that exception applies. Neither the author's consent nor the payment of remuneration is required in any of these cases; however, it is necessary to cite the author and the publication source.

Firstly, the educational exception allows the use of a lawfully published work as illustrative material for educational and scientific purposes, to an extent commensurate with this motivation and provided that said use does not pursue commercial aims. This is known as the educational exception 'for illustration'.^{*11} Reliance on it is not directly linked to the activity being situated within an educational institution. According to the explanatory memorandum^{*12} on the law transposing the DSM Directive^{*13}, this exception is formulated in terms of the objective, not the institutional setting: the beneficial use of the exception must be for learning purposes.^{*14}

The term 'use' is broader in nature than reproduction (copying). It can refer to not only copying but also processing and making available to the public (e.g., in a conference presentation). There is a certain overlap with the citation exception.^{*15} As for differences, the latter is not limited to non-commercial purposes, and the volume of use motivated in connection with the educational exception analysed here is expected to be larger than that following from citation-related motivation. Legal literature has clarified that 'illustration', which denotes use of a part rather than the whole, means giving a specific example and should not involve reproduction of the whole work. That said, in certain cases, the use of the complete work is not excluded. For instance, a complete poem may be used as illustrative material.^{*16}

Secondly, a lawfully published work may be reproduced for educational and scientific purposes to a justified extent (in length terms) within educational and research institutions whose activities do not pursue commercial aims. This is the educational exception 'for reproduction' (see clause 19 (1) 3) of the Copyright Act). In the case of this exception, the activity must take place in an educational or research institution. This exception allows copying. Sharing copies with students should still fall under the exception described in the previous paragraph (the educational exception for illustration), however, because the activities permitted are centred on use, not copying.

According to the explanatory memorandum on the act of law transposing the DSM Directive, 'under the current law, the free use of a work for educational purposes (§19 (2) and (3) of the Copyright Act) is structurally one of the cases of free use for which compensation to the rightholder is not explicitly provided. However, it should be noted that in accordance with subsection 27¹ (1) of the Copyright Act, the author and the publisher have the right to receive remuneration for the reprographic reproduction of the work, inter alia, in the case referred to in subsection 19 (3) of the Copyright Act. This means that one of the exceptions already [made] in the current legislation in the field of education is still partly compensated free use'.^{*17}

Thirdly, the legal provisions for the educational exception authorise reproduction of a lawfully published work in digital form and communicating it to the public solely for the purpose of illustration to the extent

¹⁰ This section of the paper provides a brief overview of the educational-exception issue to aid in making sense of the results of the empirical study of the exception at issue. For more in-depth treatment of the subject, see Nemvalts and Kelli (n 5).

¹¹ See cl 19 (1) 2) of the Copyright Act.

¹² Explanatory memorandum to the draft act amending the Copyright Act (transposition of copyright directives) 368 SE, first reading, 2021 <<https://www.riigikogu.ee/tegevus/eelnoud/eelnou/d3d07943-9d1c-4ebe-94a4-8ae1ebdf7a68>> accessed 26 April 2023.

¹³ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ L130, 92–125.

¹⁴ Ibid, p. 21.

¹⁵ Clause 19 (1) 1) of the Copyright Act states: 'The following is permitted without the authorisation of the author and without payment of remuneration if mention is made of the name of the author of the work, if it appears thereon, the name of the work and the source publication: making summaries of and quotations from a work which has already been lawfully made available to the public, provided that its extent does not exceed that justified by the purpose and the idea of the work as a whole which is being summarised or quoted is conveyed correctly.'

¹⁶ H Pisuke, Autoriõiguse alused. (2006) 86. The book's title, in Estonian, translates to 'Basics of Copyright'.

¹⁷ This is the wording applied by the explanatory memorandum (n 12) p. 21.

justified by the purpose of use and on the condition that the use is made for non-commercial purposes, under the responsibility of the educational establishment, on its premises, at other physical venues, or in a secure electronic environment accessible only by the educational establishment's pupils/students and teaching staff. This specific exemption (the educational exception 'for digital use', per clause 19 (1) 3²) of the Copyright Act) was recently introduced via the Act amending the Copyright Act^{*18} and follows from the DSM Directive. Recital 20 of that directive identifies the beneficiaries of this exception thus: 'While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should, therefore, benefit all educational establishments recognised by a Member State, including those involved in primary, secondary, vocational and higher education. It should apply only to the extent that the uses are justified by the non-commercial purpose of the particular teaching activity. The organisational structure and the means of funding of an educational establishment should not be the decisive factors in determining whether the activity is non-commercial in nature'.

