



Name: Stichting Nederland Kennisland

Transparency Register Number: [78964012479-25](#)

Type of respondent:

- Institutional user (e.g. school, university, research centre, library, archive) OR Representative of institutional users
- End user/consumer (e.g. internet user, reader, subscriber to music or audiovisual service, researcher, student) OR Representative of end users/consumers for the purposes of this questionnaire normally referred to in questions as "end users/consumers"

Question 1: [In particular if you are an end user/consumer:] Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?

There are numerous cases where certain online services that are available in one member state are not accessible from another member state. Examples of this include Netflix, but also long established services like Amazon which force their users to pick an account with one 'local' version of their services effectively preventing users to buy ebooks from the language specific catalogues of several member states.

These examples are symptomatic of a larger problem, namely that there is no functioning single market for digital goods. Given that in the digital environment national borders are an artificial construct citizens have the legitimate expectation that they can access online services from anywhere in the EU. Also from an innovation and competition perspective having such fragmentation of online services is undesirable as it makes Europe a less interesting market for innovators and service providers to focus on.

Question 7: Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?

We strongly believe that adequate protection for rightholders is not served by fragmenting markets and making it more difficult for citizens in some member states to gain access to certain online services that are not being offered in their member states. To the contrary, it is well established that citizens who do not have legal access to cultural productions (such as TV series) that are legally available elsewhere have a strong incentive to use unauthorized sources to obtain the access that they desire. This is detrimental to the interests of rightholders and by extension undermines the credibility of the copyright system as a whole.

In addition the current situation violates the essential ideas behind the single European market. As more and more services go online this will undermine the integration process that



has been achieved in the last decades.

Given all of the above we think that it is necessary that the effects of territoriality should be limited through legislative measures. In the short term this should include a clarification of the scope of the making available right (see our answer to the next question) as well as full harmonisation of limitations and exceptions and other relevant rules. In addition the European Union should commence working on a single European copyright code to replace the existing national copyright and related rights legislations and to ensure that the principles of the single market also apply to online services¹.

Question 8: Is the scope of the “making available” right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?

No it is not. This can best be illustrated by the case of cultural heritage institutions, which are increasingly asked to provide access to cultural heritage across the entire EU. In the majority of cases works made available on the websites of cultural heritage institutions are made available without territorial restrictions. In this situation there is substantial uncertainty about the scope of the "making available" right when making works available to audiences in all of Europe.

Given that cultural heritage institutions have limited resources to spend on rights clearance the only acceptable way to provide more clarity with regards to the scope of the "making available" right would be to apply a country of origin principle². An approach based on targeted audiences would create increased burdens since dissemination through platforms like Europeana is explicitly targeted at users in all member states.

The same argument can be made for all other online service providers. The current uncertainty does create substantial uncertainties when developing cross border services. These uncertainties can be reduced by applying a country of origin approach. Applying a target country approach would also reduce these uncertainties but would mean increased transaction costs for all types of service providers.

Question 10: Does the application of two rights to a single act of economic exploitation in the online environment (e.g. a download) create problems for you?

While this situation does not create practical problems (a download is a download) this situation is indicative of a larger problem. It shows that the current structure of copyright is increasingly out of sync with technical and social reality. Copyright holders and intermediaries have traditionally been able to adapt existing rules to new technical realities but this has created a set of very complex rules and practices that is not understandable to the majority of citizens/internet users.

¹ Compare Hargreaves and Hugenholtz: *Copyright Reform for Growth and Jobs - Modernising the European Copyright Framework* (pages 6/7), Brussels 29/05/2013. Available at: <http://www.lisboncouncil.net/publication/publication/95-copyright-reform-for-growth-and-jobs-modernising-the-european-copyright-framework.html>

² idem. (page 10)



While citizens do not necessarily need to have a detailed understanding of the copyright rules (or the technology) involved in online access to copyrighted works and related services, it is desirable for a number of reasons to limit unnecessary complexity.

First of all, less complexity means less barriers to market entry which can be expected to have a positive effect on innovation in the area of online services.

Secondly, and maybe more importantly, a less complex copyright system is easier to understand for citizens. Understanding a system is one of the prerequisites for creating legitimacy. As evidenced by questions 75 to 77 of this consultation the Commission is concerned about the level of respect for rights among European citizens. If the Commission and other stakeholders (and this includes Kennisland) want to increase the level of respect for rights then reducing complexity of the system and making it easier to understand is a necessary first step.

As part of such an effort we support the proposal made by Hargreaves and Hugenholtz to recalibrate the reproduction right³:

Given that the right of making available was especially tailored to serve as the primary economic right involved in acts of digital transmission, it would make sense for the scope of the right of reproduction to be reduced. This could be achieved by replacing the currently technical notion of reproduction by a more normative interpretation that factors in the economic impact of a digital reproduction. If a technical copy has no economic significance, it should not count as reproduction. Part of this solution could be integrating the current exception for transient copying into the definition of the reproduction right.

Question 11: Should the provision of a hyperlink leading to a work or other subject matter protected under copyright, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

No, the provision of a hyperlink leading to a work or other subject matter protected by copyright should under no circumstances be subject to the authorization of the rightholder.

Hyperlinking is one of the most fundamental and basic building blocks of the Internet. From an innovation perspective, users' ability to freely link to information and to share the URL of that information has led to an unprecedented amount of online innovation driving economic growth. If we do not want to limit the potential of the internet anyone should continue to be able to reference and refer to all publicly available materials via a hyperlinks and all other technologies that reference the URL such materials.

The creator of a hyperlink must be free to link to publicly available resources without having to worry about infringing copyright. This needs to be the case regardless of the legal status of the linked work or of the intent of the rightholder who has published such a work (or authorized the publication). The recent ruling of the CJEU on the the Svensson case has unfortunately not provided the required amount of clarity and as a result the European

³ idem. (page 12)



legislator needs to enact unambiguous rules that ensure that the act of hyperlinking falls outside the scope of actions protected by copyright. Failing to do so will risk placing European internet users, businesses and innovators at a competitive disadvantage vis a vis the rest of the world. It would also be a clear signal that the European legislator does not understand the important role that open networks play in fields like innovation, access to culture and freedom of expression.

