



Response to the UK IPO's call for views on the Proposal for a Directive on Copyright in the Digital Single Market

[Copyright for Knowledge](#) is a cross-sectoral body, which aims to work with government at both a UK and European level to achieve a balanced copyright regime in Europe.

We are writing to you as a group of research organisations and funders to comment on the EU Proposal for a Directive on Copyright in the Single Digital Market.

We hope you will take account of the points below when developing your position on the EU proposal.

TDM

The significance of Text and data mining (TDM) for all areas of research in the 21st century cannot be emphasised too highly and for that reason we welcome the exception for TDM (Article 3 of the proposed Directive). This is a positive and necessary measure but the limited availability of the exception solely to “research organisations” as defined in Article 2(1) is an artificial restriction. In our view that it will give rise to uncertainty and confusion. We strongly believe that the TDM exception should be more open in scope.

Meaningful and beneficial scientific research is frequently conducted by organisations that either operate in a commercial environment or have close ties to for-profit organisations. While it is good that universities and non-profit research institutes across the EU will benefit from the proposed TDM exception, it is also very common for “research organisations” to form valuable research partnerships with for-profit entities.

It is also the case that TDM could be very valuable to organisations which are neither for-profit organisations nor “research organisations”. An example would be an NGO using TDM to investigate the spread of infectious diseases. The exception should also be available to individual citizens as is the existing UK TDM exception. A TDM exception available to anyone with lawful access to the body of data to be analysed would be more effective in liberating scientific research from unnecessary constraints. This would go much further in boosting the competitiveness of research within the European Union.

TPMs

Copyright for Knowledge welcomes the recognition that the use of Technical Protection Measures by rightholders has serious potential to frustrate the proposed exception for TDM. We note that Article 3(3) limits legitimate use of TPMs to ensuring the “security

and integrity” of the relevant networks and databases. On the other hand we firmly believe that the Directive should also offer a clearly defined route for legal redress when issues arise from the misuse of TPMs to block legitimate access, frustrating the proper application of the TDM exception and indeed frustrating the proper application of other copyright exceptions and limitations within the copyright acquis.

It is not sufficient to require member states to encourage rightholders and research organisations to define commonly agreed best practice (Article 3(4)). There needs to be a clear legal recourse for research organisations who find that their legitimate TDM projects are frustrated by the unjustified use of Technical Protection Measures. Otherwise it will be too easy for rightholders to avoid entering into negotiations about removing or relaxing TPMs to facilitate legitimate text mining projects.

Cross border document supply (Inter-Library loans)

Whilst we applaud the fact that the proposed Directive places considerable emphasis upon facilitating cross border Information Society activities, Copyright for Knowledge was disappointed to find that no measures were included to facilitate libraries in supplying legitimate requests for copies of copyright material received from libraries situated in a different EU member state.

This activity is a very significant contribution to supplying the information needs of scholarship and research. Currently the legislation governing this in each European Union member state is different and gives rise to uncertainty and to inequalities. The proposed Directive is an excellent opportunity to remedy this situation by a simple copyright exception making it unambiguously clear that this service offered by libraries, currently mainly within member states, may also be extended across borders into any other member state.

Article 11, Protection of press publications concerning digital uses

Whilst we understand the intention of this measure in the draft Directive in terms of supporting a diversity of press publications within the European Union, it is not clear to Copyright for Knowledge that an ancillary right for press publications is either necessary or advantageous. We fear that it may result in an unnecessary complication of the overall rights landscape. At the same time we welcome the fact that Article 11 contains wording which appears to protect the rights of authors in relation to the new right for press publications.

We have a specific concern that the publishers of scholarly and scientific journals may see the new right in Article 11 as the basis for a campaign for the same publication right to be extended to scholarly and scientific journals. We see this as a possible threat to the widely shared and accepted Open Access agenda to promote the availability of the results of publicly funded research in freely available web-based sources. If the publication right were to be extended, it would be a seriously retrogressive development, which would endanger the widely accepted policy of making the results of research as available as possible as promptly as possible for use by the wider research community throughout the EU.

The Preservation of cultural heritage exception (Article 5 of the Directive)

Copyright for Knowledge welcomes whole-heartedly the new exception permitting cultural Heritage Institutions to reproduce copyright protected works from their

permanent collections for preservation purposes. This is an essential measure to ensure the preservation of our shared cultural heritage for the future.

We would like to emphasise however the importance of facilitating collaborative preservation arrangements and programmes between different cultural heritage institutions including, very significantly, cross border collaborations between EU member states. This is necessary in order to maximise the benefit of scarce resources, since preservation copying is an expensive activity. It will also ensure that our shared cultural heritage is preserved in the most efficient and effective manner possible.

We note that Recital 19 of the proposed Directive clearly acknowledges the need to enable cross border cooperation. However the need to facilitate collaborative and cross border arrangements does not appear to be addressed directly in the wording of Article 5 itself. We would therefore strongly support a revision of the wording of Article 5 to make it clear that these activities are included in the scope of the exception.

Dedicated terminals, Article 5(3)(n) of the InfoSoc Directive, 2001/29/EC

Copyright for knowledge believes the proposed Directive would provide an ideal opportunity to clarify and update the “dedicated terminals exception” contained in Article 5(3)(n) of the InfoSoc Directive 2001/29/EC:

“...use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections.”

In view of rapid technological advances in hand-held personal devices: It would be a step forward for the services provided by libraries to members of the public, if a definition of “dedicated terminals” which includes the use of modern devices could be added to the existing legislation. This would update it to keep in step with the advances of 21st century technology in the Information Society. There is no intrinsic reason why a personal hand held device should not qualify as a “dedicated terminal” with the necessary safeguards in place. Currently the scope of the term “dedicated terminal” is not widely understood and the exception, which is potentially very useful to libraries is therefore under-used. An amendment to the legislation could improve this position considerably.

Out-of-Commerce Works and Mass Digitisation (Article 7)

We welcome the fact that the proposed Directive attempts to offer a solution to the issues facing cultural heritage institutions who wish to digitise significant collections of works which are out-of-commerce but still protected by copyright. Copyright for Knowledge is of the view that a solution based upon an exception or alternatively a solution which offered an exception which could be used when there is no licensing scheme available would be preferable to the arrangements offered in Article 7. These are some of the weaknesses identified by us:

1. Under the proposed measure a scheme for licensing digitisation of out-of-commerce works would be permitted to be extended to cover the works of non-members of the CMO. This is dependent on several hypotheticals:

The relevant CMO and the rightholders they represent must be willing to a) offer a collective licence for full text digitisation of out-of-commerce works. Additionally they must be willing b) to apply for permission to offer that licence as an extended collective licence. If there is resistance on the part of the CMO or the rightholders they represent to any of those necessary steps then the extended licence will simply not materialise and the legitimate ambitions of cultural heritage institutions will not be assisted to any degree at all.

2. The conditions specified in Article 8(2) of the proposed Directive which include advertising 6 months in advance that digitisation of specific works is planned and the use for that purpose of a single online portal yet to be established by the EU Intellectual Property Office. This appears to add layers of administrative burden and expense to any planned digitisation project and such projects are in any case a resource-heavy undertaking. This taken with point 1 above makes it unlikely that the proposed solution will be of any practical benefit to cultural heritage institutions.

3. The regular stakeholder dialogue proposed in Article 9 seems unlikely to be very effective for cultural heritage institutions given that in the circumstances all the cards are in the hand of the rightholders' organisations.

On balance we feel that an exception-based solution would be more effective or a solution which offered an exception in the event that an appropriate licence is not available.