

## EU copyright: a further step in the digital era



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***On 6 June 2019, the new EU Copyright Directive entered into force. The Copyright Directive is part of a broader initiative within the European Union to further align copyright with the digital era. The directive was the subject of considerable controversy during its creation.***

On 6 June 2019, Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (the "Copyright Directive") entered into force. The Member States need to transpose the Copyright Directive into their national legislation by 7 June 2021.

The Copyright Directive aims at protecting creativity, guaranteeing Union citizens broader access to online content and allowing them to fully exercise their freedom of speech in the digital age. In particular, the provisions regarding the rights of publishers of press publications (Article 15) and the liability of online content-sharing service providers (Article 17) caused a great deal of controversy during the preparation of the Copyright Directive.

### **Text and data mining for scientific research (Article 3)**

Article 3 of the Copyright Directive provides a new exception to copyright in order to allow the optimal use of text and data mining for scientific research. Text and data mining covers any automated analytical technique aimed at analysing text and data in digital form in order to generate information, which includes among other things patterns and correlations (Article 2(2)).

Member States need to provide for an exception in their national copyright legislation in relation to reproductions and extractions made by research organisations (e.g. universities and their

libraries) and cultural heritage institutions (e.g. public libraries or museums) in order to carry out, for the purposes of scientific research, text and data mining of works or other subject matter to which they have lawful access.

In order to benefit from the exception, the research organisation needs to carry out its scientific research pursuant to a recognised public interest mission on a not-for-profit basis or by reinvesting all the profits in its scientific research. The primary goal of the research organisation needs to be conducting scientific research or carrying out educational activities involving the conducting of scientific research.

## **Press publications (Article 15)**

Article 15 of the Copyright Directive aims at better protecting publishers of press publications, such as news publishers or press agencies, by allowing them to more easily conclude licence agreements for the online use of their journalistic publications.

The Copyright Directive grants publishers of press publications the right of reproduction and the right to make press publications available to the public for the online use of their press publications by information society service providers. Thus, news aggregation services such as Google News need the authorisation of publishers of press publications to make their press publications available to the public online. The rights of the publishers of press publications expire two years after the publication of the press publication.

A press publication is a journalistic publication, irrespective of the medium used (including paper media), which is published in the context of an economic activity that constitutes a provision of services and which has the purpose of providing the general public with information related to news or other topics. Periodicals published for scientific or academic purposes, such as scientific journals, do not fall within the definition of press publications.

The rights of the publishers of press publications do not apply to acts of hyperlinking. The authorisation of publishers of press publications is also not required for private or non-commercial use of press publications by individual users or for the use of very short extracts of a press publication.

Article 15 further stipulates that authors of works incorporated in press publications are entitled to an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers.

## **Liability of online content-sharing service providers (Article 17)**

Article 17 one of the most controversial provisions of the Copyright Directive. It aims at better

protecting authors when their creations are uploaded and distributed online.

Article 17 stipulates that online content-sharing service providers ("OCSSPs"), such as YouTube and Facebook, need the authorisation of the rightholders in order to communicate or make available to the public copyright-protected works or other protected subject matter uploaded by its users.

The Copyright Directive defines an OCSSP as a provider of an information society service which has as (one of) its main purpose(s) storing and giving the public access to a large amount of copyright-protected works or other protected subject matter, which is uploaded by its users and which it organises and promotes for profit-making purposes (Article 2(6)).

If the rightholder has not authorised such communication, the OCSSP will be liable for the unauthorised communication to the public of copyright-protected works and other subject matter, unless the OCSSP can demonstrate that it has made its best efforts to obtain the necessary authorisation.

When an OCSSP receives a sufficiently substantiated notice from a rightholder, it must act expeditiously to disable access to, or to remove from its website, the notified works or other subject matter and must make its best efforts to prevent the material being uploaded ("notice and takedown"). OCSSPs are required to be transparent about the measures they undertake in cooperation with the rightholders, but the Copyright Directive also explicitly stipulates that Member States are not allowed to impose a general monitoring obligation on OCSSPs.

## **Providers of online encyclopaedias and start-ups**

Article 17 does not apply to providers of not-for-profit online encyclopaedias, such as Wikipedia, or open source software development and sharing platforms. The Copyright Directive also makes provision for a special regime for start-ups whose services have been available to the public in the European Union for less than three years and which have an annual turnover below EUR 10 million.

## **Exception for memes and GIFs**

The Copyright Directive provides for an exception to copyright for the uploading and making available online of quotations, criticism, reviews and the use of content for purposes of caricature, parody or pastiche (Article 17(7)). This exception applies, among other things, to memes and Graphics Interchange Format (GIF) images.