

Article X: Access to Educational Materials: Limitation on remedies for infringement

(a) In addition to other copyright limitations and exceptions, such as those included in Article 10, 10bis, the Appendix and other Articles in the Berne Convention, and consistent with Article 44.2 of the TRIPS Agreement, Members agree to establish appropriate limitations on the remedies for infringement of works in the following circumstances:

- (1) To copy articles for purposes of use by students in performing class work,
- (2) To make copies of books and other works used by students and teachers, when the prices charged for the works are unaffordable by the education institution or by the students.
- (3) To make a translation of a work, for the purposes of education.
- (4) To make copies of works no longer available from publishers, and/or for which the owner of the work cannot be found, if a good faith effort fails to identify and locate the owner of the work.

(b) In implementing (1-4), the following limitations on remedies should apply.

(1) So long as the use and distribution of the works is limited to educational purposes, no award for monetary relief (including actual damages, statutory damages, costs, and attorney's fees) may be made other than an order requiring the infringer to pay reasonable and fair compensation to the owner of the exclusive right under the infringed copyright for the use of the infringed work.

(2) The reasonable and fair compensation shall be determined by the Member State where the use of the work takes place. Member States should be free to determine the circumstances under which the payment of such compensation may be organised, including the point in time in which the payment is due. When determining the possible level of reasonable and fair compensation, due account should be taken, *inter alia*, of Member States' cultural promotion objectives, of the non-commercial nature of the use made by the organisations in question in order to achieve aims related to their public interest missions, such as promoting learning and disseminating culture, and the need to promote access to knowledge for all.

(c) This article shall only apply to Members who are regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations.