



*Overview and Implementation
of Europe's
New Copyright Legislation*



HOST



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NOTES

- **The webinar is being recorded.** All participants will receive a link to the recording later today.
- **Slides are on Zenodo:** See the chat box for the link.
- **Questions?** Put them in the chat box. We'll put questions to the speakers at the end of the webinar.

EUROPE'S RESEARCH LIBRARY NETWORK

Founded in 1971

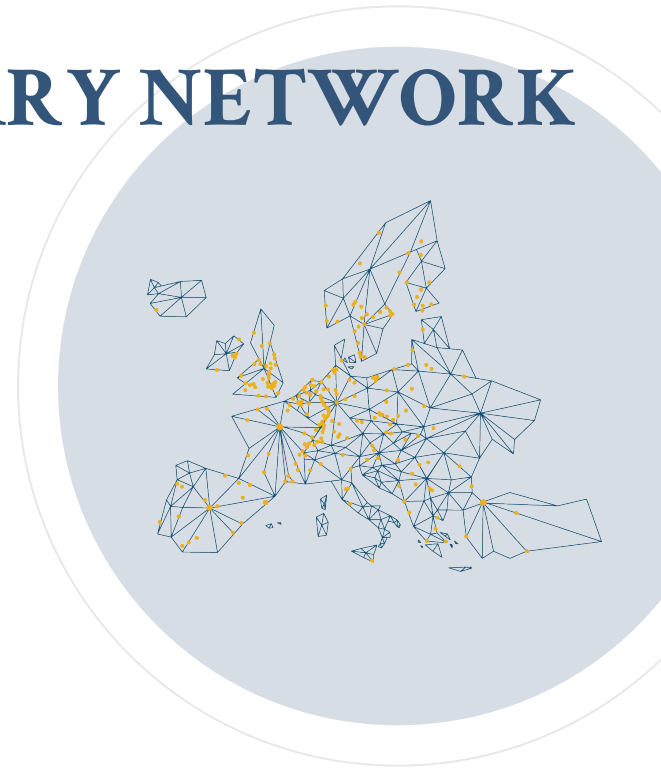
Research libraries working together for nearly 50 years

440 Libraries

Our policies, tools and infrastructures are reshaping research processes and mindsets in favour of Open.

One mission

We aim to enable outstanding research and, by extension, the growth and sharing of knowledge.



VISION: THE 2022 RESEARCH LANDSCAPE

Open Access

Is the main form of publishing

Research Infrastructure

Is participatory, tailored and scaled to the needs of diverse disciplines

Research Data

Is Findable, Accessible, Interoperable and Reusable (FAIR)

Digital Skills

Underpin a more open, transparent research life cycle.

Cultural Heritage

Of tomorrow is built on today's digital information





LIBER & THE COPYRIGHT REFORM

LIBER was very active during the dialogue for the Copyright Reform in Europe.

LIBER worked closely with MEPs and EU Officers to promote the interests of libraries and research organizations


The association joined forces with other library organizations, University associations, as well as with associations of SME and Startups.



DO WE HAVE A VOICE?

Our Association has been recognized as one of the key players for the formation of the copyright landscape in Politico's Copyright Power Matrix.

The work of our **Copyright & Legal Matters Working Group** did not pass unnoticed as it has been mentioned in the "Future of scholarly publishing and scholarly communication" report of the Expert Group to the European Commission and in Times Higher Education.



"The association's constructive engagement during the reform helped European legislators to better understand the technical and legal operation of national, university and libraries in general."

Julia Reda, MEP



Ligue des Bibliothèques Européennes de Recherche
Association of European Research Libraries

Directive on Copyright in the Digital Single Market



Digital Single Market – Where are we now?

- ❑ Transposition at Member State level is by 7 June 2021.
- ❑ Stakeholder engagement – Golden or Failed Opportunity

Library and Research Associations Working Together

- LIBER
- IFLA
- European University Association
- Science Europe (Art 3)
- EBLIDA
- SPARC Europe
- Europeana (Focussed on Art 1-10b)
- CENL (Focussed on Art 5, 7-9 only)
- Public Libraries 2030

Library Associations Working Together

LIBER worked together with many library, research and university groups to make important and material improvements for our sectors from the initial Commission draft.

