

## How EU Member States can ensure the delivery of sustainable, high-quality content for education in implementing the new EU Copyright Directive

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The EU Copyright in the Digital Single Market (“DSM”) Directive 2019/790, adopted in April 2019, includes a mandatory exception to copyright under Article 5 for the “digital use of works and other subject matter for the sole purpose of illustration for teaching”. EU Member States have until 7 June 2021 to transpose the Directive into national law, with some flexibility in how they do so.

The way in which Article 5 is implemented strongly impacts authors and publishers. This is because written works, and especially educational materials, are a significant part of the publishing market<sup>1</sup>, as well as being the resources most frequently copied<sup>2</sup> by teachers and pupils under licences provided by collective management organisations in the text and image field (“Reproduction Rights Organisations” or “RROs”).

As a result, it is vital that authors and publishers are remunerated when their works are used by educational establishments. If authors and publishers are deprived of these legitimate revenues, this will create an imbalance in the creative ecosystem and jeopardise the production of diverse, reliable, quality content that is essential to an informed and democratic society.

IFRRO, the international network of collective management organisations and creators’ and publishers’ associations in the text and image spheres, has developed “Content for Education” ([www.contentforeducation.org](http://www.contentforeducation.org)) with the support of its members, as a tool to:

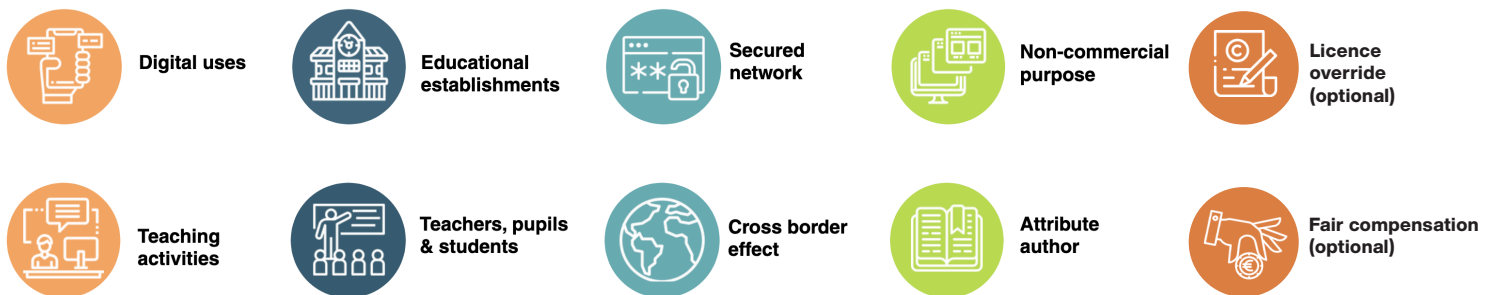
- Raise awareness about the benefits for teachers, students, authors and publishers of having a balanced approach to Article 5 implementation, as well as the dangers of introducing a broad, unremunerated exception
- Provide information about collective licensing solutions that exist and how they benefit authors, publishers, educational establishments and their students
- Provide suggestions for how Article 5 can be transposed in a way that ensures sustainable, diverse, high-quality content for education in Europe.

The Content for Education website explains Article 5 and its potential impact. It includes explanatory videos, testimonials from authors (including writers, literary translators, visual artists, journalists), publishers and teachers, as well as examples of collective licensing solutions from different countries.

<sup>1</sup>School book publishing represents 20% of the European publishing market which has a retail market value of €6-7 billion.

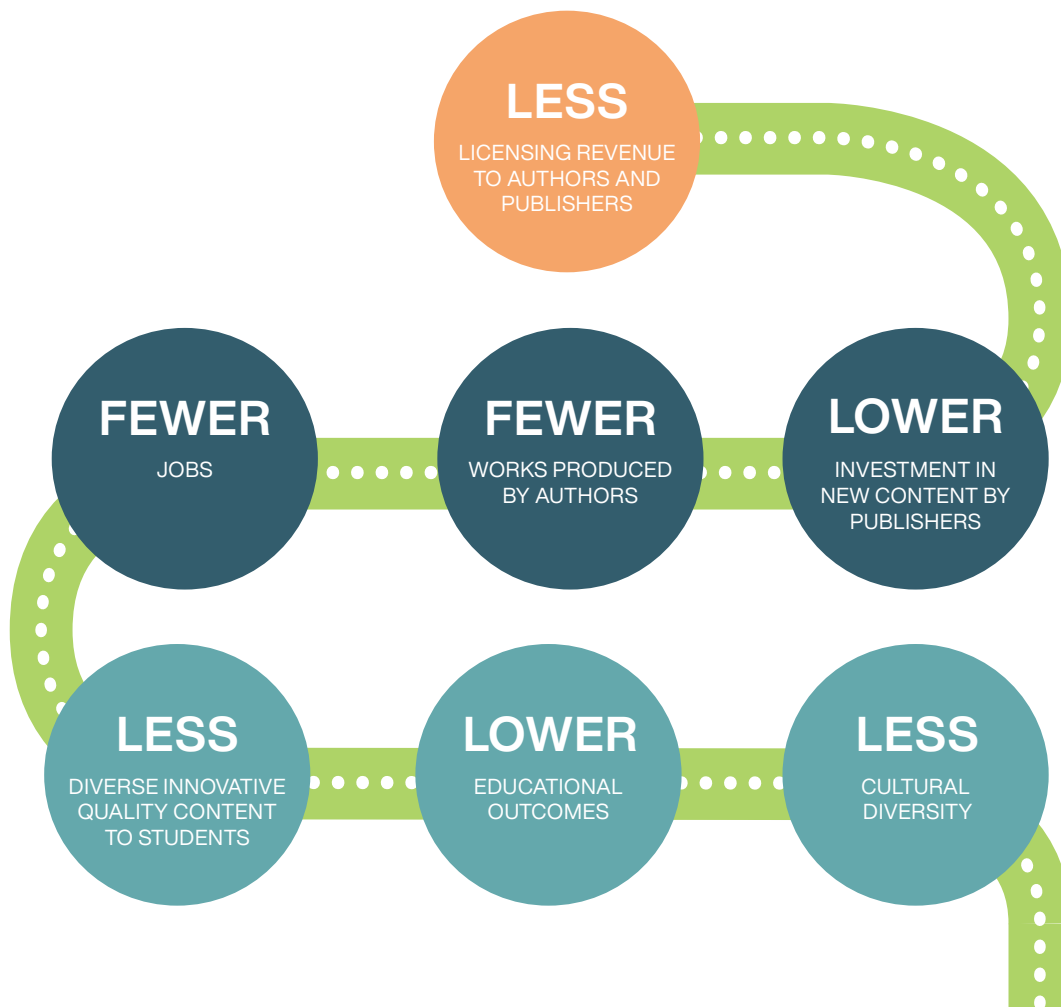
<sup>2</sup>E.g., in Denmark 500 million school book pages are copied each year; in France it is the equivalent of 2 million books.