Question 12: Should the viewing of a web-page where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

No. Digital technologies of all types create temporary copies in order to efficiently deliver content to a user. Such fleeting reproductions (such as copies in the cache memory) should be seen as outside the scope of copyright protection. Requiring permission to access temporary copies would be destructive to the operation of the internet and harmful to the effective delivery of content and services online.

Asking this very question amounts to asking whether the internet should be legal⁴. Requiring the authorisation of the rightholder for viewing and reading content that is already available amounts to an additional permission which could lead to citizens infringing the law by merely surfing on the Internet. This would risk to further reduce the social acceptance of copyright law. It would also send a signal the Europe does not believe in the potential of open networks.

II.C Registration of works and other subject matter – is it a good idea?

Question 15: Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?

Yes

Question 16: What would be the possible advantages of such a system?

From our perspective there are a number of advantages: Such a system would increase the amount of information about rightholders available to all types of users including cultural heritage institutions. From our work on digitization projects such as Images for the Future⁵ and with platforms for online access to cultural heritage such as Europeana, we know that one of the biggest problems facing cultural heritage institutions attempting to make their collections available online is the lack of comprehensive and easy (read automatically) access information about the copyright status of works and the identity and location of rightholders. Introducing a registration system on the European level would be a first step in ensuring that such information is more readily available in the future.

⁴ Compare: Angelopoulos, C. (2013, 8 July). UK Supreme Court Asks CJEU Whether the Internet is Legal: <http://kluwercopyrightblog.com/2013/07/08/uk-supreme-court-asks-cjeu-whether-the-internet-is-legal>

⁵ see: www.imagesforthefuture.org



To be useful such a system needs to record transfers of rights throughout the duration of the copyright protection of the registered works. In addition a registration system must be transparent and easy to use, so that it allows all types of rightholders (including individual creators) to register their works. The system should also include information on works that are out of copyright as a means to provide legal clarity for users of Public Domain works.

On the more general level a registration system would decrease transaction costs and improve the availability of rights information to all market participants. In particular a registration system should be beneficial for rightholders since it makes it easier for interested parties to obtain permission for reuse of protected works and to comply with copyright law.

Note, that a registration system will not be able to retroactively solve the existing problem with orphan works and mass digitisation (see more about this in reaction to questions 40 and 41).

Question 18: What incentives for registration by rightholders could be envisaged?

There could be several incentives for rightholders to register their works. Policies could be enacted whereby certain elements of copyright protection are only available to rightholders who have registered their works. In principle this could apply to any element of copyright protection that is not required by the Berne convention.

For example, registration might be required for a rightholder to start an enforcement action (such as notice and takedown), or would be required to access a particular type or level of damage awards in a successful infringement judgment. Another incentive might be that rightholders need to register their works in order to be eligible to collect royalties through collective rights management organizations. Finally, registration could be made a prerequisite for prolonging copyright protection beyond the term the minimum term required by the Berne convention. (see our answer to question 20 as well).

II.D. How to improve the use and interoperability of identifiers

Question 19: What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?

At the minimum the European Union should ensure two things: (1) that identifiers as well as rights ownership and permission databases are based on open standards, that they are available to all content creators and that they can be read by all market participants free of charge. (2) the EU should also ensure that all identifiers as well as rights ownership and permission databases are interoperable work across all of Europe (and beyond).

Any system that is developed must be developed in a true multi-stakeholder approach (e.g. not only by rightholders and intermediaries). Rights ownership and permission databases in particular must be publicly accessible on a non-discriminatory basis via machine readable interfaces. They must also include the ability to store information on out-of-copyright



(Public Domain) and openly licensed works.

II.E Term of protection – is it appropriate?

Question 20: Are the current terms of copyright protection still appropriate in the digital environment?

No. The term of copyright protection should be reduced. The excessive length of copyright protection (including neighbouring rights protection) combined with an absence of formalities is highly detrimental to the accessibility of our shared knowledge and culture. There is no evidence that copyright protection that extends decades beyond the life of the author encourages the production of copyright-protected works. Instead the requirement to obtain permission for works by authors that have long died, or are not actively exercising their rights anymore is one of the biggest obstacles for providing access to our shared culture and knowledge:

Cultural heritage institutions, hold large collections of works that are still under copyright (or where the copyright status is unclear) but that are not exploited commercially anymore. A term of protection of life plus 70 years stands in stark contrast with the commercial life of the large majority of copyright protected works in their collections that is much shorter. As a result the disproportionate length of copyright protection prevents our institutions from effectively fulfilling our mission in the digital environment.

In many cases the cost for digitisation of copyrighted works that are no longer in commercial exploitation exceeds by far the potential economic value of these works⁶. As a result these are not made available online by the rightholders who lack an economic incentive. While cultural heritage institutions that have such works in their collections have an incentive to make such works available (it is their public task to provide access to their collections) they are confronted with costs for rights clearance that increase the costs for making these collections available (without generating economic benefit for rightholders).

One of the outcomes of this is the existence of the so called ‘20th century black hole’ when it comes to online availability of copyrighted works. Works from the 20th century are significantly less likely to be available than works from the centuries before (many of which are clearly in the public domain) or from the 21st century (many of which are still available commercially).

Shortening the term of protection will decrease the number of out-of-commerce works that are in copyright and will thus reduce the scope of the problems outlined above. Given this the term of copyright protection should be reduced to at least the minimum requirement established by the Berne Convention (life of the creator plus 50 years).

In addition the European Union should work in the relevant international fora to further reduce the term. This should include efforts to agree on a system where extended

⁶ See: Heald, Paul J., *How Copyright Makes Books and Music Disappear (and How Secondary Liability Rules Help Resurrect Old Songs)* (July 5, 2013). Illinois Program in Law, Behavior and Social Science Paper No. LBSS14-07; Illinois Public Law Research Paper No. 13-54. Available at SSRN: <http://ssrn.com/abstract=2290181> or <http://dx.doi.org/10.2139/ssrn.2290181>



copyright protection after an initial automatically granted term would be only granted if the work is registered by the rightholder. The duration of the initial term should be brought into line with the duration of protection of other IP rights such as patented inventions (20 years) databases (15 years) and industrial design rights (25 years)⁷. Given this, 20 years appears to be a reasonable initial term of protection that should guarantee protection to the vast majority of protected works. Rightholders should have the ability to extend the term of protection for works that they intend to exploit after the end of the initial period by registering such works.

