

## **The Fairness of ‘Stealing’ Knowledge for Education**

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**Abstract.** Despite the success of technology in terms of making it much more convenient to gain education, copyright law seems to hamper the strength and opportunity of information technology in relation to providing access to knowledge and education. With this in mind, this paper examines the application of copyright law in the context of education in both traditional and modern methods of teaching. It discusses the problem associated with the uncertainties and lack of awareness amongst copyright users, as well as the controlling behaviours of copyright owners. This paper further relates the problem of uncertainties to broad provisions of exceptions in international copyright instruments, and further narrows down the interpretation of ‘fair’ dealing in the context of domestic laws. This paper argues that a liberal approach to copyright is fundamental when providing discretion for countries to interpret and implement their international copyright obligations, which are considered suitable to their different needs. As such, private international litigation can contribute to adopting a more balanced and more respectful approach to national differences and national norms.

### **1. Education, ICT and Copyright Law**

Education systems are regarded as contributing to international knowledge public goods. As a public good, education is characterised as being non-excludable, meaning that, once it has been provided, nobody can be excluded from enjoying its benefits. Education as a public good must therefore be considered non-rival in terms of consumption, i.e. one person benefits from the public good without reducing the amount available to others (Dirk Willem te Velde, 2005). Since education is considered to be a public good, various efforts have therefore been taken so as to provide education to the public.

Recent developments in relation to information technology have invariably shifted traditional methods of knowledge delivery from verbal communication and chalkboards to a more visually enhanced experience. More advanced classroom activities today rely upon a variety of both basic and advanced telecommunications technologies, such as one-way and two-way open or scrambled broadcasts, cable and satellite delivery, fibre optics and microwave links, CD-ROMS, and the Internet.

Higher educational institutions are increasingly implementing the use of information communication technology in teaching activities. This is owing to the fact that it is convenient, self-paced, individualised, interactive, faster, cheaper, and has the ability to provide learning everywhere and at any time, overcoming geographical barriers (UNESCO, 2009).

Conformable to education, the encouragement of learning is also the aim for the first establishment of Copyright law under the Statute of Anne in 1710. A similar purpose of establishment of Copyright law in the United States was also expressed in Article 1(8) (8) of its Constitution, which is to ‘promote the progress of science and useful Arts’. Simply said, copyright law is also created to promote and encourage learning, thereby acting for public good. By granting copyright protection for a limited time by providing authors with incentives, more learning materials could be created for the benefit of the community.

Logically, one would expect that education, copyright law and information technology would be an ideal combination that works well together in order to disseminate knowledge and information for the benefit of the

society. Sadly, however, whilst the development of ICT brings conveniences for flexible learning and distance education, this situation also increases a number of opportunities to infringe copyright law. Students, for example, are considered to be more prone to commit plagiarism, as they feel that no one is watching them due to being away from campus. Lecturers may also find themselves plagiarising fellow faculty members' work from a different campus (Nemire, 2007). As a result, illegal downloading—which includes literature piracy, the unauthorised re-use and distribution of works, plagiarism and associated infringements—is commonly practiced more than one is aware of. Notably, a research carried out on academic and literature industry in 2009 reported that illegal downloading has been considered as a behavioural and attitudinal problem of young people—especially students (Wallace, 2004).

Encountering this problem, copyright owners use technology to control their copyright works. Nowadays, controlling access to materials online can be regulated in many ways. Common methods include the use of passwords, firewalls, screening for IP addresses or domain names, hardware connections, encryption, or using CD-ROMS as a delivery vehicle (Longdin, 2005). All of these methods could be used either separately or in combination.

Notably, these various technological protection measures and contracts often leave users with less advantage owing to restrictive and unfair terms of licensing agreements, favourable to foreign database producers, imposing high fees, despite the fact that usage may fall within copyright restrictions (Azmi & Abdulrahman, 2008).

In certain circumstances, the aforementioned technological protection somehow prohibits legitimate users from using the exemptions and limitations provided by copyright law in education, particularly the fair dealing provision.

