

Defining a public domain for copyright and data legislation at the European Parliament (part 2)



Based on the *report* of MEP Julia Reda on the European Union Copyright Directive (Implementation of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society) released in January 2015, the European Parliament voted in favour of a *resolution* on 9 July 2015, asking the Commission to take concrete steps towards copyright reform by proposing a revision of the 2001 Directive before the end of the year. As part of the LSE Law and Communications Research Network Seminar series, *Melanie Dulong de Rosnay* and *Orla Lynskey* compared default entitlements to information in the areas of copyright and data protection law. See the first post from Melanie on the report and relevant background in this two-part series [here](#).

The resolution towards the revision of the EU Copyright Directive 2001/29/EC was widely supported. Consensus was reached to preserve the public domain from private entitlement in several areas, but amendments succeeded in removing the few more radical proposals of reform which were contained in the Reda report.

Freedom of panorama: the preservation of public space

The most publicised advancement of the vote is the preservation of a physical public domain. Half a million citizens signed a petition to support the freedom of panorama: the right to use pictures of buildings and works of art such as sculptures, without having to pay a fee or negotiate a licence. Public space is therefore recognised as a resource which can't be privatised. As underlined in the MEP press release, "most Europeans will continue to be able to post selfies online and view photos of famous buildings on Wikipedia", the famous commons-based platform, but also on Instagram, Facebook and other commercial platforms taking advantage of user-generated content. As note O of the resolution observes, these are "digital intermediaries, which refuse to pay authors or negotiate extremely low levels of remuneration". The work of "journalists, professional photographers or documentary filmmakers" will also be made easier.

Mentions of the public domain

An important step is the recognition that works which are in the public domain should stay in the public domain: they should not be subjected to additional rights when digitized. Recommendation 31 of the resolution calls on the Commission to effectively safeguard public domain works in that sense.

The voluntary public domain, or dedication of a work to the public domain by a living person, should also be examined. A **Public Domain Dedication**, through tools such as Creative Commons CC0, indicates that users are free to use such work or database. In some jurisdictions, it is **unclear** whether the law would authorise an author to not fully exercise her copyright and such a proposal (also included in recommendation 31) would bring legal security to this option. Rather than by individuals, this practice is being used by many public institutions, libraries and museums as a sign that they do not claim additional rights when curating or distributing works, data and metadata. Examples include the Human Genome Project, the British Library, Europeana, the German National Library, or the Netherlands Government for public sector information. Reda's initial proposal to exempt from copyright works produced by the public sector had been deleted on 16 June 2015. Instead, protection of personal information should be privileged.



Towards the elimination of technical barriers to access

Another important issue is the preservation of exceptions to copyright, the functional public domain (as mentioned [in the first post](#)), as a space of freedom for users to access and build upon. Their exercise should not be threatened by technical protection and contractual terms of use, according to recommendation 61. Research and libraries are also being considered. Automated analytical techniques, or text and data mining, should be authorised for research purposes “provided that permission to read the work has been acquired”, proposes recommendation 48. Libraries should be able to proceed with e-lending in the same way that physical books can be lent, and authorised to “digitalise content for the purposes of consultation, cataloguing and archiving (recommendation 54).

An interesting development for cross-border access and cultural diversity, in recommendations 8, 9 and 14, is the reduction of geoblocking measures, industry practices which prevent cultural minorities to access content in their language online.

No progress for the digital single market

Despite this recognition of freedom of circulation, the agenda set by the Digital Single Market Package is not further advanced. Transformative uses requiring quotation rights not only for text but also for audiovisual, crucial for freedom of expression online, didn't pass the parliamentary discussion. Exceptions to copyright in favour of users may not be further harmonised, nor made fitter for the digital age. While showing progress on a couple of key issues, the report did not achieve to push for a more radical reform on users' rights.

This article give the views of the author, and do not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics and Political Science.

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