III.Limitations and exceptions in the Single Market

Question 21: Are there problems arising from the fact that most limitations and exceptions provided in the EU copyright directives are optional for the Member States?

Yes, the optional nature of the list of exceptions and limitations has resulted in a patchwork of approaches across the EU, creating confusion and legal uncertainty for users and an uneven playing field for organisations. Users of the same type should be able to enjoy the same exceptions (user rights) in all member states.

The current situation make copyright law more difficult to understand to users and makes copyright policies more difficult to implement for service providers and other intermediaries. In line with our answer to question 10 we think that it is in the systems best interest to reduce unnecessary complexities. The most comprehensive way to address this issue would be to establish a unified EU copyright title (compare our answer to question 78).

Question 22: Should some/all of the exceptions be made mandatory and, if so, is there a need for a higher level of harmonisation of such exceptions?

Yes, all existing and additional exceptions should be made mandatory and harmonised to the fullest extent possible (obviously after they have been broadened in line with our response to the relevant questions below). It is not acceptable that citizens in some members state enjoy lesser level of access to works protected by copyright simply because of an uneven implementation of exceptions and limitations of the InfoSoc directive.

All the exceptions provided by the EU copyright directives are drafted on the basis that they do not interfere with the normal exploitation of the work and, therefore, do not unreasonably prejudice rightholders. This means that making them mandatory in all member states should have no negative effect on rightholders, while in many cases this will substantially benefit citizens and other public policy objectives such as access to knowledge and culture or inclusive education.

Question 23: Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases.

⁷ See also Hargreaves and Hugenholtz: *Copyright Reform for Growth and Jobs - Modernising the European Copyright Framework* (pages 8-9), Brussels 29/05/2013. Available at: <http://www.lisboncouncil.net/publication/publication/95-copyright-reform-for-growth-and-jobs-modernising-the-european-copyright-framework.html>



Yes, new exceptions should be added that allow non-commercial sharing for protected works by individuals (see our answer to question 61), as well as text and data mining (see our answer to question 55).

Also, the status of e-lending should be clarified (see the answers to questions 37) possibly via a new exception. In addition cultural heritage institutions need to be enabled to make works in their collections available online for non-commercial purposes. As outlined in the answer to question 34 this does not require a new exception but can be achieved by expanding the scope of the existing provision in article 5(3)n of the directive.

Finally there is a need to introduce an open ended norm that increases the flexibility of the current system of targeted exceptions (see next question).

Question 24: Independently from the questions above, is there a need to provide for a greater degree of flexibility in the EU regulatory framework for limitations and exceptions?

Yes, there is a need for more flexibility in the EU regulatory framework for limitations and exceptions⁸. The exceptions and limitations in the 2001 InfoSoc directive were not drafted in a technologically neutral manner which is problematic in times of accelerated technological progress.

By definition exception and limitations that apply to specific uses cannot ensure that as of yet unknown forms of use are covered by them. Technological innovation can be expected to lead to new forms of use in the near future and Europe would be well advised to create a copyright framework that is flexible enough to deal with such developments. The current discussion about text and data mining is a good example of this:

European researchers have to deal with legal uncertainties about the status of text and data mining activities because the InfoSoc directive fails to address this form of use that was (relatively) unknown when it was adopted. Having an open norm would have provided the structure for creating more certainty on the legal aspects of text and data mining at the time when the issue started to arise.

As pointed out by Professors Hugenholtz and Senftleben, a flexible approach is not only beneficial but is also in line with the historical development of copyright rules in the EU:⁹

There appear to be good reasons and ample opportunity to (re)introduce a measure of flexibility in the national copyright systems of Europe. The need for having more openness in copyright law is almost self-evident in this 'information society' of highly dynamic and unpredictable change. A historic perspective also suggests that, due to a variety of circumstances, copyright law, particularly in the civil law jurisdictions of Europe, has lost much of its flexibility in the course of the past century. In other words,

⁸ See also: Hugenholtz, P. B. and Senftleben, Martin, *Fair Use in Europe: In Search of Flexibilities* (November 14, 2011). Available at SSRN: <http://ssrn.com/abstract=1959554> or <http://dx.doi.org/10.2139/ssrn.1959554>

⁹ idem (page 29)



making copyright law in author's rights regimes more flexible would not go against the grain of legal tradition. (...) We would therefore recommend to introduce a measure of flexibility alongside the existing structure of well-defined limitations and exceptions, and thus combine the advantages of legal security and technological neutrality.

From an economic perspective, the current EU copyright regime puts Europe at a competitive disadvantage with the rest of the world, as knowledge intensive economies such as the US, South Korea, Taiwan and Israel benefit from the flexibility offered by their 'Fair-Use' style exceptions.

Question 25: If yes, what would be the best approach to provide for flexibility? (e.g. interpretation by national courts and the ECJ, periodic revisions of the directives, interpretations by the Commission, built-in flexibility, e.g. in the form of a fair-use or fair dealing provision / open norm, etc.)? Please explain indicating what would be the relative advantages and disadvantages of such an approach as well as its possible effects on the functioning of the Internal Market.

The best approach would be one that provides built in flexibility in reaction to new technological developments or new forms of use. An open norm such as fair use fits this description. It should be implemented EU-wide (see also answer to Question 22) and in addition to (existing) targeted exceptions and limitations (as an additional exception). As long as an open norm is implemented EU wide its effect on the functioning of the single market would be minimal while it can be expected to improve the competitive position of European market actors vis a vis market participants in other jurisdictions that have an open norm.

III.A.1 Access to content in libraries and archives

Question 28: (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to use an exception to preserve and archive specific works or other subject matter in your collection?