Now intend to support people at MS level on the optimal implementation.

Please let us know if you will be involved.

Art 3 Text and Data Mining (Before)

1. Allowed universities etc and research organisations to do data analytics on in copyright works.
2. **Excluded** libraries as a beneficiary of the exception unless part of the bodies above.
3. Allowed public private partnerships when commercial entities have no deciding controlling power over the data mining.
4. Does not allow contracts to override the new exception.
5. Publishers can only apply technical measures aimed at protecting the security of the platforms.
6. Encourages stakeholders to agree common best practice around 5.
7. No compensation for the exception.

Art 3 Text and Data Mining (After)

Main improvements:

- ❑ **Includes** all libraries and cultural heritage institutions as beneficiaries.
- ❑ Explicitly allows beneficiaries to keep their data mining outputs as long as securely held.

Art 4 Text and Data Mining (No Before)

- Makes mandatory an exception that allows commercial entities and individuals to data mine.
- Explicitly allows beneficiaries to keep their data mining outputs “as long as necessary.”
- Is subject to technical and contract override.
- However for publicly available websites only technical measures can be used to prevent access, **not** contractual ones.
- Not subject to compensation.

Art.5, Online-teaching

“Use of works and other subject matter in digital and cross-border teaching activities”

Digital teaching activity

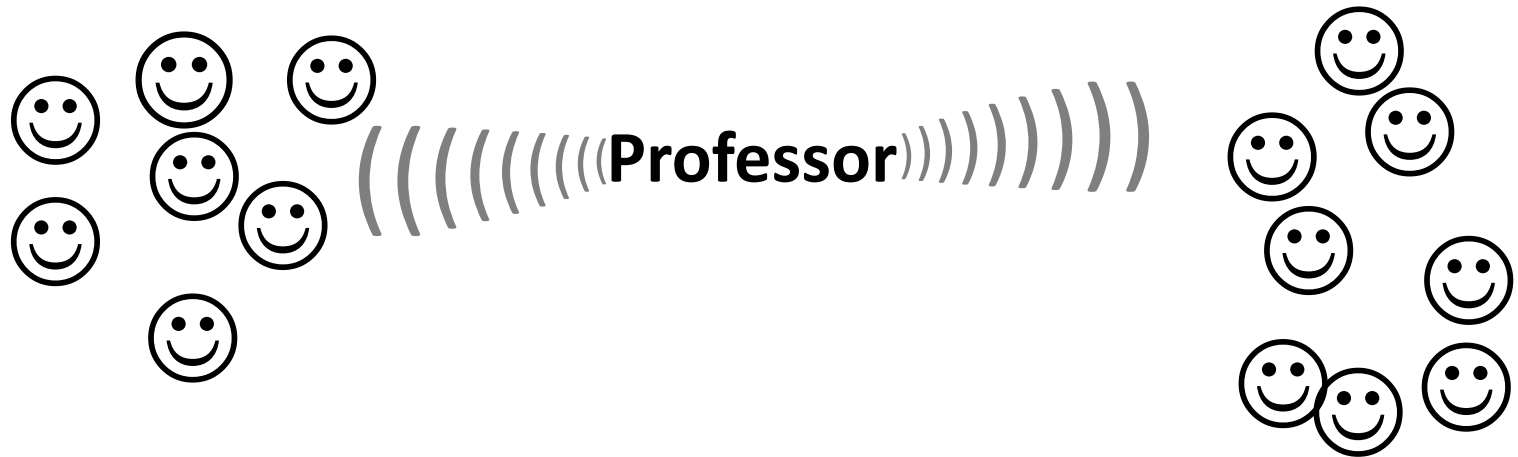
- **Educational establishment**
- **on premises or outside (for example also in a museum, library)**
- **Also use in the (class-)room, e.g. electronic whiteboards**
- **non-commercial purpose of the particular teaching activity**
- **includes learning activities**

recognised by a Member State,
including those involved in
primary, secondary, vocational
and higher education

