

# Kluwer Copyright Blog

## Are the Needs of Research Reflected in Copyright Decision-Making? An analysis of Copyright Councils & Consultations – Part II

Stephen Wyber (Knowledge Rights 21, International Federation of Library Associations and Institutions) · Friday, February 21st, 2025

In the first part of this blog, we explored the structure of formalised copyright councils, finding that efforts to ensure balance between the interests of rightsholders and users were the exception not the rule. Furthermore, it was only in a small minority of cases that the representation of research was formalised. Part 2 explores experience from the transposition of the Directive on Copyright in the Digital Single Market in EU Member States and beyond, and how far research stakeholders were actively involved. This is not only the most recent EU Directive on copyright, but also includes significant provisions on research. The objective is to examine the experience of wider consultations about copyright reform. Such initiatives can co-exist with formal copyright councils or exist on their own. The way that these are carried out – and who is engaged (actively or passively) offers additional insights into how far the interests of research are reflected in copyright policy formation.

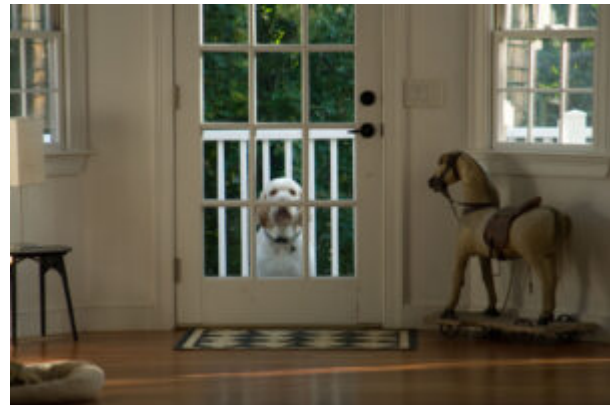


Image by Peter Mello via Flickr

This wider reflection is worthwhile in light of the fact that permanent copyright councils with an emphasis on providing advice on legislation only exist in nine countries. Looking at wider consultations helps get a fuller idea of how well research voices are being heard. Nonetheless, it is worth noting that the fact that the legislation was implemented in many countries during COVID disrupted normal consultation processes.

### Methodology

To carry out the analysis here, we drew heavily on the work undertaken by the [Communia Association](#) in assessing implementation of the Digital Single Market Directive in the EU's 27 Member States, as well as the monitoring work carried out by the [CREATe centre at the University of Glasgow](#). Once again, we validated the conclusions from these with the experiences of [Knowledge Rights 21 National Coordinators](#). The data also primarily focuses on the EU's 27 Member States. Once again, source data is available in the [annex](#).

### **Are research interests being heard in consultations?**

In terms of types of engagement opportunity, at a minimum the expectation would be to have some sort of consultation with stakeholders. In countries with existing copyright councils with a balanced make-up, this certainly was the case, for example in Belgium.

Some countries held more expansive discussions with stakeholders, for example with focus groups or other discussions. This was the case in Czechia and Denmark, at least on some issues. Finland too organised stakeholder consultations with a high degree of transparency as to who was involved, with the research sector noticeably part of discussions. However, a controversial decision to remove the lead civil servant involved in this work and replace them with a consultant with a past record of working for rightsholders represented an unhelpful development, and the Parliament even obliged the drafting team to go back and reflect better the right to education in the text.

Lithuania also falls into this category, with a small working group including the National Library, and opportunities for the ministry of education and science to engage, but no public consultation.

Another group of countries simply had open public consultations, with the opportunity to submit comments and inputs via an open website. This was the case in Cyprus, Estonia, Germany, Hungary, Ireland and Luxembourg for example, allowing all stakeholders to engage, although the readiness of government to take on board this feedback varied. Moreover, there was not always parliamentary debate.

Poland also held a number of public consultations before presenting a draft, but then had to make changes to the proposal based on criticism in parliament and beyond. Slovenia held a public consultation and initially planned to hold meetings but these were cancelled in favour of an emergency process that appeared to favour rightsholders.

Greece combined processes, with meetings with civil society and academics at the beginning, but then a more closed process of preparing a law and only a short (two-week) public consultation on the final proposal. Malta similarly held a limited consultation (before producing a draft), as well as meetings with educational establishments, while Romania also had closed working groups (mainly made up of rightsholders, but also some libraries) before an open public event. Spain too did both, but its stakeholder meetings also appear to have been mainly focused on rightsholders, while in Bulgaria a noted weakness was that the stakeholder engagement process worked best for those with stronger public affairs capacity.

The most positive examples seem to come from Austria, Latvia, Slovakia and Sweden, which had both meetings and public consultations, leaving extensive periods of time for feedback, and the Netherlands which did the same. The Dutch consultation indeed highlighted research as a sector from which input was necessary. Croatia too combined both elements well, but there are questions

there about how far feedback was taken into account.

Finally, there were those who implemented the law with little consultation at all, notably France, which relied heavily on decrees to change rules, but with a greater sense of urgency around creating new rights than taking steps to support research. Italy only held informal hearings, and appears only to have invited cultural industry representatives, with no-one from research. Portugal too used decrees and seemed most focused on rightsholder inputs.

It is worth noting that of the 27 countries, only six explicitly included libraries as stakeholders (Croatia, Czechia, Finland, Netherlands, Romania, Sweden), while only three made sure to bring research voices to the table (Lithuania, the Netherlands and Sweden). Those others who had open consultations at least offered a wider possibility to get involved, within the limit of resources, while other countries simply didn't take any feedback on board.

In summary, the implementation process for the DSM Directive once again underlines a tendency not to guarantee specific possibilities for the research sector to feed into decision-making. Where there are at least concerted efforts to seek stakeholder views, these more often than not focus on getting input from rightsholders.

## Conclusion and Recommendations

Overall, this study has served to underline that where formal processes are in place for stakeholder consultation around copyright laws, research is rarely recognised and given the opportunity to speak.

This can be seen as a reason for reviewing the way that copyright policy is made in order to ensure a stronger focus on wider societal outcome. However, it can also arguably represent a case for side-stepping copyright as a lens through which to review reforms. With copyright's primary focus on seeking balance between (generally well-structured and resourced) rightsholders and users (who tend to be more scattered), measures framed through it are inevitably focused on compromising on steps to achieve fundamental policy goals such as research and education. This is not to say that the creative sector itself does not need support and protections, but we would argue that more copyright is not always the most effective way to do this.

- **Recommendation 1:** review the composition of copyright councils or formal consultation groups to ensure the presence of relevant people or organisations who can meaningfully represent the interests of research.
- **Recommendation 2:** Treat copyright as one among various tools available for achieving wider public policy goals, such as promoting research and education.

Beyond the existence of formal mechanisms, it should not be taken for granted that research organisations or others will be able to respond to open calls for input. Frequently, these have little focus on public affairs, and in particular legal issues. In situations where there are no formal mechanisms for key stakeholders to engage, it may be important to find ways to ensure that the voice of researchers and research organisations is heard.

- **Recommendation 3:** support the research sector to participate effectively in open public consultations, for example through establishing ‘hotlines’ or other structures for consultation or the representation of interests.

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A graphic for a survey report. The background is dark with a glowing blue and red digital circuit pattern. A gavel is positioned in the center, with a glowing padlock icon above it. Text on the left reads '2024 Future Ready Lawyer Survey Report' and 'Legal innovation: Seizing the future or falling behind?'. A blue button says 'Download your free copy →'. The Wolters Kluwer logo is at the bottom left. A white box at the bottom right contains the 'FR Future Ready' logo and the word 'LAWYER' in a black box.

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