With regards to all questions in this section it should be stressed that while the consultation document limits itself to activities of libraries and archives the questions in this section are equally relevant for museums and other cultural heritage institutions. In fact the relevant exceptions and limitations explicitly apply to 'publicly accessible libraries, educational establishments or museums, or [...] archives'. The 2012 Orphan Works directive clarifies this to include 'film or audio heritage institutions and public-service broadcasting organisations'. In line with this, the following answers (28-35 and 39-41) should be read as applying to all cultural heritage institutions falling within this scope and not only to libraries and archives. Our answers to the questions in this section are largely identical to the answers contained in the response of the working group of Dutch Cultural Heritage Institutions, which we have signed as well.

The Netherlands have implemented article 5(2)c of the InfoSoc directive as an exception in its national copyright law (article 16n). This exception formulates three specific acts of reproduction: restoration, preservation of material that threatens to decay and format shifting if formats become inaccessible. These narrowly defined, specific acts of



reproduction, do not fully cover the needs of cultural heritage institutions in the digital environment.

Institutions increasingly digitize works in their collections not only to prevent harm, but to be able to better fulfil their missions. Digital copies of cultural heritage works provide many advantages such as being (automatically) indexable, being easier to access and having lower storage costs. The current Dutch implementation of article 5(2)c of the InfoSoc directive does not allow institutions to structurally create digital copies of works in their collection. This prevents institutions from fully realising the potential inherent to digitisation of their collections. This is highly detrimental in an environment where, as the 'New Renaissance' report¹⁰ puts it, “digitization is more than a technical option, it is a moral obligation”.

In addition recital 40 of the directive which states that 'Such an exception or limitation should not cover uses made in the context of online delivery of protected works or other subject-matter' is highly problematic. As online dissemination of works becomes more and more important for cultural heritage institutions, limiting the reproduction exception in such a way is simply anachronistic as it prevents institutions from using digitized works in a meaningful way.

Also technological measures and their relationship with the exceptions benefitting cultural heritage institutions are highly problematic: Often CDs and DVDs are protected by technological measures, the removal of which would require the cooperation of the producer. Art. 6 of the Infosoc Directive provides that technological protection measures are protected per se, independently on the scope of protection, entrusting to voluntary agreements or to subsidiary interventions of Member States the adoption of appropriate measures to ensure that legitimate users can make effective use of licensed content.

Question 29: If there are problems, how would they best be solved?

From our perspective the best solution would be to broaden the existing exception in article 5(2)c of the InfoSoc directive, so that it allows institutions to make reproductions of all works in their collection as long as these are not intended for direct commercial advantage. In line with our answer to Question 22 this exception should be made mandatory for all member states.

Also Art. 6 of the InfoSoc directive should be revised in order to enforce exceptions and limitations and to ensure legitimate utilizations of protected works, regardless of format or mode of dissemination.

Question 30: If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

¹⁰ COMITÉ DES SAGES, The New Renaissance, Report of the Reflection group on bringing Europe's cultural heritage online, 2011, http://ec.europa.eu/information_society/activities/digital_libraries/doc/refgroup/final_report_cds.pdf, p. 14



The main element would be a broadening of the existing exception in article 5(2)c of the InfoSoc directive. Instead of only allowing specific acts of reproductions it should allow all acts of reproduction necessary for publicly accessible libraries, educational establishments or museums, or by archives to achieve aims related to their public-interest missions. This should include reproductions made as part of mass digitization efforts, backup copies and reproductions for format shifting.

Reproductions should be limited to use by the heritage institution itself which is not for direct commercial or economic advantage or use in line with other exceptions and limitations allowed for by the directive (such as the broadened version of the exception foreseen in article 5(3)n that we propose in answer to question 34). Reproductions would explicitly be allowed for the purposes of increasing the operational efficiency and reducing costs of the beneficiary institutions.

Broadening the scope of the extension along these lines mirrors the recommendations made as part of the European Commission commissioned 'Study on the application of directive 2001/29/EC on copyright and related rights in the information society' from december 2013¹¹.

III.A.2 Off-premises access to library collections

Question 32: (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to negotiate agreements with rightholders that enable you to provide remote access, including across borders, to your collections (or parts thereof) for purposes of research and private study?

Libraries are subject to complex and lengthy negotiations with publishers and database vendors, which impact upon collection development, duration of access, permitted uses. Negotiation with publishers is an expensive and time consuming process and most licences are presented as final, without the ability to negotiate on terms, which are often taken over from other jurisdictions.

Often libraries entrust negotiation and management of contracts to national or regional institutional consortia to increase their bargaining power. But the use of consortia for the negotiations is a remedy, not an optimal solution, and the logic of large numbers may introduce rigidities in pricing and business models, encouraging the purchase or subscription of large packages of content rather than the selection of targeted works. Also it is extremely common for licences to prevent cross border access to digital content for research and study.

In more general terms this question fails to address the most urgent issue confronting cultural heritage institutions today: providing online access to works in their collection. Among the existing exceptions the exception for the consultation of works and other

¹¹ Compare De Wolff and Partners: *Study on the application of Directive 2001/29/EC on copyright and related rights in the information society* (pages 291-302), Brussels 16/12/2013. Available at: http://ec.europa.eu/internal_market/copyright/docs/studies/131216_study_en.pdf



subject-matter via dedicated terminals on the premises of such establishments for the purpose of research and private study comes closest to a mechanism that could enable such uses.

From both the perspective of publicly available libraries, archives and museums as well as the perspective of our patrons (end users/consumers) the existing exception that allows institutions to make works in their collections available ‘for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises’ (article 5(3)n) is extremely limited and not in line with the technological possibilities and the expectations of citizens anymore.

Limiting the availability of digitised works to dedicated terminals on the premises of cultural heritage institutions prevents them from reaching citizens that cannot travel to the premises (for example because they are disabled or because they lack the economic means to do so). Furthermore it is out of line with the legitimate expectation of users that have been shaped by universal online accessibility of other services. Citizens, researchers and educators would greatly benefit from online access to the collections of Europe's publicly funded institutions.

