



LIGUE DES BIBLIOTHÈQUES EUROPÉENNES DE RECHERCHE  
ASSOCIATION OF EUROPEAN RESEARCH LIBRARIES

**LIBER Response to the EC Creative Content Online Consultation**  
**Registered organisation ID 24973952940-04**  
December 2009

These answers on the European Commission's consultation "Creative Content Online" are from **LIBER (Ligue des Bibliothèques Européennes de Recherche / Association of European Research Libraries)**. LIBER is the principal organisation representing **research libraries** in Europe. Its current membership includes 400 national and university libraries in more than 40 countries.

LIBER's mission is to **represent the interests of research libraries of Europe, their universities and researchers**. LIBER promotes in particular:

- efficient information services
- access to research information, in any form whatsoever
- innovation in end-user services from research libraries in support of teaching, learning and research
- preservation of cultural heritage
- efficient and effective management in research libraries

LIBER strongly supports the submissions made by JISC (Joint Information Systems Committee) and EBLIDA (European Bureau of Library, Information and Documentation Associations).

**Research and education are the pillars of the European knowledge economy**

The European researcher and learner sit at the centre of a pervasive digital information landscape. He/she expects to use a wide range of resources from the desktop. These could be locally hosted resources, such as digital holdings from the university or public library, or the mass of information resources that are available via the internet. This digital landscape is not a vision of the future, rather it is how users expect to interact with all their resources now.

**Access to and sharing of information, not copyright, is the basis for (scholarly) creativity**

LIBER is committed to the principles of freedom of access to information and the belief that universal and equitable access to information is vital for the social, educational, cultural, democratic, and economic well-being of people, communities, and organizations in Europe. Information in our society and in research institutes generates scholarly or economic value only if it can be used and re-used. This is clear from the growing (economic) importance of so-called user generated content.

### **Europe needs a unified copyright regime**

As stated by Commissioner Viviane Reding in her Lisbon speech on 9 July this year: “If we do not reform our European copyright rules on orphan works and libraries swiftly, digitisation and attractive content offers will not take place in Europe, but on the other side of the Atlantic.” (“Digital Europe – Europe’s fast track to Economic Recovery”, / Viviane Reding, EU commissioner for Telecoms and Media, The Ludwig Erhard Lecture 2009, Lisbon Council, Brussels, 9 July 2009.)

The challenge of copyright in Europe is that legislation exists at both European and national levels. This may well lead to instances where a researcher has one set of entitlements in country A and a contradictory set in country B. In addition, fair dealing exemptions which are laid out at a European level are not mandatory in the Member States. These are two examples of a copyright regime in Europe which is currently unsatisfactory.

What is required to overcome these barriers to trans-border access is a stronger and unified European copyright regime, which balances the rights of rights holders with those of users. The EU Directive on Data Protection should similarly be harmonised at a European level and in Member States. A European Copyright Law would certainly enhance legal security and transparency, and reduce transaction and licensing costs.

LIBER advocates a better balance in national and European legislation between the rights of the rightsholders and the needs of information users. The aim of copyright and IPR legislation should be to balance both these sets of requirements, to the resulting benefit of all stakeholders.

### **Europe needs a flexible arrangement regarding orphan works**

Avoiding the 20th century black hole, in particular regarding books, is critical – especially when seeking to engage younger audiences. Measures should be taken to encourage organisations to digitise their holdings.

The current approach in many European countries is not to digitise material where the rights holders cannot be traced. Inevitably, such an approach tacitly accepts the existence of a mass of orphan works, works which an individual would like to have digitised but where the rights cannot be cleared. In a digital Europe, this is an unsatisfactory position.

In the Nordic countries, extended collective licensing is possible and can also be applied to orphan works. However, licensed material needs to have an embargo as it cannot be released into public domain. We suggest new cut-off dates: Year 1940 (70 years delay): before this date, works are considered out of copyright. Year 1985 (25 years delay): before this date, lower requirements for diligent search in relation to orphan works. The use of orphan works should become even more flexible than this in research and education, in order to avoid an immense administrative burden.

### **Publicly-financed digital content should remain in the public domain**

The use of privately-funded digital content should be defined by the fundraising body and copyright material should be accessed according to a legal framework harmonised at a European level and in the individual Member States. Public Private Partnerships contracted in order to digitise content should be licensed for short timescales (max. 10 years). Online

advances are so rapid, that tying up previously out-of-copyright information in exclusive deals for multiple years risks limiting freedom of access and thus inhibiting innovation and the development of the knowledge economy. However, services like the delivery of high quality images, sound and video recordings and print-on-demand materials could be charged services (if applicable through commercial partners).

**Copyright rules should stimulate the use and re-use of content in the European Knowledge Society. They should also stimulate new business models in order to get a fair remuneration for the rightholders**

The citizen, student and researcher expect access to a broad range of information resources. Copyright rules should be adapted to the reality of new (social) media through which content is produced and disseminated by almost every citizen. In order to fully realise a Digital Europe, future European copyright rules should stimulate (and not penalise, as they currently do) the use and re-use of (scholarly) information, especially in educational and research contexts. Copyright rules should stimulate new business models through which creators of content and other rightholders can obtain a fair remuneration.

**Copyright law should never be overruled by contract law**

Contractual overriding of copyright law and its exceptions should be prevented.

Wouter Schallier, LIBER Executive Director  
on behalf of The LIBER Executive Board and the LIBER membership

**Contact:**

**LIBER – Wouter Schallier**  
**P.O. Box 90407**  
**2509 LK The Hague**  
**Tel : +31 629047952**  
**Email : [wouter.schallier@kb.nl](mailto:wouter.schallier@kb.nl)**  
**Web: [www.libereurope.eu](http://www.libereurope.eu)**