

Dear

I am writing to you on behalf of SPARC Europe who is leading a coalition of European academic, library, education, research and digital rights communities as we are most concerned about Article 13 of the proposed copyright directive and the draft compromise amendments circulated last week.

We wish to appeal to you to help ensure that the proposed Article 13 does not threaten access to Europe's research and innovation.

We would like to summarise our concerns in 4 important points:

Concerns

1. The provisions of Article 13 threaten the accessibility of scientific articles, publications and research data made available through over 1250 repositories.
2. Repositories are the knowledge hubs of the academic outputs of scores of European universities and non-profit academic communities. These repositories, managed by universities and non-profit academic communities, provide access to valuable publicly funded research and are essential infrastructure for EU global competitiveness.
3. These repositories are likely to face significant additional operational costs associated with implementing new filtering technology and the legal costs of managing the risks of intermediary liability. On top of which, the additional administrative burdens of policing this content would add to these costs. Such repositories, run on a not-for-profit basis, are not equipped to take on such responsibilities, and may face closure.
4. This would be a significant blow, decreasing the flow of knowledge from academy to society and creating new challenges for implementing funder, research council and other EU Open Access policies.

See the attached short flyer on the value of repositories for more information.

With regards to this, we encourage the deletion of Article 13. Alternatively, we suggest the following 4 recommendations:

1. We welcome the current recital 37 which proposes that university and educational repositories should be exempted from filtering obligations as the content is authorized for upload. However, we would like to emphasize that recitals are not legally binding and do not provide adequate protection for educational repositories. The directive text thus needs to be clearer so as to not include educational institutions that manage repositories.
2. In the current draft compromise amendment proposed by MEP Axel Voss, we are concerned about the strengthening of the licensing obligation of internet service platforms. Rights holders are not required to provide licenses, nor can all content be licensed. Were this to be introduced, it would lead to legal uncertainty for universities when offering access to their research results through open access repositories. It will also add to their costs. I.e. It does not protect university repositories as previously stated in recital 37 since they are still covered by the licensing obligation and only then are they exempted from the upload filter obligation. Thereby threatening access to Europe's research. We therefore suggest that this new addition be removed. Alternatively we would recommend the solution proposed in the IMCO and LIBE committee opinions.
3. The licensing obligation will furthermore create legal uncertainty for other platforms frequently used by scientists and researchers, such as GitHub. GitHub is a platform to share and develop code. Programmers do not have a centralised way of licensing their code nor do they have any collecting societies to represent them collectively. This demonstrates how the compromise amendment does not take the complexity of the different types of copyrighted content and licensing into consideration. We therefore suggest that the new licensing requirement proposed be removed to simplify an already complex terrain. Alternatively we would recommend the solution proposed in the IMCO and LIBE committee opinions.
4. As representatives of the academic and scientific community we feel obliged to address the threat to human rights the proposed article 13 is likely to inflict on citizens of the European Union. The proposed draft is effectively arguing for upload filters which will require the monitoring and censorship of user uploaded content.

The CJEU has already stated that such monitoring as is being suggested in the draft is a violation of the European Charter of Human Rights.

In summary

We therefore appeal to you to remove Article 13 from the Draft Directive, or that, at the very least, you ensure that academic and educational non-profit repositories are exempt from Article 13.

For a succinct outline of our views, please see the Open letter
<<https://sparceurope.org/copyrightreform/#openletter>> .

This has been undersigned by the following organisations: CESAER, COAR, The Commons Network, Communia Association, Creative Commons, C4C, EBLIDA, EIFL, EUA, Free Knowledge Advocacy Group EU, IFLA, LIBER, RLUK, Science Europe and SPARC Europe, and scores of further institutions and individuals.

Yours sincerely,

Ásta Helgadóttir

SPARC Europe | Copyright Policy Advisor