Questions and Answers – New EU copyright rules

Brussels, 4 June 2021

What is the new Copyright Directive about?

Digital technologies have transformed the way creative content is produced, distributed and accessed. The Copyright Directive is a new piece of EU legislation that brings the copyright rules up to date with those changes and with the online world. It aims to create a comprehensive framework, which will benefit a wide range of players acting in the digital environment: internet users, artists, journalists and the press, film and music producers, online services, libraries, researchers, museums and universities, among many others.

To achieve this goal, the Copyright Directive focuses on three main objectives:

- Wider opportunities to use copyrighted material for education, research and preservation of cultural heritage: the exceptions allowing these uses have been modernised and adapted to the technological changes, to allow uses online and across borders.
- More cross-border and online access for citizens to copyright-protected content: the Directive contributes to increasing the availability of audiovisual works on video-on-demand platforms, it facilitates the digitalisation and dissemination of works that are out of commerce and ensures that all users are able to circulate online with full legal certainty copies of works of art that are in the public domain.
- Fairer rules for a copyright marketplace, which functions better and stimulates the creation of high-quality content: a new right for press publishers in relation to the use of their content by online service providers, a reinforced position of rightholders to negotiate and be remunerated for the online exploitation of their content by user-uploaded content platforms and transparency rules related to the remuneration of authors and performers.

The European Parliament and the Council of the European Union gave their green light to the new Copyright Directive in spring 2019. The deadline for Member States to transpose the new rules into national law is Monday, 7 June 2021.

How does the Commission help Member States to implement the Copyright Directive?

The Commission has provided Member States with technical assistance during the transposition process, through regular meetings and bilateral contacts.

The Commission has also issued the guidance on Article 17 of the Copyright Directive to support Member States in implementing the new rules on the use of protected content by online content-sharing service providers, and to foster the development of the licensing market between rightholders and online content-sharing service providers.

Article 17 provides that certain online content-sharing service providers need to obtain an authorisation from rightholders for the content uploaded on their website. If no authorisation is granted, they need to take steps to avoid unauthorised uploads. The aim of the guidance is to support a correct and coherent transposition and application of Article 17 across the Member States, paying particular attention to the need to ensure an appropriate balance between the different fundamental rights of users and rightholders.

The guidance will also help market players to better comply with national legislations implementing Article 17. It provides practical indications on the main provisions of Article 17, such as the best efforts to be made by the service providers to obtain an authorisation and avoid unauthorised uploads, and how to safeguard legitimate uses in practice, within the balance reached in Article 17.

What are the new rules for online content-sharing platforms?

One of the objectives of the Directive is to reinforce the position of creators and rightholders to negotiate and be remunerated for the online use of their content by certain user-uploaded content platforms.
Accordingly, the platforms covered by the new rules are considered to be carrying out acts covered by copyright (i.e. performing acts of communication or making available to the public) for which they need to obtain an authorisation from the rightholders concerned.

In situations where there are no licensing agreements concluded with rightholders, the platforms need to take certain actions if they want to avoid liability. In particular, they need to: (i) make best efforts to obtain an authorisation; (ii) make best efforts to ensure the unavailability of unauthorised content regarding, which rightholders have provided necessary and relevant information; and (iii) act expeditiously to remove any unauthorised content following a notice received and make also their best efforts to prevent future uploads.

What is the special regime for smaller enterprises foreseen in relation to the new rules for online content-sharing platforms?

- New small platforms will benefit from a lighter regime in case there is no authorisation granted by rightholders.
- This concerns online service providers, which have less than three years of existence in the Union and which have a turnover of less than 10 million euros and have less than 5 million monthly users. In order to avoid liability for unauthorised works, these new small companies will only have to prove that they have made their best efforts to obtain an authorisation and that they have acted expeditiously to remove the unauthorised works notified by rightholders from their platform.
- However, when the audience of these small companies is higher than 5 million monthly unique viewers, they will also have to prove that they have made their best efforts to ensure that works that have been notified by rightholders do not reappear on the platform at a later stage.

How does the Directive ensure a fair remuneration of authors and performers?

The Directive aims to increase transparency and balance in the contractual relations between content creators (authors and performers) and their producers and publishers.

