

Brussels, 30 November 2017

OPEN LETTER IN LIGHT OF THE COMPETITIVENESS COUNCIL ON 30 NOVEMBER 2017

Dear President Juncker,

Dear President Tajani,

Dear Prime Minister Ratas,

Dear Prime Minister Borissov,

Dear Ministers,

Dear MEP Voss,

We write to you to share our respectful but serious concerns that discussions in the Council and European Commission on the Copyright Directive are on the verge of causing irreparable damage to our fundamental rights and freedoms, our economy and competitiveness, our education and research, our innovation and competition, our creativity and our culture.

We refer you to the numerous letters and analyses sent previously from a broad spectrum of European stakeholders and experts for more details (see attached).

On behalf of the signatories,

Caroline De Cock

Copyright for Creativity

The over 80 signatories below represent human and digital rights organisations, media freedom organisations, publishers, journalists, libraries, scientific and research institutions, educational institutions including universities, creator representatives, consumers, software developers, start-ups, technology businesses and Internet service providers.



	Organisation	Country/Region
1	Access Info Europe	Europe
2	ActiveWatch	Romania
3	Allied for Startups	Europe
4	ARTICLE 19	Global
5	Asociación de Internautas	Spain
6	Asociación Española de Startups	Spain
7	Associação D3 – Defesa dos Direitos Digitais (D ³)	Portugal
8	Associação Nacional para o Software Livre (ANSOL)	Portugal
9	Association for Progressive Communications (APC)	Global
10	Association for Technology and Internet (ApTI)	Romania
11	Association of European Research Libraries (LIBER)	Europe
12	Association of Publishers of Periodical Publications (AEEPP)	Spain
13	Association of the Defence of Human Rights in Romania (APADOR-CH)	Romania
14	Association of the Internet Industry (eco)	Germany
15	Austrian Startups	Austria
16	Bits of Freedom (BoF)	Netherlands
17	BlueLink Civic Action Network	Bulgaria
18	Brand24	Poland
19	Bulgarian Helsinki Committee	Bulgaria
20	Center for Democracy & Technology (CDT)	Global
21	Centrum Cyfrowe	Poland
22	Civil Liberties Union for Europe (Liberties)	Europe
23	Communia Association	Global
24	Computer and Communications Industry Association (CCIA)	Global
25	Copyright for Creativity (C4C)	Europe
26	Create Refresh Campaign	Europe
27	Creative Commons	Global
28	DIGITALEUROPE	Europe
29	Dutch Association of Public Libraries (VOB)	Netherlands
30	EDiMA	Europe
31	Electronic Frontier Foundation (EFF)	Global
32	epicenter.works	Austria
33	Estonian Association of Information Technology and Telecommunications (ITL)	Estonia
34	Estonian Startup Leaders Club	Estonia
35	European Bureau of Library, Information & Documentation Associations (EBLIDA)	Europe
36	European Digital Rights (EDRi)	Europe
37	European Innovative Media Publishers	Europe
38	European Internet Services Providers Association (EuroISPA)	Europe
39	European University Association (EUA)	Europe
40	Factory Berlin	Europe
41	Federation of Hellenic Information Technology & Communications Enterprises (SEPE)	Greece
42	France Digitale	France

