



**EUA response to the European
Commission proposal for a
Directive on copyright in the
Digital Single Market**

18 November 2016

The European University Association ([EUA](#)) welcomes the European Commission's (EC) 14 September [proposal](#) for a Directive on copyright in the Digital Single Market. EUA views the proposed Directive as an important step towards more modern copyright laws for the digital age, fair remuneration of authors and more transparency and balance in the publishing system. EUA particularly appreciates the three mandatory exceptions for research based on text and data mining (TDM); for cross-border off-site education; and for the preservation of cultural heritage currently included in the proposal.

While the proposed Directive thus broadly intends to provide more legal certainty for students, researchers and educators, some of its aspects and details need further clarification, which requires dialogue among all stakeholders, in order to make European copyright laws efficient, future-proof, and innovation-friendly. In line with EUA's February 2016 [response](#) to the EC's December 2015 [communication](#) on a modernised framework for copyright, EUA urges the EC, the European Parliament (EP) and the Council, on behalf of the European university sector, to consider the following points:

- Limiting the mandatory exception for research to TDM tools and techniques could prove to be a short-lived solution given the rapid developments in Science 2.0 and the ICT sector as a whole. EUA therefore suggests to rephrase and broaden the proposal. It should include the more general term of "data analytics" in order to make the proposal more future-proof.
- Restricting a TDM exception to research organisations inhibits collaboration among citizens, researchers outside academia and fledgling commercial organisations, such as spin-offs, start-ups and SMEs. In addition, it is at odds with the collaborative infrastructure the EC is investing in, such as the European Open Science Cloud, and, more generally, the principles of Open Science and Open Innovation. The EC, the EP and the Council should therefore ensure that a mandatory exception be included to enable all parties, individuals and organisations alike, that have legal access to content to analyse and mine it with the tools of their choice.
- Allowing data providers to introduce random measures to protect the "security and integrity" of their network could allow them to arbitrarily block access for researchers with legal access to their content who are trying to conduct data analytics and text and data mining. Safeguards should be put in place, e.g. external, transparent and independent network monitoring mechanisms.
- Remaining silent on Open Access to research publications, data and teaching materials in the proposed Directive is a missed opportunity from the perspective of the European university sector. In order to enable a full Open Access environment, the EC should provide an exception that allows research organisations and individual researchers to distribute scientific publications through their own channels, such as publication repositories. Easy accessibility and increased visibility would improve the quality of research and stimulate further cooperation and valorisation within and beyond academia.

- Facilitating cross-border off-site education and distance learning is a laudable step in the right direction. It is, however, worrying that the proposal includes the possibility to allow member states to ignore and bypass this exception with licensing schemes. Furthermore, the full scope and meaning of the term “illustration for teaching” remains vague and ambiguous.
- Allowing exemptions for “students and teaching staff” in the use of works in digital and cross-border learning and teaching activities is absolutely commendable. Nonetheless, in its present form the proposed Directive lacks a clear definition of both terms. EUA hence suggests to specify their range in a precise and ample manner in order to cover all permanent and temporary staff as well as all types of learners with a formal relationship to an educational establishment, including, e.g., visiting researchers and students, participants of non-profit massive open online courses or lifelong learners.
- Confining the exception on the preservation of cultural heritage only to permanent objects of a collection is regrettable. The exception needs to be broadened and further clarified. The current phrasing in the proposed Directive creates potential legal uncertainty with regard to online material as well as permanent loans. Additionally, proposing licensing schemes for out-of-commerce works will lead to unnecessary regulatory barriers and decrease actual access to these works. The aforementioned limitations also do not fully recognise the existing collaboration efforts between cultural heritage institutions in sharing works as widely as possible with the general public.

The European University Association (EUA) is the representative organisation of more than 800 universities in 47 European countries and 33 national rectors' conferences (NRCs). Its Council is made up of the president, the members of the Board, and of the presidents of all of Europe's NRCs. EUA works closely with its members to ensure that the voice of European universities is heard, wherever decisions are being made that will impact their activities.