

POSITION

Copyright Directive: EUA position ahead of a final agreement

February 2019

Negotiations on reforming the Directive on Copyright in the Digital Single Market have entered the final three-way (or “trilogue”) negotiations between the European Parliament, Council of the European Union and European Commission. The goal of the new Directive is to reform the current Directive (2001) and adapt EU copyright rules as digital technologies have changed the way we create, distribute and exploit protected material.

The Directive will have a direct impact on 735 000 researchers working in Europe’s higher education sector (2017 estimate, Eurostat), specifically on how their work connects and contributes to society. Moreover, the Directive will have a direct impact on 1 484 000 people active as teachers in higher education (2016 estimate, Eurostat), as well as 19 590 000 students participating in tertiary education (2016, Eurostat).

In January 2019, the EUA Council, comprised of the President, the members of the Board and the chairpersons or nominated representatives of the national rectors’ associations, adopted the following position ahead of a final agreement on the Copyright Directive.

EUA position

EUA would like to express its position that the provisional agreement of 14 December 2018 is appropriate for the education and research activities of European universities, which are exempt from key provisions that would hinder students, teachers and researchers from making full use of the opportunities offered by digital technologies. However, these exemptions should be further strengthened.

Furthermore, EUA is concerned that no agreement has yet been reached to exempt educational and scientific repositories from the scope of the Copyright Directive, particularly the provisions included in Article 13. Moreover, despite welcoming the exemptions made for education and research, EUA is mindful of the concerns about the impact of the Directive on other sectors and the wider society.

Considering the main articles of interest to universities in the provisional agreement of 14 December 2018:

ARTICLE 3 - EXCEPTION ON TEXT AND DATA MINING FOR RESEARCH PURPOSES

- EUA welcomes the provisional agreement’s Article 3 exception on text and data mining for research purposes, which covers “reproductions and extractions made by research organisations and cultural heritage institutions in order to carry out text and data mining of works or other subject-matter to which they have lawful access, for the purposes of scientific research.” EUA is also pleased by the provisional agreement’s new Article 3(a) text and data mining exception for individuals and institutions with legal access to works. Together these exceptions allow universities to continue text and data mining for research purposes and collaborate with other partners. However, *collaborating with non-university partners across Europe should be further facilitated by making the Article 3(a) exception mandatory rather than optional for member states.*

ARTICLE 4 - EXCEPTION FOR DIGITAL AND CROSS-BORDER TEACHING ACTIVITIES

- EUA welcomes the provisional agreement's Article 4 exception for digital and cross-border teaching activities that "take place under the responsibility of an educational establishment, on its premises or other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff". This exception provides legal clarity for learning and teaching activities to make full use of the opportunities offered by digital technologies. However, *EUA is concerned that the provisional agreement allows member states to bypass the exception if and when "suitable licences [...] covering the needs and specificities of educational establishments are easily available in the market."*

ARTICLE 11 - COPYRIGHT FOR PUBLISHERS OF PRESS PUBLICATIONS

- EUA welcomes the progress made in the provisional agreement to limit the definition and scope of Article 11 on copyright for publishers of press publications. Regarding the definition of press publications, the provisional agreement on Article 2(4d) exempts scientific periodicals by stating: "Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be considered as press publications for the purposes of this Directive." Regarding the scope of the article, the provisional agreement on article 11(1) excludes "private or non-commercial uses of press publications carried out by individual users". This is positive, although *EUA believes it should be further improved by explicitly exempting uses carried out by education, research and cultural heritage institutions.*

ARTICLE 13 - USE OF PROTECTED CONTENT BY ONLINE CONTENT SHARING SERVICE PROVIDERS

- EUA is concerned that no agreement has yet been reached to exempt educational and scientific repositories from the scope of Article 13 on use of protected content by online content sharing service providers. This article aims to determine the liability of commercial services such as YouTube, Facebook and others for content uploaded to their platforms. Having this liability extend to educational and scientific repositories would greatly hinder or even prevent their work. For this reason, *EUA insists that Article 2(4b)(EP)/5(Council) should exclude educational and scientific repositories from the definition of "online content sharing service providers" and thereby the scope of Article 13.*

EUA involvement

EUA has been closely involved in the negotiations on EU copyright reform. In January 2017, the EUA Council adopted a [position](#) welcoming the Commission's [proposal](#) as an important step towards modernising EU copyright rules, aiming to provide legal certainty for researchers, teachers and students working with digital technologies. Given the needs and specificities of higher education and research organisations, the document especially welcomed the proposal's exceptions in the areas of education, research and preservation of cultural heritage.

The EUA Council position adopted in January 2017, developed by the EUA Secretariat in close collaboration with the EUA Expert Group Science 2.0/Open Science, has been the pillar of EUA involvement in the negotiations. EUA has advocated its views on an ongoing basis to members of the European Parliament, including those of the Committee on Legal Affairs (JURI), and permanent representations of EU member states. In addition, EUA has worked together with organisations representing the European academic, library, education, research and digital rights communities. Moreover, EUA involved the national rectors' conferences in the stakeholder dialogue on the national level by providing up-to-date information during key phases of the negotiations.