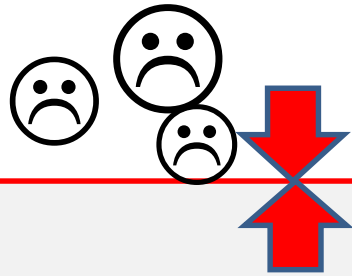
e.g. studying at home via
access to a learning
platform or download

Art.5, Online-teaching

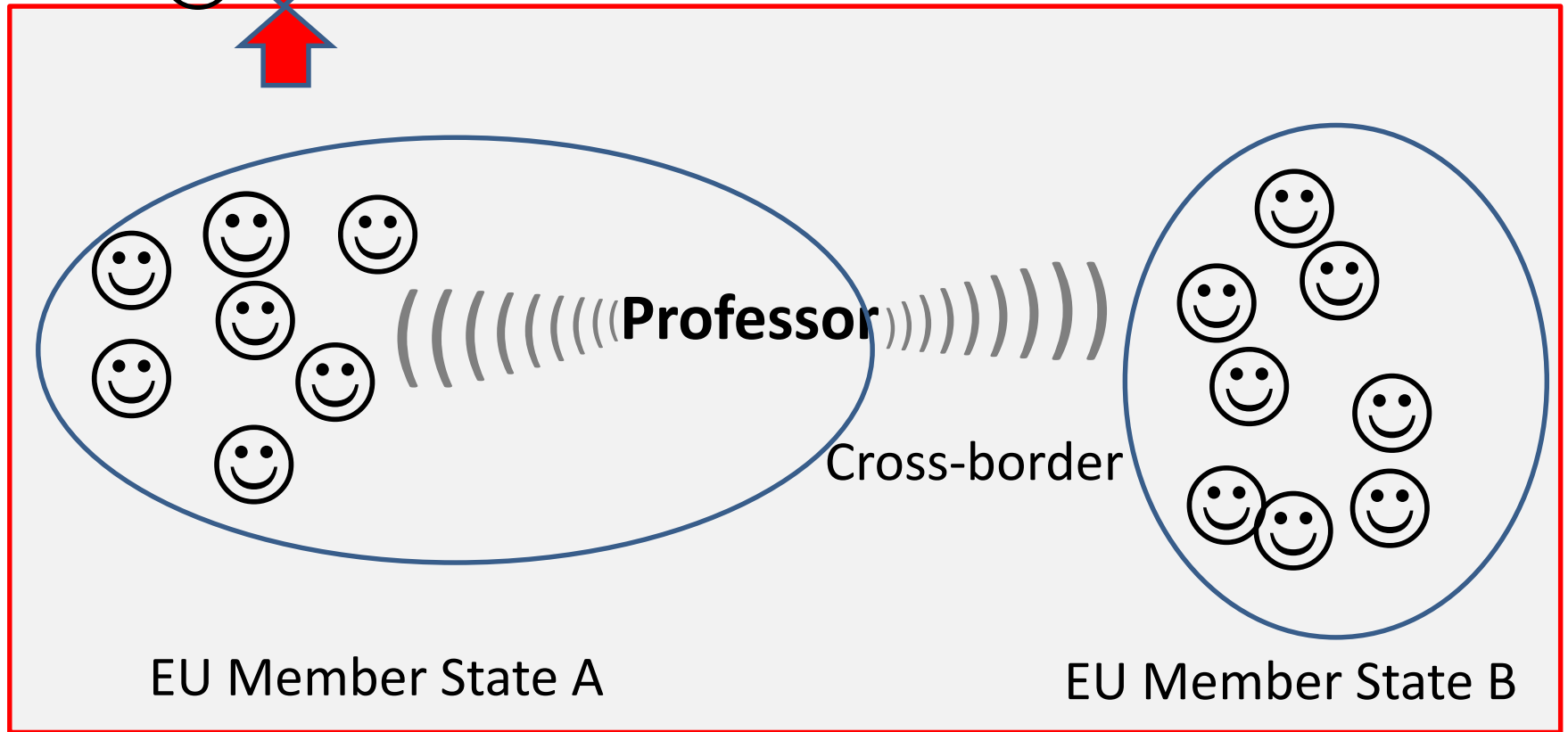
Digital teaching activity



Art.5, Online-teaching



Closed group (staff and students)= authentication procedures



**So far: Directive is mandatory,
but...**

Art.5, Online-teaching

(EU-) Member States are free to:

- **Specify**: the **proportion** of a work or other subject matter that can be used
- **provide** for fair **compensation** for rightholders (via collective societies)
- **Exclude**: specific uses or types of material (e.g. material that is primarily intended for the educational market or sheet music)



The latter requires:

- easily available and suitable licences
- Visibility of the license for educational establishments (in an appropriate manner)

Art 6 Digital Preservation (before)

- Makes mandatory preservation, and allows preservation in digital and all formats.
- Should not allow technical protection measures to prevent preservation if the Member State appeals process is followed.
- Does not allow contracts to prevent preservation.
- Silence on preservation networks.

Art 6 Digital Preservation (after)

Main improvements:

- ❑ Explicitly refers to digital preservation networks, including digital preservation networks working across borders, in the EU.

Articles 8-11 Mass Digitisation of OOC Works (before)

- Licensed based solution for the mass digitisation of previously published / made available out of commerce works. (*What if no collecting society or legally they cannot offer a licence?*)
- Excluded the works of non EU / EEA authors and artists.
- Requirement by representative CMOs (Collective Management Organisations) to advertise the materials for a period of at least 6 months before publication on the EU IPO website.
- Can represent the works of non-members, who have the same rights as members.
- Allows opt outs by rights holders.

Articles 8-11 Mass Digitisation of OOC Works (before)

- A work was not out of commerce if still available in foreign languages.
- Accessibility allows access across borders in whole EU and EEA if licence allows it.
- Stakeholder dialogue to encourage the availability of licences.

Articles 8-11 Mass Digitisation of OOC Works (after)

Main improvements:

- Extended to cover unpublished materials also. (Never in commerce)
- Creates a backstop exception that can be used 1) where no CMO, or 2) where there is a CMO but legally they cannot offer a licence for the purpose of making out of commerce works available in line with Art 7-9.
- Member States can put in place cut off dates.
- Allows cross border use if licensed (also under the exception).
- Unless a CMO is representative of a third country, it excludes works which *predominantly* consist of third party nationals, unless first published /broadcast/ made available in the EU, or for sound and film if they have offices here.
- Translations treated as a different work to the original so probably can be digitised even if other language versions are available.

Articles Art 12 Collective Licensing with an Extended Effect (no before)

- Allows extended forms of licensing that cover the works of non-members as if they were members, in areas where individual rights clearance is not possible.
- Does not allow cross border uses.
- CMOs must be representative of the rights already that they are licensing.
- CMOs must advertise the works they want to license before licensing them “a reasonable period” in advance.
- Equal treatment must be given to members and non-members.
- Members can opt-out from their works being used.
- Member States can decide which sectors to apply this to.
- The above must be monitored by the Commission and reports submitted on the effects of this new law.

Article 14 Works of visual art in the public domain

Public domain works: when the term of protection of a work of visual art has expired,

any material resulting from an act of reproduction of that work is not subject to copyright or related rights,

unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.

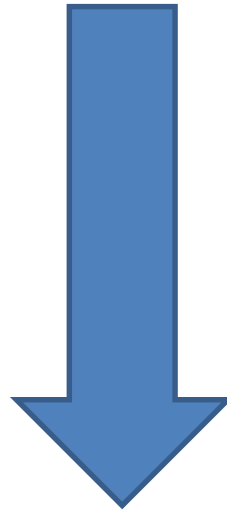


Are Professional painting photographs own intellectual creations ?

Art.15, Protection of press publications concerning online uses

What does that mean ?

Information society service providers (Websites, news agregators, search engines...)



need license for...

Dissimination of (even small parts of) Press Publications

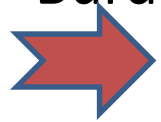
Art.15, Protection of press publications concerning online uses

What is it good for ????

- Copyright works are protected anyway

But:

- Burden of proof for copyright on little snippets and
- Burden of proof for copyright ownership



Litigation risk and costs for news publishers



An own press publisher's right might make it all easier for publishers (???)

