

COMMUNIA Association position paper on the review of the EU copyright laws.

March 2015

The mission of the COMMUNIA Association is to educate about, advocate for, offer expertise and research about the public domain in the digital age within society and with policy-makers.

It draws on our [Progressive Agenda for the Digital Public Domain](#) and from the 14 [COMMUNIA policy recommendations](#). Most of these policy recommendation deal directly or indirectly with aspects of the existing (EU) copyright framework.

In general COMMUNIA advocates for policies that expand the scope of the public domain and make more certain the reuse rights of works in the public domain. COMMUNIA does not seek to abolish exclusive copyrights, but to limit their scope to sensible proportions that do not place unnecessary restrictions on access to and use of works and other subject matter that qualifies for protection under copyright and similar legal regimes.

COMMUNIA takes the public domain as a point of departure for its analysis of copyright policy. Our definition of the public domain has been codified in [the Public Domain Manifesto](#) that we authored and published in 2011 and that has been signed by more than 1500 organisations and individuals. The Public Domain Manifesto establishes a broad definition of the public domain that includes works that are not protected by copyright (because they have never been protected or because copyright protection has expired), as well as use rights created by open licensing practices and limitations and exceptions to copyright.

There are three elements of our definition of the public domain that are relevant in the discussion about the review of the EU copyright rules:

- **Exclusive rights should be limited.** The temporal nature of copyright is an important element of all copyright systems. While the duration of the term of protection has been radically expanded in the 20th century, a review of the copyright rules provides the opportunity to advocate for a reduction of the term of protection (aligned with Communia policy recommendation #1) and the introduction of formalities (aligned with Communia policy recommendation #8). Both issues were addressed with questions as part of the public consultation undertaken by the European Commission in 2013/14.
- **The public domain should not be eroded by legal or technical means.** The fact that certain works do not qualify for copyright protection because they belong to an essential commons of information that is not covered by copyright is relevant both in the field of public sector information, and also regarding the digitization of public domain works (which should not generate new exclusive rights). In addition, the European sui generis database right needs to be abolished as it undermines this principle. These issues have not been addressed by the public consultation, but they should be on the agenda.

- **Limitations and exceptions to copyright should continue playing their role of adapting copyright to technological changes.** The fact that limitations and exceptions to copyright provide an essential breathing space for the system to work will be at the core of the discussions about the review of the copyright rules. This is evident from the Commission's consultation, and also from the fact that many exceptions are outdated and that the overall system of limitations and exceptions lacks harmonisation across the member states of the EU.

COMMUNIA Policy Positions

Based on these principles, we have defined a list of issues for which COMMUNIA should advocate with regard to the review of the EU copyright framework:

1. The definition of a legal status for the public domain. The European copyright framework needs to include a positive definition of the public domain;
2. The recognition of the legal validity of voluntary dedication of works to the public domain by their authors;
3. The reduction of the term of copyright protection to the minimum level required by the Berne Convention (50 years after the death of the author);
4. The introduction of incentives for rights holders to register their works;
5. The opposition of the introduction of new ancillary copyright rights that further restrict access to information and culture, and the abolishing existing legal regimes that have the same effect;
6. Harmonization of the rules applying to the protection of unoriginal photography (and their reproduction), to ensure that the mere reproduction of public domain works does not create new exclusive rights;
7. The development of clear rules for researchers who must be able to read and analyse all information that is available to them, whether through text and data mining or otherwise ("the right to read is the right to mine");
8. Reduction of the remaining barriers for re-use of public sector information by exempting works produced by the public sector from copyright protection;
9. Full harmonization of all current limitations and exceptions (as defined by the InfoSoc Directive) to copyright across the EU, so that they are made mandatory and uniformly applicable to all users in all EU member states;
10. Inclusion of a new open provision that ensures flexibility in the interpretation of copyright limitations and exceptions with regard to new technologies and social practices;
11. Expansion and adaptation of limitations and exceptions to grant users more freedom in accessing and reusing protected works, and to permit public institutions to fully carry out their missions in the online environment. This includes but is not limited to increasing and expanding exceptions benefiting:
 - a. Individual users who must be enabled to make transformative uses and to quote/sample from materials other than texts;
 - b. Educational institutions which must be provided the flexibility needed to include protected works in online offers and must be allowed to provide such content to

individuals not enrolled in formal educational settings;

- c. Cultural heritage institutions which must be empowered to digitize their collections and make them available online;
- d. Users with disabilities who must be able to benefit to the fullest extent from technological advances that allow them to access and use information and culture that has been up until now inaccessible to them.

12. Preservation of the current liability framework applicable to intermediaries, which will ensure that the Internet serves as an open publishing platform that enables citizens to publish, share and interact with culture in unprecedented ways.