

Future-proofing European Research Excellence

A Statement from European Research Organisations on Copyright in the Digital Single Market

The world stands on the cusp of a revolution driven by the advance of digital technologies and capacity. Europe must take the lead to develop legislative frameworks that allow fair dissemination, access to, sharing and use of available knowledge.

Broad sections of society and the economy — including the research, innovation and education sectors which underpin competitiveness and sustainability in a knowledge society — are seeking to improve the way they work, produce results and provide impact. Digital technology is key for this. It is often the most effective way to harness information and improve services, products and solutions aimed at addressing society's challenges.

The European Commission has recognised this in its strategy for a Digital Single Market — a vision which aims to put Europe at the forefront of a prosperous and growing digital society.

The success of the strategy hinges on allowing innovative sectors of society and the economy to fairly and responsibly exploit the full potential of research and human creativity.

The decisions that European legislators and policymakers take on copyright will have a decisive bearing on whether or not Europe can harness this opportunity, and on European competitiveness in research and innovation long into the future. We know that European policymakers are keenly aware of the need to serve the many different sectors involved, to foster creation of knowledge and to avoid adding barriers which would impinge on the greater good.

In light of this, we, as representatives of the European research community, stand together to make the case for copyright reform to provide legal certainty around cross-border research activities and the deployment of new technologies for research and innovation.

To achieve European research excellence, the European Commission's proposal for a Directive on Copyright in the Digital Single Market must be amended in the following ways:

TEXT & DATA MINING

Text and Data Mining (TDM)¹ is the process by which one can derive information from machine-readable material. It is a necessary tool for researchers dealing with a vast amount of data and publications, and allows for accelerated knowledge creation, competitiveness and growth. Article 3 of the proposed Directive introduces a mandatory exception for TDM². However, this exception is limited to research organisations for the purposes of scientific research.

1. TDM allows linkages and meaning to be extracted from huge quantities of data and publications by the use of automated tools. Such approaches are vital in a digital Information Age. Europe's current copyright framework does not easily allow TDM to take place since, in order to undertake TDM, the underlying materials need first to be copied. To correct this, the proposed Directive introduces certain mandatory exceptions from current European copyright restrictions. However, the Directive does not go far enough in creating a copyright framework fit for the digital age. In order to be effective, the suggested exceptions need to be improved.

2. The proposed Directive introduces mandatory exceptions from certain rights set out in the EU copyright framework (such as the reproduction right and the right of communication) to allow for TDM and illustration for teaching. For example, in the case of the reproduction right, rights holders must authorise the reproduction of a copyrighted work. Since a temporary reproduction is necessary to mine content, it should be specifically authorised by the author, except when an exception applies.

We strongly support the principle that The Right To Read Is The Right To Mine. This means that having lawful access to content includes the right to mine that content. It is counterproductive to arbitrarily limit the beneficiaries of the exception for TDM to research organisations for the purpose of scientific research purposes only. The exception must be redrafted so that any individual or organisation with legal access to content can also legally use digital technologies to mine that content. Furthermore, Article 3(3) allows rightsholders to apply measures to ensure the security and integrity of the networks and databases. However, it does not clarify that technical measures may not be used to prevent beneficiaries from exercising their rights under an exception, or to impose unreasonable limitations on how TDM is performed. Unless this is clearly specified, this provision will be used and abused by publishers to limit TDM. The agreement of best practice at Member State level regarding the use of technical protection measures is not an adequate measure to prevent such abuse.

If this Directive is to truly deliver on the promise of legal clarity and harmonisation, then all of the exceptions included in the Directive should be protected from override by contract and by Technical Protection Measures (TPMs).

