
This briefing is intended to inform all those who are working on the draft “**Copyright in the Digital Single Market**” Directive, such as MEPs and their advisors, Council officials and the Commission.

SUMMARY

Below we outline, in summary and then in some more detail with real-world examples, our concerns regarding three key articles in the draft directive. Our comments focus on the specific effect of the proposals on open access to research and academic articles.

Article 11: ancillary rights

- **We urge deletion of this article**

In broad terms, we oppose this ancillary right. It could make the last two decades of news less accessible to researchers and the public, leading to a distortion of the public’s knowledge and memory of past events.

The new right - if extended as the Parliament ITRE Committee advocates to **academic and scientific publications**- would damage open access to research and academic articles. **It would in effect ask readers to pay publishers for access to works for which authors, institutions or research funders had already paid publishers to make freely accessible to all under “open access” terms.** There is no evidence that this extension by ITRE would be effective, and nor has any consultation around this been carried out with the key stakeholders involved, i.e., Europe’s research community that will be most negatively affected by such a requirement.

Consequence of Article 11 extension to academic and scientific publications: the hampering of access to research in the EU, and the damaging of global research, industry and society, by erecting a paywall for already-paid-for publications

Article 13: filtering and legal burdens

- **We urge deletion of this article**

Repositories have become a mainstream infrastructure at almost every Higher Education institution to implement Open Access and Open Science policy.

Article 13 provisions requiring filtering would mean that not-for-profit organisations hosting Europe's over 1250 open access repositories would:

- Face significant costs to implement filtering systems
- Face legal costs to manage the new liabilities Article 13 would create

This would:

- Damage relations with university management and researchers who use them to store, monitor and provide access to their institution's output.

Consequence of Article 13: possible closure of these precious resources; undermining of open research, science and education in the EU, and diminishing of the impact and visibility of Europe's research among the global research community

Article 3: Text and Data mining (TDM):

- **We urge a broader TDM exception** to apply to any person who has legal access to content, including content that is publicly available on the Internet, and for any purpose; and a requirement that technological protection measures and contracts not be allowed to interfere with the exception

Limiting mandatory exceptions to research alone would hamper research and innovation. Those who already have the legal right to read content should be allowed to mine it; it is important for Europe to provide the framework to support such new research practice to keep up with competition in the US and abroad.

Consequence of Article 3: the EU loses an edge in research and innovation; the EU's competitors get a boost as they make discoveries in biotech, medicine, and much else thanks to data mining which a narrow Article 3 exception would prevent in the EU

Article 4 Education:

The exception under Article 4 in the draft directive is far too limited to ensure that copyright is no barrier to education in the EU.

We believe that a robust exception to copyright for education should support broad access to and fair reuse of copyrighted content of all types in a variety of education settings, locally and across borders. The scope of the exception should cover digital and non-digital uses, including 'scientific research' purposes, alongside educational ones, and prevent right holders from overriding the exception through

contractual provisions or technological protection measures. Finally, the exception should not depend on compulsory remuneration.

IN GREATER DETAIL:

What is open access, and why is it important?

Open Access (OA) provides free, immediate, online access to research or academic articles; Open Access is here to stay. The majority of publishers incl. Springer, Elsevier, Wiley, etc. agree licenses to use these articles fully in the digital environment. OA accelerates research, education, scientific progress and economic growth. Many funders including the European Commission, and the European Council's Competitiveness Council, have committed to ensuring, by 2020, OA to publications arising from publicly funded research.

These very short videos, the second of which is by publisher Wiley, explain open access very clearly.

<https://www.youtube.com/watch?v=L5rVH1KGBCY>

<https://www.youtube.com/watch?v=gdR3X4Z5COU>

This video gives the examples of a cancer breakthrough achieved thanks to open access:

<https://www.youtube.com/watch?v=G55hlnSD1Ys>

How might the draft directive damage research, science, education and the economy?

