

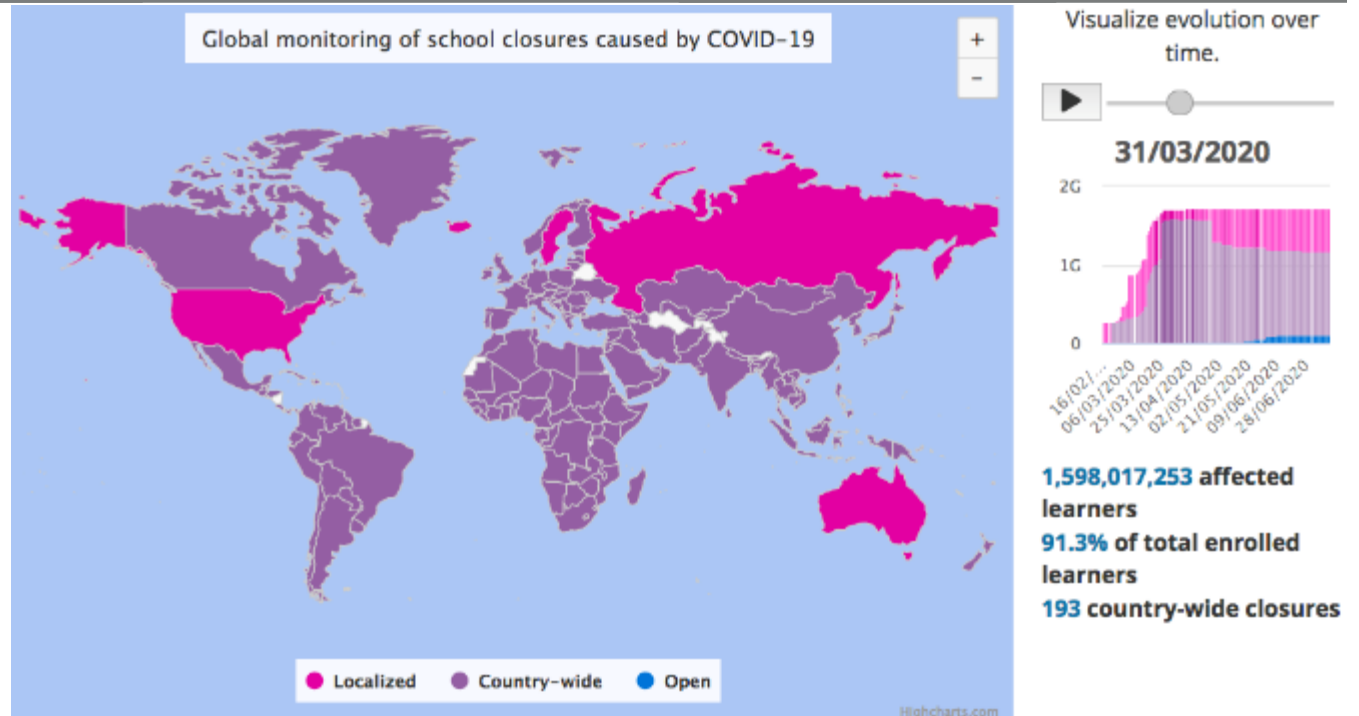
# E-Resources during COVID-19: copyright and licensing issues

Webinar in association with AfLIA

Teresa Hackett  
EIFL Copyright and Libraries Programme Manager

14 July 2020

- 1.5 billion learners in 193 countries affected by closure of schools and educational institutions (March 2020)
- Overnight and mid-way through the academic year