For our institutions to fully participate in the digital public space we must be enabled to offer online services that are available from everywhere and by anyone seeking to ‘to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits’, as enshrined by article 27.1 of the Universal Declaration of Human Rights. Online universal access to the collections of all publicly accessible libraries, Museums and Archives can play an important role in realising this objective. Being able to offer online access to works in our collections will also allow our institutions to reach bigger and more diverse audiences. For these reasons we consider the current exception to be too narrow.

Question 33: If there are problems, how would they best be solved?

From our perspective, the best solution would be to broaden the existing exception in article 5(3)n of the InfoSoc directive, so that it allows institutions to make available digital copies of out-of-commerce works in their collections via electronic networks such as the internet for non commercial purposes.

Question 34: If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

The main element would be a broadening of the existing exception in article 5(3)n of the InfoSoc directive. Instead of limiting the making available to dedicated terminals on the premises of the institutions it should also apply to making the works available online via public networks such as the internet. The scope of the exception should further be expanded to not only include ‘the purpose of research or private study’ by ‘individual members of the public’ but should apply to all non commercial uses.

Furthermore, It seems reasonable to limit the scope of the exception to ‘works and other



subject-matter not subject to purchase or licensing terms' as long as they are still commercially available. This should be combined with an opt out-clause that would allow rightholders to either prevent the making available of their works or to negotiate licensing terms with the institutions (either on an individual basis or collectively).

These conditions are crucial to ensure that the new broadened exception meets the requirements of the three step test. Limiting the scope of the exception to publicly accessible cultural heritage institutions and to out-of-commerce works and works that are not subject to licensing terms should satisfy the 'certain special cases' criterium and cannot, by definition, be in conflict with the 'normal exploitation' of the works in question. The fact that the exception would be limited to non commercial uses of the works made available and that authors can decide to opt-out of the exception would further ensure that 'the legitimate interests of the author' are not necessarily prejudiced.

In fact many authors would benefit from improving online access to out-of-commerce works because works that they have created are kept available via cultural heritage institutions (and are available to them to build upon or to do research). As a result citizens, researchers and educators also greatly benefit, because they are granted access to works that wouldn't be available through markets players.

This solution would also be in line with the relevant recommendations made in the 'New Renaissance' report. The report recommended that 'National governments and the European Commission should promote solutions for the digitisation of and cross-border access to out of distribution works' and that 'For cultural institutions collective licensing solutions and a window of opportunity should be backed by legislation, to digitise and bring out of distribution works online, if rightholders and commercial providers do not do so'¹².

III.A.3 E – lending

Question 36: (a) [In particular if you are a library:] Have you experienced specific problems when trying to negotiate agreements to enable the electronic lending (e-lending), including across borders, of books or other materials held in your collection?

Libraries have faced a number of problems when attempting to negotiate agreements to facilitate electronic lending. These include:

- Denial of sales of electronic books to libraries by publishers;
- Removal of content that was available for e-lending without informing the library;
- The use of multiple licences and different models create lack of clarity on the condition of access to the content for users;
- A deterioration of registered users' rights (crossing a border with a borrowed book was not a problem. Transborder online access to an electronic copy offered by a library is often impossible as the result of restrictive licensing conditions.

¹² COMITÉ DES SAGES, The New Renaissance, Report of the Reflection group on bringing Europe's cultural heritage online, 2011, http://ec.europa.eu/information_society/activities/digital_libraries/doc/refgroup/final_report_cds.pdf, p. 5



More generally the question is if it is necessary and desirable to negotiate agreements to enable electronic lending. Contrary to what is stated in the introduction to this question there is considerable uncertainty about the status of e-lending under EU law. The directive on rental and lending does not explicitly exclude e-lending or lending of digital items from its scope and some libraries argue that based on the current acquis and the UsedSoft decision by the ECJ they should be allowed to provide e-books in libraries for download. In the Netherlands the Association of Public Libraries (Vereniging van Openbare Bibliotheken) has brought the matter before the courts. They have started a test case against the collective management organisation in charge of the lending right arguing that they should be allowed to provide e-books in libraries for download.

Question 37: If there are problems, how would they best be solved

The best solution for the problem would be to create legal certainty by unambiguously including the right to e-lending in the EU acquis. While the lending of analogue works is currently being enabled by directive 2006/115 e-lending, which is most often considered as an act of making available, would probably need to be regulated via an (additional) mandatory exception in the InfoSoc directive. Such a new exception could take the form of a statutory license with fair compensation for authors.

Since e-lending must be available for all books (commercially available or not) it should be treated separately from the general exception for making out-of-commerce works available online that we argue for in response to question 34.

Question 38: [In particular if you are an institutional user:] What differences do you see in the management of physical and online collections, including providing access to your subscribers? What problems have you encountered?

From the perspective of cultural heritage institutions there are enormous differences between physical and online collections. These differences are so fundamental that it does not make sense to compare the two. The ability to offer access to their collections online frees cultural heritage institutions from many of the constraints imposed by them by the properties of analogue media and their physical infrastructure (such as buildings). Being able to offer access to collections online means that in theory access can be provided to full collections independent from the location of the viewer or the time of the day. This has the potential to radically improve the ability of publicly funded cultural heritage institutions to carry out their public mission to provide access to knowledge and culture.

Unfortunately this enormous potential is currently being held back by copyright rules unnecessarily restrict how cultural heritage institutions can exercise their mission in the online environment. Under the current EU copyright rules cultural heritage institutions are dependent on permission from rightholders in order to make protected works in their collection available online. As we have argued above this makes no sense in situations where the majority of works held by these institutions are not even commercially available.

With the increasing digitisation of our society and media production in particular this has



other, potentially far reaching consequences. Libraries for example can buy all physical publications to ensure that they are available to the public both during the period of their commercial availability and thereafter.

The same is not true for digital publications that are not being sold, but licensed: Currently Libraries cannot buy licences to all commercially available content because rightholders are free to decide whether they want to give access to a specific work, and to decide on the terms for such access. Often such conditions make it impossible to keep such works indefinitely or to make it available to the community by lending it out.

The consequence of this is that the collection building policy of Libraries is increasingly determined by the publishers and not by the institutions. In the long run this development threatens to undermine the core function of cultural heritage institutions to preserve the knowledge and culture of our societies and to keep it available to the public.

