

#1

WHAT COPYRIGHT HAS TO DO WITH EDUCATION

Copyright Untangled is a series of factsheets about education and the copyright reform. This sheet will explain the basic concepts relevant to understanding the role of copyright in education and how the current copyright reform will affect education.

“Every day I work with educational material created or compiled by teachers. A lot of their material cannot be shared [with other teachers] without infringing copyright. The rules should be simplified and made more flexible for education.”

– High School Teacher, petition signee rightcopyright.eu

What is copyright?

Copyright grants a creator **the exclusive right over the use and distribution of his work**. In principle, you cannot use a copyright protected work without the permission of the creator. In general in Europe, copyright lasts until 70 years after the death of the last surviving author. Copyright is applied the same online and offline.

What can I do as an educator?

To help facilitate education, your national law likely includes exceptions to copyright for education. This is called the **education exception**. This enables you to do things like (probably) show a video in class, distribute a poem among your students and use images in your lectures. When you use copyright protected material, such as images, songs or videos, you still need to be aware of what type of use falls under the education exception.

To what should I pay attention to?

The education exception does not always apply. Some **types of work** and **certain uses** are excluded from the exception. Not everyone who provides education can benefit from the education exceptions. Sometimes cultural heritage institutions such as museums and informal education institutions fall outside the **scope** of the education exception. It is, for example, unclear if certain digital use falls under the education exception. Sometimes **licensing schemes** are in place. In this case educational establishments need to seek out a license at the relevant collective management organisation for which they often need to provide financial compensation.

When working **cross-border** educators need to take into account that copyright rules are not the same in every EU member state. All member states have implemented the education exception in their national law in their own way, which has resulted in many differences between countries. When working cross-boarder, you need to pay attention to possible differences in legislation.

#1

WHAT COPYRIGHT HAS TO DO WITH EDUCATION

Why should we, educators and educational organisations, care about the upcoming DSM Directive?

The proposed Directive on Copyright in the Digital Single Market, the DSM Directive, has the aim to harmonize the rules for using copyright protected material including the rules concerning the education exception and its application for digital uses. The Directive could improve the current situation for educators when it comes to copyright, however the proposed Directive has **several considerable shortcomings**. The DSM Directive has been proposed by the Commission and is now awaiting for approval of the European Parliament and Council who are expected to decide on the proposal before the end of 2017 meaning there is still time for us to make sure the proposal will be improved.

What is wrong with the proposal?

The Commission's proposal includes an education exception for **digital education only**. Member states can also **exclude specific types of work** or other subject matter. The exception is intended **solely for activities by educational establishments** in primary, secondary, vocational and higher education. The proposal also gives Member States the opportunity to implement laws that would require licenses for the use of content. These **licenses can take precedence over the education exceptions**. Licenses can result in higher costs for schools.

What is Communia arguing for?

We want the same copyright rules for education in all the member states and that these **rules can not be overridden by licensing schemes** to make sure education remains affordable. We believe that the education exception should apply to **all educational institutions**, including non-formal education and cultural heritage institutions. We want a Directive that allows use and exchange of digital and non-digital materials, and one that **enables educators to work cross border** with teachers in other EU countries. Check out our [position paper here](#).

Join us in our mission to shape the future of education

- Share this handout with educators and educational organisations across Europe to inform them about the current copyright reform related to education.
- Sign up for our [monthly newsletter](#).
- We are building an informal coalition of like-minded organisations and individuals. If you want to be part of our community and raise your voice for better copyright for education, drop us a line at education@communia-association.org so that we can make sure to keep you up to date on our activities.

#2

THE ABC OF COPYRIGHT REFORM

Copyright Untangled is a series of factsheets about education and the copyright reform. This sheet will explain recurring concepts and the timeline regarding the copyright reform.

“Every day as a researcher, even in one of the wealthiest European universities, you hit restrictions based around copyright that stifle your research. Private interests should not be allowed to interfere with the public good, especially for health, education, and research.”

– Researcher, petition signee rightcopyright.eu

The Directive on Copyright in the Digital Single Market (DSM Directive)

Is a law (Directive) proposed by the European Commission. On 14 september 2016 European Commission presented its proposal for the DSM Directive to the European Parliament. The aim of the Directive is to harmonize some rules for using copyright protected material. Regarding education the rules for illustration of teaching, and its application for digital uses, to make sure copyright rules concerning (digital) education are the same in every member state of the European Union.