Policy incoherence: Open Access is one of the EU's six European Research Area priorities. In 2016 at the Competitiveness Council, all of Europe's ministers of science, innovation, trade and industry committed to Open Access to scientific publications as the default option for publicly funded research results by 2020. Both Article 11 and 13 risk undermining these vital objectives.

Article 11: ancillary rights

In broad terms, we oppose this ancillary right. It could make the last two decades of news less accessible to researchers and the public, leading to a distortion of the public's knowledge and memory of past events.

The extension of ancillary rights to scientific and academic publications (ITRE Committee) would mean **academic publishers could restrict access to scientific and research papers, undermining the sharing of**

research and the progress of education, science and the economy. This would be very detrimental to the EU's knowledge-based economy.

Key points:

Academic/ research journal prices have outpaced inflation by over 250 per cent in the past 30 years. Publishers often ask for these ever-higher fees in exchange for access to the fruits of taxpayer-funded research. (Ref: Oxford University).

In 2015 the Max Planck institute estimated that **the annual turnover of academic publishers amounted to approximately EUR 7.6 billion**, and this money has mainly come **from publicly-funded institutions.**

This turnover was achieved **without an ancillary right. Researchers and libraries are concerned at this exploitation and at the waste of money paid in fees, that could be better spent on research, research infrastructure and related services to ensure Europe's competitive innovative research edge.** We understand the costs of addressing new ways of managing and disseminating information and knowledge for publishers and institutions alike. However we do not believe that new copyright legislation should be used to supplement these costs and that they should be managed through licensing.

Academic publishers already have the rights they need in the current system. They negotiate these with authors, and often require a fee (known as an "Article Processing Charge") that the author, their institution or funding body must pay in exchange for the article being published Open Access. It would be unethical for **publishers to ask for additional rights to academic research papers. After all, they have already accepted payment to make such papers Open Access. Why should they profit a second time from the same content – this time, from those who would access the papers?**

Science is about discovery and spreading knowledge. The extension of the Article 11 provision to academic publishers would reward journals or publishers, even though they don't write or review the research. Conversely, **Article 11 would hamper access to researchers, libraries, and individuals**, who would have to ask permission and possibly pay for vital everyday research activity such reading research papers and quoting from them.

You don't know, as a researcher, which article is relevant until you read it. If you have to pay for every piece of research you read, then research and scientific progress becomes very difficult and costly, and out of reach altogether for many.

Article 13: filtering and legal burdens

There are over **1250 repositories of scientific articles, publications and research data** managed by non-profit institutions or academic communities in Europe. Open access repositories enable widespread access to and reuse of the results of scientific research, most of which is publicly funded. They support the growing number of open access and open science policies being adopted in Europe. They help ensure that the results of research will have the greatest impact and benefits for citizens in Europe and worldwide.

Examples:

See here for examples: <https://www.coar-repositories.org/activities/repository-observatory/first-edition/repository-profiles/>

There are thousands of open access repositories in Europe, including disciplinary ones like "**Europe PMC**", which provides access to about 4 million full-text articles in the health and biomedical fields and is used by millions of scientists, industry, practitioners and citizens every year.

Almost all of Europe's universities and research institutions have repositories including University of Oxford, University of Cambridge, Imperial College London, ETH Zurich, University College London, London School of Economics and Political Science, Karolinska Institute, EPFL, LMU Munich, King's College London, and many others.

The implementation of Article 13 would seriously inhibit the ability of repositories to support open access policies and laws in Europe and fulfill their mission to ensure the results of publicly-funded research are available to everyone.

Article 13 provisions on filtering would mean organisations hosting these repositories would:

- **Face significant costs to implement filtering systems**
- **Face legal costs to manage the new liabilities Article 13 would create**

Consequence: possible closure of these precious resources

See the short video below for why the "value gap", if relevant at all in the world of copyright, does not apply to academic journals. Indeed, the EU risks a "Scientific breakthrough gap" if Articles 11 and 13 go ahead.

<https://vimeo.com/217495703>

Article 3: Text and Data mining (TDM): Limiting mandatory exceptions would hamper research and innovation!

