

The EBLIDA Newsletter is published monthly on European library & information society issues, programmes, news and events of interest to the library, archive and cultural heritage community.

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## Issue No. 4. April 2019



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Forward

This issue is devoted exclusively to the European Union directive on copyright in the digital single market. The consolidated text can be found on this [link](#)

## The President's Editorial



Dear colleagues,  
Dear friends,

After much debate and controversy, the European Union Directive on Copyright was eventually approved on 26th March 2019. The European Parliament split into two under the pressure of parties coalescing into transversal alliances that had very little, if nothing, in common. Political loyalties within European political groups were broken; a good number of MEPs did not attend the final session.

Oddly enough, the results were characterised by divisions that seemed to be of more national than political nature. MEPs expressed their preference associating a political vision to copyright having little to do with the spirit of the law. French MEPs voted almost unanimously

If you are used to considering the Nordic area as homogeneous, the vote on copyright clearly shows that this is perhaps a memory of the past. Swedish MEPs voted massively against while Finnish MEPs were for; in Denmark each MEP went his/her own way.

In collaboration with IFLA, LIBER and other European associations, EBLIDA has carried out a thorough observation of the copyright Directive for years within the Expert Group on Information Law (EGIL). EGIL was particularly active in the phase preceding the vote. It will be even more essential in monitoring the transformation of the European law into national legislation and in orienting its application. EBLIDA's most sincere gratitude goes to the experts who have managed to make this Directive an acceptable text for libraries, in spite of its obvious shortcomings. Their expertise and their lobbying capacity has been extremely valuable for the library community.

European library associations took a common position during the 4th March meeting of the EBLIDA Executive Committee in Naples. EC Members agreed that the Copyright Directive included articles having a favorable impact on libraries, namely articles 3, 4, 5, 7 and 8. They rejected instead articles 15 and 17 (11 and 13 in previous versions of the Copyright Directive).

The consultation generated by the decision of the EC Committee also showed that, beyond their common position, European library associations were nevertheless putting more or less emphasis on individual aspects of the Directive. Nuances in the general evaluation also emerged, reflecting different needs and expectations. The EBLIDA Secretariat decided therefore to not conceal these under a veil of uniformity and to open a debate which starts with this Newsletter and will continue in the future if the need arises.

The Copyright Directive is opening new horizons. Discussions around it should not be confined to the chapter on limitations and exceptions. It will be extremely interesting to see how the EU Directive will be converted into national provisions and the way national library associations will interpret this piece of European legislation. Even more interesting will be to look at the policy implications of the Directive. Beyond the strict precincts of the exceptions and limitations libraries will have to tie with other actors working in the information environment. The future will tell whether they will ally with authors and creators, information service providers and/or small and medium publishers.

It is the task of the EBLIDA Secretariat to keep track of these progresses with no preconceived opinion and to confirm its role as a platform for opinion exchange encouraging the transfer of best practices across Europe.

This Newsletter is exclusively devoted to the Copyright Directive. We have asked some of the actors who played a major role in this undertaking to bear witness on how they lobbied at European and national level and how they exerted their influence on the result of the vote. We invite other library associations to intervene in the debate and to widen the spectrum of opinions and the range of options that have to be taken into account by the library community.

Unless we decide to shift the focus of the Conference, It will not be possible to talk Copyright during the Annual Conference in Dublin (25 June). We will however organise a Survey (Survey Monkey) that will be sent to all national library associations. Its results will be communicated during the Dublin Conference.

**Ton van Vlimmeren**  
**EBLIDA President**

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**by Giuseppe Vitiello**  
**EBLIDA Director**



Many colleagues have noted it: the recently approved Directive on Copyright in the Digital Single Market creates a favourable environment for libraries. Exceptions and limitations protecting libraries are numerous. Article 3 protects research organisations and cultural heritage institutions that carry out text and data mining of works; Article 4 encourages cross-border teaching activities; article 5 prescribes exceptions for the preservation of cultural heritage; articles 7 and 8 facilitate the use of out-of-commerce works by cultural heritage institutions.

