



## **The European Parliament's position on the Digital Single Market Directive What's in there for libraries?**

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### Text and data mining – mandatory exception (article 3)

The Parliament has agreed on a mandatory exception for research organisations to undertake text and data mining of materials to which they have lawful access. Thanks to library engagement, this now clearly extends to libraries and cultural heritage institutions.

### Text and data mining – non-mandatory exception (article 3a)

The provision on text and data mining is combined with a second exception, which member states do not need to adopt, allowing any person or institution with legal access to the content to carry out text and data mining, but giving rightholders the possibility to override this by “reserving” this right.

If this non-mandatory exception was adopted, member states would still be able to use provisions under the 2001 InfoSoc Directive, which already provided scope for member states to allow text and data mining under an exception to copyright.

From our point of view, the compromise adopted (meaning the combination of these two articles) is only a little better than Commission's proposal, and, crucially, still does not clearly allow individuals and institutions with legal access to works to carry out text and data mining. For them, a simple 'all rights reserved' statement will deprive them of the right to mine. Moreover, the lack of harmonisation will also be detrimental to more cross-border collaboration within the European Union.

On the positive side, both provisions establish that datasets created for the purpose of conducting text and data mining will not have to be deleted afterwards but stored in a secure manner, for instance through trusted bodies appointed for this purpose. This will have to be defined at a national level.

### Education (article 4)

Although the new provision focuses mainly on improving the legal status of online educational activities in formal educational settings, there is also a reference to libraries. These, when using digital materials in the framework of a learning activity, will benefit from an exception if the activity is led by an educational institution.

Member states can, however, choose not to make the exception applicable if licenses covering these uses are available in the market. Discussions in Parliament saw useful improvements to drafting here, with greater clarity on the need for such licences to be adapted to need. However, there are still likely to be different rules for digital and physical education.

### Preservation (article 5)

The article as amended by the European Parliament creates a mandatory exception to make reproductions of works in any form for the purpose of preservation. This right cannot be overridden by contract. According to the text, any reproduction of material in the public domain will not be protected by copyright (under a few conditions). This provision will be an important improvement in



European countries that do not have a preservation exception in place and will foster cross-border preservation projects by providing the legal certainty that is currently lacking.

#### Functioning of exceptions and limitations (article 6)

The amendments adopted by the European Parliament to article 6 are very worrying and will be one of the focuses of our efforts in the upcoming months. A first prevents the 'stacking' of exceptions. This undermines the functioning of law across the existing copyright Acquis by preventing this Directive's exceptions from being combined and working together. It would mean, for instance, that once something has been preserved, it cannot be subsequently used for teaching purposes. The amendments also prohibit research-oriented teaching, as well as data-mining of materials that have been preserved. This endangers scientific practice and undermines replicability.

#### Out of commerce works (articles 7 to 9)

This is perhaps the most successful amendment to the Directive for libraries. The EP has added a fall-back exception to the licensed-based system proposed by the Commission to solve the problem of out of commerce works. It means that whenever no appropriate licensed-based solutions are in place, the exception will apply for the reproduction, communication to the public and distribution of out of commerce works by cultural heritage institutions. The definition of out of commerce works has also been amended to explicitly include works that were never in commerce under the system.

#### Union Legal Deposit (article 10a)

In a surprising move, the European Parliament adopted an amendment creating a form of legal deposit for the European Union, aimed at giving the European Parliament Library a right to claim copies of any books touching on EU affairs. It remains unclear how this would work, and whether it will pass into law.

#### Press publishers' rights (article 11)

Despite calls for its deletion or replacement with a presumption of representation, the new press publishers right was voted through. This will allow press publishers to claim licensing fees for uses of any more than a single word of press publications. However, individual and non-commercial uses will not be affected, and it is clear that scientific publications will not be covered. The length of the new rights stands at five years (down from 20 in the Commission proposal), and there are clearer provisions on sharing revenues with writers. Concerns also remain about the impact on institutions using press publications for research.

#### Upload filters (article 13)

One of the most controversial provisions in the Directive is an effort to solve the 'value gap' – the feeling that Internet platforms are tapping money out of the music and audiovisual industry. The original Directive effectively mandated platforms to install filters in order to stop any infringing content being uploaded in the first place. It took a deeply clumsy approach, which brought education and research repositories into scope.

The version approved by the Parliament keeps the underpinning obligation to find means of preventing infringing content getting online, although does not specify the method. Filters remain the most logical way of complying. There is also an attempt to exempt repositories, but only in the case that content has been uploaded with the agreement of all rightholders involved. Further work



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is needed to ensure that this provision doesn't damage the operation of open science and open education, as well as to fight the restrictions on free speech that automatic filters imply.

### **Next steps in the European copyright reform**

The text approved by the Parliament gives this institution a stance to negotiate with the Council and the Commission. These two had already made their positions public, and the three institutions will move to trilogue discussions to agree on a final version. After adoption of the directive, member states will have time to bring national law in line with the objectives set out by the directive.