	Organisation	Country/Region
43	Free Knowledge Advocacy Group EU (FKAGEU)	Europe
44	Free Software Foundation Europe (FSFE)	Europe
45	Frënn vun der Ënn	Luxemburg
46	German Library Association (dbv)	Germany
47	Hermes Center for Transparency and Digital Human Rights	Italy
48	Human Rights Without Frontiers (HRWF)	Global
49	Hungarian Civil Liberties Union (HCLU)	Hungary
50	Index on Censorship	Global
51	Initiative gegen ein Leistungsschutzrecht (IGEL)	Germany
52	International Federation of Library Associations and Institutions (IFLA)	Global
53	ISPA Austria	Austria
54	Italian Coalition for Civil Liberties and Rights (CILD)	Italy
55	Italian Internet Service Providers Association (AIIP)	Italy
56	Justice & Peace	Netherlands
57	Kennisland	Netherlands
58	l'Association des Services Internet Communautaires (ASIC)	France
59	League of European Research Universities (LERU)	Europe
60	Libraries and Archives Copyright Alliance (LACA)	UK
61	Media Development Center	Bulgaria
62	Mind the Bridge	Global
63	Modern Poland Foundation	Poland
64	National Online Printing Association (ANSO)	Italy
65	Netherlands Helsinki Committee (NHC)	Netherlands
66	Open Knowledge International (OKI)	Global
67	Open Rights Group (ORG)	UK
68	OpenMedia	Global
69	Platform for the Defence of Free Expression (PDLI)	Spain
70	Portuguese Association for Free Education (AEL)	Portugal
71	Public Libraries 2020	Europe
72	Robotex	Estonia
73	Roma Startup	Italy
74	SA&S – Partnership for Copyright & Society	Belgium
75	Science Europe	Europe
76	SentiOne	Poland
77	Silicon Allee	Germany
78	SPARC Europe	Europe
79	Startup Poland	Poland
80	Ubermetrics	Germany
81	Wikimedia Deutschland	Germany
82	Xnet	Spain
83	ZIPSEE	Poland
84	Technology Ireland	Ireland
85	European Network for Copyright in Support of Education and Science (ENCES)	Europe

ANNEX

30 November, 2017 – [Statement](#) from Science Europe, LIBER, EARE, EUA and SPARC Europe on myths and misunderstandings about text and data mining (TDM) in the copyright reform. This statement stresses that permitting TDM by all parties will provide a significant boost to the European economy.

21 November, 2017 – [Open letter](#) from 17 Polish NGOs addressed to the Polish authorities (including the Ministry of Culture and Ministry of Digital Affairs) on the filtering obligation in the copyright reform proposal, urging the Polish government to oppose the idea of censoring the Internet.

15 November, 2017 – [Statement](#) from ALLEA (All European Academies) on the text and data mining exception, urging the European Institutions to elaborate a more balanced exception for TDM taking the needs of science and research in Europe better into account.

9 November, 2017 – [Open letter](#) from French trade associations questioning if France is pushing for the ban on hosting websites in Europe. The letter warns that Article 13 would make hosting services de facto the sole judges, ex ante, of what can or cannot be accessible on the Internet. Therefore, the signatories call upon France to defend the liability regime of hosting service providers, as they point out that this is compatible with implementing effective copyright protection.

27 October, 2017 – [Open letter](#) from CCIA, DIGITALEUROPE, EDiMA and EuroISPA on the importance of discussions on the so-called right of communication to the public (CTP) and the eCommerce Directive 2000/31/EC (eCD), in the context of Article 13 and Recital 38. The letter stresses that any clarifications made for the purposes of the proposed Directive on Copyright in the Digital Single Market must not change nor supersede the e-Commerce Directive.

20 October, 2017 – [Recommendation](#) co-signed by over 50 respected academics on measures to safeguard fundamental rights and the open Internet in the framework of the EU copyright reform, which points out that: "Article 13 (...) is disproportionate and irreconcilable with the fundamental rights guarantees in the Charter [of Fundamental Rights of the EU]" (p. 14) and "contains imbalanced, undefined legal concepts that make it incompatible with the existing acquis" (p. 23).

16 October, 2017 – [Open letter](#) from over 50 NGOs representing human rights and media freedom asking the EU legislators to delete Article 13. It is especially striking that organisations such as Reporters without Borders and Human Rights Watch, which are known to intervene for the protection of human rights in less democratic countries, have been moved to the point where they felt the need to voice their concerns in this matter to ensure that EU citizens are safeguarded from the EU's copyright agenda crushing their fundamental rights.

16 October, 2017 – [Opinion](#) of the CEIPI on the European Commission's proposal to reform copyright limitations and exceptions in the European Union. The opinion considers that this reform should be an opportunity to reflect on the future design of an “opening clause” to address uses that are not yet covered by existing exceptions and limitations but are justified by important public interest rationales and fundamental rights such as freedom of expression and the right to information. The authors also urge the EU legislators to promote first the interests of European authors, researchers, teachers, students and users broadly, and pave the way for Europe’s future generations of innovators and artists.

