

Digital Services Act: Updated argumentation to exempt not-for-profit scientific and educational repositories

The Confederation of Open Access Repositories (COAR), European University Association (EUA), Association of European Research Libraries (LIBER), Science Europe and SPARC Europe, based on the views and experience of our large membership bases, **urge members of the European Parliament to exempt not-for profit scientific and educational repositories from the proposed Digital Services Act (DSA).**

An important step forward in this direction is to support “Recital 43 a (new)” [tabled by the Committee on Industry, Research and Energy \(ITRE\)](#), which states that “The additional obligations imposed on online platforms under this Regulation should not apply to not-for-profit scientific or educational repositories [...]”.

Why support this amendment?

“Recital 43 a (new)” exempts not-for-profit scientific and educational repositories from obligations imposed on online platforms by the proposed DSA. These repositories are hosted by universities and other research performing organisations to collect, preserve, and disseminate educational and research material such as publications and data. The amendment tabled by the ITRE Committee is an important step forward in limiting the impact of the proposed DSA on repositories and their function as key instruments of contemporary higher education, research and innovation in Europe.

The higher education and research sector relies on thousands of repositories to ensure access to up-to-date results and knowledge. This is a well-functioning system with mechanisms in place to ensure the quality and integrity of the information contained in the repositories. If not-for-profit scientific and educational repositories were to be included in the scope of the DSA, many would face additional burdens and investments to comply with the DSA obligations. In many cases, they would not have the capacity to deal with these requirements due to small budgets and staffing. Including these repositories in the scope of the DSA would lead to a decline in the efficacy of an already well-established system, and ultimately introduce new barriers to scientific advancement.

Why exempt not-for-profit scientific and educational repositories entirely from the proposed DSA?

While ‘Recital 43 a (new)’ is an important step forward and should be supported without qualification, we will continue our efforts to achieve a full exemption.

The key reasons to exempt educational and scientific repositories entirely from the scope of the proposed DSA are:

- While the EC states that not-for-profit educational and scientific repositories are in the scope of the DSA proposal, the **DSA definition of online platforms** does not fit such repositories or

infrastructures. Scientific and educational repositories make data available on behalf of research institutions, sometimes based on a public mandate or on legislation (such as the Open Data Directive), not 'at the request of a recipient of the service'. Furthermore, repositories or infrastructure mostly work 'top-down', meaning the criteria for content is prescribed: uploaders do not have a choice on what they upload, and often it is not the recipient of the service who uploads but the provider of the service itself – namely the institution. Given the inapplicability of this core definition, contrary to the statements of the Commission we believe we are exempt from the Digital Services Act.

- The explanatory memorandum and the recitals clearly show that the **target of the DSA are commercial platforms**, and not scientific and educational repositories that operate not-for-profit. Keeping these repositories in the scope would put additional financial and administrative requirements (such as complaint mechanisms and staff requirements to operate these mechanisms) on entities that are not the target of the legislation.
- Policy makers (including the Commission) and many research stakeholders are **promoting Open Science, i.e. making research results available** for re-use and verification of research. Certain small repositories might not be able to cope with the additional (financial and administrative) burden that the inclusion of these repositories and infrastructures in the scope of the DSA would cause. A consequently reduced number of repositories is contradictory to Open Science initiatives, such as the European Open Science Cloud.
- The DSA also creates a **clash of law** with obligations to make scholarly information available to the public, such as the Open Data Directive. Who owns copyright and sui generis rights in scholarly works and databases is a complex question. To ensure that intellectual property rights are not a barrier to education and research, the Open Data Directive, funder mandates, and member state laws such as secondary publisher rights exist to allow repositories to make publicly funded material available online.
- **Consistency in EU legislation:** in the Directive on Copyright in the Digital Single Market, 'not-for-profit educational and scientific repositories' were exempt from the scope in recognition that their role is different than that of other information society services under Directive (EU) 2015/1535. To ensure consistency in EU legislation, the same exception should be applied in the DSA.
- The DSA aims to **tackle different forms of illegal content** (for example the sale of illegal products or terrorist activities) than what could reasonably be expected in scientific and educational repositories. In case there are infringements on research integrity (such as falsified data) in scientific and educational repositories, the research sector and the institutions that run these repositories have dedicated procedures in place.
- Exemptions for small businesses in the DSA proposal recognise the **need to exempt small players**. This needs also to be applied to educational and scientific players. Education and research are too important to receive collateral damage in legislation aimed mainly to regulate the commercial sector.



About our organisations

[COAR](#) is an international association with 151 members and partners from around the world representing libraries, universities, research institutions, government funders and others. COAR brings together individual repositories and repository networks in order to build capacity, align policies and practices, and act as a global voice for the repository community.

The [European University Association](#) (EUA) is the representative organisation of more than 850 universities and national rectors' conferences in 48 European countries. EUA plays a crucial role in the Bologna Process and in influencing EU policies on higher education, research and innovation. Thanks to its interaction with a range of other European and international organisations, EUA ensures that the voice of European universities is heard wherever decisions are being taken that will impact their activities.

[LIBER](#)'s (Ligue des Bibliothèques Européennes de Recherche/association of European research libraries) mission is to enable world class research, by representing the interests of its institutions, their universities and their researchers in several key areas. Some [450 national, university and other libraries](#) are part of LIBER and our wider network includes [goal-oriented partnerships](#) with other organisations in Europe and beyond.

[Science Europe](#) is the association representing major public organisations that fund or perform excellent, ground-breaking research in Europe. Its 38 member organisations in 28 countries account for 23.9 bn€/year investment in scientific research and make a significant contribution to the field by developing and implementing policies related to the European Research Area.

[SPARC Europe](#) is a Foundation that is working to make Open the default for research and education in European Higher Education. It was established over 15 years ago and has 130 members from 22 countries. It is a policymaker and advocates for a more Open research and education area in the interest of research, education, industry and society.