

Legal Affairs Committee Education Exception

CA 6 on article 4

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 to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use 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 of an educational establishment, ***or in any other venue where the teaching activity takes place under the responsibility of the educational establishment***, or through a secure electronic ***environment*** ~~network~~ accessible only by the educational establishment's pupils or students and teaching staff;

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

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, ***such as material which is primarily intended for the educational market or sheet music***, to the extent that adequate ~~licences~~ ***licencing agreements*** authorising the acts described in paragraph 1 ***and tailored to the needs and specificities of educational establishments*** are easily available in the market.

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic ~~networks~~ ***environments*** undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.

4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to the first paragraph shall be unenforceable. Member States shall ensure that rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1, generally or as regards specific types of works or other subject-matter that they may choose.

CA 23 on recital 14

Compromise amendment replacing all relevant amendments, including AM 171 (Boutonnet et. al), AM 172 (Adinolfi et. al), AM 173 (Mastalka et. al), AM 174 (Buda), AM 175 (Karime, Dzhambazki), AM 176 (Radev), AM 177 (Zlotowski), AM 178 (Reda), AM 179 (Radev), AM 180 (Mastalka et. al), AM 181 (Buda), AM 182 Guoga, Maydell), AM 183 (Geringer de Oedenberg et. al), AM 184 (Adinolfi et. al), AM 185 (Reda), AM 186 (Zlotowski), AM 187 Zlotowski), AM 188 (Karim, Dzhambazki), AM 189 (Wolken, Koster), AM 190 (Adinolfi et. al), AM 191 (Karim, Dzhambazki), AM 192 (Guoga, Maydell), AM 193 (Reda), AM 194 (Roziere et. al), AM 195 (Mastalka et. al), AM 196 Radev), AM 197 (Szajer, Bocskor), AM 198 (Wolken, Koster), AM 199 (Boutonnet et. al), AM 200 (Reda), AM 201 (Wolken, Koster), AM 202 (Adinolfi et. al), AM 203 (Mastalka et. al), AM 204 (Szajer, Bocskor), AM 205 (Roziere et. al), AM 206 (Boutonnet et. al), AM 207 (Le Grip), AM 208 (Szajer, Bocskor), IMCO 11, IMCO 12, IMCO 13, IMCO 14, ITRE 8, ITRE 9, ITRE 10, CULT 8, CULT 9, CULT 10, CULT 11, CULT 12

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.

CA 24 on recital 15

Compromise amendment replacing all relevant amendments, including: AM 11 (Rapporteur), AM 179 (Radev), IMCO 12, CULT 9, AM 180 (Maštálka, Chrysogonos, Kuneva), ITRE 9, AM 182 (Guoga, Maydell), AM 183 (Geringer de Oedenberg, Stihler, Negrescu, Coffèrati, Lauristin, Honeyball), AM 184 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 185 (Reda), AM 189 (Wölken, Köster), AM 186 (Złotowski), AM 187 (Złotowski), AM 181 (Buda), AM 188 (Karim, Dzhambazki)

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they

pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity. ***Where cultural heritage institutions pursue an educational objective and are involved in teaching activities, it should be possible for Member States to consider those institutions as an educational establishment under this exception in so far as their teaching activities are concerned.***

CA 25 on recital 16 and recital 16a

Compromise amendment replacing all relevant amendments, including AM 12 (Rapporteur), AM 190 (Adinolfi, Ferrara, Borrelli, Tamburrano), CULT 10, AM 193 (Reda), AM 194 (Rozière, Guillaume, Berès, Tarabella), AM 191 (Karim, Dzhambazki), AM 192 (Guoga, Maydell), AM 195 (Maštálka, Chrysogonos, Kuneva), IMCO 13, AM 196 (Radev), ITRE 10, AM 198 (Wölken, Köster), AM 197 (Szájer, Bocskor), AM 199 (Boutonnet, Bilde, Lebreton)

(16) The exception or limitation should cover digital uses of works and other subject-matter ~~such as the use of parts or extracts of works~~ to support, enrich or complement the teaching, including the related learning activities. ***The exception or limitation of usage should be granted as long as the used work or other subject-matter indicates the source, including the authors' name, unless this turns out to be impossible for reasons of practicability.*** The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means ~~in the classroom~~ ***where the teaching activity is physically provided, including where it takes place outside the premises of the educational establishment, for example in libraries or cultural heritage institutions, as long as the use is done under the responsibility of the educational establishment,*** and online uses through the educational establishment's secure electronic ~~network~~ ***environment,*** the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

(16a) A secure electronic environment should be understood as digital teaching and learning environment, access to which is limited through appropriate authentication procedure to the educational establishment's teaching staff and to the pupils or students enrolled in a study programme.

CA 26 on recital 17 and recital 17a

Compromise amendment replacing all relevant amendments, including AM 200 (Reda), AM 201(Wölken, Köster), AM 202(Adinolfi et al.), AM 203 (Maštálka et al.), IMCO 14 (CULT 11), AM 207 (Le Grip), AM 205 (Rozière et al.), AM 204 (Szájer, Bocskor), AM 206 (Boutonnet et al.), AM 208 (Szájer, Bocskor), CULT 12

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences. ***These licencing agreements can take the form of collecting licensing agreements, extended collective licensing agreements and licences that are negotiated collectively such as “blanket licences”, in order to avoid educational establishments having to negotiate individually with rightholders. Such licensing agreements should be affordable and covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, or for teaching in educational establishment or sheet music.*** In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that ***such*** licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes. ***Member States should be able to provide for systems to ensure that there is fair compensation for right holders for uses under those exceptions or limitations. Member States should be encouraged to use systems that do not create an administrative burden, such as systems that provide for one-off payments.***

(17a) Where the harm to a rightholder would be minimal, no obligation for payment of compensation may arise.