



## Shambolic JURI Committee vote on Copyright in the Digital Single Market Directive - Good, Bad and Ugly.

On 20 June 2018, the Legal Affairs (JURI) Committee of the European Parliament voted on its long awaited amendments to the Draft Copyright in the Digital Single Market Directive.

As a major advocate of the library and information sector, while EBLIDA welcomes the encouraging outcomes on some of the Articles, the overall result of the JURI's deliberations is actually rather lacklustre and in places rather negative for libraries, education and research.

On this note, **EBLIDA President, Ton van Vlimmeren**, declared that ***“Libraries are a crucial element of the knowledge society, a truly democratic institution ensuring free, equal and legal access to information. If we want European citizens to benefit from their work, we need a copyright reform that goes beyond the report of the JURI Committee. Together with our members and partners, we will continue to lobby for a broader copyright reform.”***

See below for a quick analysis of the text:

### The Good, Bad and Ugly

#### Article 2 - Definitions

- ⊕ Research organisation is defined as “a university including its libraries, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services”.

#### Article 3 - Text and data mining

- ⊕ A mandatory exception is granted for reproductions and extractions of works or other subject-matter to which they have lawful access made in order to carry out text and data mining for the purposes of scientific research by research organisations. Under Article 2 TDM must be done “on a not-for-profit basis or by reinvesting all its profits in scientific research”.
- ⊕ This exception cannot be overridden by contractual provisions.
- ⊕ An additional optional exception is given to Member States “for reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining”
- ⊖ **but** this optional exception is subject to rightholders not having expressly reserved the use of such works and other subject matter “including by machine readable means.” Such reproductions cannot be used for other purposes.
- ⊕ Member States can continue to provide an exception for TDM under the Information Society Directive 2001/29/EC Article 5(3)(a).
- ⊕ Datasets created for the purpose of undertaking text and data mining activities can be retained.

- ⊖ No recognition that the right to read is the right to mine.

#### Article 4 – Education exception

- ⊕ The exception applies to Cultural Heritage Institutions (including libraries),
- ⊖ **but** only if led by an educational institution.
- ⊖ Member States can decide NOT to make the exception enforceable when licences covering such uses exist.

#### Article 5 - Preservation

- ⊕ A mandatory exception is granted.
- ⊕ It cannot be overridden by contract (licence).
- ⊕ It works for cross-border networks.
- ⊕ Reproduction of works in the Public Domain cannot be subject to copyright.
- ⊖ It only covers a narrow interpretation of preservation.

#### Article 6 - Functioning of exceptions and limitations & TPMs

- ⊖ **A very worrying provision concerning the use of more than one exception**, that was not at all present in the Commission’s original text. “Access to content covered by an exception provided in this directive does not entitle the user to make another use under another exception.” (*Unofficial translation from the original French*).
- ⊖ In direct opposition to the Commission’s original proposal, the JURI voted to reinforce that “Article 5 (5) and the first, third, fourth and fifth subparagraphs of Article 6 (4) of Directive 2001/29 / EC shall apply to the exceptions and limitation provided for in this Title” (*Unofficial translation from the original French*).

#### Article 7 to 9 – Out of Commerce Works

- ⊕ A new fall-back exception applicable when no licence is on offer.
- ⊕ It applies for reproduction, communication to the public and distribution of Out-of-Commerce works, including, subject to conditions, across borders.
- ⊕ Works never in commerce (e.g. unpublished works including manuscripts) are included in the definition of out of commerce works.

#### Article 11- Linking to news publications

- ⊖ **This Article contains worrying provisions that create legal uncertainty** as additional rights clearances could now be needed to link to news content which could badly impact on the sharing and linking to news articles.
- ⊕ However, the definition of press publications in Article 2 excludes periodical publications which are published for scientific or academic purposes, such as scientific journals.

#### Article 13 - Filtering of User Generated Content Uploads

- ⊖ **Online content sharing services will have to introduce filters for content uploaded by users. This has serious implications for online freedom of speech.**

- ⊕ Although the definition of ‘online content sharing service provider’ in Article 2 excludes services “acting in a non-commercial purpose capacity such as online encyclopaedias and providers of online services where the content is uploaded with the authorisation of all concerned rightholders, such as educational or scientific repositories and other services acting for a non-commercial purpose”,
- ⊖ the wording of the definition means that repositories will now have to ensure that all permissions are obtained before upload.

### 🔍 The Bizarre

#### **Article 10 - introduction of European Union Legal Deposit**

A new requirement subjecting to legal deposit free of charge in the European Parliament Library one copy of any e-publication made available to the public in the EU dealing with the law, history and integration, policy and democracy, institutional, parliamentary affairs and politics of the EU.

As professional librarians we fail to see the necessity for this given the Member States’ own arrangements for electronic national deposit.

#### **Next Steps**

The adoption of the JURI Report on 20 June was accompanied by a **mandate to Rapporteur MEP Axel Voss to start trilogue negotiations** on the draft Directive with the Council and Commission. This is subject to approval by the European Parliament in Plenary on 4 July, but **is now likely to be challenged by a number of MEPs seeking to repeal the mandate. If that happens, the whole Parliament will have the opportunity to further amend the Report.**

**We ask that you vigorously lobby your MEPs ahead of the vote in Plenary to halt the commencement of trilogue negotiations at this stage as there is so much wanting from this legislation as well as some dangerous provisions.**

Our colleagues from VoxScientia can provide you with the necessary tools in their [call to action](#). We also encourage you to join the [#SaveYourInternet](#) campaign (more information [available here](#)).

#### **Background information:**

For background information, please consult EBLIDA’s copyright reform webpage at <http://www.eblida.org/copyright-reform>.

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