

# UNESCO's Comprehensive Study on Internet Related Issues

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## **Submitted by :**

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**Country:** United States of America

**Region:** Europe and North America

## **1. What can be done to reinforce the right to seek and receive information in the online environment?**

Creative Commons approaches this question from the perspective of providing copyright licenses and tools that enable sharing and creativity and help deconstruct barriers to access and re-use of content. One important component to reinforcing the right to seek and receive information in the online environment is to ensure that the public has access to the content it funds. We think that publicly funded resources should be openly licensed resources. Right now this is not the case. In fact, oftentimes the public has to pay for materials several times over before they are granted access to it. Take the example of scholarly publishing. Many university researchers receive grants from a federal government to conduct their work. The public pays for this. The researcher does their work and then publishes in a commercial journal. That journal then sells access back to universities through subscription fees to those publications. This is not an efficient—or just—use of the public's investments. The principle applies beyond scholarly publishing. Policies should be aligned so that publicly funded educational resources, cultural heritage materials, public sector information, and other types of digital outputs should be made broadly accessible and re-useable to the public that paid for it, utilizing standardized legal tools like Creative Commons licenses.

Another thing that can be done is to reform copyright law so that it becomes better aligned with 21st century uses of digital technologies and the Internet. Hundreds of organizations and individuals have already weighed in on the European Union consultation on new copyright rules earlier this year. Some of the suggestions put forth by civil society and user-rights organizations argue for a shorter default copyright term, the introduction of a copyright registration system, a strengthening of user rights via a robust set of limitations and exceptions (and more harmonization of those limitations), and flexibility in support of user rights through the introduction of a an open norm to the list of existing copyright exceptions.

Another component to reinforcing the right to seek and receive information in the online environment would be to ensure that licensing does not surface as the only solution for the

sharing of content. Oftentimes licensing is inadequate because it relies on a user opting in or it imposes restrictions on uses that are not always regulated by copyright, such as text and data mining.

While our answer here is focused primarily on aspects of copyright law that could be improved to support access and re-use of digital information in the online environment, there are many other aspects that could/should be considered within this question. For example, users need affordable access to broadband Internet connectivity, the principle of net neutrality ought be firmly embraced and supported at the policy and legislative levels, and freedom of information laws should be strengthened and streamlined to get access to important information in support of transparency.

## **2. What mechanisms can develop policies and common standards for open-licensed educational resources and scientific repositories, and for the long-term preservation of digital heritage?**

One mechanism to support the development of common standards for open-licensed educational resources is look to the best practices already in place. First, there is already a well-established definition for Open Educational Resources, originally developed via UNESCO and further solidified by one of the community's largest funding of open education projects, the William and Flora Hewlett Foundation. Open Educational Resources "are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use and re-purposing by others." See <http://www.hewlett.org/programs/education/open-educational-resources>. This definition communicates a set of principles regarding the availability to access and re-use educational content--namely that educational resources that align with this definition should be made available in such a way that permits legal customization, remix, and translation. Some of the Creative Commons licenses align with this definition.

Nations should be encouraged to adopt public funding mandates whereby educational resources such as digital textbooks paid for in whole or in part with public tax monies are required to be released under an open intellectual property license, such as the Creative Commons Attribution (CC BY) license. UNESCO has already supported policy interventions in line with the idea that publicly funded educational resources should be openly licensed resources through the release of the 2012 Paris OER Declaration: "[Member States should] encourage the open licensing of educational materials produced with public funds. Governments/competent authorities can create substantial benefits for their citizens by ensuring that educational materials developed with public funds be made available under open licenses (with any restrictions they deem necessary) in order to maximize the impact of the investment." See [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/English\\_Paris\\_OER\\_Declaration.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/English_Paris_OER_Declaration.pdf). CC BY content can be re-used and customized, and the rights of access and re-use are clear.

There are already examples of policies that require that publicly funded educational content be shared under open licenses. One particular example is at the federal level within the United States Department of Labor Trade Adjustment Assistance Community College and Career Training grant program (<http://www.doleta.gov/taaccct/>). That program requires “as a condition of the receipt of a TAACCCT grant, the grantee will be required to license to the public all work (except for computer software source code) created with the support of the grant under a Creative Commons Attribution 4.0 (CC BY) license. Work that must be licensed under the CC BY includes both new content created with the grant funds and modifications made to pre-existing, grantee-owned content using grant funds.” See <http://www.doleta.gov/grants/pdf/SGA-DFA-PY-13-10.pdf>.

With regard to access to and re-use of articles and research data in scientific repositories, public sector bodies should consider a similar approach to the procurement and sharing of publicly-funded educational materials mentioned above. Policies can be adopted whereby final versions of peer-reviewed scholarly articles resulting from federal funding can be required to be deposited in an open repository after a limited embargo period, thereby ensuring public access to the publicly funded scientific research after the embargo expires. This is the current setup for major scientific research funding programs such as the National Institutes of Health Public Access Policy. See <http://publicaccess.nih.gov/>. Another method is publishing in full open access journals, which typically permit articles to be licensed under a permissive open license (such as Creative Commons Attribution) when an article processing charge is paid by the author, institution, or funder. Recently the Bill & Melinda Gates Foundation announced that beginning in 2015 all the research and data that they fund will be required to be shared and licensed under a Creative Commons Attribution license (CC BY). The foundation will pay for article processing charges. A zero embargo will be permitted beginning 2017, although a 12-month embargo may be used in the transitional period between 2015-2017. See <http://www.gatesfoundation.org/How-We-Work/General-Information/Open-Access-Policy>.

