

Article 5 – Reproduction for Preservation and other Public Interest Services

All types of libraries are involved in preserving works in their collections. National libraries, backed up by legal deposit legislation, have a responsibility to keep a record of the cultural life of the nation, in order to preserve material so people have guaranteed access to our cultural heritage. Universities also preserve academic books and journals in order to ensure lasting access. Archives, which often hold unpublished works, are particularly interesting as they tend to hold materials that can offer unique insights into the past. Public libraries, as part of their role in the community, preserve a variety of publications and other documents relevant to local history, culture or traditions. The importance of safeguarding cultural heritage has been recognised explicitly in the UN 2030 Agenda.

Libraries' work on preservation has received a major boost from the development of digitisation technologies. However, this potential will remain unrealised for as long as laws do not keep up. Existing rules, for example, can limit the number of preservation copies taken (digitisation requires multiple copies), as well as leaving uncertainty as to whether a change of format (from paper to digital) is legal. By allowing institutions to digitise only their own works, they make it impossible to work in networks, sharing the (often costly) equipment and skills necessary for this work.

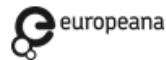
In addition, there are a number of other non-commercial or public interest services which are at the heart of libraries' work, such as making copies for loan purposes or taking copies for rights clearance, which are currently not covered in law. Such works do not involve the making available of copies of works to the public, but only the responsible management of collections.

Our Ask

- Make it clear that when undertaking preservation activities, libraries and cultural heritage institutions can work with partner organisations, including across borders.
- Make it clear that the preservation exception cannot be overridden by the terms of licences
- Make it clear that libraries and cultural heritage institutions can also undertake preservation copying on works that they hold on long-term loan.
- Allow digitisation of works for other non-commercial public interest purposes.
- Ensure reference to cultural heritage institutions, research organisations and educational establishments throughout.

What does the Commission's Proposal Say? The Commission's proposal is a useful step forwards. It makes the exception mandatory – every member state will have to allow libraries and cultural heritage institutions to undertake preservation – and it leaves the question of what technology can be used open. This will help prevent the provision becoming obsolete as new preservation tools become available.

What's Missing? The Directive proposal appears not to be conscious of the fact that digital preservation involves increasingly frequently working in networks, where organisations work together to preserve material for other institutions who do not have the appropriate technical infrastructure or skills to undertake preservation. While the recitals to the draft Directive recognise the potential of preservation networks as a means of reducing the costs of digitisation, nothing in the text itself clarifies that this is possible. This will be particularly important for cross-border networks, as these networks can and do cross member state borders.



Secondly, while there is a provision for libraries and cultural heritage institutions to seek to remove technological protection measures (TPMs) which would prevent them from undertaking preservation work, there is nothing to stop rightholders including bans on preservation copying in the terms of licences.

Thirdly, the current text only covers works 'permanently' in the collection of libraries and cultural heritage institutions. This is somewhat open to interpretation, as it may or may not also include works on long-term loan. Moreover, by referring to cultural heritage institutions, it potentially leaves out other public interest entities, such as research organisations or educational establishments.

Finally, it fails to cover copying for a range of other non-commercial activities undertaken by libraries as part of their core public interest missions, such as cataloguing, rights clearance, and insurance.

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