The Copyright Act is not consistent in its application of terminology. For example, it variously uses the terms 'educational and research institution'^{*19}, 'educational establishment'^{*20}, and 'educational institution'.^{*21} The Supreme Court has held that the term 'educational institution' in the Copyright Act must be interpreted as having a meaning similar to that in the country's Education Act.^{*22} In principle, it can be assumed that the educational exception for digital use is applicable to educational institutions as defined in the Education Act. This is, in fact, stated in the explanatory memorandum accompanying the draft act amending the Copyright Act (for transposition of copyright directives).^{*23}

The DSM Directive does not oblige Member States to compensate the rightholder for any damage resulting from the implementation of the educational exception for digital use. Recital 24 of the DSM Directive provides the following explanation: 'Member States should remain free to provide that rightholders receive fair compensation for the digital uses of their works or other subject matter under the exception or limitation provided for in this Directive for illustration for teaching. In setting the level of fair compensation, due account should be taken, inter alia, of Member States' educational objectives and of the harm to rightholders. Member States that decide to provide for fair compensation should encourage the use of systems that do not create an administrative burden for educational establishments.' Accordingly, Member States have the right to provide for compensation to rightholders for use under the educational exception.

Lastly, there is the educational aspect of the public performance of a work. According to Section 22 of the Copyright Act, '[t]he public performance of works'^{*24} in the direct teaching process in educational institutions by the teaching staff and students without the authorisation of the author and without payment of remuneration is permitted if mention is made of the name of the author or the title of the work used, if it appears thereon, on the condition that the audience consists of the teaching staff and students or other persons (parents, guardians, caregivers, etc.) who are directly connected with the educational institution where the work is performed in public'.

There have been several important court rulings related to the educational exception for public presentation. For example, the Supreme Court has clarified that 'it would be inconsistent with the aim of section 22 of the Copyright Act if the exception could be applied only to performances of works on the territory of a particular educational institution where the performers study or work. There may be a number of reasons for organising a school event elsewhere (e.g. the school's premises are too small, renovation, etc.), which do not affect the justification for applying the exception'.^{*25} The Supreme Court stressed in that

¹⁸ RT I, 28.12.2021, 1.

¹⁹ Clause 19 (1) 3) of the Copyright Act.

²⁰ Clause 19 (1) 3²) of the Copyright Act.

²¹ Section 22 of the Copyright Act.

²² RKTko 2-16-17491, 27.11.2019, para 15.2.

²³ Explanatory memorandum (n 12) p. 21.

²⁴ The right to public performance of a work is the property right belonging to the author for 'public performance of the work as a live performance or a technically mediated performance' (cl 13 (1) 7) of the Copyright Act).

²⁵ RKTko 3-2-1-159-16, 27.2.2017, para 17.

judgement also that delimiting the beneficiaries of the education-linked exception for public presentation such that they consist solely of persons involved in the education process is of central importance.^{*26}

In addition, the personal-use exception (addressed by Section 18 of the Copyright Act) may form a basis for the use of material for educational purposes.

Importantly, the effects of these exceptions are not limited to works protected by copyright (books, pictures, and music). They also encompass objects protected by related rights (such as performances and phonograms).^{*27}

3. Methodology for conducting the study

3.1. The study design and sample

The study had a discrete quantitative and qualitative phase. In the first, an electronic questionnaire was implemented in the LimeSurvey environment, hosted on a University of Tartu server. The survey process recruited teachers from pre-school institutions (kindergartens), schools providing general education, vocational-education and training institutions, and hobby schools (for hobby education) and lecturers at higher-education institutions. In the qualitative phase, three focus-group interviews were conducted to inform interpretation of the data collected in the quantitative phase. One group consisted of pre-school teachers; another comprised the teachers from general-education, vocational, and hobby institutions; and the third consisted mainly of higher-education teaching personnel. Institutions providing in-service training were not surveyed separately, but many of those surveyed were active in that domain.

Purposive convenience sampling served to ensure broad-based representation of all the groups surveyed, but it might have affected generalisability – only those who voluntarily responded to the invitation participated. Interviews were conducted with respondents who had indicated their willingness to be interviewed in the survey and who had provided a contact e-mail address (otherwise, responding was anonymous). Reducing such factors' impacts on generalisation of the results, the team increased the representativeness of the survey by means of recruitment that did not specifically target a group with a known position on copyright issues. Multiple electronic channels were used to recruit the teachers. For instance, both professional associations of teachers and the educational institutions themselves were requested to disseminate information on the survey, and teacher-training lecturers were recruited through the respective electronic mailing lists of the University of Tartu and Tallinn University. Higher-education lecturers in diverse disciplines were approached through the existing information channels of the higher-education institutions, through the relevant contact points in their human-resources and/or academic departments.

Figure 1, presenting the breakdown of the respondents by teacher category, indicates that 158 teachers in pre-school education, 412 in general education, 88 in vocational education, 89 in higher education, and 85 in hobby education participated in the study. Those respondents who taught at several institutions were asked to focus on the one they considered to be the main educational institution related to their work. The group engaged in hobby education displayed a slightly higher prevalence of working in private institutions as opposed to the national education system, and all of these private institutions charged their learners tuition fees.

²⁶ The position of the Supreme Court is expressed as follows: 'For the purposes of applying section 22 of the Copyright Act, the decisive factor is how wide the audience could be, taking into account the activities of the educational institution, and whether and how much the school charges for it, i.e. what was the purpose of the school's activities in organising the concert. In the circumstances of the present case, the advertisement for the concert was directed at the general public and everyone (including a large number of people not connected with the school) was able to buy a ticket and attend the concert. ... Consequently, not all the conditions for the application of section 22 of the Copyright Act, and thus also of section 17 of the Copyright Act, ... were fulfilled.' RKTko 3-2-1-159-16, 27.2.2017, paras 20–21.