The relevance of the Copyright Directive for libraries, however, goes far beyond the few articles providing for exceptions and limitations. It concerns the future development of the web and the role libraries can play in the digital environment. In the last two centuries two networks have been in existence in the analogue world: a commercial network including publishing and audiovisual companies, and the non-commercial network of libraries guaranteed by public legislation and resources. Citizens are coming to libraries to find what they are unable to acquire in book and music shops. The second half of the 20th century marked the zenith of library aspirations in terms of free access to information.

With the emergence of digital networks the role of libraries has diminished in concomitance with the advent of conglomerates providing for easy and often free access to information. Google Maps, Google Books, Google Scholar and other services are universally used. The perception that more and more information in digital form can be made accessible for free has grown together with the power of the information service conglomerates. All this comes with an invisible cost, though: the occupation of the private space with personal data delivered to conglomerates that manipulate consumers' choices towards market-oriented opportunities. This trend will be more pervasive, and also more invisible, when Artificial Intelligence tools will facilitate massive transfer of personal data to information service providers for further processing and consumers' orientation.

It is perhaps an illusion to think that the Copyright Directive re-establishes a two-network environment - commercial vs. non-commercial – in the digital environment. The power of information service providers is based not only on the quantity of products they provide for free thanks to advertisement revenues (and, when the case, misuse of copyright-protected works). It is based on the kind of social agreement Google, Apple, Facebooks, Amazon, Microsoft make with their consumers. It is based on a culture of connectivity where the public and the private sphere intertwine. Nevertheless, a copyright dense digital environment assigns libraries, and the international organisations representing them, huge responsibilities on how to construct the infosphere generated by the Directive and to make the most out of the exceptions and limitations included in it.

Libraries are an essential part of the democratic fabric of a country. Through the close association of free access to information and freedom of expression they have to deliver content in a way that is respectful of individual freedoms – the same way that has made, and is making, Europe a happy democratic place. The way libraries will channel the products they manage, the forms of connectivity they will adopt on their platforms may be an example of information economics where algorithms and artificial intelligence tools are applied in an ethical way, that is independent on profit laws.

Another responsibility of libraries is to be able to repair market distortions. Opposite to social information providers, libraries are warrant of a pluralistic and diverse approach to information. There is speculation that a possible side effect of the Copyright Directive could be an alliance between web

with 300 newspapers publishers. If alliances between a handful of publishers and the oligopoly of information service providers come true, it is the responsibility of libraries, and in particular of public libraries, to diversify their offer in order to provide for alternatives to mainstream commercial flow of information.

This market trend creates another imperative for libraries: to be innovative, to launch initiatives to, and alliances with, authors, creators, information providers and small and medium publishers so as to become an attractive distribution channel for digital publications that do not find visibility in the digital environment.

Is the Internet a place where collective intelligence actors coalesce for the progress of knowledge? Or is the Internet also a creative space where individuals can make their own living thanks to their artistic talent? Open access and creative commons are the obvious solution for academic libraries. When it comes to creators and creative industries, however, public libraries have to reformulate their policies on copyright in a flexible way. In other words, the Copyright Directive may raise fears that uploading content on the Net through filtering may curtail free navigation on the Web; it also creates tremendous opportunities for libraries and cultural institutions if they are able to carry out their own Internet policy in an enlightened and cooperative way.

Member States are given two years to implement the Copyright Directive into their national legislation, so it will still be some time until this legislation comes into force. It should be our joint effort to make sure that national laws transpose the Directive in such a way that libraries reinforce their role in an environment where general compliance to copyright regulations will intensify. Libraries will have to mobilize with a view to consolidating their public representation as non-commercial networks providing access to information for all - the same role they enjoy in the analogue, printed world.

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## Final stretch for the Digital Single Market Directive

by **Barbara Stratton**

**Chair, EBLIDA Expert Group on Information Law**



On 26th March 2019, the European Parliament adopted in a final vote the [consolidated text](#) (with most Articles renumbered) of the Directive on Copyright in the Digital Single Market negotiated since last autumn in trilogue discussions by Parliament, Council and Commission. It is not quite the end of the road for the Directive: it must next be adopted by the Council of Ministers (possibly 15th April 2019), then published in the Official Journal, after which Member States will have two years in which to implement it.