## **2. Uncertainties and lack of awareness in copyright law**

To begin with, the problem of illegal copying, downloading and plagiarism could potentially result from uncertainties or a lack of awareness of the users. In normal traditional classroom settings, for instance, educators heavily rely upon copyrighted books, newspapers, magazines, and sometimes photographs, videos, slides, musical works, and sound recordings in the course of teaching the students. These resources are sometimes integrated with the educators' own original works in a meaningful way, providing compact educational tools which allow great flexibility in both teaching and learning.

Notably, much of the materials used in educational programmes are protected under copyright law. Copyright law requires that anyone who wants to use the work in question must get the permission from the copyright owners or pay royalties unless such works fall under the exceptions of copyright, which allows fair dealing with a work for educational purposes. 'Fair dealing' is formulated out of the British common law copyright system, which permits reasonable access to copyright works without the need for permission or payment for the purpose of public interest, such as research or private study (Tawfik, 2005a). This rule and restrictions apply to various traditional, paper-based materials, as well as to online materials. The concept of fair dealing is, however, narrower than the concept of 'fair use', which is applied in America.

Traditionally, the law provides a relatively simple and broad provision allowing 'performances' and 'displays' in the face-to-face classroom setting. Although fair dealing is constantly applied in traditional methods of teaching, there are nevertheless still some uncertainties and difficulties in regard to applying the exception to education. For instance, studies state that such exceptions and limitations only apply to a narrow range of copyright subject matter, i.e. literary, dramatic, musical and artistic works, and the typographical arrangements of published editions; therefore, it not applicable to computer programs (Burrell & Coleman, 2005) and non-authorial works.

Studies also state that the research and private study exception suffers from a number of serious defects. In particular, it fails to distinguish between different stages of research, and provides no clear guidance concerning the quantity of material that can be copied in relation to such an exception (Burrell & Coleman, 2005). Thus, although the law allows copyright works to be used without the copyright owner's permission or without paying royalties in the traditional method of teaching, the law is limited, restricted and ambiguous, thereby causing those within the education sector to be uncertain and open to copyright infringement action. As a result, this causes a number of different uncertainties and difficulties for students, researchers and institutional users alike.

The degree of uncertainty and difficulties in terms of applying the copyright exceptions and limitations in education are even greater in the current modern method of teaching. Despite Virtual Learning Environments as being one of the fastest-growing areas of education, little is so far known concerning how the exceptions and limitations to copyright law apply to this area of educational delivery. Studies show that, in terms of delivery of learning, training or educational programmes by electronic means, there is a significant lack of awareness or knowledge in this arena of copyright law and its application (Waelde & MacQueen, 2004). The uncertainties are more magnified in cross-border educational institutions (Longdin, 2005) and projects, especially concerning the use of third-party materials (Scodigor, 2004).

Furthermore, there are also numerous groups of people who often believe that, if information is transferred to the World Wide Web and made available over the internet, its use thereafter must be free and unrestricted. This is a wrongly held belief, and despite this popular ignorance of the law, users who are found to infringe copyright law in this way (or any other way) are vulnerable to legal suit. Whether one is truly ignorant of the law or simply chooses to ignore the law, the law is clear that ignorance offers no defence.

### **3. Copyright exception relating to education in international treaties**

When analysing the reasons for the lack of awareness or uncertainties of users concerning the application of copyright law in an educational context, it is pertinent to consider the relevant international provisions relating to copyright exceptions.

Whilst calling for the minimum standards of protection of copyright works, the 1886 Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) also provides for exceptions and limitations to the exclusive right given to copyright owners (Ricketson, 2003). This insertion is important when seeking to balance the rights of the owners and users so that the community is also able to benefit from copyright law. Numa Droz stresses in the first diplomatic conference through draft Berne Convention (1884) that 'limitations on absolute protection are dictated, rightly in my opinion, by the public interest', and any set of property rights—even those of the author—must always be subject to such limitations (Ricketson, 1999b, p.94). She further advances that the 'ever-growing need for mass instruction could never be met if there were reservation of certain reproduction facilities, which at the same time should not generate into abuses' (Ricketson, 1999a, p.61).

Despite the acknowledgement concerning the importance of exceptions and limitations in terms of balancing the conflicting interests and ensuring access to mass instruction and education, there is, however, no universal all-encompassing exception for education. Available provisions relating to education only exist in Article 10(2) of the Berne Convention, providing for specific teaching exceptions, and Article 9(2) which provides guidelines for exceptions and limitations in general.