The Directive contains five different measures to strengthen the position of authors and performers:

- A principle of appropriate and proportionate remuneration for authors and performers;
- A transparency obligation to help authors and performers have access to more information about the exploitation of their works and performances;
- A contract adjustment mechanism to allow authors and performers to obtain a fair share when the remuneration originally agreed becomes disproportionately low compared to the success of their work or performance;
- A mechanism for the revocation of rights allowing creators to take back their rights when their works are not being exploited; and
- A dispute resolution procedure for authors and performers.

How does the new Directive support the press and quality journalism?

The new press publishers’ right applies to online uses of press publications by information society services providers, such as news aggregators or media monitoring services. The objective of this right is to help the press publishing industry benefit from a fairer market place and to promote the best possible environment to develop innovative business models. The new right strengthens the bargaining position of press publishers when they negotiate the use of their content by online services.

Journalists, as authors of the contributions, i.e. the articles, in press publications, are essential in the press sector for providing reliable and quality journalistic content. By facilitating the online exploitation of press publications and making the enforcement of rights more efficient, the Directive has a positive impact on them. Also, in order to make sure that the journalists benefit economically from the press publishers' right, the Directive provides that they will receive an appropriate share of the revenues generated by it. By ensuring the sustainability of the press sector, the new right fosters plural, independent and high-quality media, which are essential for the freedom of expression and the right to information in our democratic society.

Does the new press publishers' right also cover parts of press publications (so-called 'snippets')?

According to the Directive, the use of individual words and very short extracts of press publications does not fall within the scope of the new right. This means that online service providers remain free to use such parts of a press publication, without requiring an authorisation by press publishers.
When assessing what very short extracts are, the impact on the effectiveness of the new right is taken into account.

**Does the Directive impose upload filters online?**

No. The Directive does not impose upload filters nor does it require user-uploaded platforms to apply any specific technology to recognise illegal content. Under the new rules, certain online platforms are required to conclude licensing agreements with rightholders - for example, music or film producers - for the use of music, videos or other copyright protected content. If licences are not concluded, these platforms will have to make their best efforts to ensure that content not authorised by the rightholders is not available on their website. The 'best effort' obligation does not prescribe any specific means or technology.

**Does the new press publishers' right affect individual users?**

The Directive does not target individual users, but online uses of press publications by large online platforms and services, such as news aggregators. Internet users continue to be able to share content on social media and link to websites and newspapers (acts of hyperlinking).

Moreover, the acts of hyperlinking and the re-use of single words or very short extracts by online platforms and services is excluded from the scope of the new right granted to press publishers of press publications.

**How do the new copyright rules protect users and their freedom online?**

The Copyright Directive protects freedom of expression, a core value of the European Union. It sets strong safeguards for users, making clear that everywhere in Europe the use of existing works for purposes of quotation, criticism, review, caricature as well as parody are explicitly allowed. This means that memes and similar parody creations can be used freely. The interests of the users are also preserved through effective mechanisms to swiftly contest any unjustified removal of their content by the platforms.

The new provisions on user-uploaded platforms facilitate the conclusion of licences between commercial players and contribute to improve the remuneration of creators.

To take one example: the new rules applicable to the use of press publications online only apply to commercial services such as news aggregators, not to users. This means that internet users continue to be able to share such content on social media and link to online newspapers.

**Does the Copyright Directive prevent users from expressing themselves in the same way as now? Are memes and GIFs banned?**

No. Uploading memes and other content generated by users for purposes of quotation, criticism, review, caricature, parody and pastiche (like GIFs or similar) is specifically allowed. Users are able to continue to upload such content online, but the new rules bring clarity in this respect and apply in all EU Member States.

Until now, copyright exceptions allowing these uses were only optional and Member States were free not to implement them. Under the Copyright Directive, this is no longer the case: Member States are obliged to allow these uses. This is a particularly important step for the freedom of expression online.

**What are the other exceptions to copyright rules included in the Directive?**

Exceptions or limitations to an exclusive right allow the beneficiary of the exception – an individual or an institution – to use protected content without the prior authorisation of rightholders. Exceptions and limitations exist to facilitate the use of copyrighted content in certain circumstances and achieve specific public policy objectives such as education and research. The new Directive brings the EU framework on exceptions up to speed with digital uses in certain areas like education, research and cultural heritage. It introduces four mandatory exceptions for:

- Text and data mining (TDM) for research purposes;
- A general TDM exception for other purposes;
- Teaching and educational purposes;
- Preservation of cultural heritage.

The aim is to open up the possibilities that digital technologies offer to research, data analytics, education and heritage preservation, also taking into account online and cross-border uses of copyright-protected material.

