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# **Copyright Directive: A New Era for the Digital Single Market?**

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## **Key points**

The present policy brief examines the Directive of the European Parliament and of the Council on copyright in the Digital Single Market, as proposed by the European Commission, according to the Ordinary Legislative Procedure. Recently adopted by the Plenary Session of the Parliament, by 348 votes to 274, the Directive will be requiring that Member States create national legislation, which ensures the application of voted measures. The main goal of the proposal is to harmoniously protect intellectual property from unauthorized use, in this way modernizing the operation of the Digital Single Market. However, there have been plenty oppositions, especially to articles 11 and 13, placing enormous responsibilities and restrictions on individuals, technological companies and digital platforms.

As multiple implications on various levels of the digital industry are observed, the policy brief urges for:

- The continuous and inclusive cooperation of all interested parties, in order to ensure maximum efficiency and stabilisation of the ongoing turbulence
- The Union's assistance to the transitional procedure, as well as the support of the system established

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## Introduction

As of September 12<sup>th</sup>, 2017, the Members of the European Parliament (MEPs) have approved the Copyright Directive, regarding the Digital Single Market, by 438 votes to 226, with 39 abstentions. The Directive proposal consists the product of alterations of the initial draft, rejected in June and since then, it has been subjected to further negotiations between the legislative Institutions: the EU Parliament, the Council of the EU and the European Commission, according to the Ordinary Legislative Procedure. The vote, as well as its aftermath were accompanied by strong lobbying, both by its supporters and oppositionists, thus placing it in the spotlight for a vast audience spectrum across the EU. Having proceeded to the stage of the -as commonly known- Trialogues, the final text has been voted upon by the Plenary Parliament Session.

## Analysis

Given the fact that the area of Copyrights falls under the exclusive EU competences, the Union, over the years, has adopted a series of regulatory measures, ensuring Member States' activity harmonization. Based on the Communication "Towards a modern, more European copyright framework", issued in December 2015 and aiming to retool EU legislation, the Directive was proposed by the Commission, in order to facilitate the function of the Internal Market and protect creators' contents from unauthorized use. The latter was deemed extremely crucial, considering the ascension of digital platforms to the center of gravity both in economy and entertainment worldwide.

Among a thorough listing of cases where copyrights are to be protected by the Directive, such as protection of cultural heritage and limitations imposed on data mining, the negotiations and discussion sparked by the proposal notably refer to Articles 11 and 13. The first one contains provisions regarding remunerations to creators for the digital use of their press publications by information society service providers, including the appearance of links to copyright-protected data in search engines. The latter instructs that "online content sharing service providers and right holders shall cooperate in good faith in order to ensure that unauthorized protected works or other subject matter are not available on their services.". Exemptions are naturally granted to research-oriented platforms, such as Wikipedia, as well as content shared by individuals privately and not for exploitation purposes.

For a major part of European entrepreneurs, such as publishers and artists, the measures are long awaited and are therefore, warmly welcomed. That is, of course, highly reasonable, as the wide use of digital platforms lead to poorly monitored plagiarism and unauthorized access to content, which was translated to grave income losses and serious violations of intellectual property.



However, despite consultations on the matter with the greatest stakeholders and the public, conducted by the Commission between December 2013 and June 2016, the Directive was met by consistent opposition from a wide range of individuals, including technology companies, such as Google, Facebook and YouTube, academics, as well as individual internet users and online content creators, especially after the Parliament's position in favor of the Directive. Their concerns include undermining of the public interest, grave restrictions of free information circulation and paralysis of educational and academic research current practices, leading to an overall devastating fallout for every aspect of the Digital Market, with the greatest impact being on successful start-up tech companies. Another complaint for the adopted legislation refers to liability for detecting infringements falling to platforms, as well.

Furthermore, the text proposal fails to clarify the nature of the "appropriate and proportionate" measures called for, or the exact amount of the remunerations described in Article 11. That is due to the legal standing of Directives, which are to be integrated into national law individually by each of the Member States, thus permitting them considerable interpretation and execution freedom. The extent to which the control of uploaded content would be imposed is, also, uncertain. For example, "memes", that is, an exceptionally popular trend of digital humoristic media, using extracts of online content for comedy purposes, are likely to fail compliance with the new Directive, regardless of the fact that they are created for merely entertaining purposes. The same fate could be reserved, according to article 12a for any media leakage of sports matches' "instantanés".

Finally, questions are raised as to what is to be done about the collision of the Directive's provisions with global standards, as European Union's content constitutes only one third of said circulating digital data. The issue could be even more complicated, taking into consideration that the prominent stakeholders, such as Google, operate on the level of a globalized economy and therefore are not exclusively under EU legal jurisdiction. Overall, the measures' implementation is expected to be completed in approximately two years.

## **Recommendations**

Given the great number and various interests of individuals and professionals affected by the application of the proposed legislation, it is crucial that a viable compromise be reached between the interested parties, at the same time ensuring the initial goal of the development of the Digital Internal Market.

On that note, the creation of a European Copyright Committee for the approval of special permissions of data exploitation to press professionals and online creators, with a respectable amount of tax attributed to copyright holders, would be highly critical. Otherwise, that task could be assigned to already existing institutions of such nature.



Additionally, eligible for exploitation permission would be start-up companies and other enterprises operating in publishing, information, entertainment or any other field, requiring data broadcast. The permission should be renewable, with the same duration for all candidates and granted as product of an agreement between the stakeholders and the content users, but, at the same time, with EU as an intercessory guarantor. It would be also necessary that special, unlimited rights to academic and educational platforms be granted, in order to ensure that research and learning would not be in any way undermined or challenged.

Apart from the licensing process, EU constitutions should be appropriately formed and equipped, in order to assist digital platforms in monitoring the data they host, instead of the responsibility falling exclusively to the latter ones. In the event of inability to do so, the Union should grant a customized fund to platforms hosting a vast amount of copyrighted data, so that they can develop the appropriate mechanisms to adhere to regulations of data control.

As to the exact height of links, as well as content usage taxation, there should be provisions of a council comprised of representatives of all interested parties within the very EU Data Committee, in order to find a silver lining, satisfying all those involved.

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