Article 10(2) of the Berne Convention provides quite an open, flexible and technology-neutral specific teaching exception to copyright protection. Under Article 10(2), copyright work can be utilised for the purpose of teaching on the condition that it is 'justified by the purpose' and if it is 'compatible with fair practice'. Ultimately, the word 'utilisation' is neutral enough to cover not only reproduction but also communication to the public (and the making available to the public). However, the words of 'by way of illustration' seem to impose some degree of limitation concerning the size of the 'borrowing'; it was interpreted as not to exclude the use of

the whole of a work in appropriate circumstances (Guibalt, 2003, p.15). These words also (which in fact has found its way into national laws) was never intended to further restrict the scope of the educational purposes (Xalabarder, 2007). By limiting its use to only two grounds, this provision is considered to be both open and flexible for teaching purposes, since it never limits copying to any specific quantitative (i.e. how much can be used and how many copies can be made) or qualitative (what kind of works) restrictions on exempted uses (Xalabarder, 2007).

The Berne Convention revisions also shows that, 'by way of illustration in publications, broadcasts or sound or visual recordings for teaching' does not constitute an exhaustive list, but the language itself results from a specific wish to accommodate new technology. The reason behind such wording was to enable educators 'to take full advantage of the new means of dissemination provided by modern technology' (Ricketson & Ginsburg, 2006), and it has since been well accepted that digital technologies are also covered under the exception (Xalabarder, 2007).

Nevertheless, the teaching exceptions in Article 10(2) of Berne Convention have always been interpreted so as to apply only to courses which have led to an 'official' degree, covering both elementary and university teaching in both private and public institutions, as well as in the case of distance teaching (Ricketson & Ginsburg, 2006). This means that it applies to teaching at all levels, whether dispensed in educational institutions and universities, municipal, state and private schools; however, this does not apply to teaching dispensed outside of such institutions, i.e. the general public and adult education facilities.

The analysis concerning the specific teaching exception provision in Berne Convention reveals that it is quite an open, flexible and technology-neutral exception which ultimately leaves its member countries with the flexibility and opportunity to consider what is regarded as 'fair practice' and 'justified by the underlying purpose'.

Notably, Article 10(2) of Berne Convention is not a mandatory exception, but rather simply sets the limits within which an exception for teaching purposes may be carried out by national laws (Ricketson & Ginsburg, 2006). Thus, the broad and flexible provisions of the Berne Convention exception for teaching purposes remain subject to national laws.

In the same way, Article 9(2) of the Berne Convention also permits the reproduction of copyright works subject to the fulfilment of the 'three step test', namely that a) it is in certain special cases; b) such a reproduction does not conflict with the normal exploitation of the work; and c) it does not unreasonably prejudice the legitimate interests of the author. It is upon fulfilling these three criteria that national legislators must ensure compliance when drafting, legislating and justifying their exceptions and limitations (Senftleben, 2004).

Notably, the wordings were almost precisely followed by Article 13 of the TRIPS Agreement, Article 10 of the WIPO Copyright Treaty, and Article 16 of the WIPO Performances and Phonograms Treaty. Appreciating technological development, the WIPO Copyright Treaty Agreed Statement concerning Article 10 Limitations and Exceptions also permits member countries to 'devise new exceptions and limitations that are appropriate in the digital network environment'.

This general exception ultimately leaves discretion for national legislators to fashion exceptions and limitations to their national copyright law, with specific reference to their own economic, social and cultural circumstances (Ricketson & Ginsburg, 2006).

#### **4. Copyright exceptions relating to education in national laws**

Since the broad provisions in international copyright treaties allow certain flexibilities in terms of drafting and applying exceptions and limitations to copyright law, national legislatures ultimately retain a great measure of discretion in the way in which they interpret and subsequently implement their international copyright obligations (Tawfik, 2005b). Essentially, the assessment carried out by national legislators in terms of the extent of limitations adopted for the benefit of educational and research institutions significantly vary from one country to the next (Crews & Ramos, 2004; Guibalt, 2003). These variations are understandable, recognised and even encouraged by the provisions of the international and regional instruments, thereby allowing countries to make their own decisions within certain parameters concerning the restrictions to be imposed. This is purposely intended to be left to the national legislators' discretion so as to suit the individual countries' diverse political, economic, social and cultural interests and needs.

