



## **Proposal for a Directive on Copyright in the Digital Single Market**

The members of the Conference of European National Librarians (CENL) represent the national librarians of the member states of the Council of Europe, covering 49 national libraries in 46 countries. National libraries with their uniquely rich and diverse collections have a vitally important role to play in supporting the preservation of national patrimony, cultural heritage, research and learning.

We welcome the ambition of the draft Digital Single Market Directive proposal and believe that in its broad scope it balances well the interests of citizens, researchers, cultural heritage institutions and creators.

### **Mass Digitisation – Out of Commerce / Never In Commerce Works**

Given the depth and breadth of national library collections, CENL members are currently digitising and making available online some of their public domain collections. Where member state laws already allow and licences exist, our members are also digitising parts of their in copyright 20<sup>th</sup> century collections. Twelve years after the Google Books case began, we welcome the draft but believe in its current form it is very unlikely to encourage new digitisation in countries where there is not already a legal solution in place for commercially unavailable works.

**Recommendation:** CENL believe this is an extremely important proposal, as much material that sits in cultural heritage organisations that is commercially unavailable could be made available online to European citizens to support innovation, and create a new revenue stream for authors, artists and other creators. While recognising the primacy of licence based solutions and the importance of remuneration, in order to stimulate the making available online of in copyright works, the Directive should create certainty for libraries and be **amended** to solve the following important issues:

- When a collecting society does not exist, no licence can be forthcoming. For example, Estonia and Malta have no collecting society for the written word (other than for lyrics), Slovenia has none for artistic works, etc.
- A collecting society may exist, but for many reasons it may not be able to offer a licence to a library for making available its commercially unavailable materials. For example, it may not be deemed as representative of never in commerce materials that were not produced commercially.<sup>1</sup> Or it may not have the appropriate legal mandate to offer cultural heritage institutions licences for mass digitisation purposes.<sup>2</sup>

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<sup>1</sup> Many collections of high research, political and cultural value were never produced for commercial purposes. e.g. Samizdat materials, field recordings, theatre programmes, public information posters, letters from individuals in organisational archives, trade catalogues, club magazines, publications and videos from NGOs and private companies, etc. This type of material is often called “grey literature” and depending on the Member State and the collecting society, sometimes will and sometimes won’t be licensable by a Collective Management Organisation.

<sup>2</sup> For example, while there is a collecting society for film in the Czech Republic, and one for broadcast material in the UK, currently neither can offer cultural heritage institutions a licence for making available commercially unavailable films online.

- Introduce a far more pragmatic solution for establishing whether something is commercially available or not. We see workable solutions for this in Germany and France relating to establishing a work's commercial status that should be reflected in the Directive.
- Remove the prohibition on works by non EU authors. For international publishing houses or for embedded works it will be disproportionately difficult with little benefit to establish the place of first publication at any scale.<sup>3</sup> This is particularly problematic for languages spoken widely beyond Europe such as English, French, Spanish and Portuguese.

### **Dedicated Terminals**

Technology has moved on dramatically since 2001 when the dedicated terminals provision came into force. On the one hand users expect to be able to access all types of information on their own devices, and technical protection measures are now easily employable. On the other, digital preservation is far more advanced and national libraries are preserving and format shifting not only analogue but born digital materials too.

**Recommendation:** A fit for purpose provision must allow users to use their own devices, and through the employment of technical protection measures ensure this activity can only take place on the premises, and by this, therefore adequately protect the rights of content creators. Furthermore, libraries should be able to give access in this way to born digital materials as well as analogue. This provision should not be overridable by contract.

### **Digital Preservation**

The ability for a national library, charged with preserving a country's cultural heritage, to be able to legally preserve its wide variety of collections is fundamentally important. Given the challenges, particularly of digital preservation, we increasingly see the use of networks of preservation domestically, as well as across borders. Collections are often not unique to a collection or to a country, so it may make technical and financial sense for one library to preserve the collection and another library to use that digital surrogate.

**Recommendation:** The cross border and network nature of digital preservation in the 21<sup>st</sup> century must be clearly expressed in order to support libraries attempting to save our European cultural heritage.

### **Text and Data Mining**

We welcome the intent of the proposal but are very concerned that in its current form it could exclude national libraries, despite our uniquely large and rich collections. It is unlikely, given that our role is to preserve national patrimony, that national libraries would be viewed as primarily undertaking scientific research or providing educational services.

**Recommendation:** The definition of a research organisation must unequivocally include publicly accessible libraries.

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<sup>3</sup> With large multinational publishers who publish in both Europe, as well as Africa, Asia or South America, establishing where books were first published will be very time consuming. Similarly in a magazine or journal, it will not be possible to know whether an individual embedded contribution was first published in Europe or elsewhere.