²⁷ Section 75 of the Copyright Act, 'Limitation of related rights'.

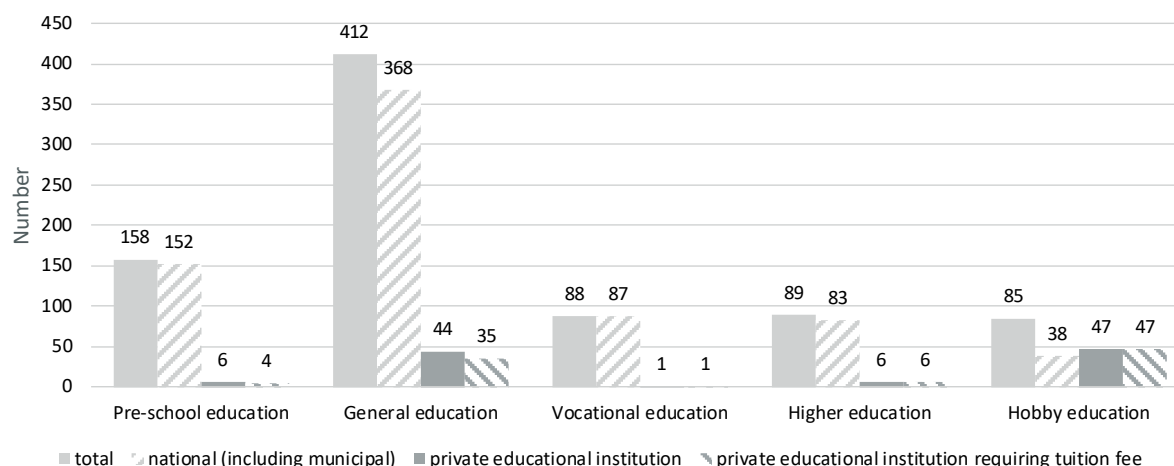


Figure 1. The breakdown of those completing the survey questionnaire between public and private educational establishments and by the main type of educational institution represented, also showing the prevalence of tuition fees in private educational establishments

The teachers were categorised in terms of the fields of study described in national curricula and other regulations. Among the kindergarten ('pre-school') teachers were group teachers, music teachers, movement teachers, and support specialists. General-education schools' teaching staff represented teachers of various specific subjects, year-based or 'homeroom' teachers, and support specialists. The vocational-education teachers covered the arts, business and administration, environment studies, information and communication technology, engineering, manufacturing and construction, agriculture, forestry, fisheries and veterinary medicine, health and well-being, and service-provision fields. Higher-education lecturers surveyed represented the humanities, arts subjects, the social sciences, business, administration and law, the natural sciences, education, mathematics and statistics, information and communication technologies, engineering, manufacturing and construction, agriculture, forestry, fisheries and veterinary medicine, and health and well-being. Participating teachers engaged in hobby education represented the fields of sport, engineering, nature, music, the arts, and general culture. A more detailed picture of the study's sample can be found in the open study report.²⁸ In sum, nearly all fields of study were represented at all levels of education, with the exception of the services field, which was not reflected in the set of higher-education personnel taking part.

In the survey, 116 respondents (14%) indicated that they were willing to participate in focus-group interviews. Representatives of each level of teaching were selected, for maximal variety among the informants. As noted above, interviews were conducted in separate groups with 1) teachers in pre-school institutions; 2) teachers at general-education schools, vocational schools, and hobby schools; and 3) university lecturers. In total, 14 teachers were invited to participate in the interview with group 1, of whom eight accepted. From the second group (general-education, vocational, and hobby schools), 18 teachers were invited to be interviewed, of whom seven proved eligible for interviews (three engaged in general education, three from vocational schools, and one from a hobby school). Finally, 13 lecturers providing higher education were invited to join focus groups, of whom six participated.

3.2. The questionnaire

The questionnaire was split into background questions (11 items) and copyright-related questions (33 items). The latter were subdivided into general questions and questions pertaining to specific categories of works (textbooks, workbooks, e-learning materials, and literary and reference works), photographs (a category including both general photographs and photographs of specific works of art), musical works, and audiovisual works. While the survey posed only 44 questions in total, most of them were complex and

²⁸ Kelli, Leijen, and Pedaste (n 1).

allowed for differentiation in terms of several features. Most items were multiple-choice, but respondents were given the option to add an open response where appropriate.

Prior to the main data collection, the questionnaire underwent pilot testing with three respondents, from different target groups. A separate survey session was held with each of them, during which they also filled in an ancillary questionnaire and, in parallel, took part in a cognitive interview aimed at clarifying any ambiguities in the instrument.