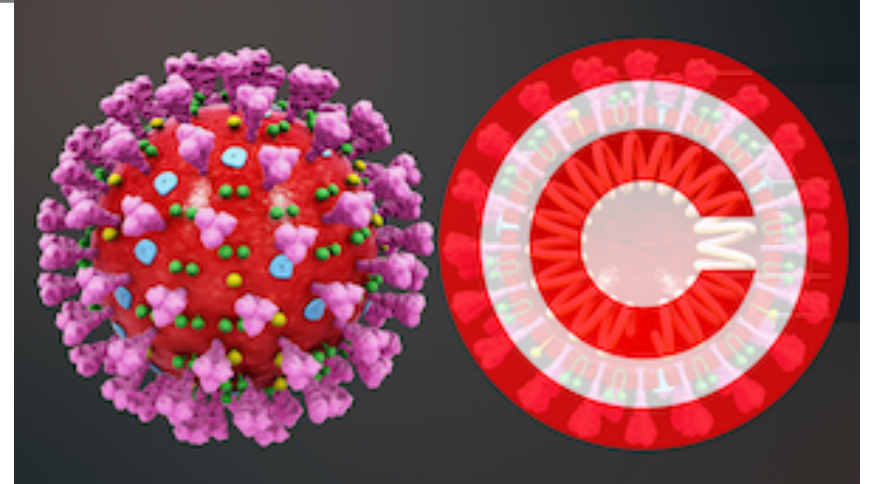


Source: UNESCO

**For education to continue,  
it had to move off-campus and online**

Copyright law still applies, even in a pandemic

How do copyright laws, and e-resource licences, support education and learning in these changed times?



*Source: Cearta.ie*

**Are some countries better equipped than others to respond?**

## The presentation will cover...

- Two activities: remote teaching and online story time
- Rulebooks: e-resource licences, and national copyright law
- Copyright law analysis: Africa, Europe and US
- Advocacy efforts to fix copyright for education and libraries
- Resources and tools to evaluate your own situation

Rules for online use of copyright-protected material may be different to the rules for face-to-face use

Copyright librarians had to quickly assess impact of the new situation – mass switch to online learning – according to national copyright law, and applicable licences

**Depending on the material, usage is governed either by copyright law or by contract law (licence)**

Commercial e-resources  
subject to a publisher  
licence that sets out in  
detail how the content  
may be used

## 5. USAGE RESTRICTIONS

5.1. Licensee shall not engage in the following activities and shall take all commercially reasonable efforts to prevent Authorized Users from engaging in the following activities:

5.1.1. Removing or altering the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;

5.1.2. Making print or electronic copies of the Licensed Materials for any purpose (except as authorized by Sections 4 and 6);

5.1.3. Posting or distributing any part of the Licensed Material on any electronic network other than the Secure Network, including without limitation, the Internet and the World Wide Web;

5.1.4. Systematically or programmatically downloading (for example, downloading entire journal issues) articles, files, or material obtained from the Licensed Material;  
or

**Check standard Terms and Conditions for any restrictions on  
remote access and online use**

## International Coalition of Library Consortia (ICOLC)

### Statement on the Global COVID-19 Pandemic and Its Impact on Library Services and Resources



Asked publishers to temporarily lift certain usage restrictions e.g.

- campus-only access
- limits on the number of simultaneous users
- restrictions on document delivery or photocopying limits

Available at:

[icolc.net/statement/statement-global-covid-19-pandemic-and-its-impact-library-services-and-resources](https://icolc.net/statement/statement-global-covid-19-pandemic-and-its-impact-library-services-and-resources)

Many publishers generously responded e.g.

- waiving restrictions on concurrent access
- allowing remote access (if not already permitted)
- lifting paywalls to COVID-19 content, or entire portfolio

Expanded access set to expire at different times, depending on publisher and territory

List of publishers providing complimentary expanded access, see ICOLC website

**In addition to usage terms in standard licences for your e-resources, check if any expanded access applies, under what conditions and for how long**



## Open Access and Open Educational Resources (OER)

Users can copy, download, distribute, print without legal, financial or technical barriers



For other resources, not subject to a licence, such as printed material, check your copyright law for applicable **exceptions and limitations** (also known as user rights)

**Exceptions** to the exclusive rights granted to authors or publishers to authorize or prohibit certain acts e.g.

- Right of reproduction (making a copy)
- Right of communication to the public (providing online access)
- Right of public performance (performing a work in public)

