



Commission Proposal on Copyright in the Digital Single Market Library and Cultural Heritage Institution Responses

When the current Commission first signaled its intention to reform copyright, European libraries and cultural heritage institutions offered a warm welcome. The plans promised an opportunity to bring the copyright system up to date, meet user expectations, and promote educational, cultural, and broader social objectives.

We believe that overall welfare is best served by a robust and mandatory set of copyright exceptions which facilitate access to knowledge. Relevant, user-friendly copyright exceptions will strengthen the fight against piracy by providing legitimate alternatives. In the light of the Commission's proposal for a Draft Directive on Copyright in the Digital Single Market, thematic responses on all key areas of library and cultural heritage institution interest are given below:

On text and data mining (TDM), the new exception does not go far enough. The provisions ensuring that the application of contract terms cannot prevent users undertaking lawful activities under an exception or limitation are overdue, and should be replicated for all exceptions and limitations that support education and learning, research and access by people with disabilities. Provisions enabling users to undertake legitimate activities, without being constrained by technological protection measures, should be strengthened, and similarly applied to all exceptions, including in Article 5 of the Information Society Directive (2001/29/EC).

However, limiting the TDM exception's scope is a recipe for uncertainty. **Any individual or organisation who has legal access to a work should have the right to mine it, without discrimination as to purpose (commercial or otherwise).** Measures introduced to protect the security and integrity of networks and databases should not stand in the way of legitimate uses of the TDM exception, including across borders. It is important that the exercise of academic and research freedoms is not compromised or monitored. The potential societal gains, not least in terms of stopping the flow of research to other countries with better adapted rules, are immense.

On education, new rules should not add complexity for teachers and others involved in formal or informal learning. Given that education itself is one of the original goals of copyright, a simpler option is a mandatory exception for illustration for teaching and scientific research applying both to analogue and digital materials.

The Commission's recognition of the need to give libraries and cultural heritage institutions (CHIs) the possibility to copy works into different formats for **preservation** is an important step forward. However the proposal should not undermine the existing exception which allows reproductions by CHIs for any public interest purpose. Explicit reference to digitisation would add certainty. The proposal also **needs to make clear that one institution working as part of a (cross-border) network could allow a partner institution to undertake preservation of works on its behalf.**

The proposal is silent on libraries and cultural heritage institutions supporting individuals engaged in education or research who request copies of book chapters and articles from an institution which is too far away for them to visit in person. The **ad hoc supply of documents to users for private research purposes (including across borders)** is a key part of library and cultural heritage institution work and

supports education across Europe. **If we want Europe's researchers to take advantage of the rich content held in its libraries and cultural heritage institutions, this provision is key.**

Similarly, reform **allowing libraries and cultural heritage institutions to give their users on-the-premises access to their digitised permanent collections via their own devices is overdue** – the reference to 'dedicated terminals' in Directive 2001/29/EC is outdated. It goes without saying that appropriate security measures, including technological protection measures, would be in place to prevent the materials being removed from the library.

We welcome the fact that the Commission has recognised the problems that cultural heritage institutions in Europe face when making **out-of-commerce works** in their collections available online. **The draft however does not take large scale digitisation of European culture much further forward than where we are today.** Moreover, the recent European Court of Justice (CJEU) case on the French solution for mass digitisation of out-of-commerce works (C-301/15) risks chilling activities in this area. The need for effective action is more urgent than ever.

As well as being overly complicated, the proposed solution seriously limits the number of works which would be covered. Importantly, the licensing based approach proposed by the Commission does not offer a solution where there is no collecting society for a category (e.g.: audio-visual in many member states) or type of work (e.g. works that have never been in commerce), or where a collecting society exists but it is not able to offer a licence for the making available of commercially unavailable material. It may not even provide an answer to the questions raised by the CJEU. **To ensure works are not forgotten and locked away unnecessarily, we need a back-up mechanism.**

We therefore propose to add an exception to allow cultural heritage institutions to make out-of-commerce works and never in-commerce works in their collections available online for non-commercial purposes. Member States would be empowered to ensure that the exception does not apply in sectors and for types of works where licences are available. **This would recognise licensing as the primary, if not the only, mechanism for dealing with out-of-commerce works.**

On **e-lending**, we welcome the recent CJEU ruling in the case of Vereniging Openbare Bibliotheken vs. Stichting Leenrecht (Case C-174/1), suggesting that e-lending can take place under the Rental and Lending Directive (2006/115/EC) under some circumstances. However, **libraries continue to face challenges in accessing e-books, and overcoming contract terms or technological protection measures that prevent lending.**

Libraries and cultural heritage institutions also have **serious concerns about any measures that create unnecessary new rights, and add cost and complexity** to their work. This risks being the case with the proposals on **ancillary copyright**. Members of the European library and cultural heritage community are concerned that these risk making the smallest fragments of text subject to related rights, which could jeopardise core activities such as cataloguing and the development of open access repositories for research publications and data.

Finally, we welcome the Commission's proposals on **contract transparency and renegotiation** as a **helpful first step towards greater price transparency in general.**

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For further reading on libraries and copyright exceptions please see the [LIBER Basic Guide to Limitations and Exceptions in EU Copyright Law for Libraries, Educational and Research Institutions](#)