

2016 - IPO call for views on Modernising the European Copyright Framework

This is Jisc's submission to the Intellectual Property Office [Call for Views: Modernising the European Copyright Framework](#) [1].

Jisc is the UK's expert body for digital technology and digital resources in higher education, further education and research. Since its foundation in the early 1990s, Jisc has played a pivotal role in the adoption of information technology by UK universities and colleges, supporting them to improve learning, teaching, the student experience and institutional efficiency, as well as enabling more powerful research.

Jisc and its customer universities and colleges rely on intermediary services to promote discussion with and among people involved in research and education. These range from obtaining feedback on the services we provide, to student discussion groups, to collaborations among researchers including citizen science. Some of these use platforms operated by Jisc or universities, others take place on third party platforms.

Since 2000 the [e-Commerce Directive](#) [2] (2000/31/EC), through its provisions on hosting (Article 14) and monitoring (Article 15), has offered legal certainty to the operators of these platforms. This has been credited with permitting the establishment of a wide range of interactive on-line services, from social media services to comment sections on websites. These have resulted in the conversion of millions of passive consumers of media into active prosumers, exchanging information with one another through public forums in what has become the "digital society".

However the [draft Copyright Directive](#) [3]'s proposed treatment of intermediaries (in Recital 38) seems likely to create considerable uncertainty over the extent to which those protections still apply. For example do on-line discussions "go[] beyond the mere provision of physical facilities" and thereby involve an obligation to obtain licences in case copyright material is uploaded? Do they "provide... large amounts of ... subject-matter uploaded by their users" and thereby incur an obligation to proactively monitor for breaches of the law, in direct contradiction of Article 15 of the e-Commerce Directive? Will they still retain the status of "hosting providers" under Article 14 that Directive, protected from liability until notified, or will they be considered publishers who "store and provide access to the public" and may incur liability as soon as material is posted? If so, what "appropriate and proportionate measures" will they be expected to implement?

Such uncertainties over the legal requirements for providing on-line services, and the legal liabilities that those services may incur, is likely to make organisations much more wary of providing them. This will reduce opportunities for on-line discussion in two ways. Universities and colleges will be less likely to provide their own platforms, faced with uncertain risks in doing so. They are also likely to find fewer, and more restricted, third-party platforms that they

can use for wider public engagement.

If the scope of the e-Commerce Directive's protections are to be changed, the new scope and obligations must be much more clearly specified. Otherwise the resulting legal uncertainty will create unnecessary restrictions on the further development of the digital society.

Source URL: <https://community-stg.jisc.ac.uk/library/consultations/2016-ipo-call-views-modernising-european-copyright-framework>

Links

[1] <https://www.gov.uk/government/news/call-for-views-modernising-the-european-copyright-framework>

[2] <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0031&from=EN>

[3] <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0593>