With regards to the above the 'study on the application of directive 2001/29/EC on copyright and related rights in the information society' that was commissioned by the European Commission and published in december 2013¹³ contains an interesting observation. At the end of the section discussing inter alia the exception benefitting cultural heritage institutions, the authors observe that:

"The large-scale digitization projects ultimately aim at the making available of the collection, [...] the making available for consultation is increasingly requested to apply at distance and online; and the lending is shifting to cover the online transmission of digital items. The exception-by-exception reasoning, which is the model of the InfoSoc Directive, might not be relevant anymore. Maybe it is time to look at different uses that some categories of users (libraries or educational institutions) or some objectives (access to culture and knowledge or education) would be privileged to undertake under a limitation of copyright. [...] the space of non-infringing uses could be defined by their objective and some general conditions, including a more open requirement that the use does not exceed what is necessary for its objective. This is a radical move that this study has not made. It could make our system of exceptions more fit for its purpose and understandable for users and copyright owners alike. If the requirements for each exception are adequate and legitimate, it would not sacrifice the high level of protection of copyright and related rights that the EU law has adopted."

From the perspective of (Dutch) cultural heritage institutions such an approach would have many benefits. It would create room for rethinking Europe's rich tradition of providing access to knowledge and culture through public institutions and it would enable our institutions to fully leverage the possibilities offered by digitization and near universal connectivity.

III.A.4 Mass digitisation

¹³ Compare De Wolff and Partners: *Study on the application of Directive 2001/29/EC on copyright and related rights in the information society* (page 403), Brussels 16/12/2013. Available at: http://ec.europa.eu/internal_market/copyright/docs/studies/131216_study_en.pdf



Question 40: [In particular if you are an institutional user, engaging or wanting to engage in mass digitisation projects, a right holder, a collective management organisation:] Would it be necessary in your country to enact legislation to ensure that the results of the 2011 MoU (i.e. the agreements concluded between libraries and collecting societies) have a cross- border effect so that out of commerce works can be accessed across the EU?

From the perspective of cultural heritage institutions this question (and the following) are too limited. The issue of mass digitization is far broader than what can be addressed with the 2011 MoU and the 2012 Orphan works directive (the other relevant European policy instrument in this area). Copyright issues related to the mass digitization of collections and the subsequent making available of digitized works require a comprehensive approach that cannot be based the principles of due diligence search and licensing. If we want to enable European cultural heritage institutions to transfer their collections into the digital age (and there cannot be any doubt that this is both an important policy objective and a reasonable expectation of users who as taxpayers fund these organisations) we need a far more comprehensive approach.

Both the 2012 directive on certain permitted uses of orphan works and the 2011 MoU on out of commerce works are insufficient to address the copyright issues arising from mass digitisation projects. In addition, the extremely slow uptake of the MoU (according to the 2013 the 'study on the application of directive 2001/29/EC on copyright and related rights in the information society' there is one single project that is "inspired" by the MoU¹⁴) clearly illustrates that the MoU is not a suitable mechanism for enabling mass digitization on a large scale.

The Orphan Works Directive is ill-suited to enable mass digitisation projects. While it will enable publicly accessible libraries, museums and archives to make orphan works available after a due diligence search has been carried out for specific works, the requirement of carrying out due diligence search makes it effectively unusable for mass digitisation projects as this would require an huge additional investments in both time and money.

The inadequacies of both the OW directive as well as the Memorandum of Understanding can be addressed by an extension of the scope of the exception created by article 5(3)n of the InfoSoc directive as outlined in the answer to question 34 above. Doing this would provide cultural heritage institutions a clear legal framework for operating in the digital environment that would allow us to to achieve the aims related to our public-interest missions. Under this approach the online activities of cultural heritage institutions would be covered by three targeted exceptions:

- An exception covering the making of reproductions (an expanded version of the current exception defined in 5(2)c)
- An exception covering the making available online of out-of-commerce works (an expanded version of the current exception defined in 5(3)n)
- A new exception covering e-lending

¹⁴ idem. (page 279)



Question 41: Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio- or audio-visual collections, broadcasters' archives)?

This is certainly necessary. The public has a legitimate interest in having online access to the collections of all publicly accessible libraries, museums and archives across Europe (see article 27.1 of the Universal Declaration of Human Rights). There is no good reason for limiting mechanisms that create such access to certain types of content. The approach proposed in reaction to questions 40 and 34 above, would cover all types of works and other subject matter that are held by these institutions.

This solution would also be in line with the relevant recommendation made in the 'New Renaissance' report of the Commission appointed 'Comite de Sages' that was published in 2011. The report recommended that 'solutions for orphan works and out of distribution works must cover all the different sectors: audiovisual, text, visual arts, sound'¹⁵.

III.B Teaching

Question 42: (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced specific problems when trying to use works or other subject-matter for illustration for teaching, including across borders?

Yes. As noted by the European Commission in the introductory message above, the educational exception in the directive is already broad and should be interpreted as allowing for the inclusion of all types of works for illustration of teaching.

It is however problematic that none of the Member States have implemented the exception as broadly as allowed by the Copyright Directive and that the permitted uses in educational contexts differ between member states. This presents special difficulties for the providers of online open courses that can be accessed by citizens in different member states.

Also the exceptions implemented in many member states are unfit for the digital age as they are often limited to uses made in educational establishments or by accredited students. Such conditions limit the usefulness of these exceptions for online educational resources that are freely available. As they are often interpreted that any use of copyrighted material beyond the physical premises of such establishments requires prior authorisation from rightholders.

Question 43: If there are problems, how would they best be solved?

The problems would best be solved by making the educational exception mandatory for all the member states while clearly defining its specific provisions leaving no room for narrow implementations, as recommended in Question 45 below.

¹⁵ COMITÉ DES SAGES, The New Renaissance, Report of the Reflection group on bringing Europe's cultural heritage online, 2011, http://ec.europa.eu/information_society/activities/digital_libraries/doc/refgroup/final_report_cds.pdf, p. 5



In addition, the educational sector provides another example of the need for simple, easy to understand copyright rules (compare our answer to question 10 above). While educational uses are covered by targeted exceptions in all member states, it is our repeated experience that both education professionals and students struggle with determining what types of use they can make without obtaining prior permission from rightholders.

