

EUROPEAN COPYRIGHT REFORM: LATEST DEVELOPMENTS

On 14 September 2016, the European Commission published its copyright reform package. This includes the following proposals:

- A new, EU-wide mandatory exception for Text and Data Mining (TDM), protected from override by contract terms and abusive technological protection measures.
- A mandatory exception for illustration for teaching using digital tools with cross-border effect, but Member States can opt out and use licensing instead
- A mandatory exception for preservation, using whatever techniques necessary.
- Mandatory provisions for licencing the making available of out-of-commerce works, including cross borders
- A new sui generis publishers' right, allowing publishers of newspapers and blogs rights over snippets of their stories for 20 years
- An obligation on content-hosting websites to monitor all uploaded content for potential infringement

The objective is “to guarantee the legality of certain types of uses in these fields, including across borders” because “the current lack of copyright law consistency across the EU affects scientific progress”.

Libraries have welcomed recognition of the need for mandatory, harmonised exceptions with cross border effect, and the exclusion of abusive contract terms or use of technological protection measures. However, there is no good reason why these are not applied to all the exceptions. Meanwhile, key library priorities – remote access and cross-border document supply are neglected. The proposal as a whole shows a misplaced faith in the potential of licensing to solve all issues, when as EU judges have readily admitted, libraries' missions are too important to be left to the market alone.

Implementing the Treaty of Marrakesh

A draft Directive and a Regulation set out to implement the Treaty of Marrakesh. Libraries have broadly welcomed the proposals, which explicitly reject the notion of supplementary remuneration for rightholders and onerous commercial availability checks. Ruling out such barriers helps to ensure that the objectives of the Treaty – to maximize the availability of copyright-protected works in accessible formats – is respected.

They also welcome the Commission's proposal to report on the situation of persons with other disabilities, two years after Marrakesh legislation comes into effect. This will provide valuable evidence, and move the EU towards greater compliance with its obligations under the UN Convention on the Rights of People with Disabilities. Libraries however expressed concern with record keeping requirements for authorized entities that go

beyond the terms of the Treaty and which could create burdensome but futile burdens for public interest institutions.

In the European Parliament, rapporteurs have been named for each piece of legislation, and we expect serious discussion on Marrakesh implementation to progress by the end of 2016, Debate on the other copyright issues to take longer. Libraries have been active in seeking to influence both the Parliament and Member States, recently making contact with over 100 MEPs interested in supporting libraries and their users.

Exceptions for eLending: On 10 June 2016, the Advocate General of the Court of Justice of the European Union published his opinion in case C-174-15, *Vereiniging Openbare Bibliotheek vs Stichting Leenrecht*, looking at whether the EU's Rental and Lending Directive also applied to eLending, under certain circumstances. He found that '***the lending of electronic books is comparable to the lending of traditional books. It follows that the general regime of the lending right, which provides in particular for fair remuneration for authors under the public lending exception, is applicable***'. On 10 November 2016, the Court agreed with this, setting a new precedent in EU law.

Out of Commerce Works: On Wednesday 16 November, the Court will also judge on whether a French scheme allowing the licensing of the digitisation and making available of out of commerce works, without seeking authors' permission first, is legitimate. The Advocate General in this case ([C-301/15](#) *Soulier and Doke*) argued that this was not the case. It is worth noting that the current Commission proposals would impose such a system across Europe.

The Story So Far...

November 2013: European stakeholder dialogue on Licenses for Europe breaks down.

March 2014: Public consultation on EU Copyright sees nearly 10000 written responses

December 2014: European Parliament Report calls for overhaul of EU copyright to enhance exceptions and limitations to promote balance in copyright.

May 2015: Digital Single Market Strategy published, promising modern copyright rules

June 2015: European Parliament Legal Affairs Committee (JURI) acknowledges need for reform, including to take account of the public interest and the need for cross-border access, and calls explicitly for new library exceptions.

July 2015: European Parliament approves JURI report in plenary with majority of 380.

December 2015: Commission publishes communication setting out direction of travel, with suggestions for new exceptions, promotion of cross-border access, and helping authors and performers to get fair contracts with publishers and record companies. MEPs subsequently ask questions about digitization, cross-border document supply and eLending.

March 2016: CJEU hearing on Dutch eLending case, looking at whether eLending can fall under the same rules as normal lending. At the same time, the Commission publishes a vague consultation on whether there should be a new right for news and other publishers.

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