



Wikimedia Position Paper
on the Proposal for a Directive
of the European Parliament and the Council on
Copyright in the Digital Single Market
2016/0280 (COD)

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Why it matters to Wikimedia

Hundreds of thousands volunteers contribute content to Wikipedia and its sister projects, while 4.5 million individuals have donated money. All these people support a movement that is dedicated to the digitisation and the making accessible of our cultural heritage. Today's information technologies offer a historical chance for humanity to democratise access to knowledge and preserve culture.

The Wikimedia movement actively invests in the preservation of our cultural heritage. Volunteers help small-town museums with the digitisation of their archives. We provide a free, safe and sustainable online hosting solution for digitised cultural heritage works. Maybe more importantly, we provide global access and context to this precious knowledge. Yet, we are often convinced that our efforts and resources are not as impactful as they could be. Currently, the EU copyright framework fails to take into account and protect the legal space in which cultural heritage exists - the public domain. It also ignores the vital and efficient role hundreds of thousands of users are playing in preserving our cultural heritage.

The European Parliament has the opportunity to include meaningful improvements to the current copyright regime and thereby help significantly leverage the effectiveness of cultural heritage digitisation initiatives.

What Wikimedia calls for

1. Safeguard the Public Domain

Unrestricted access to digital reproductions of public domain works is essential for sharing Europe's culture with its citizens. Yet, much of our heritage remains locked away in dusty archives, because the institutions don't have the resources to digitise it. This is why Wikimedia is invested in driving the digitisation process and the making accessible of cultural heritage works forward. We are providing volunteer working time, legal advice, technological support and public relations help to cultural heritage institutions in order to help them fulfill the missions and mandates they were established with. We have cooperated with the Bundesarchiv in Germany, the Bundesdenkmalamt in Austria, the Rijksmuseum in the Netherlands, the National Museum in Warsaw in Poland and the National Maritime Museums in Sweden and the State Archives Agency in Bulgaria, just to name a few.



Over the years, the question of the **legally unobjectionable digitisation of public domain works** arose. Institutions, civil society and volunteers were concerned by claims of rights on public domain works. Several times, overzealous lawyers asserted that works whose rights had surely expired, could still be locked-up and needed licensing agreements. Copyright notices are still added to scanned representations of cultural items that are hundreds of years old, a practice that deprives Europe's citizens of online access to their cultural heritage and that borders on copyfraud.

In order to allow civil society organisations to continue investing in the digitisation of our cultural heritage and in order to ensure that cultural heritage institutions can pursue their public mission, **Wikimedia urges the European Parliament to include a public domain safeguard** in the EU copyright reform. This can be achieved by simply clarifying that, if copyright and related rights in a work have expired or never existed, verbatim digital reproductions in full or in part of that work, regardless of the mode of reproduction, shall equally not be subject to copyright or related rights.

2. Freedom of Panorama

Freedom of Panorama in the public space is critical for ensuring **freedom of expression and access to education in Europe**. As a free knowledge and user-generated resource, Wikipedia's articles rely on images of public spaces to improve its educational value. The current non-mandatory exception and the varying different ways it has been implemented by the Member States makes it hard for anyone, from professional documentarians to tourists, to take a photograph or film of a public place and safely share it with the public over the internet without risking litigation.

The European Commission ran a [consultation](#) on Freedom of Panorama. According to the synopsis of the results published shortly after the copyright reform was officially proposed, **consumers, institutional users, service providers, professional photographers and architects** expressed that the introduction of a mandatory exception would have a **positive impact on their activities**. In its [communication](#) on Promoting a fair and efficient European copyright-based economy in the Digital Single Market, the European Commission "confirms the relevance of this exception" and "strongly recommends that all Member States implement this exception."



Considering the relevance of this exception as confirmed by the Commission itself and the proposal made by rapporteur Marc Joulaud (EPP FR) in the Culture Committee, **Wikimedia strongly recommends that a mandatory Freedom of Panorama exception that allows for the re-use of images to be included by the European Parliament.**

3. User-Generated Content Exception

A major challenge for the European copyright framework is that we need to provide for enough flexibility for creativity and innovation to happen while assuring enough legal certainty to protect creators and businesses. User-generated content projects like Wikipedia and Wikimedia Commons clearly demonstrate the positive effects of collaborative communities and user-generated content to society by setting new standards for the digitisation and preservation of cultural heritage.

Parts of protected works are often combined or assembled for purposes such as education, illustration, information, criticism and even entertainment. We call these new works user-generated content. Such uses of extracts or quotations typically do not cause significant economic harm to the rightholders concerned. On the other hand, they significantly help user-generated projects improve access to high-quality educational materials online.

Wikimedia therefore supports the proposal made by rapporteur Marc Joulaud (EPP FR) in the Culture Committee. We also welcome the rapporteur Catherine Stihler (S&D UK) of the Internal Market Committee to have included a similar exception in her own draft report.

4. Text and Data Mining

Wikipedia and its sister projects - in particular Wikidata - widely make use of the possibilities offered by modern, automated access to data and content online. Our volunteers process, aggregate, categorise and make accessible large amounts of data with the goal to provide new educational opportunities. One example is **the use of data from national statistical offices in Europe, to present a visually attractive and easily searchable basic information about all municipalities in the EU.** A further example is the use of data from medical databases, such as PubMed, for the correct description of diseases and the linking back to appropriate scientific sources.



The proposal made by the European Commission on text and data mining unfortunately offers the possibility to automatically search and analyse data only to scientists and amongst them only to those formally associated with institutions. Wikimedia does not belong to this group of organisations. This means that, **should the current text be adopted, we would be limited to only explore information for which we have secured additional licenses, even if the information is freely accessible online.** This would increase transaction costs for everyday tasks and ultimately reduce competition online, which in turn would limit user choice.

The proposal in Article 3 by the European Commission on text and data mining would cause the **volunteer authors of Wikipedia articles to be cut off from the possibility to aggregating the data contained in the majority of scientific publications and scientific databases.** Wikimedia therefore strongly supports the improvements proposed by rapporteur Therese Comodini Cachia (EPP MT) of the Legal Affairs committee and rapporteur Catherine Stihler (S&D UK) of the Internal Market committee and rapporteur Zdzisław Krasnodębski of the Industry & Research committee.

5. Education Everywhere

Education is perhaps the most decisive factor in the economical and democratic development of societies. This special role has ever since been recognised in copyright law. Virtually every European Union Member States has exceptions and limitations aiming at empowering teachers and students to fulfill their academic potential.

The European Commission rightly recognises that cross border teaching activities online are an important new method of instruction and of learning in Europe and takes steps towards removing some of the legal obstacles in this area. What the Commission proposal does seem to completely ignore, however, is that teaching & learning nowadays takes place everywhere and anytime, not just on the premises or closed networks of universities or schools. People learn languages on their phone waiting for the bus using applications like Duolingo, they read about the history of the Treaty of Rome on Wikipedia during lunch and tutor each other and use a variety of communication channels to tutor each other.

While Wikimedia welcomes the Commission's effort, we must insist on broadening the educational exception to cover many more everyday educational uses. We are afraid that the current proposal might even have restrictive effects by casting a shadow of insecurity on all uses that are not defined therein. We support the changes the Legal



Affairs committee rapporteur Therese Comodini Cachia's has proposed and ask for futher steps in this direction.

6. Protect Liability Exceptions for Online Platforms

Neutral online platforms and publishers are critical to the free exchange of knowledge, on Wikipedia and elsewhere. Wikimedia projects receive hundreds of edits per minute by their users, totaling billions of edits since the projects were founded.

The idea of paving the way forward for the mandatory implementation of “effective content recognition technologies” is dangerous. Such technologies have a proven track record of failures when it comes to balancing fundamental rights such as the freedom of speech and the right to criticise. They simply fail to recognise limitations, exceptions, free licenses and in many cases public domain works. These are major faults that make content recognition systems destructive to user-generated projects like Wikipedia and Wikimedia Commons. Additionally, very similar technology is used by undemocratic regimes to censor information online. Installing censorship infrastructure across online platforms in Europe is a risky policy that should not be taken easily.

We recommend the European Parliament to maintain the liability regime as imposed under the E-Commerce Directive, and to refrain from adding enforcement clauses to yet another legal instrument in the already inscrutable body of Directives and case law.