29 September, 2017 – [Open letter](#) launched by the Free Software Foundation Europe and OpenForum Europe to secure the free and open source software ecosystem in the EU copyright review, warning that filtering algorithms will ultimately decide what material software developers should be allowed to share.

26 September, 2017 – [Open letter](#) from the European research and innovation community to the Members of the Legal Affairs (JURI) Committee of the European Parliament calling to secure Europe’s leadership in the data economy by revising the Text and Data Mining (TDM) exception. The letter asks to revise the exception for TDM to recognize that it applies to any person that has legal access to content, including content that is publicly available on the Internet, and for any purpose.

25 September, 2017 – [Open letter](#) from the coalition of innovative media publishers to Members of the European Parliament and the Council of the European Union on the introduction of a new neighbouring right under Article 11 of the Copyright Directive. The letter stresses that Article 11 will have serious negative effects on the quality of the press, freedom of opinion and freedom of expression of EU citizens.

15 September, 2017 – [Study](#) for the European Parliament’s Legal Affairs (JURI) Committee on strengthening the position of press publishers and authors and performers in the copyright Directive authored by Professor Lionel Bently, Professor Martin Kretschmer, Tobias Dudenbostel, María del Carmen Calatrava Moreno, and Alfred Radauer. The study suggest on Article 11 to for JURI to adopt the recommendations contained in the Draft JURI Report of March 10, 2017. On the EC’s proposals around fair remuneration in contracts of authors and performs, the study criticizes the EC’s lack of ambition.

13 September, 2017 – [Open letter](#) by trade associations and stakeholder organisations representing consumers, digital rights groups and technology businesses requesting clarity on article 13. The letter warns that the provision is far-reaching and incompatible with EU law, creates legal uncertainty and confusion, and dismantles the 'safe harbour' of article 14 of the eCommerce Directive.

8 September, 2017 – [Contributions](#) by the Max Planck Institute for Innovation and Competition in response to the questions raised by the authorities of Belgium, the Czech Republic, Finland, Hungary, Ireland and the Netherlands to the Council Legal Service regarding Article 13 and Recital 38 of the Proposal for a Directive on Copyright in the Digital Single Market. This contribution concludes that it is inadvisable to adopt Article 13 of the proposed Directive and its respective Recitals, 38 and 39. [\[Compilation of all the position statement of the Max Planck Institute for Innovation and Competition on the modernisation of the EU copyright rules.\]](#)

6 September, 2017 – [Open letter](#) from a group of representatives of European academic, library, education, research and digital rights communities to the Members of the Legal Affairs (JURI) Committee of the European Parliament on how the EU copyright reform threatens Open Access and Open Science. The letter urges for the removal of proposals that would restrict access to research and place administrative and legal burdens on institutional repositories. We also request improvements on proposals related to text and data mining, copyright in an education setting, and preservation and access to works for non-commercial endeavours.

10 July, 2017 – [Letter](#) to Members of the European Parliament by Polish digital rights organisations to express their concern with the concepts of the new rights for publishers and of general monitoring obligation for user-generated content that are included in the proposal of the Directive on Copyright in the Digital Single Market.

21 June, 2017 - [Petition](#) from RightCopyright.eu, signed by over 4500 educators from across Europe for a better copyright for education. The petition includes five demands that need to be implemented into the new directive for copyright in the Digital Single Market, because unfortunately, copyright laws haven't changed for over fifteen years, and this is affecting educators every day.

29 May, 2017 – [Open letter](#) from over 60 civil society and trade associations – representing publishers, journalists, libraries, scientific and research institutions, consumers, digital rights groups, start-ups, technology businesses, educational institutions and creator representatives – asking European lawmakers to oppose the most damaging aspects of the proposal, but also to embrace a more ambitious agenda for positive reform, highlighting three key messages:

- Article 13 ('censorship filter'): Do not impose private censorship on EU citizens by filtering user uploaded content.
- Article 11 (press publishers' right): Do not create new copyrights.
- Articles 3-9: Put Europe on the map by enabling innovation, research and education.