# What is the Article 5 exception for illustration for teaching?



## What is at stake?

Article 5 leaves significant flexibility for EU Member States to decide how to transpose the rules into national legislation. The choices that Member States make will have a significant impact on authors and publishers whose works are copied. In many cases it will be a deciding factor as to whether an author is able to continue make a living from writing or a publisher to invest in new publications. Hindering the creative ecosystem will undermine the whole educational system, impoverishing the quality and diversity of content and subsequently the education of younger generations.



# How to ensure a balanced exception for illustration for teaching and a positive outcome for both users and creators at national level?

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## **KEY POLICY CONSIDERATION #1:**

### **Clearly define digital use by limiting the scope to extracts of works**

It is important that Member States clarify that “illustration for teaching” means to support, enrich or complement teaching using only small parts or extracts of works. It is essential to set objective criteria and limits regarding the use of written works. Without clear boundaries, the exception could be interpreted as a green light to make extensive copies of works. In fact, prior to the adoption of the DSM Directive, the majority of Member States already limited reproduction of written works to “extracts” or “short extracts”, either in law or under licences.

Recital 21 of the Directive specifies “the use only of parts or extracts of works” enabling Member States to define extracts or set proportions for different categories of works. The use of extracts or short extracts is common practice in education, specifically for written works (the most used in education).

The limitation to extracts ensures respect of the “three-step test”, which shall guide all exceptions to copyright, according to Article 9 of the Berne Convention.

## **KEY POLICY CONSIDERATION #2:**

### **Allow prevalence of licences**

Article 5 gives Member States the possibility not to apply the exception where there are suitable licences easily available on the market. It is important that EU Member States’ transposition of Article 5 provides a mechanism to preserve licensing systems between users and RROs (on behalf of authors and publishers), which have already been developed in many Member States. These systems provide flexible solutions for users, including across borders, in adapting to new digital uses, permitting uses that go even beyond those an exception would cover. Importantly, these systems provide the user with legal certainty. The exception should be applied only when licensing agreements are not available.

## **KEY POLICY CONSIDERATION # 3:**

### **Fair compensation where the exception is applied**

Article 5 allows Member States to provide for fair compensation where the Article 5 exception is applied. It is vital that Member States include a provision for fair compensation for the loss incurred by authors and publishers. Secondary rights are necessary income for authors and publishers (especially small ones): e.g., a PwC study showed 25% of authors receive more than 60% of their income from secondary uses.

Free education doesn’t mean free use of content. Remunerating authors and publishers is essential for the sustainability of the sector and maintaining diversified and quality educational content. It is absolutely vital to avoid a situation in which neither the licensing option nor the compensation provision is available in the national law. This would be extremely detrimental to educational establishments and their students, as well as to authors and publishers.

# Collective licensing

Collective management organisations in the text and image sector, known as Reproduction Rights Organisations (RROs), collectively manage the licensing of reproduction rights on behalf of authors and publishers when it is impracticable for them to act individually. RROs collect and distribute to authors and publishers the royalties due for uses of their works.

## BENEFIT OF COLLECTIVE LICENSING FOR USERS IN THE EDUCATION SECTOR

### Adapted to users' needs

Collective licences are the outcome of negotiations, generally between the licensor (RRO) and organisations with significant bargaining power such as those representing the education sector, e.g., the Ministry of Education, or federation of universities or schools. Licensing conditions are therefore adapted to the specific needs of the sector.

A licence usually defines and covers a wide range of uses (see illustration below). Licences have been adapted over the years, evolving with technology and educational practices, so they continue to meet the needs of the users.

### Easily available

Collective licensing provides a one-stop shop for educational establishments to get authorisation to use a variety of quality content for their students for a relatively small fee per student (e.g., the price of a couple of cups of coffee).

## BENEFIT OF COLLECTIVE LICENSING FOR AUTHORS AND PUBLISHERS

Collective licensing ensures that authors of works used and the publishers that invest in those works are remunerated for their work and continue providing quality, innovative content, to the benefit of students.

## How does collective management provide solutions?



More details about some of the educational licences being offered can be found on the Content For Education website ([www.contentforeducation.org](http://www.contentforeducation.org)), or on national RRO websites, which can be located via IFRRO's website ([www.ifrro.org](http://www.ifrro.org)). A search function allows users to search for RROs by country.