



**Updated EUA response to the
European Commission proposal
for a Directive on copyright in the
Digital Single Market**

9 February 2017

The European University Association ([EUA](#)) welcomes the European Commission's (EC) 14 September 2016 [proposal](#) for a Directive on copyright in the Digital Single Market. EUA views the proposed Directive as an important step towards more modern copyright laws for the digital age, fair remuneration of authors and more transparency and balance in the publishing system. EUA particularly appreciates the three mandatory exceptions for research based on text and data mining (TDM); for cross-border off-site education; and for the preservation of cultural heritage currently included in the proposal.

While the proposed Directive thus broadly intends to provide more legal certainty for students, researchers and educators, some of its aspects and details need further clarification, which requires dialogue among all stakeholders, in order to make European copyright laws efficient, future-proof, and innovation-friendly. In line with EUA's February 2016 [response](#) to the EC's December 2015 [communication](#) on a modernised framework for copyright, EUA's initial, November 2016 [assessment](#) of the proposed Directive, and the joint [statement](#) by EUA, CESAER, LERU, LIBER and Science Europe in January 2017, EUA urges the EC, the European Parliament (EP) and the Council, on behalf of the European university sector, to consider the following points:

- Limiting the mandatory exception for research to TDM tools and techniques (Art. 3) could prove to be a short-lived solution given the rapid developments in Science 2.0 and the ICT sector as a whole. EUA therefore suggests to rephrase and broaden the proposal. It should include the more general term of "data analytics" in order to make the proposal more future-proof.
- Restricting a TDM exception to research organisations (Art. 3.1) inhibits collaboration among citizens, researchers outside academia and fledgling commercial organisations, such as spin-offs, start-ups and SMEs. In addition, it is at odds with the collaborative infrastructure the EC is investing in, such as the European Open Science Cloud, and, more generally, the principles of Open Science and Open Innovation. The EC, the EP and the Council should therefore ensure that a mandatory exception be included to enable all parties, individuals and organisations alike, that have legal access to content to analyse and mine it with the tools of their choice.
- Allowing data providers to introduce random measures to protect the "security and integrity" of their network (Art. 3.3) could allow them to arbitrarily block access for researchers with legal access to their content who are trying to conduct data analytics and text and data mining. Safeguards should be put in place, e.g. external, transparent and independent network monitoring mechanisms.
- Remaining silent on Open Access to research publications, data and teaching materials in the proposed Directive is a missed opportunity from the perspective of the European university sector. In order to enable a full Open Access environment, the EC should provide an exception that allows research organisations and individual researchers to distribute scientific publications, data and teaching materials through their own channels, such as repositories. Researchers and educators should keep an inalienable right to re-use their own publications, data and teaching materials or parts thereof, even if they signed them over to a publisher. Publicly-funded research belongs to the public as already acknowledged by numerous national legislators, for example, in France (LOI n° 2016-1321, Art. 30 (L. 533-4)) or

Germany (§ 38 Abs. 4 UrhG). Easy accessibility and increased visibility would improve the quality of teaching and research and stimulate further cooperation and valorisation within and beyond academia.

- Allowing exemptions for “students and teaching staff” (Art. 4.1.a) in the use of works in digital and cross-border learning and teaching activities is absolutely commendable. Nonetheless, in its present form the proposed Directive lacks a clear definition of both terms. EUA hence suggests to specify their range in a precise and ample manner in order to cover all permanent and temporary staff as well as all types of learners, including, e.g., visiting researchers and students, participants of non-profit massive open online courses or lifelong learners.
- Facilitating cross-border off-site education and distance learning is a laudable step in the right direction. It is, however, worrying that the proposal includes the possibility to allow member states to ignore and bypass this exception with licensing schemes (Art. 4.2). Since the activities of teaching and research intertwine inseparably at universities, the natural step is to include a copyright exception for the purposes of teaching and research. EUA proposes that the exception for education and research already existing in the 'InfoSoc' Directive (Art. 5.3.a) be transposed into the new Directive as a mandatory exception. To make real progress, the university sector needs legal certainty at EU level that cannot be overridden by licensing agreements. Furthermore, the full scope and meaning of the term “illustration for teaching” remains vague and ambiguous.
- It is surprising that document supply has not been addressed in the proposed Directive. A provision in the form of a mandatory exception to the right of reproduction, allowing cross-border document supply of book chapters and articles, is a simple solution to ensuring that individual researchers, educators and learners have access to the material that they need.
- Confining the exception on the preservation of cultural heritage only to permanent objects of a collection is regrettable (Art. 5). The exception needs to be broadened and further clarified. The current phrasing in the proposed Directive creates potential legal uncertainty with regard to online material as well as permanent loans. Additionally, proposing licensing schemes for out-of-commerce works will lead to unnecessary regulatory barriers and decrease actual access to these works. The aforementioned limitations also do not fully recognise the existing collaboration efforts between cultural heritage institutions in sharing works as widely as possible with the general public.
- Extending the rights of publishers as outlined in the proposed Directive (Art. 11) should clearly exclude ancillary copyright, which puts linking to content under copyright protection. Any extension of the EU's copyright frameworks to include ancillary copyright would damage European universities and curtail academic freedom, especially if such curtailment were extended to cover scholarly journals, research publications and teaching material. It would do untold damage to the ability of researchers, educators and learners to share their findings and reference the world of scholarship in their published works as well as their teaching and learning activities.
- Introducing a transparency obligation to ensure that authors and performers receive regular, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights is praiseworthy (Art. 14). This provision has the potential to redress the imbalance of power

between rights holders and authors. However, further clarification in the proposed Directive is needed in order to ensure that this obligation fulfils these goals.

The European University Association (EUA) is the representative organisation of more than 800 universities in 47 European countries and 33 national rectors' conferences (NRCs). Its Council is made up of the president, the members of the Board, and of the presidents of all of Europe's NRCs. EUA works closely with its members to ensure that the voice of European universities is heard, wherever decisions are being made that will impact their activities.

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