



LIBER Position Statement: Copyright in the Digital Age

A central part of LIBER's mission is to provide an information infrastructure that enables research in LIBER institutions to be world class.

For this infrastructure to thrive, it must be part of an ecosystem that can accommodate and nurture the changing nature of research and innovation in the digital age. As the infrastructure evolves to accommodate rapid advances in information technology, an explosion in the production of data and a culture shift towards collaboration and openness, so too must the surrounding policies and legislation. So far, however, the evolution of copyright and associated intellectual property legislation has not kept pace with the digital age. Without significant changes to European legislation, Europe's research potential will not be fully realised.

The need for copyright reform is urgent. If we aim to be competitive in terms of quality research output, we cannot afford to delay the process of reform.

LIBER advocates an approach to copyright reform that balances the rights of creators to be recognised for their work with the rights of the end user to access information in an environment of legal certainty that fosters research, innovation and creativity and does not create barriers to education and learning. Our approach can be summarised through three high-level principles:

1. Access to and use of publicly-funded research should not be unduly restricted by copyright

LIBER believes that the results of publicly-funded research should be available for exploitation by the public, and for the social and economic benefit of the public. The copyright framework should support rather than stand in the way of this exploitation.

2. Copyright should foster, not hinder, innovation and competitiveness

LIBER recognises the huge potential economic and social benefits of data-driven innovation. Although facts and data are not governed by copyright, activities such as text and data mining¹ (a technological process that copies works in order to extract and analyse large quantities of facts and data) are being hindered by a copyright framework which was not designed for the digital environment. It is imperative that the copyright framework is adapted to ensure that European innovation is competitive.

3. Preservation of, and access to, cultural heritage must be supported by copyright exceptions

LIBER calls for a legislative framework that enables libraries to fulfill their mandate to preserve and provide equitable access to our cultural heritage over the long term without unduly burdening the public purse. Mass digitisation, the lending of e-books, the shifting of formats for the purpose of preservation, provision of content in accessible formats and the supply of excerpts of books and articles for research purposes are core library activities in support of research excellence.

¹ See the LIBER factsheet on text and data mining: www.libereurope.eu/news/tdm





In order to implement an information infrastructure which enables research in LIBER institutions to be world class, the following issues need to be addressed under European copyright law:

Harmonisation

Researchers are increasingly collaborating across borders, working in virtual research environments, and co-creating content. A harmonised approach to the adoption and implementation of limitations and exceptions is therefore required to reduce legal uncertainty. The Information Society Directive includes some limitations and exceptions which address problems that libraries face in providing access to digital information. These exceptions are not mandatory and, where implemented at national level, are not necessarily given the same interpretation. The result is an environment of legal uncertainty. This hinders the circulation of knowledge and its creation; blunting the impact of the infrastructures which have been developed to support collaboration and innovation.

Terms of protection

Whilst acknowledging copyright's social, economic and cultural functions, we believe that the minimum terms of protection in Europe (currently 70 years) should be reduced. They should be brought in line with the minimum terms of protection set out in the Berne Convention and the Agreement on Trade Related Intellectual Property Rights (TRIPS): life plus 50 years for copyrighted works and 50 years for neighbouring rights. Longer copyright terms exacerbate the issue of orphan works, which are created when copyright owners cannot be found or identified. Only a small percentage of copyright works created for commercial gain retain ongoing value sufficient to justify long copyright terms. The EU Directive on Orphan Works recognises the significance of the orphan works problem and LIBER believes that a reduced term of protection for copyright works would greatly alleviate this issue. The need to carry out a diligent search for owners of orphan works is putting too much strain on library resources and is creating a cultural black hole as 'orphaned' content cannot be used by the public or researchers.

Contracts and technological protection measures

In the digital environment, consultation and considered reform of copyright exceptions will be ineffective without a provision safeguarding copyright exceptions and limitations from override by contract or technological protection measures. In the case of technological prevention measures, the copyright framework should also recognise the occasional need for libraries to use or create software that can help circumvent these measures for the purpose of making and facilitating lawful use of a work.

Mass digitisation

The *Author's Guild versus Google Books* ruling in the United States recognises the enormous potential for researchers to benefit from the mass digitisation of books. It also places Europe at a disadvantage. Due to territorial issues, this content is not available to European researchers. Rather than facilitating digitisation at scale, there is the danger that requirements set out under the Orphan Works Directive may prevent European libraries from effectively competing with their American counterparts to counterbalance a Google Books monopoly. The implementation and impact of the Orphan Works Directive should be monitored and evaluated with this in mind. The Memorandum of Understanding² on Out of Commerce Works also needs to be reinforced by supporting legislation so that it is implemented uniformly across Europe.

Text and data mining

A specific exception to allow the extraction of facts and data for the purpose of text and data mining is essential. This will facilitate the deployment of new research methods to exploit lawfully-accessed digital content. Any exception should not discriminate between commercial and non-commercial purposes. Furthermore, distribution of the results of text and data mining must be permissible so long as the results are not a substitution for the original work. The implications of the Database Directive for text and data mining should also be reviewed and down-sized to accommodate this activity.

² http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm





Open access

By increasing accessibility and availability, and by facilitating the use and reuse of content, open access will play an integral role in driving research excellence globally. Copyright law should not hinder its progress. An exception or legal instrument should be developed which allows researchers to make the results of publicly funded research available openly³, regardless of contracts signed with a publisher. Open data is also an area of growth and potential driver of research and innovation. It is important to ensure that legal Intellectual Property instruments such as the Database Directive do not conflict with the realisation of this potential and negate the huge public investment in research infrastructures to support reuse of this data.

A 'fair-use' type exception facilitating research and new technologies

A general open-ended exception, compatible with the Three Step Test, is required. This will avoid obsolescence and ensure that any new copyright regime can accommodate future digital innovations, maintain European competitiveness and be interoperable with copyright regimes such as those in force in the United States. In an era of fast-moving technologies, we believe a closed list of exceptions is not flexible enough to allow European research institutions to compete with those in the United States and Asia, where fair use is already in place.

Preservation

Legal uncertainty around the ability of libraries to make copies of published and unpublished works for the purpose of preservation must be addressed. A mandatory exception which allows libraries to make copies and shift formats for preservation is essential in order to ensure sustained access to cultural and scientific heritage into the future.

Commercial versus non-commercial research

Any exception for research should not distinguish between commercial and non-commercial research purposes. The definition of non-commercial is vague and open to multiple interpretations. The lines are becoming less defined between purely non-commercial research and research that has commercial potential or has been funded by commercial entities. Given that universities are being encouraged to transfer knowledge, discoveries and science to the private sector through the so-called 'Knowledge Transfer' agenda in order to support the competitiveness of Europe we believe there is a fundamental economic need to amend copyright law in this manner.

For more information about LIBER's position on copyright, please contact Susan Reilly (susan.reilly@kb.nl). To learn more about LIBER as an organisation, please visit our website: www.libereurope.eu

³ By 'openly' we mean compliant with the criteria for open access as set out in the Berlin Declaration: <http://openaccess.mpg.de/286432/Berlin-Declaration>