The most common limitations to be found in national legislation includes the right to make compilations of short works or passages for purposes of teaching, the right to reproduce parts of works in publications for use as illustrations for teaching or for the purposes of scientific, literary or artistic criticism, research and private study; the right to quotation; the right to communicate to the public parts of works by broadcasting a radio or television programme made to serve as an illustration for teaching purposes or for scientific research purposes; the right to perform and display a work in the course of teaching activities; and the right to reproduce a work for the purpose of examination (Guibalt, 2003). Often these uses of copyright works are allowed provided that they occur in conformity with fair dealing or fair practice, and mention is made on the source and of the name of the author which appears on the work used.

The EU Copyright Directives, for example, provides a list of possible exemptions for its member states to choose from with the exception of Article 5(1) providing (mandatory) temporary copying exemption. In Scandinavian countries, for instance, there is a long tradition of collective license agreement.

Moreover, Malaysia, for example, under Section 13(2)(a) Copyright Act 1987, allows the use of copyright works for the purpose of non-profit research or private study, provided that such are accompanied by acknowledgement of the title and its authorship and can be regarded as fair dealing. This particular exception in terms of research and private study is considered to be useful for those academics who copy works in order to further their research, and also for those students who collect materials to prepare for an essay or sit an exam. Unlike the teaching exception, the research and private study exception is not a specific exception standing on its own, but is one that falls under the general exceptions provided in Article 9(2) of the Berne Convention concerning reproduction rights.

Similarly, in the UK, Section 29(1) of the Copyright Design and Patent Act 1988 provides that any copying or dealing with a literary, dramatic, musical or artistic work for the purposes of research does not infringe any copyright if it is regarded as fair dealing, done for a non-commercial purpose, and accompanied by sufficient acknowledgement.

Now, however, the important issue remains: what can be considered as fair dealing? There is no well-defined international standard for fair dealing provided in the multilateral treaties, which subsequently causes a further lack of uniformity amongst different countries.

## 5. Fair Dealing

In determining the concept of fair dealing, courts have to consider various factors in order to establish the right balance between the copyright owners and users' interests. Lord Denning in *Hubbard v. Vosper* [1972] 2 QB 84, 94 identifies three factors that will ordinarily be relevant in determining whether a particular use is to be considered fair. He said:

You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But short extracts and long comments may be fair.

However, all of the abovementioned factors should be flexibly applied depending on the type of work, as well as the manner, of reproduction. In certain circumstances, it might be permissible to reproduce the whole work, particularly when the work is short, as indicated by Megaw in the same case.

In the case of *University of London Press Limited v. University Tutorial Press Limited* [1916] 2 Ch 601, the exception in research and private study seems to be strictly applied. It was held that republication of a copyright work was not a 'fair dealing', merely because it was asserted to be intended for purposes of private study, nor if a book of questions which include its answers is reproduced for the use of students. Neither case is considered to fall within the description of 'fair dealing'. Since mere assertion that the work is for the purpose of private study or student use is considered insufficient, and so it remains uncertain what would be considered enough to grant an exemption from copyright protection.

Another alternative in determining whether or not the taking was fair is to consider whether the user's purpose could have been achieved by any other means, as viewed in *Associated Newspapers Group v. News Group Newspapers* [1986] RPC 515, 519. Here, some commentators caution concerning the danger that the court might take a restrictive view for this point without taking into account the related commercial factors (Bently & Sherman, 2004).

In *CCH Canadian v. Law Society of Upper Canada* [2004] SCC 13, the judge determined whether a dealing was considered to be fair by taking into account how much was copied, the effects associated with the dealing on the market for the work, whether the defendant's purpose could have been achieved by other means, and the nature of the work copied. The Supreme Court also indicated, however, that, in relation to the research and private study exceptions, a further relevant factor is what happens to a copy after it has been made. In particular, if the copy is subsequently destroyed, this will aid a finding that the taking was fair. To this extent, it seems incongruous that, if we apply this to an educational context where lecturers should destroy the sources of research materials, this could then be regarded as fair. Nevertheless, the CCH case does take an open view where it emphasises that it is important that the purpose of the dealing is not restrictively interpreted but rather may constitute as one of the factors to be taken into account when determining whether or not the dealing is considered fair. A permitted purpose does not *ipso facto* validate the infringing act; rather, the dealing with respect to the copyright work must still be fair. As observed by the Supreme Court of Canada in CCH case at page 663:

... Some dealings, even if for allowable purpose, may be more or less fair than others; research done for commercial purposes may not be as fair as research done for charitable purpose.

