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Statement

on copyright in the Digital Single Market

The European Trade Union Committee for Education (ETUCE), which represents 131 education trade unions in 48 countries, welcomes the European Commission's proposal¹ to provide a copyright exception for the use of digital materials for educational non-commercial purposes. It also supports the proposed regulation that would allow researchers who have a legal access to copyright protected content to mine that content (Text and Data Mining) without restrictions. Such a regulation would benefit the dissemination of recent research and facilitate further research and innovations in the sciences and higher education.

ETUCE welcomes the idea of copyright exception or limitation for education as well as the TDM exception for research as it provides a more diverse choice of learning materials and resources for teachers and researchers. Moreover, a genuine exception for education can contribute to the development of cross-border cooperation between institutions, teachers, and researchers in the EU. It relieves teachers and researchers of a fear of breaking the law when using online resources for their work and eliminates a legal uncertainty about digital materials.

However, ETUCE would like to point out several important issues and problems to consider in regard to this proposal:

1. First of all, it should be kept in mind that education and the content of educational materials is an **exclusive national competence of Member States**. Instead of imposing a unified, mandatory rule on European education systems that vary significantly across the EU, the European Commission should rather promote **social dialogue and collective agreements** in the education sector introducing social partners as main actors in negotiations on national copyright regulations in education.
2. ETUCE notes that a new Directive needs to address the rights of creators and the rights of users in a balanced way and in the context of education, knowledge and research to ensure the respect of the rule of law and of safety standards. The use of copyright-protected materials in education and research can present a serious challenge when these materials are produced by teachers, academics, or researchers in their private time. Any proposal on a copyright exemption for educational purposes must include **safeguards for fair remuneration and correct attribution** of work to teachers, academics and researchers. Educational institutions should be prevented from forcing their employees to sign imbalanced contracts where all their intellectual rights are transferred to the institution they are working for without any restrictions and any compensation.
3. The problem of proper attribution of work is especially sensitive in the Higher Education and Research sectors where **early stage researchers and doctoral candidates, as well as members of contingent faculty** are sometimes deprived of

¹ Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market (2016/0280 (COD))

the protection of academic freedom and intellectual property rights that their academic colleagues have. ETUCE calls on the European institutions to ensure that **all** researchers and teachers regardless of their academic status enjoy a **full discretion in the copyright of their scholarly work**.

4. ETUCE also highlights that the digital form of teaching materials creates **multi-dimensional copyright protection** which should be carefully reflected in the copyright exceptions. For example, in cases when academics and teachers are being requested by their educational institutions to share the **digital recordings of their lectures or classes**, the "teaching product" is **not only the content** of the lecture or class (which might be the intellectual property of the educational institution) but also the **performance** by the presenter in giving her/his lecture or class (which is solely the intellectual property of the teacher/academic).
5. ETUCE welcomes the European Commission's proposal to remove the copyright restrictions on the digital use of illustrative materials for educational purposes as such an action would **reduce the financial burdens on education systems and institutions**, most of which are already paying substantial licensing fees to provide students and teachers with access to teaching and learning materials. Licensing schemes primarily benefit for-profit private companies and contribute to indirect privatisation and commercialisation of education. ETUCE reminds that **education is a fundamental human right** and privatisation of education deepens socio-economic, gender, ethnic and geographical inequalities.
6. ETUCE notes the European Commission's proposal to allow Member States to opt out from the copyright exception for education only in the cases where **"adequate" licenses are "easily available in the market"**. However, the proposal would be more effective if the European Commission clarified more precisely the criteria of an "adequate" and "easily available in the market" license, how the "appropriate availability and visibility" should be ensured by Member States, and who will monitor the availability of these licenses.
7. The European Commission continues to present an economic and business approach to education, using such terms as "new business models" and "educational services". ETUCE reminds that **education is a public good and not a market "service"**, and it is crucial not only for each individual's development but for the society as a whole.
8. In order to have an effective implementation of the copyright exemption for educational purposes on the EU level, **they should be reflected in international trade and investment agreements** that the EU is pursuing. ETUCE strongly advocates for a carve-out of education and other public services from trade and investment agreements.
9. ETUCE underlines that the provision of quality and inclusive public education is the principal responsibility of the state which includes **sufficient public investment in teaching and learning materials**. Open and free access to digital materials for teaching purposes should not be used as an excuse to reduce state financial support for education materials and other education expenses, for example, library expenditures.
10. Digital use of illustrative digital materials for teaching, including films, music, theatre plays, news articles, contributes to the development of innovative learning and teaching methods. ETUCE supports the use of digital materials in education, but reminds that not everything can be taught from the screen. The aim of education is not merely to transfer skills, but **to develop students' social and emotional intelligence, mutual understanding**, critical thinking and **respect for others**. E-

learning is one of several teaching tools and it should not replace proven pedagogical practices.

11. At the same time, such an exception strengthens **teachers' professional autonomy** to choose pedagogical approaches and materials without limiting their resources to the materials obtained by their institutions through licenses. Nonetheless, ETUCE reminds that digital materials on the Internet might include hazardous and harmful content and untrue facts. In that regard, the proposal is not clear on how the **quality of the educational content** of exempted digital materials can be assured. In its policy paper *The 21st Century Teaching Profession and the Use of ICT*², ETUCE has suggested that open educational resources should be given **a standard set of metadata so teachers can look them up, index and filter them efficiently**.
12. Another possible danger of teachers and researchers using digital materials is their exposure to cyber-criminality, technological surveillance and the expropriation of personal data. ETUCE points out that in order to avoid these risks, **teachers' and researchers' initial and continuous professional development** should include a **comprehensive training** on how to use ICT tools and digital material, where to find them, and which materials are trustworthy. Moreover, teacher's and researcher's working time should include sufficient time to make progress in **developing digital competences and media literacy**.
13. ETUCE welcomes the effort to make **education more inclusive** that is reflected in this proposal, as well as in another recent European Commission's proposal which suggests to allow "uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled" (Proposal 2016/0278 (COD)). An open and free digital use of learning materials for non-commercial educational purposes, certainly, contributes to the provision of education for all regardless of students' social and migrant background, racial and ethnic origin, religion and belief, disability, age, sexual orientation and other characteristics. However, without **sufficient public investment in an adequate infrastructure and up-to-date digital equipment** in schools, the open access to digital materials for learning will only deepen the gap between advantageous and disadvantageous schools.
14. Finally, ETUCE notes that the European Commission's proposal makes no reference to the **Open Access initiative** proposed within the European Open Science Strategy. Open access is essential for Europe's ability to freely share knowledge by supporting the open dissemination of publicly-funded research. It has significant implications for copyright in the digital market that should be taken into account in order not to weaken the effort to develop an open access environment.

² <https://www.csee-etuice.org/en/documents/policy-papers/1789-the-21st-century-teaching-profession-and-the-use-of-ict-2016>