[read more](#)

The European Commission

Can propose legislation such as the DSM Directive. It is similar to a cabinet government. It consists out of 28 members, one member per member state, who represent the general interest of the European Union.

[read more](#)

The European Parliament (EP)

Is the directly elected body of the European Union. They can approve or reject the DSM Directive together with the Council of the European Union. The EP is divided in multiple committees. Committee members propose amendments after which the committee votes on which amendments they think are better than the original proposed text. This document is called an Opinion. Almost all relevant committees have voted on their Opinion before the summer of 2017.

[read more](#)

- **The legal affairs committee (JURI)** the most important committee on the DSM Directive, takes the Opinions of the other committees into account in their report to the European Parliament. JURI will be the last committee to vote on its amendments in October 2017.
- **The Internal Market and Consumer Protection committee (IMCO)** focusses on reducing barriers to economic trade and simplify legislation to enhance competitiveness across the Single Market, while including the consumer's interests.

[read more](#)

[read more](#)

#2

THE ABC OF COPYRIGHT REFORM

- The committee on Culture and Education (CULT) is responsible for all the cultural aspects of the European Union including cultural heritage and education. [read more](#)
- The Industry, Research and Energy committee (ITRE) is responsible for areas related to industry, information technology and telecommunications. [read more](#)
- A **Rapporteur** reports the findings of his committee to the European Parliament. **Axel Voss** was appointed as the rapporteur for the proposal for a Directive on Copyright in the Digital Single Market for the legal committee. [read more](#)

The Council of the European Union (Council of Ministers)

Comprises of national ministers, but more commonly expert representatives from the relevant ministries. They can approve or reject the DSM Directive. [read more](#)

Timeline:



* This timeline is subject to change

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#3

HOW TO CONVINCE YOUR LEGISLATOR

Copyright Untangled is a series of factsheets about education and the copyright reform. This sheet will give you talking points to convince your legislator.

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Who should you talk to?

The European Parliament can amend, reject or accept the Commission’s proposal on copyright in the Digital Single Market. It is therefore important to

**CONTACT
TO YOUR MEP**

and tell him or her what you think should change about the proposal. You can find your MEP on the website of the European Parliament: www.europarl.europa.eu/meps/.

The Council of the European Union can also negotiate, reject or adopt the proposal. The council consists out government ministers from each EU country who are supported by the Permanent Representatives to the EU. Therefore you can either

**CONTACT
MINISTRY**

of your country or

**PERMANENT
REPRESENTATIVE
TO THE EU**

To explain them what should be changed about the proposal. You can look up the permanent representation of your country [here](#).

What should I say?

Dear legislator,

I’m worried about the the future of education in relation to copyright in Europe. I would like to talk to you about article 4 on education of the proposal of the Directive on copyright in the Digital Single Market. The proposal does not serve educational purposes. The following points should be taken into account:

#3

HOW TO CONVINCE YOUR LEGISLATOR

1. REMOVE UNNECESSARY PHYSICAL AND/OR TECHNOLOGICAL BARRIERS

Face-to-face teaching activities are not limited to the walls of a classroom. Teachers carry out educational activities in a variety of locations. The Commission's proposal will create unnecessary obstacles to traditional educational activities that take place outside the school, for example, educational activities involving digital uses of copyrighted materials, which are carried out by teachers and students affiliated with an educational establishment on the premises of e.g. a library or a museum. **We therefore recommend an exception that gives the education community the ability to access and use content for educational purposes without physical or technological barriers, provided that the uses are in accordance with fair practice.**

2. BROADEN THE BENEFICIARIES OF THE EXCEPTION

We are worried that the proposed new exception only applies to 'educational establishments.' Education is understood today as a lifelong process that is conducted by a multitude of institutions, formally and informally, and includes learners themselves. This was noted in the Council Resolution of 27 June 2002 on lifelong learning. Yet, when defining copyright law, the Commission's proposal fails to embrace its own lifelong learning approach by limiting the potential beneficiaries of the proposed exception to 'educational establishments' such as offered by museums, libraries, archives, professional associations, independent learning, and civil society organisations. **We therefore propose that the beneficiaries of the exception will be broadened to include all persons and entities providing an educational activity.**

