



**Wikimedia (Free Knowledge Advocacy Group EU) Position Paper**  
**on the European Commission's**  
**Proposal for a Directive of the European Parliament and the Council on**  
**[Copyright in the Digital Single Market](#)**  
**2016/0280 (COD)**

**Content**

1. Include a mandatory Freedom of Panorama exception.
2. Include a “no new protection on digitisations” clarification.
3. A text and data mining exception that benefits journalists and start-ups.
4. Maintain intermediary liability protection for online platforms.
5. Seriously consider the risks of a related right for press publishers.

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## General note

Wikimedia is a global movement dedicated to the preservation and making accessible of our cultural heritage by means of digitisation and online distribution. Despite the fact that new technologies provide a historic chance for cross-border access to culture, legal obstacles remain in place that make it difficult to share knowledge even within the European Union. The proposed copyright reform unfortunately does little to address the challenges and seize the opportunities. To the contrary, it may have adverse effects on volunteer projects in general, if adopted in the current form. We believe that several fixes can vastly improve the effectiveness and balance of the reform.

## 1. Missing Article - Freedom of Panorama

Freedom of Panorama 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 partly very different ways it has been implemented by the Member States make it hard for anyone, from professional documentarians to tourists, to safely take a photograph or film of a public place and share it with the public over the internet.

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** consider 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, the political climate in the European Parliament as well as the Council and the actual everyday problems the current situation causes, **Wikimedia strongly recommends that a**



## **mandatory Freedom of Panorama exception be included in the EU copyright reform.**

This is the lowest necessary step to be taken in order to ensure that the copyright framework is compatible with both, the digital environment and everyday life. The recent amendments made to national laws in Belgium and France are far from being a sufficient surrogate for actual harmonisation.

## **2. Article 5 - Preservation of cultural heritage**

For more than a decade now, Wikimedia has been providing volunteer working time, legal advice, technological support and public relations help to cultural heritage institutions in order to help them digitise their exhibitions and make them accessible, thereby fulfilling their societal missions. 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, just to mention 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 in some cases 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 EU legislator to include a public domain safeguard in the EU copyright reform.** This can be achieved by simply clarifying that, once copyright and related rights in a work have expired, 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.

## **3. Article 3 - 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 goals 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 recommended treatments.

The proposal made by the European Commission on text and data mining, unfortunately offers the possibility to automatically search and analyse data only to research 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**.

The proposal in Article 3 on text and data mining will 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**. It will additionally hinder data journalists from investigating many cases and will exclude European start-ups, for whom the transaction cost of securing licenses are considerable, from quickly developing their full potential.

#### **4. Article 13 & Recital 38 - Use of Content by Information Society Service Providers**

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. At the same time, Wikimedia's projects have astonishingly low rates of copyright infringements. When looking at hosting in general, the situation is also much better than the proposal's wording would suggest: The current enforcement mechanisms effectively address instances of copyright infringement, as well as libel and slander. If anything, they need balancing towards freedom of expression rather than introducing (automated or manual) mass screening of the web.

In our view it would be especially unfair and unbalanced to additionally burden sites that already have well-functioning mechanisms that ensure they only host legal content. The current proposal does not provide any certitude that Wikipedia and other volunteer projects with a proven track record of respecting copyright would not fall into its scope and would



not have to introduce “effective content recognition technologies”. We would welcome a **clearly stated exemption for user-generated content sites with only negligible amounts of infringing content**. Instead, we recommend the creation of **clear and straightforward notice-and-action rules** as a more workable solution.

In the EU, the E-Commerce Directive is essential in ensuring the crucial immunity from intermediary liability that allows the free web to exist and allows Wikimedia to host Wikipedia and the other free knowledge projects. If the law did not provide this protection, many sites, including ours, would not be able to host contributions from users. We are very worried by the proposed **Recital 38 that clearly aims to re-write the E-Commerce Directive** without even opening it. This is a questionable legislative approach **risking to rock fundamental principles of the internet without due process**. Wikimedia demands this **passage to be dropped**. Under such rules, Wikipedia could not have emerged in the first place and the EU, in making this into law, would in effect emulate authoritarian regimes and trample on the very values it should promote and for which Wikimedia projects are examples.

##### **5. Article 11 - Protection of press publications concerning digital uses**

By proposing an additional neighbouring right for press publishers that lasts 20 years and covers all press publications, the European Commission seems to have neglected the risks.

Under the presented scenario, online content aggregators would have to clear licenses and pay fees to press publishers for the use of press content, even if they only use **snippets**. While Wikipedia and our other projects aren't online aggregators by design, our **volunteer authors often use press articles and provide annotated bibliographies of sources**.

The Commission's proposed additional related right of publishers can result in an unforeseen risk that Wikipedia and other Wikimedia projects benefiting on an appropriate way of press releases will also be included in the group "aggregators". It would be difficult to impossible to calculate the cost. As a result, Wikimedia projects, including Wikipedia, could have to significantly limit the use current press material for the description of current events, to the detriment of their educational mission.