Copyright and educational activities in ten countries in Africa

Education International

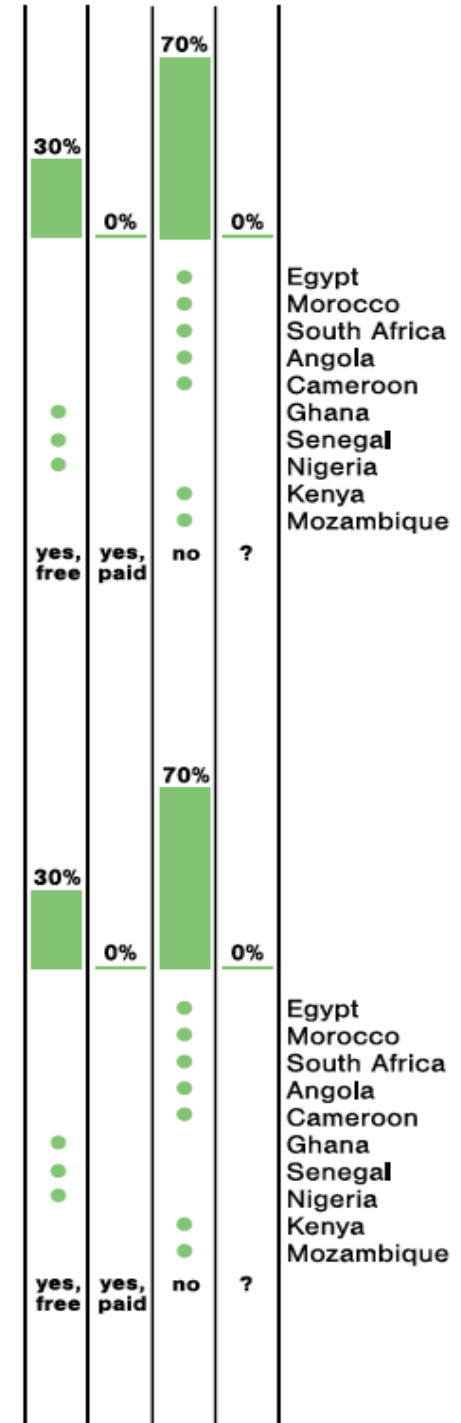
June 2019

## Teacher wants to email reading materials to students

Is this legal?

## Teacher wants to share an article on the school's network

Is this legal?



**Teachers display works and other subject-matter during a streamed or recorded online class accessible only to the students of the school or university**

Providing online access for remote teaching *generally* requires three steps\*

## **1. Exception to right of reproduction (to make a digital copy of a printed item)**



Ghana: allowed, but teachers might want to use larger amounts

§21 subject to conditions: limited to extracts or short works, published works




Mozambique: arguably allowed

§11(b) copying by reprographic means, including 'facsimile' copies

*\*In the absence of an explicit exception, the activity might be allowed under a general or an implied exception.*

## 2. Exception to the right of communication to the public (online access)

 Ghana: allowed §19(1)(c)

 Mozambique: no exception to the right of communication to the public  
§11(a) Use for educational purposes “to use a lawfully published work by way of *illustration* in publications, *broadcasts* or audio or video recordings intended for educational purposes”;

- It might be possible to argue that transmission via the internet is a broadcast (as defined in the Act)
- It might be hard to argue that *illustration* applies to a book chapter, or a textbook.

**3. Exception to the right of reproduction might be needed for cache copies (temporary, transient copies created as part of the online transmission, and stored on servers and the computer of the end-user)**

 Ghana: allowed §19(6)

 Mozambique: no exception

**Librarians and other facilitators to read aloud entire books to children, and display the respective illustrations, during a library's live streamed story time session**

For online story time, the relevant exception is to the right of public performance and/or communication to the public

 Ghana: allowed §19(1)(c)(iii) “utilisation of the work for professional training or public education”

Subject to conditions: fair practice and indicating name of author §19(1)(4)

 Mozambique: arguably allowed §19(b)

Face-to-face by staff and students of the educational establishment is allowed e.g. teachers and school librarians, thus not public librarians

## **Remote teaching – some countries**

- InfoSoc Directive (2001) has an education exception\*  
Problem: the exception is optional and not all member states implemented
- Allowed under Directive on Copyright in the Digital Single Market (2019), the education exception is mandatory\*\*  
Problem: the DSM directive not yet implemented in any national law

## **Online storytime by librarians – some countries**

- Allowed only under the InfoSoc Directive (2001) education exception\*  
Problem: 25%+ of member states did not implement the necessary provisions (2014)  
Many member states did not include libraries as beneficiaries of the education exception

\*Article 5(3)(a)

\*\*Article 5 education is mandatory for all EU member states



## **LIBER (Association of European Research Libraries)**

Open letter to European Commission and member state governments, April 2020



“Urgent guidance to ensure that researchers, educational establishments and libraries are able to fulfill their educational responsibilities and provide remote services using in-copyright works during the COVID-19 crisis without fear of litigation.”