These experiences are mirrored by the Hargreaves report¹⁶, which observes:

Many university academics – along with teachers elsewhere in the education sector – are uncertain what copyright permits for themselves and their students. Administrators spend substantial sums of public money to entitle academics and research students to access works which have often been produced at public expense by academics and research students in the first place. (...) Senior figures and institutions in the university sector have told the Review of the urgent need reform copyright to realise opportunities, and to make it clear what researchers and educators are allowed to do.

Question 45: If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under what conditions?

A legislative solution on the EU level is needed, perhaps in the form of a regulation rather than a Directive. Any process should be conducted carefully so as not to lose or alter the currently broad and open educational exception.

The mandatory educational exception should cover all uses of all types of works for illustration of teaching. It should not be limited to any types of institution, but rather defined by its purpose: teaching. All types of educational establishments are deemed to be included under the exception's scope regardless of their source of financing: public or private as long as the purpose of educational activity is primarily non-commercial.

The exception should allow for use of any copyrighted material, including text, film, multimedia for illustration of teaching in classrooms as well as in distance learning. It should also allow for using copyrighted works in teaching compilations, whether they be analogue or digital.

The no license and no compensation model is recommended, meaning that the uses for illustration of teaching should not require the consent (license) or remuneration to rightholders. However, fair compensation may be needed in order to satisfy the three-step test, especially where the exempted uses concern works made available for e-learning purposes, for example in massive open online courses. It is our view that the levies should be paid by the educational institution (running a course or engaged in organization of a course) located in the country where the uploading of the educational materials takes place.

¹⁶ Ian Hargreaves, Digital Opportunity, A review of IP and Growth, 2011, page 41, <http://www.ip.gov.uk/ipreview-finalreport.pdf>



Fair distribution of the sums collected should be assured.

III.D Disabilities

Question 50: (a) [In particular if you are a person with a disability or an organisation representing persons with disabilities:] **Have you experienced problems with accessibility to content, including across borders, arising from Member States' implementation of this exception?**

(b) [In particular if you are an organisation providing services for persons with disabilities:] **Have you experienced problems when distributing/communicating works published in special formats across the EU?**

(c) [In particular if you are a right holder:] **Have you experienced specific problems resulting from the application of limitations or exceptions allowing for the distribution/communication of works published in special formats, including across borders?**

At present, persons with disabilities – in particular the visually impaired, deaf, dyslexic and other print disabled persons – in the EU and globally, only have access to a very small fraction of the reading material published each year.

This situation is especially limited with regards to the cross border shipment or exchange of accessible formats for persons with disabilities given that Member States and International law up until now does not allow the legal cross border exchange of reading content among institutions and organisations that serve the cultural and academic needs of persons with disabilities.

The ratification and effective implementation by the EU and its Member States of the World Intellectual Property Organisation (WIPO) Marrakech Treaty¹⁷ could overcome much of this problem for visually impaired persons, but these exceptions and limitations to copyright should also be extended to person with other disabilities.

Question 51: If there are problems, what could be done to improve accessibility?

The swift ratification, implementation and application of the WIPO Marrakech Treaty by the EU and its Member States is needed to improve accessibility for persons with disabilities. A broader interpretation of EU exceptions applied to other disabilities should also be included in EU and national legislations.

Question 52: What mechanisms exist in the market place to facilitate accessibility to content? How successful are they?

There are not enough mechanisms in place at present. To a great extent there has been a

¹⁷ WIPO. (2013). Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted by the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities in Marrakesh, on June 27, 2013. Available at, http://www.wipo.int/treaties/en/text.jsp?file_id=301016.



market failure to supply accessible formats for persons with disabilities. Despite the great technical advancements in the digital space, most persons with disabilities cannot take advantage of these possibilities due to the lack of availability of protected works in suitable formats.

III.E Text and data mining

Question 53: (a) [In particular if you are an end user/consumer or an institutional user:] **Have you experienced obstacles, linked to copyright, when trying to use text or data mining methods, including across borders?**

Yes, since in most cases it is necessary to make a copy of the content in order for a machine to extract facts and data for mining, the act of text and data mining there is a lot of uncertainty among users of online services provided by cultural heritage institutions that want to make use of text and data mining. Because it restricts the copying of large portions of databases, the Database Directive may also be a legal barrier to text and data mining. Although text and data mining is concerned with the extraction of facts and data and as such should not be subject to an exclusive right, the results of text and data mining research are currently being suppressed because of a lack of legal clarity.

We observe that the resulting legal uncertainties create a situation where the wealth of information that is available online (often produced and made available by publicly funded institutions) is not fully accessible to researchers employing text and data mining technologies.

Question 54: If there are problems, how would they best be solved?

From our perspective, the best solution would be an additional mandatory exception that is added to the list of targeted exceptions contained in the InfoSoc directive.

Question 55: If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?

A legislative solution should take the form of an exception which allows the copying of content and the circumvention of TPMs for text and data mining purposes. Researchers must be able to share the results of text and data mining, as long as these results are not substitutable for the original copyright work - irrespective of copyright law, database law or contractual terms to the contrary. A specific exception to this effect allowing the copying of content for the purpose of text and data mining is necessary. Such an exception should not distinguish between commercial and non-commercial purposes as, for research institutions, this would prevent knowledge transfer.

III.F User-generated content

Question 58: (a) [In particular if you are an end user/consumer:] **Have you experienced problems when trying to use pre-existing works or other subject matter to disseminate new content on the Internet, including across borders?**



(b) [In particular if you are a service provider:] **Have you experienced problems when users publish/disseminate new content based on the pre-existing works or other subject-matter through your service, including across borders?**

(c) [In particular if you are a right holder:] **Have you experienced problems resulting from the way the users are using pre-existing works or other subject-matter to disseminate new content on the Internet, including across borders?**

Current EU legislation does not structurally allow citizens to share remixes and mashups of pre-existing works online, even in non-commercial contexts and when only very minor parts of works are re-used. This stands in stark contrast with everyday practices of large parts of the population. The fact that European citizens are able to express themselves via transformative uses of protected material is not due to exceptions guaranteeing this fundamental rights but to an opaque mix of licensing arrangements (concluded by platform providers with rightholders) and selective enforcement of rights.

