



## Article 4 – Illustration for Teaching

Using works, both in and out of copyright, to illustrate points while teaching is central to education (e.g. showing a painting or playing part of a broadcast). So is the use of, and quotation from, copyright-protected works in academic theses.

Moreover, modern education routinely takes place using digital tools, either in the classroom or online through distance learning. Finally, as was recognised in the Education and Training 2020 (ET2020) Strategy, agreed in 2009, informal and non-formal education has a major role in achieving the EU's objectives.

However, the existing exception, dating from 2001, is only optional. While many countries have indeed implemented it, it is unclear whether it should apply to digital or distance learning, in particular across borders (such as for MOOCs). There is also no certainty about whether libraries, which offer training to around 24 million Europeans a year, can also make use of it.

### Our Ask:

- Ensure that the exception covers both digital and non-digital uses in order to maximise ease of use for educators.
- Ensure that libraries and cultural heritage institutions, as entities providing informal and non-formal education to 24 million European citizens a year are also covered by the exception.
- Ensure that where compensation is offered to rightholders, it is only where this causes unjustifiable prejudice to rightholders' legitimate interests.
- Include scientific research under the exception, given that this too is a public interest activity.

**What Does the Commission's Proposal Say?** It creates a mandatory exception for digital uses of copyrighted works for illustration for teaching purposes, in schools, universities and vocational training establishments. These uses can take place either in the classroom or at distance, including across borders. In the latter case, it is the law of the country of origin that applies.

Member States have the option of dis-applying the exceptions when 'adequate' licences exist, as well as the option to offer compensation to rightholders for harm caused by uses of their works in education.

**What's Missing?** The exception creates a separate regime for digital uses of materials than for analogue ones. While it is encouraging that the exception is mandatory, the fact that it can be overridden by licences makes this potentially meaningless. Member States are allowed a lot of room to exclude works in this way, going beyond resources such as textbooks, as well as to define what 'adequate licences' means in this context. Moreover, it appears that only formal education is covered, with libraries unlikely to fall under the scope of the exception. Finally, there is no provision to underline that, even where the exception applies, it cannot be overridden by the terms of contracts.

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