What is TDM?

TDM is an innovative way of reading content one already has lawful access to, but at a much faster rate and at a much larger scale and using software rather than the naked eye.

Common misperception:

TDM is **not** about enabling access to copyrighted material for free, and **it is not an attack on Intellectual Property and European creation**. To put it simply, if someone has the right to read content, then he/she should have the right to understand and analyse that content when computers are used for assistance.

What would happen if you restricted access to TDM by limiting exceptions in this Directive?

Public and private research in Europe, along with emerging jobs in big data would be slowed at precisely the moment when other countries, including China, Singapore, Australia and the United States, are eliminating barriers for entities that use TDM and take full advantage of the opportunities provided by the data economy.

Our call to legislators on TDM:

We ask you to revise the exception for TDM to recognize that it applies to any person that has legal access to content, including content that is publicly available on the Internet, and for any purpose.

An example of the usefulness of TDM, and the delays caused by licensing/ copyright issues:

“Raul Rodriguez-Esteban, a computational biologist at drug company Boehringer Ingelheim in Ridgefield, Connecticut, says that he ran 160 text-mining queries in 2012. In one, he searched more than 23,000 articles to pick out hundreds of proteins that could relieve a mouse model of multiple sclerosis. He then sketched a network of other proteins that interacted with them, and found new potential drug targets. Academic researchers covet this capability, but say that it takes months or years to negotiate agreements. It took Max Haeussler at the University of Santa Cruz, California, three years to get the rights to download 3 million articles, from which he extracts DNA data to annotate an online map of the human genome (see [Nature483,134–135; 2012](#)).”

<http://www.nature.com/news/text-mining-spat-heats-up-1.12636>

Article 4 Education:

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We believe that a robust exception to copyright for education should support broad access to and fair reuse of copyrighted content of all types in a variety of education settings, locally and across borders. The scope of the exception should cover digital and non-digital uses, including ‘scientific research’ purposes, alongside educational ones, and prevent right holders from overriding the exception through contractual provisions or technological protection measures. Finally, the exception should not depend on compulsory remuneration. We elaborate on these issues below:

1. Precedence of licenses over exceptions

The European Commission’s efforts to harmonise digital education at the EU level will be of little consequence if member states can ultimately decide to subject the application of the exception to the availability of ‘adequate’ licenses. The proposal does not clarify whether this covers important factors like if the license has a reasonable price, respects other exceptions and limitations, or even provides fair remuneration to the original author. Many educational institutions will be ill-placed to negotiate license contracts (if they have the option at all), while others will not even be able to consider purchasing a license, due to the costs involved. **We therefore recommend that the reference to licenses be removed from the exception.**

2. Closed List of Beneficiaries

We are worried that the proposed new exception only applies to ‘educational establishments.’ Education is understood today as a lifelong process that is conducted by a multitude of institutions, formally and informally, and includes learners themselves. This was noted in the Council Resolution of 27 June 2002 on lifelong learning. Yet, when defining copyright law, the Commission’s proposal fails to embrace its own lifelong learning approach by limiting the potential beneficiaries of the proposed exception to ‘educational establishments’ such as offered by museums, libraries, archives, professional associations, independent learning, and civil society organisations. **We therefore propose that the beneficiaries of the exception be broadened to include all persons and entities providing an educational activity.**

3. Unnecessary physical and/or technological barriers

Face-to-face teaching activities are not limited to the walls of a classroom. Teachers carry out educational activities in a variety of locations. The Commission’s proposal will create unnecessary obstacles to traditional educational activities that take place outside the school, for example, educational activities involving digital uses of copyrighted materials, which are carried out by teachers and students affiliated with an educational establishment on the premises of e.g. a library or a museum. **We therefore recommend an exception that gives the education community the ability to access and use content for educational purposes without physical or technological barriers, provided that the uses are in accordance with fair practice.**

For questions, contact:

Dan Pescod, SPARC Europe’s Policy Advocate
dpescod@sparceurope.org