

Questions and Answers on issues about the digital copyright directive



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This Q and A provides answers to some of the more regularly raised issues regarding the directive on copyright in the digital single market.

The text as adopted by the European Parliament plenary can be found [here](#) .

What is the Copyright Directive about?

The proposed "Directive on copyright in the Digital Single Market" seeks to ensure that creatives (for example musicians or actors), and news publishers and journalists benefit from the online world and the internet as they do from the offline world. Currently, due to outdated copyright

rules, online platforms and news aggregators are reaping all the rewards while artists, news publishers and journalists see their work circulate freely, at best receiving very little remuneration for it. This makes it very difficult for artists and media professionals to earn a decent living.

The draft directive does *not* create any *new* rights for creatives and journalists. It merely ensures that their existing rights are better enforced. Nor does the draft directive create new obligations for online platforms or news aggregators, but ensures that existing obligations are better respected. What is currently legal and permitted to share will remain legal and permitted to share.

In short:

- The draft directive intends to oblige giant internet platforms and news aggregators (like YouTube or GoogleNews) to pay content creators (artists/musicians/actors and news houses and their journalists) what they truly owe them;
- No new rights or obligations are being created. What is currently legal and permitted to share will remain legal and permitted to share.

How will the Directive affect ordinary users?

The draft directive does not target the ordinary user.

By contrast, the draft directive will impact large online platforms and news aggregators like Google's YouTube, Google News or Facebook, making it essential for them to correctly remunerate artists and journalists whose work they monetise.

Large online platforms and news aggregators will have more reason to strike fair remuneration (licensing) agreements with artists and media houses who would have identified themselves beforehand as the owners of a piece of work. A platform will be further incentivised to strike such agreements because, in the absence of them, it would be directly liable if it hosts a piece of work with an unpaid licence fee. The current legislation offers more wiggle room for platforms to absolve themselves from this liability.

The expectation is that the draft directive will push the online platforms to finally roll out a policy to fairly remunerate all those from whose work they make their money.

Will the directive affect internet freedom or lead to internet censorship?

Freedom on the internet, as in the real world, will continue to exist as long as the exercise of this freedom does not restrict the rights of others, or is illegal. This means that a user will be able to continue uploading content to internet platforms and that these platforms will be able to continue hosting such uploads, as long as the platforms respect the creators' right to fair remuneration.

Currently, the online platforms remunerate creators on a voluntary basis and only to a very limited degree, because they are not liable for the content they host and therefore have little to no incentive to strike deals with rights holders.

The directive will not censor. By increasing legal liability, it will increase pressure on internet platforms to conclude fair remuneration deals with the creators of work through which the platforms make money. This is not censorship.

Is the directive creating automatic filters on online platforms?

No.

The draft directive sets a *goal* to be achieved - An online platform must not earn money from material created by people without compensating them. Therefore, a platform is legally liable if there is content on its site for which it has not properly paid the creator. This means that those whose work is used illegally can sue the platform.

The draft directive however *does not* specify or list what tools, human resources or infrastructure may be needed to prevent unremunerated material appearing on the site. There is therefore no requirement for upload filters.

However, if large platforms do not come up with any innovative solutions, they may end up opting for filters. Such filters are indeed already used by the big companies! The criticism that these sometimes filter out legitimate content may at times be valid. But it should be directed towards the platforms designing and implementing them, not to the legislator who is setting out a goal to be achieved - a company must pay for material it uses to make a profit. A goal which, in the real world, is uncontested and enforced.

Finally, the agreed directive even contains provisions to ensure that when uploaded content is wrongly taken down, the user can lodge a complaint and have it quickly acted upon.

Does this directive negatively affect memes or Gifs?

Quite the contrary.

The directive as agreed has specific provisions which oblige member states to protect the free uploading and sharing of works for the purposes of quotation, criticism, review, caricature, parody or pastiche. This will ensure that memes and Gifs will continue to be available and will be even safer than before, because previously such works were protected by different national laws.

Will it still be possible to see a snippet when reading or sharing articles on news aggregators?

Yes.

The agreement will allow news aggregators to continue to display snippets without requiring authorisation from the press publishers. This will be possible provided the snippet is a “very short extract” or “individual words” and that the news aggregator is not considered to be abusing this facility.

This directive will kill off start-ups...

No.

The deal offers specific protection to start-up platforms. Platforms set up less than 3 years ago, with an annual turnover lower than EUR 10 million, and average monthly unique visitors lower than 5 million, will be subject to much lighter obligations than the large, established ones.

There are claims that Article 17 (formerly Article 13) could lead to work being taken down when the rights holder is unknown. The example of the hit Despacito was given...