3. REMOVE THE REFERENCE TO LICENSES

The European Commission's efforts to harmonise digital education at the EU level will be of little consequence if member states can ultimately decide to subject the application of the exception to the availability of 'adequate' licenses. The proposal does not clarify whether this covers important factors like if the license has a reasonable price, respects other exceptions and limitations, or even provides fair remuneration to the original author. Many educational institutions will be ill-placed to negotiate license contracts, while others will not even be able to consider purchasing a license. **We therefore recommend that the reference to licenses is removed from the exception.**

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#4

5 IMPORTANT QUESTIONS ABOUT THE EC PROPOSAL FOR EDUCATIONAL EXCEPTION

Copyright Untangled is a series of factsheets about education and the copyright reform. This sheet will give you examples of questions, which may help to convince your legislator that current proposal for educational exception is not the best solution for needs of teachers and educators in the 21st century.

How to use this handout?

Below you will find an excerpt from Article 4 (educational exception) of the European Commission's proposal for a Directive on Copyright in the Digital Single Market. We highlighted its most controversial parts. You will find explanations, questions, answers and recommendations for each them.

In the beginning of November 2017 most members of the European Parliament (MEPs) will be in their home country. You can try to contact MEP that originates from your home country. These five important questions can help you to explain why the current EC proposal does not serve educational purposes.

„Proposal DSM Directive - Article 4 - Use of works and other subject-matter in digital and cross-border teaching activities

*1. Member States shall provide for an exception or limitation (...) in order to allow for **the digital use***

Explanation:

EC focuses only on digitally-supported education and leaves unharmonized a large spectrum of non-digital educational activities, which are equally important.

Question:

As a teacher will I be able to distribute short text materials to my students, or screen a movie from a DVD?

Answer/ recommendation:

Under this EU-wide rule, no. Teachers can no longer perceive the division between digital and analogue uses of works. Therefore, we recommend to remove the wording "digital", to cover all uses, regardless of the technology.

of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:

(a) takes place on the premises

Explanation:

EC is limiting teaching to the walls of a formal classroom.

Question:

If as a teacher I am conducting classes in a public library, will I be able to use the same educational materials that I could use if the classes would take place in the school building?

Answer/ recommendation:

Under this EU-wide rule, no. Teachers carry out educational activities in a variety of locations. Therefore, we recommend to remove unnecessary obstacles to traditional educational activities that take place outside the school, e.g. in library or museum.

#4

5 IMPORTANT QUESTIONS ABOUT THE EC PROPOSAL FOR EDUCATIONAL EXCEPTION

of an **educational establishment**

Explanation:

EC is focusing on the type of person or institution doing the teaching (an educational establishment), rather than on the educational purpose of the use.

Question:

Will my students be able to have access and use copyrighted materials while attending an educational program run by a museum?

Answer/ recommendation:

Under this EU-wide rule, no. Libraries, museums, etc are important providers of education. Therefore, we recommend to broaden the list of beneficiaries of the exception to include all persons and entities providing an educational activity.

or through a **secure electronic network accessible only by the pupils or students and teaching staff;**

Explanation:

EC is limiting the means of communication between teachers and students to closed networks.

Question:

As a teacher, will I be able to share materials with my students through email or using Dropbox?

Answer/ recommendation:

Under this EU-wide rule, no. Most schools don't have the resources to run their own closed networks, and most teachers already use all sorts of platforms to communicate with students. Thus, we recommend to remove the reference to networks "accessible only by the educational establishment's pupils or students and teaching staff", in order to allow teachers and students to communicate through any (secure) electronic network.

(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

2. Member States may provide that **the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter,**

Explanation:

EC gives MS the right not to apply the exception, if adequate licenses are provided by the rights holders, in practice making the exception powerless.

Question:

If a publisher offers a license to buy a material that I, as a teacher, was using under the exception, will I be forced to stop using the material and accept the terms and price offered by the licensor?

Answer/ recommendation:

Yes. Educational institutions cannot adequately support teaching and learning activities if they are fully dependent on the will of a particular licensor. They will be ill-placed to negotiate license terms and forced to accept the terms dictated by the licensor. Others won't even be able to consider purchasing a license, due to its costs. Thus, we recommend a mandatory educational exception that cannot be excluded by MS if licensed content is available.

to the extent that adequate licences authorising the acts described in paragraph 1 are easily available in the market."

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