3.3. The focus groups

The focus group interviews followed a protocol drawn up to consist of an introduction, questions corresponding to the topics covered in the questionnaire, and a summary. They applied a semi-structured interview design and were conducted jointly by all authors of this article. One of them functioned in the leading role, as the primary interviewer and the facilitator of the discussion; the second asked various questions; and the third took notes.

3.4. Data analysis

In analysis of the questionnaire responses, the results were compared across groups, with estimation of the confidence intervals for the means. If the 95% confidence intervals for the means of the two groups compared did not overlap, the result was considered statistically significant. All interviews were transcribed, and examination of the data followed the principles of thematic analysis²⁹. In addition to highlighting the main themes and sub-themes, the team compared responses across target groups (i.e., across categories of teachers). The results of the thematic analysis are presented in the next section, in connection with interpretation of the quantitative results.

4. Results of the study

Several patterns were evident in conceptions of general copyright issues and the use specific to individual classes of work in the context of learning activities. With regard to the former, respondents in our survey rated their knowledge of copyright law as average. The interviews and copyright training received after administration of the questionnaire uncovered some uncertainty and a need for further training and guidance materials.

One of the first substantive questions, pertaining to the form of copying (physical or digital copies), revealed that the use of paper materials clearly depends on the educational institution. These were employed most often in pre-school education and nearly as frequently in schools (with no statistically significant difference). Use of paper materials was relatively prominent in hobby education too, though still statistically significantly less prevalent than in pre-schools. Per the responses, they were used less frequently in both vocational schools and higher-education institutions. When material was copied, this was done slightly more often in digital form than via paper, on average, according to respondents' estimates. The difference is particularly marked for higher education, where paper copies proved almost non-existent.

To assess the volume of copying, the researchers asked in the questionnaire how many distinct types of work the respondents would estimate that they had copied digitally in the month preceding the survey. The instrument specified that this covered scanning written material, downloading or uploading a digital file online, sharing a file on a memory stick with a learner, making physical copies, and using other formats for learning purposes.

We found that those providing hobby education made the most copies, although there was extensive variation in the number within each group, rendering the averages for each group statistically insignificant in their differences from the others' (see Figure 2).

²⁹ V Braun and V Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology* 77. – DOI: <https://doi.org/10.1191/1478088706qp063oa>.

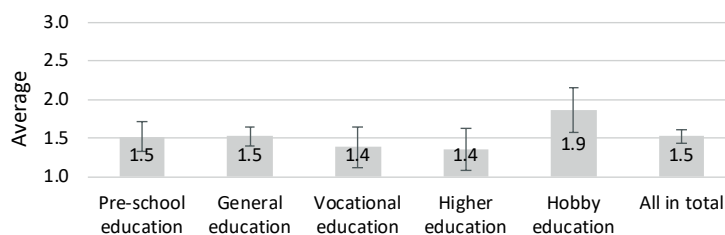


Figure 2. Responses to the item ‘How many distinct types of work (e.g., book, textbook, workbook, music and lyrics, film, photograph, game, etc.), in your estimation, have you copied digitally (e.g., by scanning written material, downloading or uploading a digital file from the Internet, or sharing a file on a memory stick with a learner) or on paper for learning purposes in the last month (September 2022)?’, where the scale is 0 = ‘None’, 1 = ‘1–5’, 2 = ‘6–10’, 3 = ‘11–15’, and 4 = ‘16 or more’)

Where material was copied, this very rarely involved complete works (as Figure 3 attests). The figure is slightly higher than average for teachers providing hobby education and relatively high also for kindergarten teachers, whose copying rate does not differ statistically significantly from those reported from hobby education.

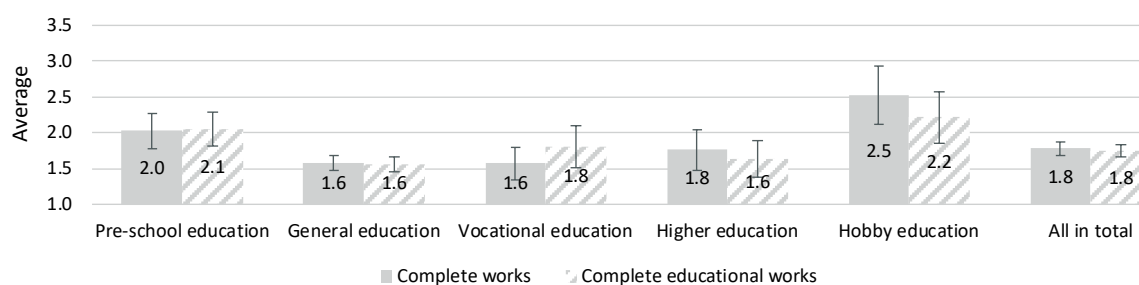


Figure 3. A plot of responses to ‘For teaching purposes, I have usually copied a complete work, whether educational or non-educational (e.g., a whole book, workbook, or piece of music) and not limited myself to extracts (such as a chapter or a few pages)’ (the response scale used the integers 6 to 1, for ‘Strongly agree’ to ‘Strongly disagree’) and ‘As a rule, I have copied materials created for educational purposes (textbooks, workbooks, etc.) in their entirety (a whole book, workbook, etc.) and have not limited myself to extracts such as a chapter or a few pages’ (on the same scale)

The remarks in interviews were consistent with the questionnaire results indicating that copying of complete works was very rare.

