

The EU adapts copyright to the digital era

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In 2016 Jean-Claude Juncker, president of the EU Commission, revealed the Commission's plans to modernise the legislation on copyright within the European Union, as part of the Digital Single Market reform package.

A draft directive was published on the same day, the EU Parliament adopted it¹ on 26th March 2019, and on 15th April 2019 it was approved by the EU Council². The directive came into force on 20th day following its publication; the member states have 12 months to transpose it.

Important matters of the directive

According to the EU Parliament, the directive contains the following new principles:

- 'Service providers of the information society' (i.e. online platforms such as Facebook, YouTube, LinkedIn, Instagram, etc.) are responsible for the contents uploaded by its users (except for 'memes', GIF-files, etc.);
- Hyperlinks to news and other press releases, accompanied by individual words or short quotations, can be shared for free on online platforms;
- Journalists are entitled to a part of the media publishers' income resulting from the use of their works;
- Start-up online platforms benefit from less strict obligations.

The directive aims to ensure that long term rights and obligations provided by copyright laws will also apply on the internet; its scope is to increase opportunities for copyright owners, especially of practising artists and writers, as well as publishers, to negotiate higher fees for the use of their works on online platforms.

Regulated aspects

The directive regulates the exceptions and limitations of copyright. Among other things, they were adapted to digital and cross-border use of works.

So, for example, the use of works protected by copyright for the purpose of text and data-mining, of online courses, of preservation and online distribution of cultural heritage, can occur freely, i.e. without the consent of the creator or a licence. The directive also allows users to generate and upload freely different pieces of content for the purposes of quotation, critique, reviews, caricatures or pastiche.

By adopting the directive, the exceptions for this type of usage (which at the moment are still optional for member states) will become mandatory in the future.

The directive also includes regulations for the improvement of the licensing procedure to extend access to creative content. The valorisation of works that are no longer merchandised will also become easier. In addition, the conditions, as well as the corresponding rights and

¹Link to the draft:https://eur-lex.europa.eu/legal-content/DE/TXT/?qid=1555574811919&uri=CONSIL:ST_7986_2019_ADD_1_REV_2

² Against the votes of Italy, Luxembourg, The Netherlands, Poland, Finland and Sweden

obligations regarding the issuance of extended collective and non-exclusive licenses by collective management societies (*organisme de gestiune colectiva a drepturilor de autor*) – also in the name of holders of rights that did not empower the collective management societies, if they belong to the holders of rights encompassed by the license agreement – have been regulated in detail.

To create a functional market for copyright protection, regulations were introduced for press publishers regarding the online use of their published work. According to these regulations, creators of works being used in press publications have the right to a part of the resulting income of the publisher.

Ultimately, the operation of online platforms regarding content uploaded by users has been clarified. Platforms require, in principle, a licence for such works protected by copyright and uploaded by users. This way, holders of rights will be better able to control and obtain conditions for the online use of their works. The directive regulates expressly the right of creators and practising artists to an appropriate and proportionate remuneration and provides a transparency obligation for the online platform, as well as a mechanism for adapting the remuneration.

Particularly controversial matters

There are two aspects of the copyright directive that are intensely debated. The mechanism for adapting the remuneration is considered on one hand as efficient protection of copyright holders; on the other hand, it is criticised as being a ‘tax’ on hyperlinks and uploads of works. There is also a potential threat that the responsibility of online platforms for content uploaded by users could lead to the use of filters, which could also act as a means of censorship.

The success of this new directive depends both on technical measures and on the legal mechanism for its national implementation.

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