Another interesting dilemma relating to education is regarding research and private study exceptions. Whilst it is agreed that the defence may only be claimed by the person actually engaged in the study or research, it is not entirely clear whether or not it is available at the instance of a person conducting the infringing activity on the person's behalf or at his request. For instance, a librarian or a shop offering photocopying facilities may make a



copy of a work or parts thereof at the request of a researcher or student. There does not appear to be any sound reason why the defence may not be available in such instances if indeed it could be shown that the requester's use was for private study or non-profit research. The rationale for restricting the defence to the actual user of the work must surely be for the purpose of ensuring that only single copies are made, and that it is not used to justify making multiple copies for circulation to more than one person—allegedly for any of the prescribed purposes. The rationale is not undermined merely owing to the copying or the infringing activity conducted by the actual user but by someone on his behalf (Tee, 2008).

The Supreme Court of Canada in *Law Society of Upper Canada v. CCH Canadian Ltd* held that the defence of fair dealing may be available for third-party acting on behalf of a person undertaking the private study or research by proving that the latter's dealing with the copyright work fell within the exception, or by otherwise relying upon its own practices or policies, if any, as evidence that its dealing, though undertaken for the latter, were within the prescribed purposes. The Supreme Court held that the word 'dealing' connoted not individual acts but rather a practice or overall system. Accordingly, it was sufficient for persons or individuals relying upon the fair dealing exception to prove that their own practices and policies were research-based and fair, or by showing that all individual dealings with the materials were, in fact, research-based and fair. For this purpose, the appellant was entitled to rely upon its access policy which, together with other factors, were considered to be sufficient to prove that its dealings with the respondents' works were research-based and fair.

In sum, the test of fairness fails to provide students, researchers or users with any degree of certainty concerning the amount entitled to be copied when relying upon the fair dealing exception. In the case of *Moorhouse*, an Australian University was held liable for copyright infringement, despite copyright warning notices being posted next to the photocopier. Although the Canadian Supreme Court in the *CCH Canadian v. Law Society of Upper Canada* [2004] SCC 13 viewed that the Canadian and British approach is likely to be inconsistent with such decisions, this creates an insecure environment—particularly for those in charge. In the absence of clear authority, institutions are therefore more likely to continue to be cautious in controlling what researchers and students copy; in some cases, excessively so (Burrell & Coleman, 2005).

## **6. Fair Dealing and digital online materials**

Another dilemma facing the issue of fair dealing is whether or not it has any place in relation to digital materials online. Compared to the traditional (pre-digital) teaching materials, copyright in the particular form of expression of ideas during the course of teaching and written course material does not normally involve a huge investment of either time or money; rather, it is cheaply replaced and has no significant sale value. Here, copyright can be said as practically being a non-issue.

Comparably, most teaching materials developed for the virtual learning environment programmes are complex and expensive to create. Much greater efforts and investment are therefore required in order to produce taught materials and lectures. Notably, the provision of expensive infrastructure for production and dissemination, in the form of equipment and facilities, grants, time release from teaching, pre-existing intellectual property and technical staff, are commonly required (Monotti, 2002). For these obvious reasons, it is understandable that copyright owners would expect much more protection for their copyright works. Nevertheless, it is important for the law to protect not only the rights and interests of the copyright owners but, at the same time, to also have to take into account the best interest of users to access the copyright works.

Exceptions to copyright rules which university tutors and lecturers enjoy whilst teaching face-to-face in a lecture theatre or seminar room currently do not apply when they are teaching online (McCracken, 2001). For example, in order to show a recent clip from the videos or TV, the lecturer needs to write to a publisher or broadcaster, asking about the rights to use the material, which subsequently takes approximately five weeks to ascertain. As cumbersome as it is, a person who teaches online will not have the time to gain permission to include current events. In this regard, the defences used to allow for classroom use are also not generally

available to online or distance education. It has long been ‘clear that systematic single copying (for instance, all the members of a class requesting the same material at once) is not within the exception’ (Cornish, 2001); thus, it follows that simultaneous online requests for material are not exempt under the Act (Wallace, 2006).