5 April, 2017 – [Letter](#) from over 20 startups and online services to Members of the European Parliament to raise their serious concerns regarding proposed Article 13. The letter warns that Article 13 of the Commission's text could cripple the growth of online innovation for startups that already exist, while also preventing new, innovative startups from entering the marketplace.

March, 2017 – [Open letter](#) from human and consumer rights calling to stop the censorship machine. The letter warns that impact of the proposed measures to weaken the current intermediary liability protections in European law will inevitably be felt in every policy area and will impact negatively on free speech and democracy around the globe.

28 February, 2017 – [Common position statement](#) from publishers expressing their concerns on Article 11. The statement cautions that purporting to fund high quality journalism and further the interests of press publications, through a levy on those making 'digital use' of their content, risks benefiting some publications at the expense of others, creating perverse incentives, and putting all EU-based publications at a competitive disadvantage.

24 February, 2017 – [Open letter](#) from independent legal, economic and social scientists that represent the leading European centres researching intellectual property and innovation law to Members of the European Parliament and the European Council setting out the key flaws of the Article 11 and Article 13

proposals. The letter remarks that with respect to both provisions, independent empirical evidence has been ignored, consultations have been summarised in a misleading manner, and legitimate criticism has been labelled as anti-copyright.

23 February, 2017 – [Opinion](#) of the CEIPI on the European Commission's copyright reform proposal, with a focus on the introduction of neighbouring rights for press publishers in EU law. The opinion remarks that as the “pie” does not get any bigger, the authors’ share will inevitably decrease. It also notes that recent empirical evidence confirmed a negative impact on small publishers, while news aggregators might have a positive effect on online news sites.

7 February, 2017 - [Joint letter](#) from 34 educational organisations and 17 individuals to the Members of the European Parliament to raise their concerns around the proposed education exception (Article 4). The signatories note several unfortunate gaps in the proposed exception, and consider that without addressing these we will not have a copyright fit for modern, quality, and inclusive education. The letter stresses that this is a once in a generation opportunity to reform copyright for education in a meaningful way.

10 January, 2017 – [Statement](#) from European research organisations on future-proofing European research excellence asking for the copyright reform to provide legal certainty around cross-border research activities and the deployment of new technologies for research and innovation. The statement considers that in its current form, the proposal could be viewed as backward looking and is not compatible with the vision of the Digital Single Market.

January, 2017 – [Study](#) from Dr Christina Angelopoulos, Centre for Intellectual Property and Information Law (CIPIIL) at the University of Cambridge, on online platforms and the Commission’s new proposal for a Directive on copyright in the Digital Single Market. This study concludes that the proposal’s current wording is incompatible with existing EU directives, as well as with the Charter of Fundamental Rights of the EU, as interpreted by the CJEU, and recommends that the relevant provisions should accordingly be deleted or significantly amended.

20 December, 2016 – [Research paper](#) of the Faculty of Law, Goethe University Frankfurt am Main, by Professor Alexander Peukert, providing a legal analysis of an EU related right for press publishers concerning digital uses. In this study, Professor Peukert analysed three possible versions of an EU related right for press publications, and came to the conclusion that “all these versions are either incompatible with fundamental rights or, alternatively, ineffective for failing to cover the current, news-related practice of online service providers and Internet users”. He concludes that a directive establishing a related right for press publications would be invalid.

30 September, 2016 – [Open letter](#) from 40 academics expressing their concerns about Article 13. The letter points out that Article 13 imposes a general monitoring obligation upon a great number of providers of intermediary services. Such an obligation is not a special monitoring obligation but a general monitoring obligation as it does require the monitoring of the activities of *all* users. [Follow-up [analysis](#)]

26 September, 2016 – [Statement](#) from Science Europe on the fact that the EU copyright reform recognises roles of research but fails to realise its full potential. The statement warns that without a broader definition of the entities that can benefit from the TDM exception this copyright proposal severely undermines the competitiveness and attractiveness of Europe in terms of innovation and places significant barriers to knowledge transfer between sectors.