**How does the Directive facilitate the access to more content protected by copyright for education, culture, and research purposes?**
The copyright exception for **text and data mining** simplifies the copyright clearance burden for universities and research organisations. It allows them to use automated technologies to analyse large sets of data for scientific purposes in all legal certainty, including when they engage in public-private partnerships. This supports scientific endeavours and innovation, e.g. helping find cures for diseases or new ways to address climate change.

Complementary to this, an additional exception for text and data mining, for other users covers text and data mining going beyond the area of research. This exception contributes to the development of data analytics and artificial intelligence in the EU.

The new teaching exception for **educational establishments and teachers** covers digital cross-border uses of content protected by copyright for the purposes of illustration for teaching, including online. This for example ensures that educational establishments can make available, in full legal certainty, teaching content to distance students in other Member States through their secure electronic environment, e.g. a university's intranet or a school's virtual learning environment.

The new **preservation exception** allows libraries and other cultural heritage institutions (e.g. archives, museums) to make copies of the works in their collections, taking advantage of new digital preservation techniques. This new rule makes it possible to digitise the EU cultural heritage to preserve it. This benefits the access to our culture heritage by the future generations.

**What is the new provision on public domain of works of art?**

When a work of art is not protected by copyright anymore, for instance an old painting, it falls into the public domain. In that situation, everybody should be free to make, use and share copies of that work. This is not always the case today, as some Member States provide protection to copies of those works of art.

The new Directive makes sure that nobody can claim copyright protection on works in the field of the visual arts which have already fallen into the public domain. Thanks to this provision, all users are able to disseminate online with full legal certainty copies of works of art in the public domain. For instance, anybody is able to copy, use and share online photos of paintings, sculptures and works of art in the public domain when they find them in the internet and reuse them, including for commercial purposes or to upload them in Wikipedia.

**What is the provision of the Out-of-commerce works about?**

The Directive introduces a new licensing mechanism for **out-of-commerce works**: books, films and other works that are still protected by copyright but cannot be found commercially anymore. This makes it much easier for cultural heritage institutions, like archives and museums, to obtain the necessary licences to disseminate to the public, notably online and across borders, the heritage held in their collections. This system makes it much easier for cultural heritage institutions to obtain licences negotiated with the collective management organisations representing the relevant rightholders.

The new rules also provide for a new mandatory exception to copyright in case there is no representative collective management organisation representing the rightholders in a certain field, and therefore cultural heritage institutions do not have a counterpart to negotiate a licence with. This so-called ‘fall-back’ exception allows cultural heritage institutions to make the out-of-commerce works available on non-commercial websites.

**What is the new provision on collective licensing with an extended effect about?**

The new provision on collective licensing with an extended effect enables Member States to allow collective management organisations to conclude licences covering rights of non-members, under certain conditions. This mechanism facilitates the clearance of rights in areas where otherwise individual licensing may be too burdensome for users. The provision includes a number of safeguards that protect the interests of rightholders.

**What is the negotiation mechanism for video-on-demand platforms? How do the new rules work?**

Despite the growing popularity of on-demand services (like Netflix, Amazon Video, Universcine, Filmin, Maxdome, ChiliTV), relatively few EU audiovisual works are available on video-on-demand (VoD) platforms. Less than half (47%) of EU films released in cinemas between 2005 and 2014 are available on at least one VoD service. Also, EU audiovisual works are often not available on platforms outside their home country; around half of EU films are available in only one country and 80% of EU films are available in three European countries or less on VoD services. This is partly explained by difficulties, including contractual ones, in acquiring the rights.

The Directive provides a new negotiation mechanism to support the availability, visibility and
circulation of audiovisual works, in particular European ones. It makes the process of reaching contractual agreements smoother and unblocks difficulties related to the licensing of the necessary rights to make available films and series on VoD platforms. More licences means that more European audiovisual works are available in VoD platforms and has also a positive effect on the type and variety of works made available on VoD platforms.

For More Information

This Questions and Answers is an update to the Questions and Answers – European Parliament’s vote in favour of modernised rules fit for digital age, published on 26 March 2019

Press release: New EU copyright rules that will benefit creators, businesses and consumers start to apply

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Press contacts:

Johannes BAHRKE (+32 2 295 86 15)
Marietta GRAMMENOU (+32 2 298 35 83)

General public inquiries: Europe Direct by phone 00 800 67 89 10 11 or by email