



Proposal for a Copyright regulation in favor of Education and Science

to

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www.ences.eu

ENCES Chairperson

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Summary of the Proposal

ENCES, the European Network for Copyright in favor of Education and Science, proposes a unified copyright regulation for the use of published work in science and education in order to overcome the complex system of limitations and exceptions. The proposal is for restriction-free and open access and use of published knowledge, without authorization for its use. The use may be subject of remuneration provided it does not affect the normal development of research activities and education.

Background

ENCES is the European Network for Copyright in favor of Education and Science. ENCES was founded in Berlin in Nov. 2008 where participants of an international workshop on „Copyright Regulation in Europe – An Enabling or Disabling Factor for Science Communication“ agreed that an EU-wide network of organizations and individuals in science and education was needed for a coordinated effort to promote the objective of a science- and education-friendly copyright in Europe.

ENCES provides a platform for organizations and individuals who are working towards improving the European copyright regulation as well as copyright legislation in respective member states. ENCES´ basic assumption is that knowledge and information in its digital form should be made available to everyone everywhere at any time and under fair conditions. This is particularly true with respect to science and education, where open and unrestricted access to knowledge and information in its published form is indispensable.

The existing copyright regime is strongly protective of creators´ and publishers´ (moral and exploitation) rights; it allows access to and usage of published knowledge in science and education only through a set of limitations and exceptions. According to ENCES´ analysis of the respective national copyright regulations within the EU, these limitations and exceptions, strictly controlled by the three-step-test, are of very limited advantage for users in science and education and have a

predominantly disabling rather than enabling effect both for the development of new knowledge and for innovation in the economy in general.

In addition, most limitations and exceptions, not least due to their complicated language, produce a great deal of confusion, uncertainty, and dissatisfaction on the side of the users. Copyright regulation, in particular with respect to science and education, does not match with the potentials of contemporary information and communication technologies and of the Internet for a much more open and unrestricted access to published knowledge.

Thus, ENCES proposes a unified copyright regulation for the use of published work in science and education in order to overcome the complex system of limitations and exceptions. The proposal is for restriction-free and open access and use of published knowledge, without authorization for its use. The use may be subject of remuneration provided it does not affect the normal development of research activities and education.

ENCES agrees with the proposal for an European copyright code, provided by the Wittem Project (http://www.copyrightcode.eu/Wittem_European_copyright_code_21%20april%202010.pdf), in particular with

Chap. 5 Limitations

Art. 5.2 – Uses for the purpose of freedom of expression and information, (2), (b):

(2) The following uses for the purpose of freedom of expression and information are permitted without authorization, but only against payment of remuneration and to the extent justified by the purpose of the ...

(b) use for purposes of scientific research.

and

Art. 5.3 – Uses permitted to promote social, political and cultural objectives, (2), (b):

(2) The following uses for the purpose of promoting important social, political and cultural objectives are permitted without authorization, but only against payment of remuneration, and to the extent justified by the purpose of the ...

(b) use for educational purposes.

But ENCES does not hold it necessary or appropriate to provide remuneration in each single case of use of published material.

Proposal

ENCES suggests the following regulation for the use of published work in science and education:

(1) Copying, distributing and making published works available to the public is, without further authorization, permitted for personal and restriction-free use in science and for educational purposes in schools, institutions of higher education (such as universities), and other non-commercial institutions dedicated to education, continuing and professional training. The right to make works publicly available (and to use these works) is restricted in each case to a well-defined group of people in science and education. Sentence 1 is also valid for scientific and educational purposes in documentation, archiving and preservation, in particular for services provided by publicly financed libraries, archives, documentation centers and museums which support scientific usage and serve educational purposes.

(2) The usage of published works according to para (1) may be subject to remuneration provided it does not affect the normal development of education and research activities.

(3) Contractual agreements which rule out para (1) are invalid.