Although the Copyright Act in its current version does not distinguish between works created specifically for educational purposes and ‘ordinary works’ in the context of educational publishing, the study also examined the use of the former. This is necessary because a need to amend the Copyright Act accordingly in the future cannot be ruled out.

Kindergarten teachers appear the most likely to make copies of materials created for educational purposes that are available to the educational institution but not accessible directly to learners (as Figure 4 shows). We found no statistically significant difference between the usage practices of teachers in general education and those engaged in hobby education, while vocational educators and teachers providing higher education proved less likely than kindergarten and general-education teachers to copy materials created for educational purposes, though only for reasons of personal accessibility. However, kindergarten teachers did not share these copies as often as others and teachers in general education schools were marginally less likely to do so. This trend can be explained by the degree to which learners in the given setting are prepared for independent learning and the extent to which they are given independent-learning tasks.

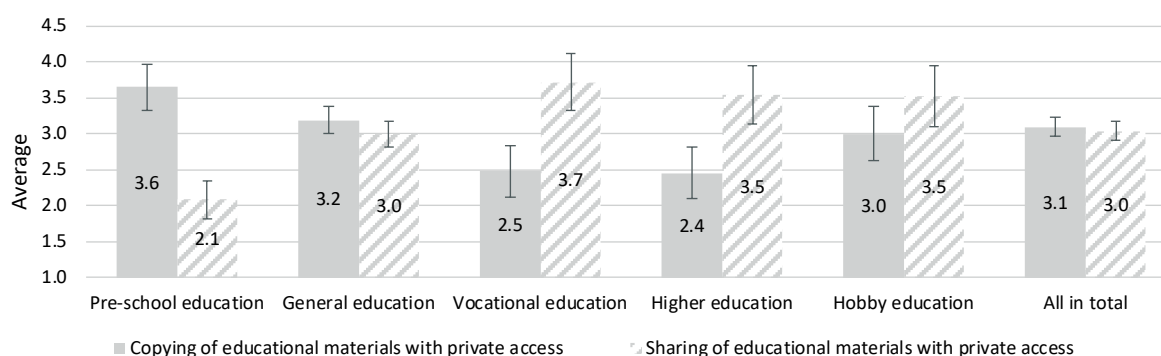


Figure 4. Responses to 'For purposes of teaching, I have copied educational materials (textbooks, workbooks, etc.) to which I have access (e.g., via the institution's methodology office) but to which my learners do not' (on an integer scale of 6, for 'Strongly agree', to 1, for 'Strongly disagree') and to 'I share copies (paper or digital) of educational materials I have created at home, for learners' education' (with the same scale)

Measured by the number of individual works involved, copying of literary and reference works was slightly more common than average in higher education, emerging as statistically significantly more commonplace than in general and hobby schools. Figure 5 reflects these patterns in the responses. We found no statistically significant differences between other groups. It is worthy of note that these works were very rarely copied in their entirety.

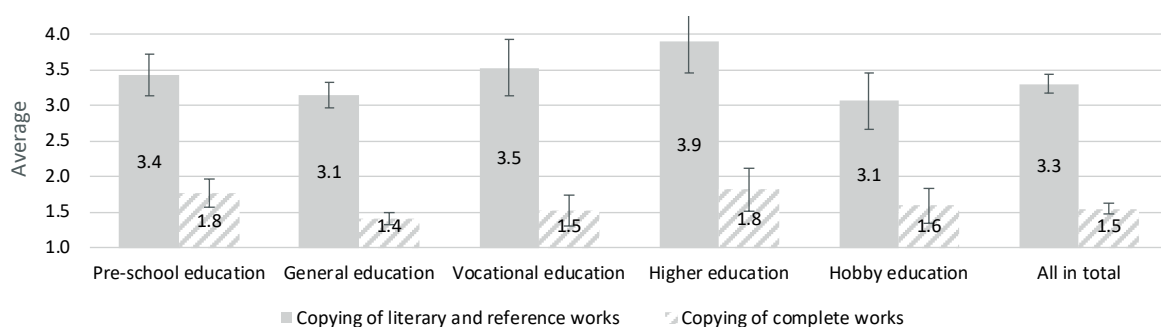


Figure 5. Responses for the items 'I have copied literary and reference works, and other written works (e.g., books, articles, drawings, illustrations, and diagrams), for teaching purposes' and the follow-on item 'When copying literary and reference works, I have copied the whole work and not limited myself to extracts (such as a chapter, a few pages, or some illustrations or diagrams)' (scale for both items: 6 to 1, for 'Strongly agree' to 'Strongly disagree', respectively)

As Figure 6 shows, the copies were relatively rarely shared for learners' home use. When educators did share them in this connection, it was most often in higher education and least often in kindergartens (the latter was the only statistically significant difference between groups in this regard).

