



**COMMISSION PROPOSAL FOR A DIRECTIVE COPYRIGHT IN THE DIGITAL SINGLE MARKET (COM (2016)0593)**  
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**The comments of the European chemical industry only relate to scientific literature and creation which can be protected via copyright.**

**We welcome the overall objective of the Commission's proposal to modernize copyright rules to fit to digitalization. But have suggestions regarding 3 topics:**

- **Exception on text and data mining (Articles 3 & 1),**
- **Rights for press publishers (Article 11 and Recital 33), and**
- **Authors' remuneration (transparency and contracts) (Articles 14 & 15).**

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*About Cefic:*

*Cefic, the European Chemical Industry Council, founded in 1972, is the voice of 29,000 large, medium and small chemical companies in Europe, which provide 1.2 million jobs and account for 17% of world chemicals production.*

EXCEPTION ON TEXT AND DATA MINING	Commission Proposal	Cefic Comments and proposals
<p><b>THE EXCEPTION</b></p> <p><b>Article 3, paragraph 1</b></p>	<p><i>Member States shall provide for an exception....for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject matter to which they have lawful access for the purposes of scientific research.</i></p>	<p>Text and data mining are often made by chemical companies as well as research institutes, academia. This is an ever growing practice in the scientific world. It can relate to patent search, search to be made at the occasion of research and innovation. All what can be done to improve this practice is supported by the chemical industry.</p>
<p><b>Article 2, paragraph 1</b></p> <p><b>'Research organisation'</b></p>	<p><i>'Research organisation' means a university, a research institute or any other organization the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:</i></p> <ul style="list-style-type: none"> <li><i>a) On a non-for-profit basis or by reinvesting all the profits in its scientific research; or</i></li> <li><i>b) Pursuant to a public interest mission recognized by a Member State;</i></li> </ul> <p><i>in such a way that the access to the success to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organization;'</i></p>	<p>At the moment typically before making text and data mining companies would request to the licensing company to whom they have already pay a fee to receive a copy of an article another "license" to make the transformation of the said article for which they have a lawful access and will pay an additional fee. This is quite burdensome. A one-stop-shop approach could be of interest in this "fast moving digital world".</p> <p>We see the logic of the Commission by proposing to non-profit research organisations to avoid paying such additional fee by being "automatically exempted". However, at the moment the way this exception is drafted may create unfair situations in particular when profit and non-profit organisations are co-operating in consortium for R&amp;D, it being composed from the industry side of big and small companies.</p> <p>We also increasingly notice that university, and other non-profit research institutes insist of having co-ownership and exploitation and R&amp;D consortium often extend to them as well. Therefore, the definition between what is profit and non-profit is not easy to draw. It can also be unfair toward SMEs.</p> <p>The intention of Cefic and its members should not be misinterpreted in no way we would like to be able to make text and data mining without paying a fair remuneration to licensing companies. But the way the exemption is currently drafted would not solve the question and may create more legal uncertainty, unfair situations and text and data mining would still be very administratively complicated for companies. This is a good momentum to "rethink" such service and come up with innovative solutions.</p>



<b>Recital 33</b>	<p><i>For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of information or entertaining. Such publication would include, for instance, daily newspapers, weekly or monthly magazines of general interest and news websites. Periodical publications which are for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. The protection does not extend to acts of hyperlinking which do not constitute communications to the public.</i></p>	<p>Finally Cefic appreciate the fact that, as mentioned in Recital 33, scientific publications are not covered by the press publication definition by way of interpretation from this recital. We suggest that this could be added in the definition of press publication in the core of the Directive at Article 2, paragraph 4.</p>
<b>AUTHORS' REMUNERATION (transparency and contracts)</b>	<b>Commission Proposal</b>	<b>Cefic Comments and proposals</b>
<b>Article 14, paragraph 1 &amp; 2</b>	<p><i>1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their work and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated by remuneration due.</i></p> <p><i>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.</i></p>	<p>Article 14 includes a very broad transparency obligation by which authors should get relevant information about the exploitation of their copyrighted work; this is quite understandable.</p> <p>In our chemical companies a lot of employees create works that can enjoy copyright for their employers. Usually, the employment contracts contain a clause according to which all their rights are either licensed or transferred to their employer for further exploitation. In return they receive a negotiated salary, or other form of remuneration. At its turn the employer can exploit, licensed etc these copyright.</p> <p>Therefore, it would be an incredible and unnecessary burden for employers to collect and make accessible information on the exploitation of rights they have from their employees. This will anyhow not provide any additional “protection” for the employees as it is for “free-lancers”.</p> <p>Therefore, Cefic proposes to modify this Article by adding that it will not apply where the author is an employee who had either licensed or transferred his/her rights to his/her employer.</p>

<b>Article 15</b>	<i>Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.</i>	The same arguments apply to this Article, therefore Cefic proposes also modify this Article on the same way as Article 14.
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