Two very controversial Articles within the Directive were adopted, albeit somewhat changed from the Commission's original proposals. Article 11 (renumbered 15) introduces a new two-year neighbouring right (down from the original 20 years) for news publishers that may adversely affect the future of circulation and re-use of recent online news information by and within organisations of all types, including libraries and other non-profit information services. Article 13 (renumbered 17) brings in de facto copyright enforcement by algorithms on uploads by users of for-profit publicly accessible internet platforms, which risks curtailing freedom of expression on the internet.

internet start-ups, digital rights NGOs and the UN Special Adviser on Human Rights which was supported by library organisations on the basis of professional ethics.

However, anticipating the survival of these two Articles, EBLIDA and its negotiating partners successfully achieved two important carve-outs that will help libraries and the dissemination of research outputs: academic periodicals are excluded from Article 11 (now 15) and “not-for-profit educational and scientific repositories” are excluded from the remit of Article 13 (now 17). The impact of the measures introduced by these two Articles will continue to be monitored by digital rights and library organisations.

The **very good news** for non-profit libraries and archives is that the rest of the Directive was successfully transformed by 2½ years of intensive lobbying by a coordination group of pan-European and international library organisations and partners into a legislative vehicle that should greatly help cultural heritage, education and research. Though Articles 15 and 17 are big blots on the landscape, the Commission’s somewhat unambitious proposals for libraries of 2016 have been crafted into trend-setting influential legislation that should propel the public interest missions of Europe’s libraries and archives in the digital environment forward for the next decade.

There are four mandatory exceptions: for cross-border digital teaching, for digital preservation including cross-border preservation networks, for text and data mining (TDM) for non commercial research, and under certain conditions for TDM for commercial purposes. Very importantly, three of the mandatory exceptions above are protected from override by contract and national procedures for dealing with TPMs will become usable in all cases where TPMs undermine the use of any of the above four mandatory exceptions. The crazy proposal that arose in Parliament during last year to prevent the use of more than one of these exceptions in relation to a work was successfully seen off.

There are also provisions for licensing for mass digitisation and the making available online to the public of out-of-commerce or never-in-commerce works (including orphan works) and for their cross-border uses within the EU/EEA, and an option for Member States to introduce extended collective licensing. Very importantly these provisions come with a mandatory backstop: a default exception to apply in cases where no suitable licence is available. Additionally, the Directive harmonises across the EU/EEA that copyright does not subsist in unoriginal facsimile reproductions of out-of-copyright “visual art” where the reproduction is not original “in the sense that it is the author’s own intellectual creation”.

The successful outcomes for libraries in this Directive were brought to you by a core team of access to knowledge champions who lobbied for libraries on the Directive for the last 2½ years:

[EBLIDA](#) - Vincent Bonnet and Barbara Stratton,

[Europeana](#) - Paul Keller,

[IFLA](#) - Stephen Wyber and Ariadna Matas,

[LIBER](#) - Benjamin White and

[SPARC Europe](#) - Vanessa Proudman assisted in succession by Dan Pescod, Ásta Helgadóttir, and Brigitte Vézina.

Their work was supported by colleagues from Electronic Information for Libraries ([EIFL](#)), the European University Association ([EUA](#)), [Public Libraries 2030](#), the Coalition of Academic Repositories ([COAR](#)) and [Science Europe](#) and by the excellent information and advice received from Copyright for Creativity ([C4C](#)).

Additionally, none of their successes would have been possible without the help of a dedicated band of MEPs who understood and supported what libraries do.

## AIB, Italy Reflections



[AIB](#) is really grateful to IFLA, EBLIDA and other Associations for their efforts to improve the original text of the directive.

### **AIB supported this commitment:**

- (a) contributing to the analysis of the text within EBLIDA and sharing comments and information;
- (b) signing letters prepared by EBLIDA and/or IFLA, and
- (c) directly participating in meetings and consultations, in Italy and in Brussels.

