

Questions & Answers: EU negotiators reach a breakthrough to modernise copyright rules

What is the new Copyright Directive about?

The European Parliament, the Council of the EU and the European Commission reached a political agreement on a new Copyright Directive that will require final approval by both Institutions in the coming weeks.

Digital technologies have transformed the way creative content is produced, distributed and accessed. The new Directive brings the copyright rules up to date with those changes and the way users access content online. For example, copyright exceptions exist in the areas of education, research and preservation of cultural heritage, but the digital uses were not anticipated by the existing rules, which date back to 2001. Therefore, this limits the possibilities for users (e.g. educational establishments, research institutions, libraries) to benefit from the potential of new technologies. In addition, the current EU copyright framework does not address the problems emerged in the recent years in relation to the distribution of value in the online environment.

The Directive wants to create a comprehensive framework where copyrighted material, copyright holders, publishers, providers and users can all benefit from clearer rules, adapted to the digital era.

In order 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 will contribute to increase the availability of audiovisual works on video-on-demand platforms, facilitate the digitalisation and dissemination of works that are out-of-commerce and will make sure that all users are able to disseminate online with full legal certainty copies of works of art that are in the public domain.
- Fairer rules of the game for a better-functioning copyright marketplace which stimulate 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.

How will the new directive support the press and quality journalism?

The new press publishers' right will apply 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 – 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 will have a positive impact on them. And, in order to make sure that the journalists will 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 will foster 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 text adopted today, 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 information society service providers will 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 will be taken into account.

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 will continue to be able to share content on social media and link to websites and newspapers (acts of hyperlinking), just as it is the case today.

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

How will the new rules tackle the so-called 'value gap' between the creators and the online platforms?

One of the objectives of the Directive is to reinforce the position of creators and right holders to negotiate and be remunerated for the online use of their content by certain user-uploaded-content platforms.

According to today's political agreement, the platforms covered by Article 13 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 will need to take certain actions if they want to avoid liability. In particular, they will 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 will be the special regime for smaller enterprises foreseen in relation to value gap?

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 right holders 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 Commission's proposal aimed to increase transparency and balance in the contractual relations between content creators (authors and performers) and their producers and publishers.

The final 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.

What are the 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 from right holders. 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 will 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** will simplify the copyright clearance burden for universities and research organisation. It will allow 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 will support 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 will cover text and data mining going beyond the area of research. This exception will contribute 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 will for example ensure 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** will allow 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 will make it possible to digitise the EU cultural heritage to preserve it. This will benefit 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 will make 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 will be able to disseminate online with full legal certainty copies of works of art in the public domain. For instance, anybody will be 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 will make 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 will 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. It has been thought for reaching contractual agreements and unblocking difficulties related to the licensing of the necessary rights to make available films and series on VoD platforms. More licenses means that more European audiovisual works will be available in VoD platforms and will have also a positive effect on the type and variety of works made available on VoD platforms.