

Why should researchers care about copyright reform?

RDA webinar with MEP Julia Reda

14th November 2016

Summary

European Commission's (EC) [Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market](#) is a clear improvement for research, but if we want to fully enhance and encourage data-driven innovation, the scope of the proposed text and data mining (TDM) exception needs to be broadened and clarified. MEP Reda highlights that the proposal is part of [EC's Digital Single Market strategy](#), but the market perspective is still missing. The RDA community needs to activate in this matter since real-life experiences and views about researchers' needs offer valuable input to the legislative process. More information on RDA views on copyright reform can be found in the [RDA position paper \(link\)](#).

Context

MEP Julia Reda was elected to the European Parliament for the German Pirate Party, representing a young worldwide movement of people who believe in using technology for the empowerment of all. She is Vice-Chair of the Greens/EFA group and a co-founder of the Parliament's Digital Agenda Intergroup. As rapporteur for the review of the 2001 copyright directive, she advocated for a European copyright that is adapted to the digital era. Reda's legislative focus is on copyright and internet policy issues.

EC's Digital Single Market strategy, introduced in May 2015, should be comprehended as a broad, cross-cutting context in which promoting the free movement of data requires not only functioning infrastructure and practices, but also a supportive legislative basis. Hence, copyright plays an important part in this context.

The purpose of the webinar was to get the latest news and update on the current European Commission proposal on copyright directive, to get an insight into why this matters to researchers, what are the potential risks for free movement of data in the proposal and what the research community can do to help. The webinar was organized as part of RDA Europe activities on influencing the copyright reform, as a follow-up for the event "[Open innovation, open scholarship and open infrastructures – insights to the European Digital Single Market](#)", organized at the European Parliament in November 2015. MEP Reda was interviewed by Irina Kupiainen from RDA Europe.

EC proposal for a directive on copyright

The webinar began with MEP Reda's presentation on latest copyright legislation developments and their impact on research. A big part of the newly presented EC proposal on copyright reform deals with questions around research and education. It has become clear over the last years that there are a lot of problems in the current copyright regime regarding research in cross-border context. The EC proposal, presented on 14th September 2016, attempts to solve these challenges and make progress in this area. It has been clearly recognised that we need flexibility in copyright when it comes to research. MEP Reda also gave a brief introduction to the most important provisions of the proposal, which should be taken into consideration during the legislative process. Reda stresses that expertise from academic community is needed and their views and real-life experiences are highly valued.

As a summary, Reda views that the research community has been taken into account in the current proposal better than in previous ones. However, a lot of work is still needed in order to achieve the

proposed goals. Reda states that the MEPs get huge amounts of well-prepared lobbying materials from industry groups, whereas such material is usually not actively provided to the MEPs from the academic sector. Policy makers need to become aware of the researchers' views and experiences on how copyright affects their research.

Exceptions to copyright

Firstly, the copyright directive proposal contains a number of exceptions to copyright that should have cross-border effect and be mandatory to all European member states. The first one is text and data mining (TDM) exception which is unfortunately in some respect narrower in the EC proposal than what the European Parliament had in mind when adopting [Reda's report in 2015](#). In the discussions that then took place in European Parliament, there was a [mutual understanding](#) that TDM exception should be applied to research purposes. However, the Commission proposals suggests that the TDM exception would apply only to research made in research institutions. The distinction between commercial and non-commercial research is sometimes difficult to make, thus this limitation may cause problems to individual researchers, and it will create barriers for innovations based on data, weakening e.g. the business opportunities for SMEs and startup companies. Europe should be able to leverage on the possibilities that data provides – thus the TDM should be applied also to commercial data. Here the political debate depends heavily on researchers' real-life experiences. MEP Reda hopes that these exceptions will be thoroughly discussed in European Parliament.

Another exception concerns illustrations in teaching. Basically it would enable people to use same material in a digital form in a class room but also in a cross-border setting (e.g. students participating remotely). However, the proposal leaves room for member state exceptions and licensing procedures which might hinder the harmonizing effect of the proposal. Another question is, how the compensation should be regulated, and this is where we need common European guidance. The proposal also allows museums, libraries and archives to make copies of their own collections, and hopefully this will contribute to preservation of digital works especially. However, the proposal doesn't say anything about the availability of these copies, and thus more clarification is needed.