All the following activities can constitute infringing behaviour under copyright law:

- Teachers scanning entire textbooks for hastily arranged online courses
- Public libraries arranging the reading of whole books as part of story-time to children
- Researchers sharing copyright-protected content via streams or recordings of lectures

Available here: <https://libereurope.eu/blog/2020/04/14/copyright-coronavirus-statement/>

## **Remote teaching and online story time**

U.S. Copyright Act has specific exceptions, subject to conditions, that permit

- use of works in remote education 17 U.S.C. 110(2)
- reading aloud for face-to-face instructional activities, and digital transmissions S110(1)

**S.110 also makes clear that educators can look to general “fair use” provisions (Section 107) to extend long-standing practices into new digital settings**

For COVID, responsible application of fair use has:

- enabled educational institutions to migrate courses online during the pandemic
- allowed libraries to offer programmes, such as online story time, without challenge from rightsholders.

## **Public Statement of Library Copyright Specialists: Fair Use & Emergency Remote Teaching & Research, March 2020**

Reaffirmed the role of fair use in supporting remote teaching during COVID-19

“Fair use is made for just these kinds of contingencies.”

“The fair use doctrine accommodates the flexibility required by our shared public health crisis, enabling society to function and progress while protecting human life and safety”.

Available at:

<https://docs.google.com/document/d/10baTITJbFRh7D6dHVVvfgiGP2zqaMvm0EHHZYf2cBRk/edit#>

# Fair practice, fair dealing and fair use

## Three distinct legal concepts

**Fair practice:** objective assessment of fairness for what is normally considered admissible, ultimately up to the courts to decide on questions such as the amount, and if the use harms the market, found in the Berne Convention (1886)

**Fair dealing:** general, flexible copyright exception first developed by the English courts in the 18<sup>th</sup> century, incorporated into UK law and many national laws including former British colonies and overseas territories.

*"Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary shall not constitute an infringement of copyright".*

**Fair use:** in the US, fair dealing evolved into 'fair use' and was codified in the US Copyright Act of 1976. Fair use permits use of a work for purposes such as "criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research."

In determining whether a particular use is fair, the court must consider four factors:

- 1) the purpose and character of the use, including whether it is of a commercial or nonprofit educational nature;
- 2) the nature of the work;
- 3) the amount of the work used; and
- 4) the effect of the use on the market for the work.

**Although fair use is generally considered more flexible and open-ended than fair dealing, this is changing as some countries expand their fair dealing provisions.**

- Heightened awareness of the importance of copyright exceptions, and benefits of a flexible fair use-type exception that can provide a safety valve in times of emergency
- Accelerated debate among librarians who don't want to operate in "legal grey zones" to support their public service missions
- Reliance on temporary fixes and goodwill of publishers during COVID (while welcome) highlights the need for a robust legal framework to support access to knowledge, and fundamental right of access to education
- Importance of copyright literacy – knowledge of copyright, and the role of librarians in helping teachers and students navigate their way through the legal issues.

**Knowledge is power, and well-grounded risk assessment is part of the game**

## **Now is a good time to advocate for copyright law reform**

### **Get the facts**

- Review copyright law for library and educational activities
- Identify any gaps or areas that need to be improved

### **Strength in numbers**

- Bring library association / library consortium on board
- Education community e.g. teachers unions
- Raise awareness of copyright and access to knowledge in the community

### **Engage with government authorities**

- Advocate for change at national copyright office, ministry of education, etc.
- As library and education professionals, you are the experts in your field
- Support international copyright law reform at WIPO

## Advocating for international copyright reform at the World Intellectual Property Organization (WIPO)



WIPO Regional Seminar on Copyright L&Es  
for Libraries and Education, Nairobi, June  
2019

Team libraries and education in Nairobi

WIPO International Conference on  
Copyright L&Es, and SCCR/39, Geneva,  
October 2019

