

# The Educators' Guide to the Galaxy: How to Implement the EU Digital Teaching Exception

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## Abstract

The transition towards distance education during the outbreak of the Covid-19 pandemic felt, to some extent, as surreal as Douglas Adams' narrative in the sensational multimedia production in the early 1980s. Balancing the lack of adequate preparation and equipment, one of the few items of good news within the European educational sector has been the timely, but in this context accidental, adoption of a new copyright digital teaching exception.

Article 5 of the 2019 EU Directive on Copyright in the Digital Single Market (CDSM Directive) attempts to modernize the relevant legal framework by increasing flexibility under permitted uses for schools and universities in their digital and cross-border activities. Despite its mandatory nature, the provision presents significant room for national maneuvering. This creates the risk that, despite the intention to harmonize copyright rules, national implementations could lead to a fragmented European response to the needs of educators and students.

Our analysis dissects Article 5 CDSM Directive and unveils a three-tiered primer for its implementation. First, we set out the rationale and promises of the new provision. Second, we present its mandatory requirements and benchmarks, aimed at setting a new model of copyright exception for digital teaching activities in Europe and beyond. Third, we conduct a comparative study of how the Hungarian, German, and Italian experiences have used the discretion left to Member States into three divergent models of implementation.

Drawing from the comparative analysis of these national approaches on the scope of Article 5 and the systematization of existing national teaching exceptions, our study provides a sound and useful perspective in two ways: It illustrates the extent to which we can consider the new provision a sound evolution towards more modern and European teaching and learning environments; while it fundamentally supports the effective and future-proof interpretation of EU copyright provisions regulating the balance between exclusivity and right to education.

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