The aim of Article 17 is to give artists a stronger position in invoking their rights for fair compensation when their work is used and distributed online by others. An artist will typically have notified platforms like You Tube that a specific work is theirs. Works for which the rights holder is unknown are therefore unlikely to engage a platform's liability if they are uploaded there.

It has been claimed that the directive will have a profoundly negative impact on the livelihood of hundreds of thousands of people...

The contrary is more likely to be the case.

The directive's intention is to help provide numerous people with the livelihood they deserve for their work, and which they require to continue creating. The draft directive intends to ensure that more money goes to artists and journalists rather than Google's shareholders, a transfer of resources that is always beneficial to jobs.

Why have there been numerous recriminations against the directive?

The directive has been the subject of intense campaigning. Some statistics inside the European Parliament show that MEPs have rarely or never been subject to a similar degree of lobbying before (through telephone calls, emails etc.).

Such wide-ranging campaigning generally does lead to impressive claims snowballing; such as that the draft directive risks “breaking the internet”, or “killing the internet”. Since the draft directive does not confer any new rights on creatives, nor impose new obligations on internet platforms or news aggregators, such claims seem excessive.

There are numerous precedents of lobbying campaigns predicting catastrophic outcomes, which have never come true.

For example, telecom companies claimed phone bills would explode as a result of caps on roaming fees; the tobacco and restaurant lobbies claimed people would stop going to restaurants and bars as a result of the smoking ban in bars and restaurants; banks said they would have to stop lending to businesses and people, due to tougher laws on how they operated and the duty-free lobby even claimed that airports would close down as a result of the end of duty-free shopping in the single market. None of this happened.

Is the main purpose of the directive to protect smaller content creators?

Although the directive is aimed at helping all creators have a stronger bargaining position on how their work is used by online platforms, the main beneficiaries will be the smaller players. Larger players often have law firms to safeguard their rights, whereas smaller ones currently have little means to support them.

How will we know exactly which platforms will be required to conform with the Directive?

The directive addresses those platforms whose main purpose is to store, organise and promote for profit-making purposes a large amount of copyright-protected works uploaded by its users. This would exclude wikipedia, GitHub, dating sites, Ebay and numerous other types of platforms for example.

The Commission will also accompany member states when they implement the different provisions of the directive in their national laws. More specifically, Article 17 (formerly Article 13) provides that the Commission will have to draft guidance on how to apply the article, in particular regarding the cooperation referred to in paragraph 4, when no licencing agreement is concluded. All stakeholders involved will be consulted, including online content-sharing service providers, rightholders, users' associations and other interested parties. Furthermore, as soon as the Directive is adopted and enters into force, the Commission in cooperation with member states will organise stakeholders' dialogues to discuss best practices on how online content-sharing service providers and rightholders can cooperate with each other. The guidance and the best practices will give better legal certainty in applying Article 13, also taking into consideration the need to balance fundamental rights of the different parties as well as the use of exceptions and limitations to copyright.

Has enough time been devoted to studying the implications of this legislation?

This has been a very thorough and democratic process. It started in 2013, and over five years there have been numerous studies, impact assessments, discussions, proposals, and votes.

Here are some of the studies carried out by the European Commission ahead of proposing legislation:

[Study](#) on the application of Directive 2001/29/EC on copyright and related rights in the information society.

[Study](#) on the legal framework of text and data mining.

[Study](#) on the making available right and its relationship with the reproduction right in cross-border digital transmissions.

[Study](#) on the remuneration of authors and performers for the use of their works and the fixation of their performances.

[Study](#) on the remuneration of authors of books and scientific journals, translators, journalists and visual artists for the use of their works.

[Study](#) “Assessing the economic impacts of adapting certain limitations and exceptions to copyright and related rights in the EU”.

[Study](#) “Assessing the economic impacts of adapting certain limitations and exceptions to copyright and related rights in the EU – Analysis of specific policy options”.

In May 2015 the Commission presented its [Digital Single Market](#) (DSM) Strategy.

In September 2016, the Commission presented its [impact assessment](#). It also presented a [communication on the copyright directive](#) for the digital single market and a [legislative proposal](#) for a directive.

Between 2016 and today: Numerous debates and 3 votes in the European Parliament’s Legal Affairs committee (2018: twice in June, and 2019: February), and 2 debates and 3 votes in plenary (2018: July and September, and 2019: March)

Between 2016 and today: Numerous debates and 9 votes in Council/COREPER (in 2018: January, April, May, November, and twice in December 2018, and in 2019: January, and twice in February). After the plenary vote, the Council will also have a final vote.

Further information

[Committee on Legal Affairs](#)

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