

Commission Proposal on Copyright in the Digital Single Market Library and Cultural Heritage Institution (CHI) Amendments (Overview) and Call to action

Background information

On 9th December 2015, the European Commission released a Communication “[Towards a modern, more European copyright framework](#)” identifying among others the need to “*adapt[...] exceptions to copyright rules to a digital and cross-border environment, focussing in particular on those exceptions and limitations which are key for the functioning of the digital single market and the pursuit of public policy objectives (such as those in the area of education, research - including text and data mining - and access to knowledge)*¹”.

In response to the Commission’s communication and in anticipation of future proposals on copyright, on 10 December 2015 the library and cultural heritage community published [recommendations](#) designed to **update and strengthen justified exceptions and limitations** to copyright in the digital age, and to prevent further fragmentation of the single market caused by **contract terms and technological protection measures** overriding exceptions and limitations offered by law.

On 14th September 2016, after the European Commission published its [Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market](#), the library and cultural heritage community underlined the lack of ambitions of the Commission’s proposal in their statement [Only real reforms can bring EU Copyright rules up to date.](#)

Now it is our time to act to make change happen in Europe.

¹ See point 2 of the Commission’s action plan at <https://ec.europa.eu/digital-single-market/en/news/towards-modern-more-european-copyright-framework-commission-takes-first-steps-and-sets-out-its>, consulted 10 February 2017.

THE CHOICE WE FACE

What We Risk Without Change

 **Text and Data Mining in Europe is limited** to research organisations, with library users, data journalists, start-ups and citizens still facing a patchwork of rules and licences. Even in research organisations, it will be a struggle to work out where TDM is permitted or not. Bigger firms will contract TDM work out to the US and Japan, start-ups will be unable to compete, researchers will start to look elsewhere to carry out their work, and Europe will have a less vibrant economy and society.

 **Education and research are made more complicated**, with different legal frameworks for digital and analogue uses. Teachers must hunt for licences before being able to use works, wasting time and money. EU citizens face differing levels of access from one country to another. Researchers wishing to collaborate across borders face navigating different rules. Digital learning and research suffer from lack of clarity around use of licences vs. exceptions. Libraries continue to be left out.

 **The work of preservation networks remains in doubt**, and rightholders can continue to impose contract terms which rule out archiving activity. Other non-commercial public interest activities requiring copying do not enjoy legal certainty, despite no market loss to rightholders.

 **Europe's 100M library users continue to face the incomprehensible situation** where they must use specific computers in libraries to access their collections, rather than their own devices.

What We Achieve With Change

 **TDM flourishes across Europe**, supporting not only growth and jobs, but also innovation and transparency. Europe returns as a global competitor.

 **A well-defined illustration for teaching exception** allows all education and research providers to make use of extracts from books, articles and other materials **to promote knowledge and skills**. Digital tools and distance education help overcome barriers to access. Modern teaching practices, tailored to International research collaboration and student needs, flourish.

 **Cultural Heritage Institutions** undertaking preservation activities in networks (and across borders) **have a solid legal basis for their work**. Libraries and their users can go about their jobs without fear of infringing copyright.

 **Europeans can go to the library, and using their own computers and tablets**, undertake research and private study.

✘ Researchers across Europe must choose between paying to travel to access unique resources not available in their local library, or simply giving up on their work. Even ad hoc uses of articles are subject to high costs which are beyond the reach of most libraries.

✘ Libraries continue to face no certainty as to whether they can lend e-books, even under a model ill-suited to their needs.

✘ In many cases, out of commerce works remain inaccessible, due to a narrow definition of relevant works, or a lack of collecting societies which are able and/or willing to offer licences. Never-in-commerce works are locked away for no good reason, with no-one practically able to offer licences for their use. There is a continued threat to the Directive, given the failure to address the arguments raised by the Court of Justice in the Soulier and Doke case.

+ Europe sees much freer flows of information and stronger research collaboration, as materials from unique collections can be made available to individuals in any EU country upon request. Scholarly publishers see no significant change in revenues, as subscriptions still make most sense for regular uses.

+ A right to e-lend is secured in EU law by ensuring that contract terms and technological protection measures cannot stand in its way. Libraries and rightholders are supported in developing models of lending better suited to the demands of library users. Citizens engage with e-books, and develop confidence and skills with digital technologies. E-book authors benefit from public lending right.

+ Where good collecting societies exist, they are enabled to offer licences to cultural heritage institutions to put works online for non-commercial purposes. **Where they are not,** for example in the case of never in commerce works, **an exception gives CHIs the possibility to go ahead,** with compensation schemes determined at national level. This ensures that creators benefit from the possibility of rediscovery, as well as new revenue streams from re-commercialisation, remuneration under exceptions, or via collecting societies.

Additional information can be found in the [LIBER's Basic Guide to EU Copyright Limitations and Exceptions for Libraries, Educational and Research Establishments](#).

Call to action

We can make change happen in Europe, and avoid the complexity and cost that a failed reform would bring. But this will require the engagement of the whole library community especially at national level.

If, like us, you believe that **overall welfare is best served by a robust and mandatory set of copyright exceptions which facilitate access to knowledge**, and that **relevant, user-friendly copyright exceptions will strengthen the fight against piracy by providing legitimate alternatives²**, then you are ready to help and to take action.

How?