From our perspective this situation is highly undesirable. As long as they do so without a commercial motivation, citizens should have the right to express themselves in any media and to make transformative uses of protected materials in doing so. Citizens should not only be allowed to make private copies of material that they have access to but they should also have the right to share protected works for non-commercial purposes.

Question 62: *If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?*

From our perspective a (mandatory) exception that allows non-commercial sharing (making of reproductions and making available) of protected works by individuals would provide sufficient room for citizens to express themselves. Such an exception could either be a new one or an extension of the scope of an existing one such as the exception for the benefit of quotations (as foreseen in article 5(3)d of the InfoSoc directive). In the Netherlands the latter approach has recently been proposed by the Copyright advisory board¹⁸.

V. Fair remuneration of authors and performers

Question 72: [In particular if you are an author/performer:] **What is the best mechanism (or combination of mechanisms) to ensure that you receive an adequate remuneration for the exploitation of your works and performances?**

While this consultation is about copyright and not about developing legislation-based business models for the authors and performers, we believe that the position of authors and performers can be improved by strengthening their rights vis a vis publishers and other distributors of their work. Authors and performers should have the ability to regain control of

¹⁸ See: Commissie Auteursrecht, Een flexibele regeling voor user-generated content, 2012, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/10/30/advies-een-flexibele-regeling-voor-user-generated-content.html>



works that they have assigned to third parties if those third parties do not actively exploit their works (anymore). Such a non-uses clause can for example be found in the changes to the Dutch copyright act that is currently pending in Dutch parliament.

Also authors of scientific articles and other short works (such as contributions to proceeding of academic proceedings should have the (time delayed) right to publish such works in an open access publication that cannot be waived or transferred to another party such as a Scientific publisher. Such clauses aimed at ensuring public access to publicly funded academic research can be found in the German copyright law and in the proposed revisions to the Dutch copyright act that is currently pending in Dutch parliament.

Question 73 - Is there a need to act at the EU level (for instance to prohibit certain clauses in contracts)?

Given that the European Union is currently promoting open access to publicly funded research as part of the Horizon2020 program it seems reasonable to create the legal conditions that ensure that authors of academic works can fulfill their open access obligations even when they also work with scientific publishers. In addition and in line with our previous answers we believe that any other measure to improve the standing of authors and performers vis a vis publishers and other other distributors can best be strengthened at the EU level.

Question 74: If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?

See our answer to question 73

VI. Respect for rights

Question 75: Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?

No, Respect for rights is not created by enforcement, but by establishing rules that are perceived as fair and balanced by as many people as possible. The most effective way to improve respect for rights would be to take user concerns seriously when addressing the other issues identified throughout our answers to the entire consultation. Copyright holders have ample means to enforce their rights. At the same time social acceptance of copyright rules remains low and citizens obtain content from unauthorized sources.

Any system that seeks to improve respect for the rules that it establishes needs to ensure that the rules are well balanced and perceived as fair by all stakeholders (or at least a majority of the stakeholders directly affected by these rules). The recent explosion of digital technologies has meant that citizens and professionals that were previously situated outside of the reach of the copyright system are now affected by the system in their day to day actions and professional activities. As we have outlined in our answers to the questions III we do not believe that the legitimate interests of citizens and many professionals are



adequately expressed by the existing copyright laws. This perception of copyright as a system that imposes unjust limits on citizens and professionals, combined with the fact that the current systems is overly complex, undermines acceptance of the system.

In our answers to the questions above we have proposed a number of modifications to the system that have the potential to, once implemented, increase the social acceptance of the system as a whole. Without these much needed changes the system risks to alienate even larger groups of stakeholders which will even further undermine respect for the rights of creators.

Question 76: In particular, is the current legal framework clear enough to allow for sufficient involvement of intermediaries (such as Internet service providers, advertising brokers, payment service providers, domain name registrars, etc.) in inhibiting online copyright infringements with a commercial purpose? If not, what measures would be useful to foster the cooperation of intermediaries?

The limitation of intermediaries' liability is important and is a cornerstone of the functioning of the Internet. Without it, there is a high risk of censorship and of going against freedom of expression, freedom of communication but also freedom to conduct a business. Middlemen should not be made liable and privatised enforcement is not the solution.

Question 77: Does the current civil enforcement framework ensure that the right balance is achieved between the right to have one's copyright respected and other rights such as the protection of private life and protection of personal data?

No, the current civil enforcement framework is tilted towards the interests of rightholders. As mentioned above there is a need for more balanced copyrights rules that can easily be understood (and followed) by all stakeholders. As long as this is not the case a renewed focus on enforcement measures will only further undermine the social acceptance of the system as a whole.

VII. A single EU Copyright Title

Question 78: Should the EU pursue the establishment of a single EU Copyright Title, as a means of establishing a consistent framework for rights and exceptions to copyright across the EU, as well as a single framework for enforcement?

Yes, in line with our previous answers (see questions 10, 21 and 22) any instrument that would provide more coherence into the EU copyright system would be very welcome. A single EU copyright title is necessary in order to achieve a fully functioning single digital market and should - if well executed - be easier to understand for citizens and professionals alike.

Question 79: Should this be the next step in the development of copyright in the EU? Does the current level of difference among the Member State legislation mean that



this is a longer term project?

This should be the next step and should be undertaken as soon as possible.

VIII. Other issues

Question 80: Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed.

In our answers to the questions above we have repeatedly touched on the issue of protected works that have been produced or otherwise created by public institutions and/or with public funds. Kennisland strongly believes that works and other subject matter that are produced by public bodies or with public funds should be available for reuse by citizens, entrepreneurs, researchers and and businesses. Given this we think that Europe should develop a strong open access policies for these sectors.

The recently adopted update of the PSI directive is a good start but we think that there are important areas that are not covered. These include the educational sector but also public broadcasting organisations who should be encouraged to make more of their output available under licensing conditions that allow others to build upon the creations of this sector.