

## **LERU, 17 June 2015**

Once upon a time there was a Pirate...  
...fighting for the reform of copyright.

“In this legislative period, I will be advancing the long overdue European Copyright reform. This is going to be a challenging task, (...)”, stated MEP Julia Reda back in June 2014. As rapporteur of the EP Legal Affairs Committee’s (JURI) report on the implementation of the InfoSoc Directive (Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society), Reda’s efforts to bring transparency, ambition and sense of urgency to the EU copyright reform are to be applauded. However, the more than 11,000 comments received by the EU Commission to the copyright consultation or the 556 amendments that were tabled to her draft report on the InfoSoc Directive already pointed to this “challenging task” becoming quite a daunting endeavour... Her ambitions have now been severely hindered by the watered-down report that has resulted from the political compromise reflected in JURI’s vote.

As LERU has repeatedly stated, two changes are of utmost importance for research-intensive universities and for universities in general:

- a mandatory exception for text and data-mining (not overridable by private contract and for both commercial and non-commercial purposes) and
- a mandatory exception for research and education purposes.

The current “shopping list” of exceptions and limitations, from which Member States can pick and choose which to apply, is not a serious approach for a Union that praises itself for having an internal market (now about to also develop a Digital Single one). Neither is it the right approach for the development of a real European Research Area.

Further harmonisation is needed and, in areas such as education or

research, the current uneven playing field amongst Member States is far too important to be ignored. Anything less than mandatory exceptions at the EU level will just preserve the current status quo of legal uncertainty and fragmentation.

Unfortunately, political reality seems to have struck back and reaching a political compromise has prevailed over adopting a meaningful report. Forget about the long-awaited harmonisation by making mandatory all the exceptions and limitations in the InfoSoc Directive. Now the text suggests “minimum standards” across the exceptions and limitations. The mandatory exception for text and data mining - which several MEPs suggested in their amendments- has now been reduced to the need “to properly assess the enablement of automated analytical techniques for text and data”.

This is a discouraging approach, which becomes even more disappointing when accompanied by statements on the need to duly justify “by a sound and objective economic and legal analysis” any new exceptions or limitations; or a call on the EC to “examine the possibility of reviewing a number of the existing exceptions and limitations”. It is regrettable that, 14 years after the adoption of the InfoSoc Directive, the need for new exceptions and limitations does not seem self-evident. Let’s not kid anyone: the EU will never be a successful knowledge economy without the right regulatory framework to enable it.

LERU not only regrets the watering down of the content of the Report but also the “tone” set by the EP in this reviewing process. From a position of “stressing”, “noting” or “calling on the EC to make” in the draft report, the EP now modestly calls the EC “to examine the possibility of”, “to study the impact of”...losing not only the sense of urgency of the copyright reform but also underestimating its role in it.

This report on the implementation of the InfoSoc Directive has now set the scene for the proposal that the EC will present by the end of this year. LERU calls on the EP to adopt a stronger and more ambitious position with regard to mandatory exceptions for research and education purposes and for text and data-mining. As stated by LERU Secretary-General, Prof. DeKetele: “Lowest common denominator approaches cannot be the default position resulting from political compromise. Certainly not in such an important file. “ LERU trusts that this report has been a preparatory exercise for the EP and that a much more serious and ambitious position will be adopted during the fierce battle that lies ahead for the reform of EU copyright.