Team EIFL at WIPO





## Introduction to copyright

EIFL Handbook on Copyright and Related Issues for Libraries

[www.eifl.net/resources/eifl-handbook-copyright-and-related-issues-libraries-english](http://www.eifl.net/resources/eifl-handbook-copyright-and-related-issues-libraries-english)

Copyright for Librarians online curriculum with EIFL and Harvard University

[https://cyber.harvard.edu/copyrightforlibrarians/Main\\_Page](https://cyber.harvard.edu/copyrightforlibrarians/Main_Page)

## Copyright laws

WIPO Lex: global database of national copyright laws

<https://wipolex.wipo.int/en/main/legislation>

WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives (2017) by Prof Crews

[www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=389654](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=389654)

WIPO Study on Copyright Limitations and Exceptions for Education (2016) by Prof Seng

[www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=390249](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=390249)

GHANA

Research or Study		
Who can copy?	Libraries and archives.	§ 21
	Conditions: The activities of the institution must not be for gain.	
What can be copied?	Published articles, other short works, or short extracts of works.	
	Conditions: Only a single copy may be made by reprographic reproduction.	
	The copying must be an isolated case which occurs on separate and unrelated occasions. The copy may be made only if there is no collective license available.	
Purpose of the copy?	For study, scholarship, or private research at the request of an individual.	
	Conditions: The library must ascertain that an individual is requesting the material solely for the permitted purposes.	
Medium of the copy?	Reprographic reproduction (term is not defined).	
Other provisions?	The provisions of this section are subject to the interest of the publisher, author, or the relevant collective administration society.	
	Where a library or archive requires more than a single copy of a work by reprographic reproduction, the permission for this shall be obtained from the author, other owner of copyright, or from an appropriate collective administration society authorized by the publisher.	

Preservation and Replacement		
Who can copy?	Libraries and archives.	§ 21
	Conditions: The activities of the library and archive must not be for gain.	
What can be copied?	Published articles, other short works, or short extracts of works.	
	Conditions: None.	
Purpose of the copy?	To preserve or replace a copy which has been lost, destroyed, or rendered unusable in the permanent collection of a similar library or archive.	
	Conditions: Reproduction is permitted if it is impossible to obtain the copy under reasonable circumstances.	
Medium of the copy?	Reprographic reproduction (term is not defined).	
Other provisions?	The provisions of this section are subject to the interest of the publisher, author, or the relevant collective administration society.	
	Where a library or archive requires more than a single copy of a work by reprographic reproduction, the permission for this shall be obtained from the author, other owner of copyright,	

