

After latest copyright vote, concerns remain for European research, 14 Sept 2018

This week the European Parliament voted on its amendments of the draft Directive on Copyright in the Digital Single Market. This is the last step before negotiations get underway between the European Council of Ministers, the European Commission and the European Parliament and they begin fighting it out over the final version that will go to vote.

We welcome that the European Parliament amended version includes permitting digital preservation and cross-border digital preservation networks. It also allows the digitisation of in-copyright works that are commercially unavailable. The Parliament's text also better supports the use of digital content in distance learning and cross-border teaching.

To help secure access to open research, SPARC Europe has been working tirelessly against Article 11 and Article 13 for the last 12 months; simple changes still need to be made to mitigate negative impacts to the academic community.

Unfortunately in Article 11, a new ancillary right for press publishers and news agencies for hyperlinks on third party platforms was supported in this vote. Press publishers will be permitted to claim licensing fees for links for uses that extend beyond a single word. Importantly, academic publications are explicitly excluded from this new right. Although "legitimate private and non-commercial use of press publications by individual users" are also excluded, we still fear that this new right will impinge on the provision of news by library and information services, which can be a relevant source of European research.

This poses a significant threat to an informed and literate society. It also risks making past and recent events less accessible to researchers and the public leading to a distortion of the public's knowledge and memory of past events in Europe.

Furthermore, the latest Article 13 vote approved a measure to formalize efforts to crack down on copyright infringement occurring on internet platforms by requiring that user-generated content be monitored and filtered. The move was motivated by a concern that Internet platforms are siphoning money from the music and audio-visual industry.

Although there is an attempt to exclude repositories in this directive, it falls short as it only pertains to cases where the content is uploaded with the approval of all rightsholders involved. This would obligate repositories to actively clear rights or licenses for all content. Including them in this way shows a clear lack of complete understanding of repositories be they for educational or research purposes; they are non-profit and exist to document and provide increased access to Europe's own research and education. And the way and conditions under which repositories share content makes them completely incomparable to Google or YouTube. Repositories are also helping fulfil Open Access, Open Science and Open Education goals across Europe. This legislation, despite changes over the last year, continues to create new risks for implementing funder, research council and other EU Open Access policies. As it currently stands, it is poised to impede access to research and education in Europe unless repositories are unconditionally excluded. Furthermore, it is the organisations themselves that warrant an exception: educational establishments, research organisations, and cultural heritage institutions as a group.

Furthermore, work still needs to be done to persuade legislators that the right to read must be the right to (data) mine. Although a mandatory exception exists for research organisations, universities and libraries, this

does not hold true for all those with legal access to content; for the public, SMEs or larger industry - Member States can choose whether to implement this or not. The risk here is that we end up with 28 different data silos across the single market. Since the very nature of research is collaborative, legislation must support and enable research and not further complicate it or even damage important relations with industry, for example. This division will also severely hamper knowledge transfer. In short, critical technologies and tools that spur innovation in Europe — Text and Data Mining (TDM) and Artificial Intelligence (AI) — must be enabled by this legislation consistently across the continent. This is crucial if Europe is not to be left behind in an age when innovation is increasingly driven by data.

SPARC Europe will fight for the interests of cultural heritage organisations, research organisations and educational establishments in the interest of access to European research. We will do this together with COAR, EBLIDA, EIFL, LIBER, IFLA, the EUA, Science Europe and others in the Trilogue before legislation is agreed upon.