While the attention of most politicians and general public was attracted by the two articles (11 and 13, now 15 and 17) concerning the redistribution of profits for in-copyright works made available by big service providers, IFLA, EBLIDA, and other library organisations in Europe, with the support of national library associations, have worked hard on all the articles of the directive, to enhance the opportunities for educational, research and cultural institutions for the benefit of the public access to knowledge, and to protect the people's fundamental rights in the digital environment.

It has been a successful campaign, thanks to which the final text of the directive approved on 26th March 2019 contains relevant improvements on the original proposal, and represents an important step forward to rebalance the exclusive rights in the digital environment with some important public interest exceptions and limitations. On AIB's opinion, it is also a reasonable compromise taking in account different commercial interest in the market of content and services which will not affect fundamental rights and the public interest.

I think we all have experienced a lot of misinformation and false beliefs circulated about the content and the scope of this directive, which threatened to obscure the fact that it was proposed to overcome some problems caused by Directive 2001/29, especially in research, education and library sectors. Our Associations have a lot to do for the quality and neutrality of information in the digital environment.

The new directive is not a point of arrival, but a starting point. EBLIDA and IFLA will be precious, as always, in supporting national implementations of the directive as well as the evaluation of its impact across Europe.

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## The Swedish Library Association and the DSM-directive

The [Swedish Library Association](#) has, for a number of years, lobbied for a European copyright



position paper in 2015, our Board of Directors decided on what specific issues we were to press in the reform package that the Commission were then preparing. These were well in line with what was proposed by Eblida,

LIBER and IFLA. These organisations have since provided us with invaluable support throughout the process and really demonstrated the benefits of being part of an international library movement.

In the autumn of 2016, the Swedish government sent out the proposal for a directive on referral. We were one of the many organisations that submitted a reply. The Swedish government's position, throughout this process, has been to safeguard the Nordic model with collective licenses. Frankly, they have been less engaged in other aspects of the directive.

Sweden has 20 members in the European Parliament. Several of them are in committees that dealt with the directive, including IMCO, ITRE, LIBE and JURI. We have met several of these parliamentarians, talked to staff members and provided them with facts in various phases of the legislative process.

We've also had meetings with political advisors from several ministries involved in copyright issues, but also with the civil servants who negotiated on behalf of our government in the Council of Ministers. Finally, we've had meetings with the Swedish parliamentarians, which in the end are the ones who will implement the directive into Swedish law. Something that surprised us is how little contact there seems to be between national and EU parliamentarians.

When we compared how various organisations viewed the directive, we discovered that we had common positions with organisations we normally do not cooperate with. For example, we wrote an op-ed with representatives of the Confederation of Swedish Enterprise.

What made our lobbying more difficult is that copyright is perceived as very complicated, and in some ways, it really is! The Swedish media's reporting on the directive was non-existent for a long time, and then became very superficial. The Swedish copyright organisations are also very strong and at the end the Swedish public debate was largely about being for or against artists and creators.

On the other hand, it's been quite easy to get our EU parliamentarians on our side, and in the final vote only three out of 20 voted for the directive. Regarding the issues that are closest to the library sector, we are quite satisfied with the final outcome. But in a wider perspective we're very disappointed that Articles 11 & 13 are part of the final directive. At the moment we're analyzing the texts in detail and prepare for when the directive will be passed through the Swedish parliament.



## Events and Dates

### April

8-10	Telford, United Kingdom	<a href="#">UKSG 42nd Annual Conference and Exhibition: Telford</a>
10-11	Kildare, Ireland	<a href="#">LAI/CILIP Ireland Joint Annual Conference 2019</a>
16	Rotterdam, Netherlands	<a href="#">Nationale Bibliotheekcongres - Eight National library congress for public libraries</a>
16-17	Riga, Latvia	<a href="#">Latvijas Bibliotēku festivāls 2019 / Latvian Library Festival 2019</a>
25	Berlin, Germany	<a href="#">E-ARK / eArchiving Building Block – auch für uns in Deutschland?</a>



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