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The Copyright Directive: Misinformation and Independent Enquiry

Statement from European Academics to Members of the European Parliament in advance of the Plenary Vote on the Copyright Directive on 5 July 2018

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The Copyright Directive: Misinformation and Independent Enquiry

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We have worked with legal, economic and social scientists to bring an independent academic perspective to the public debate surrounding the [Proposed Directive on Copyright in the Digital Single Market](#) (COM(2016) 593 final). Two [Open Letters](#) supported by 25 leading research centres across Europe have reviewed the existing evidence and offered access to independent research.

In the run-up to the Plenary Vote on the Copyright Directive, there is a great deal of noise and misinformation.

While one side sees the vote as the last chance to save the open Internet (#saveyourinternet), the other side sees a spam campaign funded by the US technology sector.

While one side claims that the proposed provisions simply ensure that artists, journalists and other creators have more power to determine the conditions under which their work is exploited online, the other side sees the financial benefits accumulating to large rightholders, with creators merely used as frontmen/women.

Nobody should be under any illusion. This vote does matter. Despite the apparently moderate language of Article 11 (new exclusive right for press publishers) and Article 13 (new obligation on platforms to obtain licences for content uploaded by users, or prevent the availability of such content by filtering), these are interventions that are a radical departure. While there are reassuring words in some recitals and provisions (for example regarding hyperlinks) and certain safeguards for non-commercial interests, these are weak. All MEPs should be aware that lobbyists do not spend millions of Euros in a sustained campaign over many years if the outcome does not promise financial rewards. Intellectual property rights are a powerful tool. There is a reason why prominent artists suddenly turn up at your doorsteps.

There is scientific consensus that Article 11 will create potentially very broad rights of ownership in news and other information that will change the way news is disseminated. This will impede the free flow of information that is of vital importance to democracy.

There is scientific consensus that Article 13 changes the obligation on service providers to act upon obtaining constructive knowledge (established under the e-Commerce Directive) to what will become a filtering obligation that benefits big players.

These are dramatic changes that need to be supported by evidence. The academic community across Europe has been united in their assessment that the evidence does not support the provisions in Article 11 and Article 13. We urge you to support proposals that do not change the underlying balance between innovation and creative investment. Reasonable solutions to Article 11 and Article 13 are available.

The JURI draft report by Therese Comodini Cachia (EPP) promoted the introduction of a presumption in Article 11 that enables publishers to sue on behalf of their authors. This proposal enjoys wide support. The reports by the IMCO (Catherine Stihler S&D) and LIBE (Michał Boni EPP) committees offer a balanced approach to Article 13 that preserves user benefits.

In order to enable these improvements, the plenary vote needs to reject the JURI report, and reopen the file to amendments.

It is striking that, very likely, critical voices coming from leading research institutes will be immediately dismissed as biased. As researchers, we have a public interest mission. Our institutes were created so that independent scientific enquiry can be conducted for the benefit of society. It is a sad day if the lobby feels free to stain any critical enquiry as funded by Google or the Record Industry.

We declare that we offer this opinion as independent researchers and experts. We do not receive funding from parties engaged in this debate, but act in the public interest. While some of us have conducted projects for governments, parliaments, members of parliaments, agencies, collecting societies, technology companies or consumer organisations, we always place a firewall between project funding and results. Universities are entrusted by society to conduct themselves to these standards.

It does not happen often that there is wide scientific consensus on a contested policy issue. This is such a case, and policy makers need to take note.

Coordinating academics:

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Note: More than 200 academics from over 25 research centres, including the leading European institutes, have signed open letters opposing Articles 11 and 13. Further information about this initiative, including monitoring of legislative progress, a database of scientific studies and [Open Letter #1](#) (24 February 2017) and [Open Letter #2](#) from European Research Centres (26 April 2018) can be accessed here: <http://bit.ly/2loFISF>

Appendix: Assessment of specific substantive points

– **Claim: The proposals will increase legal certainty**

Assessment: Not true. Licences contemplated by Article 13, paragraph 1a are simply not available at the moment and even if they were, collecting societies have no mandate to license all works to all users, but only those of their members. Moreover, even if licences were available, they would cover only the individual member states and thus would cause further fragmentation of content along national boundaries.

The proposals in Article 11 too are likely to lead to different regimes in different member states, as different thresholds and exceptions may be applied.

– **Claim: The Internet will not be filtered**

Assessment: Not true. Upload filters will become an obligation for platforms that want to enter the market. The distinction between Internet and platforms is artificial. There is hardly any internet service without active user involvement. The spectrum of user generated content ranges from newspaper websites, blogs and social networking sites to online forums and cloud solutions.

– **Claim: There is no problem relating to freedom of expression**

Assessment: Not true. Article 11 directly affects the dissemination of news. While a safeguard for links has been added as paragraph 2a, links only work if you know what they refer to. The new right is intended to extend to snippets that offer this context.

Article 13 motivates firms to use cheap upload filters which will block legitimate content. Complaint and redress mechanisms are insufficient to cope with this problem. Expressions such as permissible parodies will be affected.

– **Claim: Memes will not be affected**

Assessment: Not true. The guarantees introduced for freedom of expression are insufficient to address the issues highlighted by the Court of Justice of the European Union in the *Sabam* cases, namely that statutory exceptions to copyright vary from one member state to the other. In particular, it remains unclear how freedom of expression assessments could ever be made by automated filtering systems. These systems are simply not intelligent enough to draw a line between permissible quotations, parodies, remixes, mashups etc. and impermissible copying in the light of the fragmentation of the national copyright legislation across member states.

– **Claim: Complaint and redress mechanisms will protect the interests of users**

Assessment: The proposals are insufficient, see above. Users already do not bring many complaints. When they do, platforms and rightholders (which, under the proposal, are responsible for collaborating in responding to the complaint) will find it difficult to react within a reasonable period of time, given their divergent positions in the debate.

Although Article 13 only creates obligations for platforms rather than end-users, undoubtedly, filtering will have a deep impact on consumers. They may still try to upload works to 9GAG (a comedy website), Facebook and other platforms. However, these uploads will never arrive at the platform if they are identified as infringing by the filtering mechanisms applied.

– **Claim: Authors will receive an increased share of copyright remuneration**

Assessment: Stating the intention does not necessarily produce the desired effect. The evidence on past measures, such as the provisions accompanying the term extension directive, show that benefits go to major rightholders (which are disproportionately big firms and the estates of dead famous artists). The evidence on the introduction of press publishers' rights in Germany and Spain shows that journalists have not seen any financial benefits, and are, by a large majority, opposed to the new right.