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Copyright proposal: Copyfails reloaded

Different licences in MS will further fragment access to education in Europe

What was proposed?

The Commission proposed an additional mandatory exception (a freedom to use copyright protected works), for digital cross-border teaching activities. This would allow teachers and students to use copyright protected works in the premises of a recognised educational institution or through a closed online system. However, this freedom can be limited because the member states will be able to introduce compensation agreements ('adequate licences').

What is the problem?

Currently, teachers who want to use copyright protected movies, texts or pictures in any educational activity across Europe face different rules in every member state. The new exception is mandatory only for digital uses, and in practice it will not make the framework any more consistent. Because member states can choose to override the exception with 'adequate' licences, it may turn out that a film used in teaching in an international online course, can be accessed by students from one EU country but not from the other. Also, anything that is taught outside a school will not be exempted.

Why is it important?

High-quality, lifelong education based on equal opportunities in access to knowledge is a cornerstone of an innovative society. In Europe, with its diverse cultural backgrounds, it is especially important that the citizens can learn and study without borders – neither political nor regulatory. Teaching happens also informally, at NGOs, museums, and libraries. Therefore providing fair and equal access to any material that is useful in formal and informal teaching is an investment in a better future for Europeans.

Will the proposal fix the problems?

No. The proposal overlaps with the existing educational exception and may create even more legal uncertainty for teachers. The introduction of licences could effectively exclude vast amounts of texts and audiovisual materials from unrestricted use in education. The licences will be paid for by a school system, which is underfinanced in many European countries. NGOs, museums, libraries and other entities will not be able to benefit from the exception.

How can this be fixed?

A harmonised mandatory education exception is needed. It should cover all uses in educational institutions and other formal and informal educational activities run by any person or entity, in and outside of the classroom. These benefits could be achieved by making the existing educational exception mandatory across EU to cover both analogue and digital use.