Art.15, Protection of press publications concerning online uses

Information society service providers

Press Publication



But no license required for:
Hyperlinking
Use of Individual words

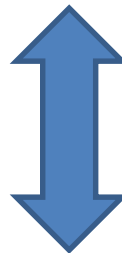
'service' means any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. Not: Private or non-commercial uses by individual users

- collection composed mainly of literary works of a journalistic nature
- individual item within a periodical or regularly updated publication (newspaper, magazine)
- Not: Websites, Blogs without editorial responsibility and control
- Not: Scientific journals

Art.15, Protection of press publications concerning online uses

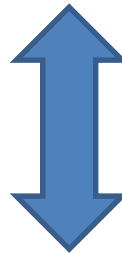
Remuneration Scheme

News aggregator/search engine using a snippet of a news article



License/payment

respective collective society (e.g. Germany: VG Media)



registration/payment

Press Publisher (of the respective articles)

Art.15, Protection of press publications concerning online uses

Does it have anything to do with the science community or libraries ?

Yes:

- Online catalogues and newspaper related projects
- The right to „quote“ from articles in online environments will get more blurry
- The right to distribute news by simple pointing to news articles will get a legal limbo.

Art.17: Certain uses of protected content by online services ("Upload Filters")

What is that ?

- prevent the (online-) availability of unauthorised works or other subject matter on platforms
- (More) Responsibility of platforms for user-generated content
- No platform liability limitations („Notice and takedown“) anymore
- New obligations for platform providers

Art.17: Certain uses of protected content by online services (“Upload Filters”)

Why is it problematic ?

- Necessity to install systems to check all uploaded content (in advance):
 - Is it copyright protected, e.g. copyright term expired ?
 - Does someone else have copyrights in it ?
 - Is the communication covered by (copyright) exceptions ?
- Issues of power: Only few companies have capacity to build such systems
- Issues of privacy: The filter-company has access to information about all worldwide uploaded content and all claimed copyrights
- Censorship issues: Infrastructure would allow governments to control all uploaded content

Database + storage with all worldwide copyrighted content must be consulted (doesn't exist yet)

quotation, criticism, review, or purpose of caricature, parody or pastiche

Art.17: Certain uses of protected content by online services (“Upload Filters”)

😊 Uploading person (you or me or your university)



Content upload

Files of music, movies, fotos, graphics, software, written text, talks...

Filter:

- Is it copyright protected ?
- Has someone else claimed copyright (correctly)?
- Does Platform have a License ?
- If no License: Copyright exceptions ?
- (Or is the uploader himself the copyright holder ?)

- Is it creative / individual enough ? Are there other (ancillary) copyrights ? EU law, 28 member state laws, jurisdiction, all up-to date

Database comprising all copyright claims

EU law, 28 member state laws, jurisdiction, all up-to date



Platform: Making available to the public

Youtube, instagram, facebook, pixabay, tublr, slideshare...

Art.17: Certain uses of protected content by online services (“Upload Filters”)

☺ Arts professor



Upload Conference talk
+presentation including citations of
fotos of artwork

Filter:

- Are images or fotos in the presentation copyright protected ?
- Has someone else claimed copyright in them (correctly)?
- Does the platform have a license ?
- Citation or other exception ?
- (Or is the uploader himself the copyright holder ?)



Platform: Making available to the public

What else ?

Excluded: services such as not-for-profit online encyclopedias , **not-for-profit** educational and scientific repositories

Public Private Partnerships ?
Private universities ?

Excluded: Services available to the public in the EU for less than three years / annual turnover below EUR 10 million,
If number of monthly unique visitors doesn` t exceed 5 Million

No general monitoring obligation.

Obligation for platforms (only) to make “its best efforts in accordance with the high industry standards of professional diligence”

Rightsholder who did **not provide necessary information** to the platform are excluded from the strict platform responsibility

Member states shall provide that a **complaint and redress mechanism (for the use of copyright exceptions** are put in place

Implementation note (Germany):

- Use of open source software for upload filters
- Guarantees for making use of copyright exceptions (e.g. citation)



Jonas Holm

*speaking on national implementation
of the new Copyright Directive
in Sweden*





THANKS!

Questions?

Please put them in the chat box.

Slides and a recording will be sent to all registered delegates.