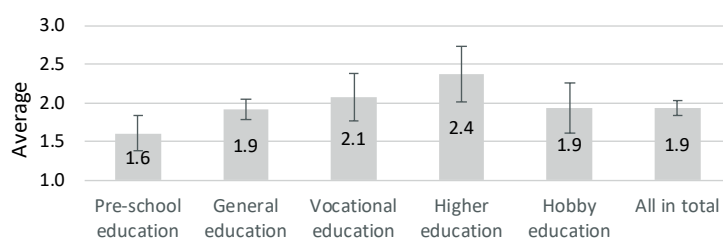


Figure 6. Responses for the questionnaire item 'I have handed out / provided copies of literary and reference works for learners to consult at home' (integer scale: 1 = 'Not at all' to 6 = 'Very often')

When respondents shared literary and reference works with learners, those providing vocational and higher education did so mostly by sharing the name of the work, general education and hobby schools manifested a roughly equal split between sharing the work's name and sharing a copy of either the entire work or a part of it, and the strongest preference in kindergartens was for sharing a copy of the whole work or part of the work. Figure 7 presents these findings graphically.

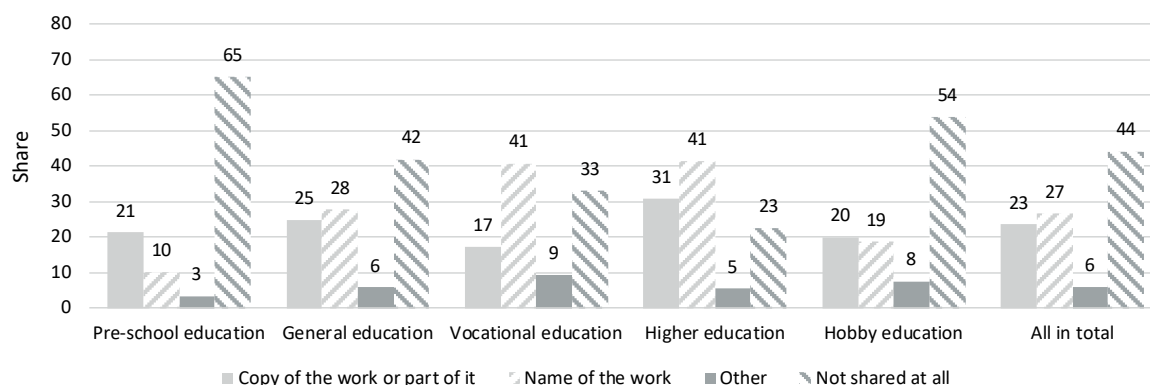


Figure 7. Questionnaire responses to 'When distributing literary and reference works to learners, I have made them available mostly in the form of: 1 = a copy of the work or part of it; 2 = the name of the work, so that learners can consult it independently; 3 = another form; 4 = no sharing at all'

Among educators, copying photographs was somewhat less common than copying literary and reference works, in respondents' estimation (see Figure 8). At the same time, the sharing of photographs differed little in prevalence from the sharing of literary and reference works, so it can be considered a more common activity for photographs in relative terms.

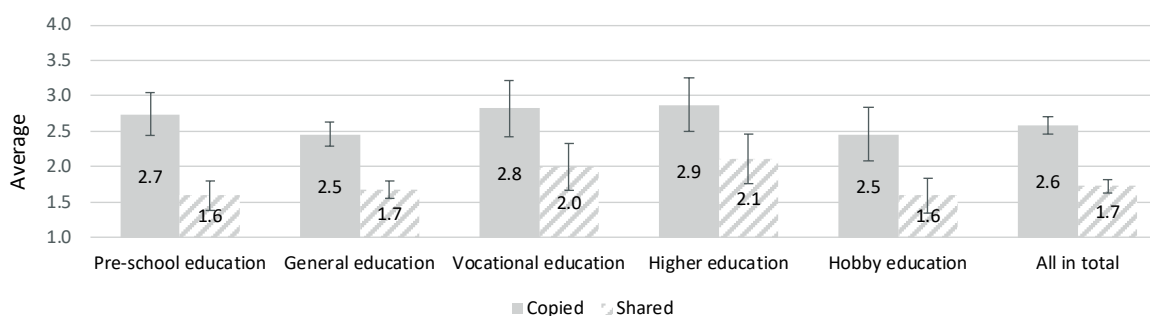


Figure 8. Responses to 'I have copied other people's photographs for teaching purposes, either on paper or digitally (whether as a single photograph or in a presentation)' and 'I have shared copies of photographs with learners and have not limited myself to showing these' (integer scale for both items: 1 = 'Not at all' to 6 = 'Very often')

Musical compositions were used relatively often by teachers in kindergartens and by those working at hobby schools, and their use was more frequent in general education than in vocational schools and higher-education institutions, as Figure 9 clarifies. In most cases, no statistically significant group-specific differences are visible between the use of excerpts and the use of complete works. Only in kindergartens was there a statistically significant difference: complete works were used less, in respondents' estimation.

