

DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

(Text with EEA relevance)

Article 5 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 Article 5(a), (b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of Directive 2009/24/EC and Article 15(1) of this Directive in order to allow 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, on condition that such use:

(a) takes place under the responsibility of an educational establishment, on its premises or at other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff; and

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

2. Notwithstanding Article 7(1), Member States may provide that the exception or limitation adopted pursuant to paragraph 1 does not apply or does not apply as regards specific uses or types of works or other subject matter, such as material that is primarily intended for the educational market or sheet music, to the extent that suitable licences authorising the acts referred to in paragraph 1 of this Article and covering the needs and specificities of educational establishments are easily available on the market.

Member States that decide to avail of the first subparagraph of this paragraph shall take the necessary measures to ensure that the licences authorising the acts referred to in paragraph 1 of this Article are available and visible in an appropriate manner for educational establishments.

3. The use of works and other subject matter for the sole purpose of illustration for teaching through secure electronic 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 rightholders for the use of their works or other subject matter pursuant to paragraph 1.

Recitals relating to Article 5

(19) 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 of works or other subject matter in such a way that members of the public may access them from a place and a time individually chosen by them, for the sole purpose of 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 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 at a distance. Moreover, the existing legal framework does not provide for a cross-border effect. This situation could 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.

(20) 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 recognised by a Member State, including those involved in primary, secondary, vocational and higher education. It should apply only to the extent that the uses are justified by the non-commercial purpose of the particular teaching activity. The organisational structure and the means of funding of an educational establishment should not be the decisive factors in determining whether the activity is non-commercial in nature.

(21) The exception or limitation provided for in this Directive for the sole purpose of illustration for teaching should be understood as covering digital uses of works or other subject matter to support, enrich or complement the teaching, including learning activities. The distribution of software allowed under that exception or limitation should be limited to digital transmission of software. In most cases, the concept of illustration would, therefore, imply the use only of parts or extracts of works, which should not substitute for the purchase of materials primarily intended for the educational market. When implementing the exception or limitation, Member States should remain free to specify, for the different types of works or other subject matter, in a balanced manner, the proportion of a work or other subject matter that can be used for the sole purpose of illustration for teaching. Uses allowed under the exception or limitation should be understood to cover the specific accessibility needs of persons with a disability in the context of illustration for teaching.

(22) The use of works or other subject matter under the exception or limitation for the sole purpose of illustration for teaching provided for in this Directive should only take place in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations or teaching activities that take place outside the premises of educational establishments, for example in a museum, library or another cultural heritage institution, and should be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses of works or other subject matter made in the classroom or in other venues through digital means, for example electronic whiteboards or digital devices which might be connected to the internet, as well as uses made at a distance through secure electronic environments, such as in the context of online courses or access to teaching material complementing a given course. Secure

electronic environments should be understood as digital teaching and learning environments access to which is limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication. L 130/96 EN Official Journal of the European Union 17.5.2019

(23) Different arrangements, based on the implementation of the exception or limitation 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 of different levels of education. While 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 arrangements for implementation can vary from one Member State to another, to the extent that they do not hamper the effective application of the exception or limitation or cross-border uses. Member States should, for example, remain free to require that the use of works or other subject matter respect the moral rights of authors and performers. 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 suitable licences, covering at least the same uses as those allowed under the exception or limitation. Member States should ensure that where licences cover only partially the uses allowed under the exception or limitation, all the other uses remain subject to the exception or limitation.

Member States could, for example, use this mechanism to give precedence to licences for material that is primarily intended for the educational market or licences for sheet music. In order to avoid that subjecting the application of the exception to the availability of licences results in legal uncertainty or an administrative burden for educational establishments, Member States adopting such an approach should take concrete measures to ensure that 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. Such licensing schemes should meet the needs of educational establishments. Information tools aimed at ensuring that existing licensing schemes are visible could also be developed. Such schemes could, for example, be based on collective licensing or on extended collective licensing, in order to avoid educational establishments having to negotiate individually with rightholders. In order to guarantee legal certainty, Member States should specify under which conditions an educational establishment can use protected works or other subject matter under that exception and, conversely, when it should act under a licensing scheme.

(24) Member States should remain free to provide that rightholders receive fair compensation for the digital uses of their works or other subject matter under the exception or limitation provided for in this Directive for illustration for teaching. In setting the level of fair compensation, due account should be taken, inter alia, of Member States' educational objectives and of the harm to rightholders. Member States that decide to provide for fair compensation should encourage the use of systems that do not create an administrative burden for educational establishments.