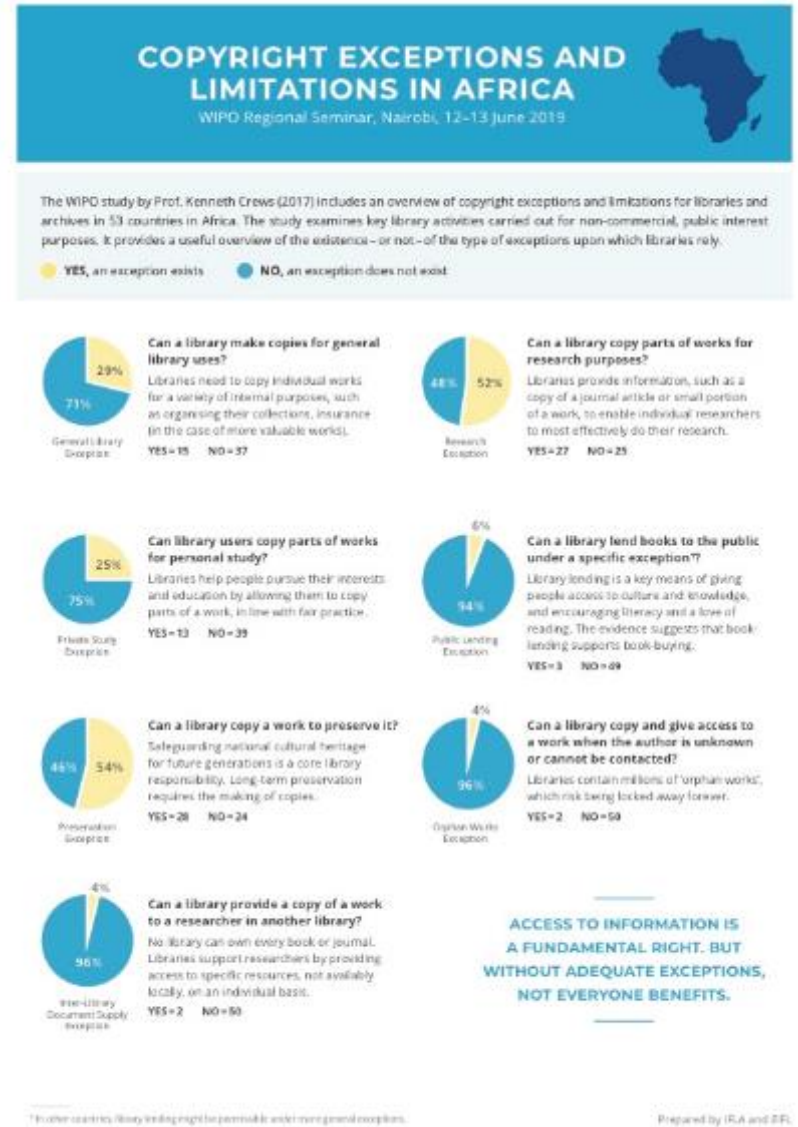


## Copyright laws: infographics

Copyright exceptions and limitations in Africa for libraries and archives – IFLA and EIFL

[www.eifl.net//sites/default/files/resources/201904/wipo\\_infographic\\_africa.pdf](http://www.eifl.net//sites/default/files/resources/201904/wipo_infographic_africa.pdf)

Copyright and educational activities in Africa -  
Education International  
English: [bit.ly/3gRtY5d](http://bit.ly/3gRtY5d)  
French: [bit.ly/2OiiNGx](http://bit.ly/2OiiNGx)



## **Advocacy tools and resources**

Rate my copyright law. Does your copyright law support library activities and services?

[www.eifl.net/resources/rate-my-copyright-law-handy-eifl-tool-score-your-law-core-library-provisions](http://www.eifl.net/resources/rate-my-copyright-law-handy-eifl-tool-score-your-law-core-library-provisions)

EIFL Draft Law on Copyright Including Model Exceptions and Limitations for Libraries and their Users (2016)

[www.eifl.net/resources/eifl-draft-law-copyright-including-model-exceptions-and-limitations-libraries-and-their](http://www.eifl.net/resources/eifl-draft-law-copyright-including-model-exceptions-and-limitations-libraries-and-their)

Time for a single global copyright framework for libraries and archives, By Teresa Hackett, EIFL Copyright and Libraries Program Manager, WIPO Magazine

[www.eifl.net/resources/why-libraries-need-single-global-copyright-framework-english](http://www.eifl.net/resources/why-libraries-need-single-global-copyright-framework-english)

Time for copyright laws in Africa to change

<https://www.eifl.net/news/time-copyright-laws-africa-change>

## Fair use/fair dealing week

<https://www.eifl.net/blogs/eifl-celebrates-fair-usefair-dealing-week>

<https://www.eifl.net/blogs/fair-dealing-replace-or-reinstate>

<https://www.eifl.net/blogs/copyright-today-and-tomorrow-and-there-life-mars>

## Sharing Openly Licensed Content on Social Media: A Conversation with GLAM, Creative Commons, June 2020

[creativecommons.org/2020/06/15/sharing-openly-licensed-content-on-social-media/](https://creativecommons.org/2020/06/15/sharing-openly-licensed-content-on-social-media/)

## EIFL at WIPO

[www.eifl.net/programme/copyright-and-libraries-programme/we-advocate-global-copyright-rules-benefit-libraries](http://www.eifl.net/programme/copyright-and-libraries-programme/we-advocate-global-copyright-rules-benefit-libraries)

## IFLA at WIPO

<https://www.ifla.org/copyright-tlib>

**eifl**

KNOWLEDGE  
WITHOUT  
BOUNDARIES

**Thank you!**

**Questions? Comments?**

Teresa Hackett

EIFL Copyright and Libraries Programme Manager

<teresa.hackett@eifl.net>