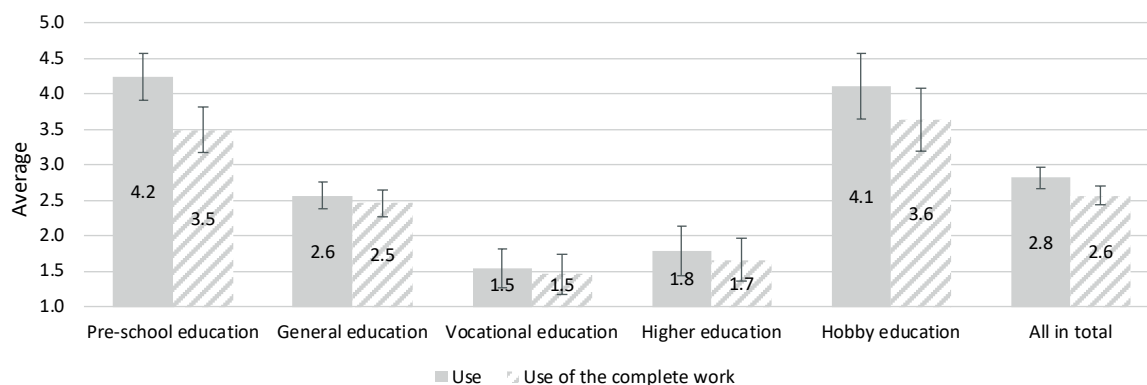


Figure 9. Responses to ‘I have used musical compositions (e.g., lyrics, a recording of music with or without lyrics, or a music video) in my teaching’ and the follow-up item ‘When I have used a piece of music, I have used the complete work and not limited myself to extracts (such as a part of the piece of music)’. The scale is the same as in Figure 8

When musical works were used for teaching purposes, the most typical means of doing so, across all of the various types of educational institution, was to perform a work found online without copying it. Figure 10 visualises this strong pattern and also attests that other uses probed in the questionnaire were very rare, showing only slightly greater prominence in kindergartens and hobby schools and not present at all in vocational schools.

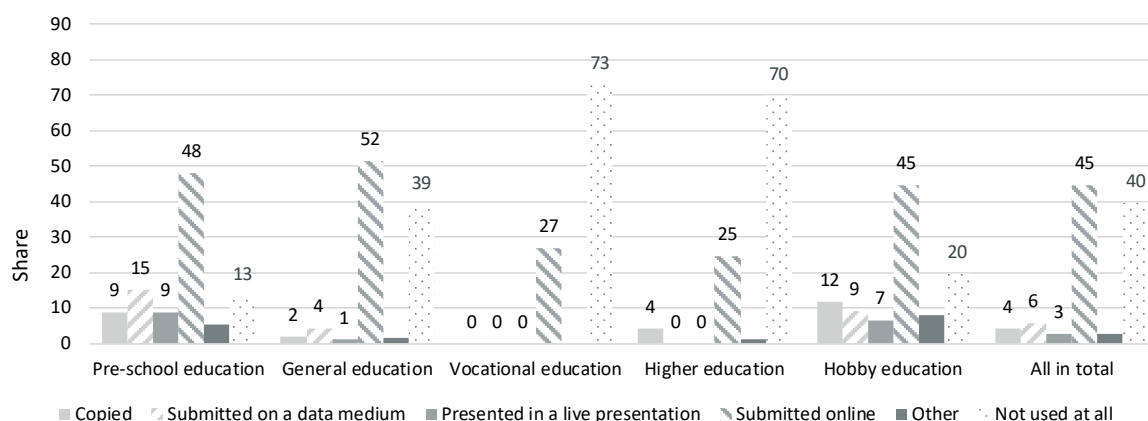


Figure 10. Responses to the survey item ‘When I have used a piece of music for teaching, I have mostly: a) copied a piece of music that I perform in the classroom; b) presented a piece of music via a physical medium (e.g., CD, DVD, or Blu-ray disc) to learners; c) presented a piece of music through a live performance; d) presented a piece of music from the Internet without copying it, such as by playing music via YouTube or Spotify for the class; e) done something else; f) not used it at all’

Audiovisual works were used least in higher education, statistically significantly less than in primary and general education (see Figure 11). Again, in terms of the use of holistic approaches, higher-education teachers display lower average scores than teachers who worked at general schools and vocational schools.

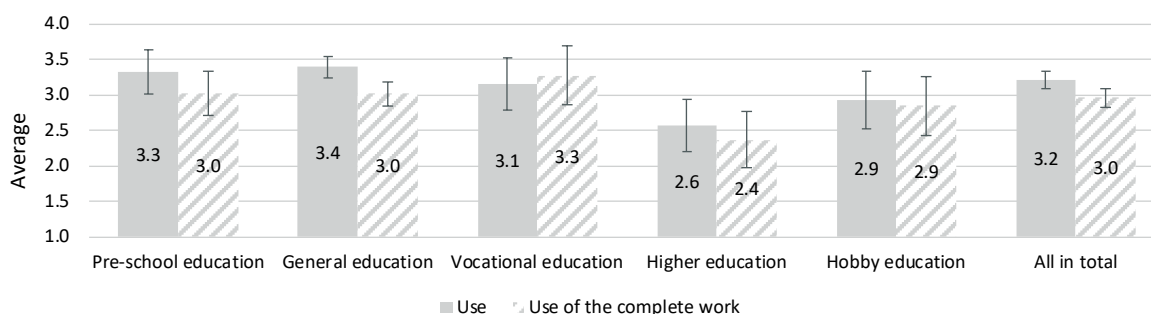


Figure 11. Responses for ‘I have used audiovisual works (televisual content or videos, documentaries, etc.) for my teaching’ and the follow-on item ‘When I have used an audiovisual work, I have used the complete work and not limited myself to extracts (e.g., a part of the audiovisual work)’ (scale for both items: 1, for ‘Not at all’, to 6, for ‘Very often’)

5. Conclusions

As noted in our introductory remarks, the aim of the Ministry of Justice in commissioning the study was to obtain information on the extent to which works and objects of related rights (performances, recordings, etc.) are used in educational establishments on the basis of the educational exception and, partly by means of that information, to decide on compensation to rightholders. Prior to the study reported upon in this article, legal practitioners tended to gauge this use through the lens of subjectively assessing non-comparable individual cases. In contrast, an objective grounding requires a systematic survey via uniform instruments, involvement of the full range of educational institutions, and a representative sample. The study’s sample size added further value to the contribution: with 832 respondents having taken part in the questionnaire portion of the survey, the researchers behind the study conclude that it utilised a large sample, for an even more objective picture of the extent of use.

The results prove illuminating. Firstly, they shed light on the extent to which information is copied, an important issue for the implementation of the educational exception. The central question is of the extent to which complete works are copied *versus* the copying being limited to parts of a work. As a general rule, the educational exception supports use of portions of works and parts of subjects of related rights, though the use of the whole object is not excluded. This matter depends on the specific object, which is one reason for the study having delved into use object-specifically.

Though the Estonian Copyright Act does not distinguish between works created for educational purposes (such as a workbook for a particular year of study in schools) and ‘ordinary’ works, this distinction is important in view of possible future regulations. The scope for education-motivated use of material created for explicitly educational purposes should be more limited than that for educational use of other works.

The study suggests that copies of complete works are made very rarely. The figure is slightly higher than average for teachers in the field of hobby education and higher in relative terms among kindergarten teachers too, whose copying rate does not differ statistically significantly from that of teachers providing hobby education and who also emerged as the most likely to make copies of education-aimed materials that are available institutionally but not directly accessible to learners (no statistically significant difference is visible between the usage practices of teachers in general-education schools and those in hobby schools). Vocational and higher-education educators appear less likely than teachers in kindergartens and general-education schools to copy materials created for educational purposes, but they still seem to do so only for personal accessibility. Since complete works are not copied on a large scale, it cannot be said that copying harms the legitimate interests of a work’s author significantly.

Education-category-specific patterns in the extent of using the educational exception help to explain also how printed textbooks and workbooks get utilised. Kindergartens and general education are very clearly distinguished by the fact that teachers there make much greater use of printed textbooks and workbooks from publishers. As for the most widely used educational works across the board, the survey revealed various aspects of the copying and sharing of literary and reference works, photographic works, photographs of

works of art, musical works, audiovisual works (principally films), etc. Copying of works in the first category listed seems to be, on average, slightly more prevalent in higher education (it is statistically significantly more commonplace there than in general and recreational schools). Copies are shared with learners relatively infrequently, most often in higher education and least often in kindergartens.

How works in other categories of concern to rightholders get used fills out the picture of the landscape.

Educators' copying of photographs is somewhat less common than copying of literary and reference works. Also, in this respect, there are no statistically significant differences among the groups compared. That said, as noted above, because the figures are similar between sharing of photographs and sharing of literary/reference works, this activity can be considered more common for photographs, in relative terms. It is noteworthy too that the various categories of educational institution differ little in their use of photographs of works of art – they are surprisingly similar. No group is statistically significantly different from the others. However, the sharing of such photos is very rare, notwithstanding relatively extensive variation between respondents working at higher-education institutions and hobby schools.

Musical compositions, on the other hand, see use relatively often in kindergartens and hobby schools, and they get used more often in general education than in vocational and higher education. In most cases, there is no statistically significant difference between the use of extracts and the use of complete works; only in kindergartens was there a statistically significant difference, with full works being used less, according to the survey participants.

Finally, audiovisual works are used least within higher-education institutions – statistically significantly less than in primary and general education. In terms of the use of holistic approaches, the average score is again lower for higher-education teachers, especially in comparison with teachers at general and vocational schools.

From the foundations provided by the survey's questionnaire and interview data, one can conclude that, in general, lecturers' and other teachers' use of works and related rights objects falling under the educational exception is not very extensive. At the same time, it cannot be said that copyright-protected material is not used at all and, therefore, that there is no basis whatsoever for rightholders to enter into a discussion with the state about possible compensation. Therefore, compensating rightholders remains on the table as a matter that may be addressed in the legal-policy domain.