Some private interest groups somehow expect the higher education sector to lobby the government to promote the extension—or at least the preservation—of educational provisions in the UK implementation of the EU Directive on the harmonisation of certain aspects of copyright and related rights in the information society. The Directive allows exceptions to be made by Member States for the benefit of certain non-profit-making establishments, such as public libraries, museums and archives. This exception, however, only applies to the reproduction right. The online delivery of copyrighted information is not included within the exemption; the introduction of favourable licensing schemes cover works which fall outside the exception, and is encouraged (Wallace, 2006). For example, under a revised Section 32 of the CDPA 1988, it was provided that exemptions (i.e. actions taken for the purpose of instruction or examination) cannot be invoked for online teaching provision except in the one specific area of examinations. The setting of examination questions, communicating these and/or providing answers is permitted as an exception to copyright. All other attempts at using this exemption online are now classified as dealing in infringing copies (Wallace, 2006).

## **7. Conclusion**

Education, ICT and copyright law have great potential in encouraging learning and promoting research and development for the benefit of the community at large. The increasing use of technology in educational systems should be supported by copyright law and not hampered by it.

Uncertainties and a lack of awareness in terms of infringing the use of copyright works in education do not only exist in digital teaching methods; notably, ambiguities have even occurred in traditional methods of teaching. However, in the traditional method of teaching, copyright is not much of an issue, as it does not have much commercial potential. Many exceptions and limitations available for education have been suggested as being narrow, limited and suffering a number of serious defects. These uncertainties only loom larger when education is delivered via electronic means.

It would appear that many uncertainties with respect to exceptions and limitations relating to education result from the broad and flexible provisions of international copyright treaties. Nevertheless, such is desirable so that a great measure of discretion is available for individual countries to interpret and implement their international copyright obligations, suitable to their unique and different social, cultural and developmental needs. In other words, it is up to the individual countries to interpret according to their needs and circumstances.

Often, cases which deal with the exceptions and limitations of copyright law—particularly in determining what is fair—seem to take a restrictive and narrow interpretation. Generally, Courts tend to consider the type, nature and amount of the work used, the quantity of copies made, the effect of dealing on the market, whether the defendant’s purpose could have been achieved by other means, and even what happens to a copy after it has been made. These factors of consideration must be carefully referred to or otherwise applied with caution, especially when considering the application in relation to different countries with vast difference in economic, social and cultural circumstances. This is especially crucial since, in most cases, Courts choose to read the fair dealing exception as a series of fixed and narrow rules (Sims, 2010).

Ultimately, careful consideration needs to be ensured when applying case law to national circumstances. One needs to first consider what may be reasonably accepted in accordance with social custom so that it will conform to the notion of cultural diversity that underlies both domestic and international principles (Dinwoodie, 2001). This is important owing to the fact that international community responds to, and ultimately resolves around, the question of the legitimacy of ‘fair dealing’ and other permitted uses of copyright works, which will fundamentally determine the shape of international copyright law for the coming decades (Tawfik, 2005a).



Essentially, support should be given to the creation and development of new knowledge and literature industries. Being the owners and users of copyright works, higher educational institutions need to consider the best policy regarding copyright infringement; this is owing to the fact that it may have interests in terms of the faculty's copyright works. However, consideration must also be given to the best interests of students and staff when accessing copyright works.

Beneficial contribution can be made by private international litigation to adopt a more balanced and more respectful approach to national differences and norms. In this context, broad interpretation should be applied in copyright cases relating to exceptions applying to education, particularly when involving legal materials. The law should be applied to suit our culture, values and beliefs so that it would be voluntarily abided by and not manipulated.

It is commendable for the current international copyright law institutions to react, expand and move towards the demands of constant change in the midst of technological development in order to establish law-making mechanisms which are dynamic in nature. However, this area of online educational provision is currently in its infancy, and justifiably could be said to provide enormous scope for growth and engagement. In most cases, the traditional benefits of exemptions for fair dealing fail to apply to non-commercial and non-profit-making organisations within the new medium. It is therefore important that this matter is not left open and accordingly vulnerable to commercial exploitation.

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