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Ministry of Education and Culture  
Helsinki  
Finland

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Dear Sirs / Mesdames

Statement and Opinion of the International Association of Scientific, Technical and Medical  
Publishers (STM) responding to

The request by the Ministry of Education and Culture of an opinion on the  
draft of the Government Bill to Parliament proposing amendments to the Copyright Act and  
Section 184 of the Electronic Communications Services Act

PREFACE

STM relies on an automated English translation of the proposed Bill (“the Draft”). Should there be any translation error or misunderstanding due to mistranslation, we would welcome it, if this could be pointed out to STM, should this submission be too critical or substantively incorrect as a result of any translation issue.

In this brief submission, STM will focus its opinion on the following provisions that are of particular importance to members of STM and its members.

With particular regard to **§38 of the Draft**, STM strongly opposes the introduction of **§38** as we find it contrary to EU and international law. STM offers its perspective and analysis more in depth by way of a separate letter.

## SUBSTANTIVE OPINION ON KEY ELEMENTS OF THE FINNISH DRAFT

- **Introduction of a Parallel Publication Exception (“PPE”), purporting to be a scientific author’s “right” in §38, read with §27(4) of the Draft;**

In spite of its characterisation as a “right” §38 really introduces an exception or limitation to the exclusive right of the author of a scientific article and also of any of the author’s co-authors. The EU acquis on copyright admits only a closed list of exceptions and limitations and these also need to be consistent with the famous Berne Convention 3-step test, as a matter of EU law. Moreover, Finland has a long tradition of international leadership in copyright and IP law and Finland is also responsible for upholding its international obligations relating to copyright law, the Berne Convention, TRIPS Agreement and WIPO Copyright Treaty, all of which include the 3-step test to assess validity of exceptions and limitations. Apart from being contrary to EU and international law, §38 also misses the mark on what it seeks to achieve, nor uses the least intrusive method to do so, nor does §38 of the Draft sufficiently guard against adverse unintended consequences for Finnish authors and publishers. Thus, STM opposes enacting §38 in its present form and recommends that more research and investigation be undertaken to assess the legal scope and ambit of a Finnish copyright provision seeking to limit the author’s right, how that would compare to national, EU and international law and what implications that would have on non-Finnish co-authors.

- **Text and Data Mining (TDM), Artt. 3 and 4 DSM, implemented in §13b of the Draft;**

According to the draft, TDM can be performed for the purpose of scientific research, but no further specification is given whereas the Directive for Copyright in the Digital Single Market (DSM) indicates that is allowed only to research organisations and cultural heritage institutions. Thus, at present the exemption is made available to any individual, even if not affiliated to a scientific institution. This should be corrected and further defined in the Draft.

Moreover, copies of the works made for use in TDM may be “kept solely for that purpose” which should be the purposes mentioned specifically in the DSM directive only and, if at all, stored with an appropriate level of security (Art. 3.2 DSM). Also, there is no reference to only lawfully accessed works which is fundamental both to Art. 3 and Art. 4 DSM. The Draft provisions should include this requirement expressly. Regarding Art. 4 DSM, The disclaimer / opt-out option is not expressly captured: positive is that there appears to be an unlimited number of ways how rightsholders may opt-out from the commercial TDM exception, yet the provision allows copies of works for use in text and data mining “unless otherwise agreed or unless the making of a copy is prohibited or restricted”, but does not stipulate how this may be done or who might need to prove the absence of an opt-out.

- **Value Gap, Art. 17 DSM, implementation through §55a to §55n of the Draft;**

The aim of the so-called “value gap” provision of the DSM is to make clear that Online Content Sharing Service Providers (OCSSPs) as defined in the DSM (Art. 2.6) are directly liable for infringements by way of user-uploaded content. The Finnish Draft does not state this, although the memorandum appears to recognize this aim. The mechanics for ensuring only compliant content is available by way of uploads through Finnish OCSSPs, the burden of proof and the suggested allocation of liability for erroneous take-downs lead to an overall insufficient implementation that does not meet the requirements to close the value gap, but rather may entrench the value gap or create new gaps. Moreover, the provision for indemnification and compensation under §55k doesn’t include enough proportionality measures and it is left quite broad, boding for abuses. The right of action in certain cases under §55l seems to mainly cover authors’ requests and not include the possibility for rightsholders to take action.

- **Teaching Exception implementation of Art. 5 DSM in §14 of the Draft;**

The teaching exemption in the DSM is made available to educational institutions, whereas the Finnish bill opens up the use of works for teaching activities as such, thus allowing for a much broader range of activities. Thus, further specifications need to be inserted at **§14**.

However, the Draft appears not to implement the crucial Article 5.2, the so-called license override where the exception would not apply to the extent that suitable licenses are available. This is problematic as there is a flourishing educational licensing market which includes the works and content originated by STM members but also Finnish publishers no doubt, which will be severely impacted should the override be omitted. STM urges Finland's lawmakers to reconsider this omission. The Draft provides for an authors' right to remuneration for copies of works made under an exception. STM is of the view that this right should also be recognized for publishers which traditionally jointly with their authors share in collective management fees.

We very much thank you for the opportunity to participate in this consultation and STM would be more than happy further to participate and contribute to the law-making process in Finland.

Sincerely / Yours faithfully

**STM**

**PER: PHILIP CARPENTER, CEO**

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