EDUCATION AND RESEARCH

Article 4 of the proposed Directive introduces an exception for the use of works and other subject matter in digital and cross-border teaching activities. However, this article restricts the scope of the exception that already exists in the InfoSoc Directive (Article 5(3)). The proposal for a Directive will restrict the exception to digital outputs. This does not embrace the full range of materials which universities wish to use for the purpose of illustration in teaching. It will also limit the exception to illustration for teaching purposes, whilst the exception in the current InfoSoc Directive refers to illustration for both teaching and scientific research. Since the activities of teaching and research intertwine inseparably at most universities and research organisations, the natural step is to propose a copyright exception for the purposes of teaching and research. Cross-border research collaboration is crucial to the research communities of Europe and a natural step in fulfilling the European Open Science Policy Agenda. We propose that the exception for education and research purposes already existing in the InfoSoc Directive be transposed into the new Directive as a mandatory exception. In order to be effective and mandatory, this exception should not be superseded by licensing agreements, as the proposed Directive now suggests in Article 4(2) because they hamper legal clarity and work across borders. To make real progress, the research community needs harmonisation and legal certainty at a European level that cannot be overridden by licensing agreements nor by national legislation.

DOCUMENT SUPPLY

Document supply offers access to resources beyond the collections held in individual universities. As one of the aims of the proposal for a Directive is to address cross-border issues in research, it is surprising that document supply has not been addressed. A provision in the form of a mandatory exception to the right of reproduction, allowing cross-border document supply of book chapters and articles, is a simple way of ensuring that individual researchers have access to the material that they need.

ANCILLARY COPYRIGHT

Ancillary copyright puts linking to content under copyright protection. Any extension of Europe's copyright frameworks to include ancillary copyright would damage European research organisations and curtail academic freedom, especially if such curtailment were extended to cover scholarly journals and research publications, as some publishers have requested. It would prevent academics and universities from freely linking and using the world of information on the Internet, placing publishers in control of the information environment. It would do untold damage to the ability of researchers to share their findings and reference the world of scholarship in their published works. That is why the extension of the rights of publishers as outlined in Article 11 of the proposed Directive should clearly exclude ancillary copyright.

TRANSPARENCY OBLIGATION

Article 14 introduces a transparency obligation to ensure that authors and performers receive regular, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights. This provision has the potential to redress the imbalance of power between rightsholders and authors. It could also help support transparency around the revenue generated from the publication of publically-funded

research. However, further clarification in the text of the proposed Directive is needed in order to ensure that this obligation fulfils these goals.

THE TIME TO ACT IS NOW

If this proposal for a Directive is not amended in a way that proactively addresses the challenges of facilitating research and innovation in an international and digital environment, it runs the risk of impeding progress in one of the most dynamic parts of the economy. In its current form, the proposal could be viewed as backward looking and is not compatible with the vision of the Digital Single Market.

Our vision is for a Europe positioned as a global leader in data-driven innovation and research, and as an exemplar in terms of citizen engagement in science and the translation of public investment in research into real societal impact.

Allowing European researchers and innovators to realise the full potential of knowledge and information is not at odds with protecting intellectual and creative contributions. Our considered proposals are made with the same duty and care for the protection of knowledge that we, as research institutions, have always shown.

A healthy research and innovation ecosystem is one in which the creation of new knowledge through excellent science, and the utilisation of knowledge by society, are in constant interaction. Such an ecosystem depends on safeguarding the capacity of innovative branches of society to access information and absorb new knowledge.

We, as representatives of the public research sector in Europe, with a united voice call on European legislators to remove the remaining barriers in the current proposal for copyright in the Digital Single Market. These barriers risk putting Europe's most advanced research and innovation practices at a disadvantage in the global competition for new knowledge and its application for the benefit of society.

We have the technologies with which Europe's research and innovation communities can thrive. Now we need the regulatory framework that allows them to do it: now and for the future.

SIGNED BY:

- CESAER, the Conference of European Schools for Advanced Engineering Education and Research
- EUA, the European University Association
- LERU, the League of European Research Universities
- LIBER, the Association of European Research Libraries
- Science Europe



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Organisations are invited to become official supporters of this statement by emailing Susan Reilly, Executive Director of LIBER (susan.reilly@kb.nl). Names will be collected until 4 February 2017.