- Read our proposals
- Engage with your own governments
 - Who is leading on the EU Copyright Reform Dossier? Who else shapes decision-making?
 - What points of common interest are there between your government and libraries? For example, are they interested in innovation? Small business? Equality? Literacy?
 - Define your position, based on our materials and your understanding of what arguments will work locally.
 - Organise a meeting with the responsible ministry/agency.
 - What other players are there – can you engage with your Parliament? Are there newspapers which could be interested? What other NGOs share your priorities?
 - **Don't forget to provide us with your feedbacks and follow-up opportunities!**
- Engage at a European level
 - Take a look at our [list](#) of key MEPs – so any come from your country?
 - Contact them, and ask for a call or a meeting – why not in a library, with a visit and photo opportunities – when they are next home. As with national governments, adapt your arguments to their political priorities (you can read about areas of interest on their website), as well as origins. Is there a library in their home town that is doing something interesting?
 - Offer to share proposed amendments to the draft Directive on copyright, and to adapt these to the MEP's interests if useful.
 - Encourage them to join the MEP Library Lovers' Group (if not already a member)!
 - **Don't forget to provide us with your feedbacks and follow-up opportunities!**

Provide your feedback to:

Vincent.bonnet@eblida.org and Stephen.Wyber@ifla.org

² On 15 December 2016, the library and cultural heritage community published an [initial overview](#) of the different aspects contained in the Commission's Copyright proposal.

Our proposals at a glance

Article 3: the text and data mining (TDM) proposals have some good points, such as the bar on override of exceptions by contractual provisions or technological protection measures (TPMs), but if left unchanged would still be worse than the current situation. By limiting the benefits of the exception to certain actors and purposes, Europe misses out not only on potential growth and jobs by casting doubt over the legality of all the existing companies in Europe currently mining the internet for example, but also on a chance to help journalists using TDM in their work (data journalism). A simple rule, which does not discriminate between users or purposes, and ensures strictly limited and transparent use of TPMs will offer the best solution. The alternative is continued loss of competitiveness vis-à-vis the US (and other countries like Japan), where fair use exceptions allow for TDM without additional payment.

Article 4: copyright rules can best serve **teaching, research and learning** when they are simple. Different rules for different countries and for digital and non-digital uses will only create confusion. Leaving out informal and non-formal education providers such as libraries and cultural heritage institutions is inconsistent with the ET2020 Strategy. Allowing licensing to override exceptions is risky, given the failure to define what 'adequate' means. The best solution will be a single, mandatory exception for all types of teaching, both digital and non-digital, formal and informal/non-formal. If licensing is retained, its use must be strictly prescribed to ensure it does not become a barrier to effective research and education.

Article 5: the Commission's recognition of the need for a technology-neutral provision on preservation is welcome, but it is still necessary to ensure that such provisions cannot be overridden by contract terms, and that cultural heritage institutions can work in networks across borders to best use resources. However, cultural heritage institutions, educational establishments and research organisations also undertake reproduction for other non-commercial, public interest purposes. We propose to ensure that these are also included in the exception.

Research and innovation will be modernised and enhanced by ensuring that citizens can access works on the premises of institutions using their own devices (not just on 'dedicated terminals', an anachronism in today's world) (**New Article 5bis**), and that reflecting existing law they can receive copies, on an ad hoc basis, for non-commercial, research or private study purposes across borders (document supply, **New Article 5 ter**). These provisions should also be protected from override by contract terms or TPMs.

New Article 5 quater: the CJEU judgement in *VOB vs Stichting Leenrecht* (C-174/15) offered a useful step forwards on e-lending. However, currently despite the ruling there is no guarantee that libraries can buy e-books, or that they will not come with contract terms or technological protection measures, that prevent lending. The Directive should support the right and fundamental purpose of a public library which is to buy any book it chooses, and lend it to citizens.

Articles 7-9: libraries and cultural heritage institutions are asking for an effective solution to the fact that long copyright terms lock away works which are no longer on the market, or were never in commerce to begin with. This prevents them from being re-discovered, and creators benefitting from a new stream of revenue. Where relevant collecting societies exist, are representative, and offer licences to CHIs extended collective licensing can be a good solution. However, this is far from the case everywhere, where no collecting society exists, or licence is not available. In these cases, an exception would allow works, nonetheless, to be made available online. In all cases, authors and creators should have the right to object to such making available, and have their works taken offline.

Our proposals in more depth

The explanations of our detailed proposals are accessible in full version via this specific [link](#).

They alternatively can be accessed individually at the links below:

- Article 3: [Text and Data Mining](#)
- Article 4: [Illustration for teaching](#)
- Article 5: [Reproduction for Preservation and other Public Interest Services](#)
- Articles 7-9: [Finding a Solution for Making Out of Commerce Works Publicly Available](#)

For further information on the definitions, use our [glossary](#).

Time is of the essence here, so please consider the [accessible timeline](#) for your own activities.

Note: As part of the Copyright for Creativity coalition, we are working alongside organisations with active positions on the other parts of the Directive – notably on the press publishers’ right (Article 11), and the mandatory checking of content uploaded onto platforms for potential copyright infringement (Article 13). It is worth noting that these areas have received most attention, given the perceived clash between the interests of big technology companies and traditional publishers and record labels.

There are also provisions on video-on-demand (Article 10), sharing compensation from copying between authors and publishers (Article 12) and on better contract terms for creators vis-à-vis publishers and labels (Articles 14-16).

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