



Ligue des Bibliothèques Européennes de Recherche
Association of European Research Libraries

Addressed to the recipients in the EU Commission listed at the end of the letter

21 June 2014

Dear Sir

EPC Copyright Vision Paper 2014: Copyright enabled on the network

[LIBER](#), the Association of European Research Libraries, is responding to the attached EPC Copyright Vision Paper with this Open Letter addressed to colleagues in the European Commission listed at the end of this document. LIBER is the principal grouping of academic and research libraries in Europe, with over 400 members.

[LERU](#), the League of European Research Universities, also wishes to be associated with the statement. Since its foundation in 2002, the League of European Research Universities (LERU) has emerged as a prominent advocate for the promotion of basic research at European universities. LERU strongly believes that basic research plays an essential role in the innovation process and significantly contributes to the progress of society.

In addition, this response is backed by several Open Access publishers (listed at the end of the letter).

We reject the statements in the EPC Copyright Vision Paper covering Text and Data Mining. The EPC document says:

“The focus of demands for an exception hitherto has been on the potential for research through automated text and data mining technologies of the world’s corpus of academic and scientific journals. In our view this is “a snare and a delusion” perpetrated by those intent on gaining free access to the widest possible body of copyright works in the name of research, going way beyond scientific journals, to works of all published authors, as well as Europe’s news media and entertainment.” (p. 48)

We do not recognise the request for an Exception in European copyright frameworks to accommodate Text and Data Mining as ‘a snare and a delusion’. Both organisations are fully committed to seeking such an Exception in the forthcoming EU copyright review to promote the ability of European researchers to compete at a global level. This position is fully in line

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with the EC Expert Group's recommendations on [Text and Data Mining](#). We also attach LIBER's [Factsheet](#) on Text and Data Mining, which more fully outlines our position.

Legal Uncertainty

There has been an extensive amount written about the effect that legal uncertainty is having on the practice of TDM by researchers in Europe. It has now been well established that Europe is falling behind in research outputs based on TDM because our copyright framework is not fit for the digital age. There is now a clear case for a legislative solution that allows TDM.

Market failure

The solutions offered by publishers are not only insufficient to meet the needs of researchers, they are placing European researchers at a disadvantage. One to one licences negotiated directly with publishers, or click-through licences such as those offered by Elsevier or through Crossref, are not scalable or interoperable and can have negative downstream effects on the dissemination of results and the availability of TDM tools. Moreover, these limited solutions do not address the legal barrier for researchers who wish to mine the open Web, an activity which is prevented by the lack of legal clarity in the current copyright system.

Click-through licences

Automated licencing solutions/click-through licences expose our researchers to excessive legal liability and, because they can differ between providers and be modified at any time, reinforce the situation of legal uncertainty.

Cross border issues

According to bibliometric data, over 40 per cent of research outputs from France and Germany are from international research collaborations. The UK between 1990 and 2005 saw collaborations with researchers in India, Australia, Canada and Germany grow from 50 percent with Germany and up to 65 percent in the case of India. Such collaboration is likely to grow with the establishment of international initiatives such as the Research Data Alliance and this creates a strong case for the harmonisation of copyright laws which facilitate research activities such as TDM across Europe and globally.

Contract override

Contracts for access to electronic goods should not be permitted to override the national principles and policies expressed in Limitations and Exceptions. Contract override provisions are essential to provide legal certainty to both content providers and end-users. The current situation in which libraries and researchers are compelled to sign licences for access to content which reference laws from other jurisdictions, or explicitly override Exceptions, is untenable.

Non-commercial

Since TDM is concerned only with the extraction of non-copyrightable objects (facts and data), it makes no sense when drafting a law to address the technical shortcomings of the current copyright framework to limit that solution to non-commercial uses. What is more, an exception for TDM should not distinguish between commercial and non-commercial purposes, as the definition of 'non-commercial' is impossible to clarify. Many research institutions receive funding from both commercial and non-commercial sources and are mandated to engage in knowledge transfer. Limiting an Exception to non-commercial work is also likely to have a chilling effect on the development and availability of tools for researchers who wish to use TDM.

Infringement

We are seeking an Exception for TDM that will allow those who have **legal access to the content** to extract facts and data from the content using automated methods such as

crawling and scraping. We are **not** seeking to gain free access to copyrighted works. Mass downloading of content for redistribution to third parties with no legal right to access the content is illegal. Enabling users to perform text and data mining at scale does not equate to enabling users to steal content and make it available illegally. However, 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.

Technical Protection Measures

It is in nobody's interest to deploy robots for text and data mining irresponsibly. Many websites provide information on the required crawl delays which indicate how many seconds should be left between the downloading of new pages. If publishers were to provide this information to researchers, the researchers could modify their crawls accordingly. As technology and infrastructure improves, the crawl delays should shorten. Libraries are willing to facilitate and communicate the development of best practice in the use of robots for text and data mining.

We re-iterate our opposition to the EPC Copyright Vision Paper's statement on Text and Data Mining. We wish to see copyright reform in the EU and the development of an Exception for Text and Data Mining.

We would be happy to meet with you to discuss these issues further.

Yours sincerely,



Dr Paul Ayriss

President of LIBER (Association of European Research Libraries)

Chair of the LERU (League of European Research Universities) Community of Chief Information Officers

This letter is also backed by the following Open Access Publishers:

- Cameron Neylon, PLOS
- Brian Hole, Ubiquity Press
- Mark Patterson, eLife
- Peter Binfield, PeerJ
- Rupert Gatti, Open Book Publishers
- Xenia van Edig, Copernicus Publications

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