Regarding the access, re-use, and long-term preservation of digital heritage resources in the galleries, libraries, archives, and museums (GLAM) sector, it's important that collecting institutions not assert intellectual property rights on digital reproductions of works already in the public domain. In addition, GLAM institutions should provide metadata about cultural heritage objects under a permissive license or dedicate this information to the public domain (regardless of whether the underlying work is protected by intellectual property rights) so that those materials can be searched for and integrated into other projects regardless of where the collections reside. In addition, copyright law should be amended so that it is easier to use copyrighted works whose owner can no longer be located (orphan works). Policies and legislation should be adopted consistent with the Public Domain Manifesto (<http://www.publicdomainmanifesto.org/>) regarding public domain works.

### **3. How can greater progress be made as regards inclusive strategies for women and girls as well as marginalized and disabled people?**

Regarding disabled people, more attention should be paid to promoting access to copyrighted works for the visually-impaired. The Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities was signed in June 2013. See <http://www.wipo.int/dc2013/en/>. Over 75 countries have signed the treaty, but it's only been formally ratified by a handful WIPO member nations. As mentioned above, there are other tactics and strategies that could be undertaken in order to promote greater progress regarding women, girls, and marginalized communities. For example, insuring pervasive, affordable, and fast Internet connectivity would be a positive step toward empowering these historically disadvantaged groups.

**4. How can accessibility be facilitated through increases in locally produced and relevant content in different languages?**

Accessibility can be facilitated through the translation of open educational resources and other openly licensed content, research, and data when those materials are published under a copyright license that permits translations. For example, all of the Creative Commons licenses (<https://creativecommons.org/licenses/>) that do not contain the clause prohibiting derivative works (called “NoDerivatives”) permit a re-user to translate the work without having to seek special permission from the author of the work.

In addition, copyright reforms supporting the expansion of limitations and exceptions for education could permit translations of educational content in particular environments where such translations would not be considered an infringement of copyright.

**5. What can be done to institutionalize Media and Information Literacy (MIL) effectively in national educational systems?**

**6. What are the current and emerging challenges relevant to freedom of expression online?**

One challenge to freedom of expression related to intellectual property rights is that some countries permit use of copyrighted content without permission or license for purposes of commentary and criticism, for example fair use and fair dealing. This doctrine provides a check on the exclusive rights of copyright owners and promotes freedom of expression. There are only a few jurisdictions that have such a broad exception to copyright law.

**7. How can legislation in a diverse range of fields which impacts on the Internet respect freedom of expression in line with international standards?**

**8. Is there a need for specific protections for freedom of expression for the Internet?**

- 9. To what extent do laws protect digitally interfaced journalism and journalistic sources?**
  
- 10. What are the optimum ways to deal with online hate speech? How can Media and Information Literacy empower users to understand and exercise freedom of expression on the Internet?**
  
- 11. What are the optimum systems for independent self-regulation by journalistic actors and intermediaries in cyberspace?**
  
- 12. What principles should ensure respect for the right to privacy?**
  
- 13. What is the relationship between privacy, anonymity and encryption?**
  
- 14. What is the importance of transparency around limitations of privacy?**
  
- 15. What kinds of arrangements can help to safeguard the exercise of privacy in relation to other rights?**
  
- 16. How can openness and transparency of data be reconciled with privacy?**

We should clarify that our responses and recommendations to the questions asked here refer to policy interventions to publicly-funded content that is meant to be widely shared. The idea and practice that publicly funded educational resources, scientific research, and public sector information should be provided free to the public under an open copyright license applies to content and resources outside of the scope of sensitive information or data having to do with national security. There is of course a lot of discussion around what types of things should be held as secret by public sector bodies--and how, what, and why governments collect such information and data, but we are not commenting on that here.

- 17. What may be the impact of issues relating to big data on respect for privacy?**
  
- 18. How can security of personal data be enhanced?**

- 19. How can Media and Information Literacy be developed to assist individuals to protect their privacy?**
- 20. How can ethical principles based on international human rights advance accessibility, openness, and multi-stakeholder participation on the Internet?**
- 21. What conceptual frameworks or processes of inquiry could serve to analyse, assess, and thereby inform the choices that confront stakeholders in the new social uses and applications of information and knowledge?**
- 22. How does ethical consideration relate to gender dimensions of the Internet?**
- 23. How can ethics, - i.e. the simultaneous affirmation of human rights, peace, equity, and justice - inform law and regulation about the Internet?**
- 24. What international, regional and national frameworks, normative guidelines and accountability mechanisms exist of relevance to one or more fields of the study?**
- 25. How do cross-jurisdictional issues operate with regard to freedom of expression and privacy?**
- 26. What are the intersections between the fields of study: for example, between access and freedom of expression; ethics and privacy; privacy and freedom of expression; and between all four elements?**
- 27. What pertinent information materials exist that cut across or which are relevant to the four fields of the study?**
- 28. What might be the options for role of UNESCO within the wider UN system in regard to the distinct issues of online Access to information and knowledge, Freedom of Expression, Privacy and Ethical dimensions of the information society?**

UNESCO could consider promoting its Open Access Policy ([http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/oa\\_policy\\_rev2.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/oa_policy_rev2.pdf)) and advocating for adoptions of similar policies among the broader UN ecosystem. Having

permissive and interoperable open access policies across the United Nations could help support access to and re-use of digital resources created by the intergovernmental organization, and provide for the widest possible reach and use of those materials around the world.

UNESCO can continue to educate member states about the OER practices and policy recommendations set out in the 2012 Paris OER Declaration ([http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/Paris%20OER%20Declaration\\_01.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/Paris%20OER%20Declaration_01.pdf)). It can continue to advocate for the adoption of open education policies within member states.

**29. What might be options for the role of UNESCO in relation to stakeholders outside the UN system?**

**30. For each study field, what specific options might UNESCO Member States consider?**