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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.

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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."

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.