Neighbouring rights introduced in the proposal

MEP Reda also highlights some additional burdens or problems the proposal may cause to researchers. First of all, the neighbouring right for press publishers is quite unclear and wide in its scope. It introduces a new layer of protection to press publications (any periodic publication, online or offline, with journalistic content). Reda thinks there is no need for new neighbouring right because for the content covered with copyright protection, there is already an exclusive right available that publishers are actually exercising. The neighbouring right is supposed to apply retroactively for the last 20 years.

Another controversial issue is the new provision that would require online service providers, online platforms, where users can upload content, to introduce content identification technologies. It makes the use of copyright exceptions irrelevant because the technology may not recognize them due to algorithms.

Questions and answers

Strengths and weaknesses? Reda thinks it is good that the proposal contains exceptions concerning education and research, but they still need clarification, because they leave room for variation. Hence, the overall picture can be vague, and common practices are missed. Irina Kupiainen added, that RDA aims for creating common policies and practices for data sharing and re-use across borders, sectors and different actors, and copyright is a question RDA is also focusing on, as it affects the possibilities for the free movement of data. Reda sees that EC proposal supports data sharing to some extent, but it does not focus

on interactions between the public and private sectors. It is crucial to create possibilities for industry to utilize data in their business because Europe is lagging behind other regions.

Text and data mining as a method? This was clarified in Reda's copyright report in 2015, meaning that it only applies to lawful access. TDM does not overwrite the exclusive right to decide on how your content is used. If you grant access to your content, then it is not just to read it, but also to read it in an automated way and analyse it with a computer. This should be clarified in the legislative process.

What is the legal basis to force publishers to make information available and at what bandwidth? The legal basis of the proposal is article 114 (internal markets). Reda sees no need for specific provision saying that right holders can limit their bandwidth inside copyright exception. Reda's concern is that this provision would be used as an excuse for limiting legal TDM under the disguise of not having enough bandwidth.

Compensation for TDM exception? Reda thinks no compensation is needed and there is really no ground for that since if one already has lawful access to content, then TDM should be possible as well. Japan, USA and UK examples offer alternative references to developing TDM in Europe.

TDM allowed for educational purposes? At the moment it depends on the member states. Reda sees that the new proposal to harmonize education exception is not likely to improve the situation because it only applies to illustration in teaching. Thus member states can have own, more specific policies.

What are the legal consequences of publishing out of commerce works if an infringement claim is made later? If the EC proposal is implemented, there is no risk for the institution itself, but the current details are not yet clear. This needs follow-up.

What about instruction exception, licensing and costs? Reda sees this as a true risk, and the best way to avoid this would be to delete the provision that says member states can decide that licenses can overwrite the proposal. If we wish to establish common European-wide conditions, it feels odd that member states are given the possibility for licensing exceptions.

TDM is only one part of research, what about publishing the results? Reda says, this depends on how the results are published. One should be able to publish the script used in TDM, the reference of the version of content, and also small extracts of the content (that are not controlled by copyright). Unless the neighbouring right for publishers is introduced, then you won't be able to publish these. The possibility to reproduce the research results is an essential theme in open science and this should be visible also in EC proposals.

Option to store content used in mining but only with temporary access? Reda thinks, at least researchers themselves should be able to make local copies of material they would like to mine. They may not be able to make these copies available to others, but they have to have the possibility to reproduce their own research.

Relation between database right and copyright? Reda emphasizes that TDM exception is explicitly also an exception to general database right. There are on-going discussions in the European Parliament about the database directive, and we will have to wait for the results. In order to make it simple, we need one TDM exception that covers everything.

Research, library and RDA community, what can we do? Reda views that materials to policy makers are needed in order to get real-life experiences. One also needs to look at all three EU institutions – Parliament, Council, and Commission – since they all have a role in decision making. There might be some changes in EC during the process. The Commission makes proposals, but in the end of the day, the Parliament and the Council make the final decisions. This is where researchers should focus their energy. Dialogue with

national ministries is also one way to influence the Council's work. There are not many MEPs in the Parliament who are heavily involved in copyright developments, mainly rapporteur and shadow rapporteurs. Also political groups and committees are good contacts. Additionally, researchers should raise these questions in public discussion in order to raise awareness.

Timetable? The initial plan was that the European parliament would vote on copyright directive next summer, but that may not happen since there is still a lot to do and discuss about.