

IP Alert: How the EU Copyright Legislation Could Impact Content and the Online Platforms Worldwide

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On the heels of its new privacy regulations, on Wednesday, September 12, the European Parliament approved another revolutionary measure which could have similarly wide-ranging impact; this time to amend the copyright laws.

By a vote of 438 to 226¹ the European Parliament passed copyright legislation that would shift the burden to police copyrighted content from copyright owners (as the law currently states) to website operators. It requires platforms such as Facebook, YouTube, Instagram, and even Medium and WordPress to be responsible for the content they host and to prevent users from uploading infringing copyrighted works.² The legislation also requires platforms on which snippets of copyright content are shared to either pay the copyright owners for the use of that content or limit the text used in links to "individual words."³ According to the legislation's sponsor, it is designed to "protect and strengthen the rights of the creatives: authors, performers, singers, songwriters, journalists...all copyright-holders."⁴ As noted above, certain exceptions apply, including excluding hyperlinks "accompanied by individual words," as well as exceptions for small and micro platforms, open-source code-hosting platforms, and free online encyclopedias, among others.⁵

In terms of process, "[t]he European Parliament still needs to negotiate a final version of the proposal with its co-legislator, the European Council. Then each EU member state will need to pass its own laws implementing the legislation."⁶ However, should this or a similar version of this legislation pass, just as with the EU General Data Protection Regulation, it would likely impact internet platforms and content creators on a global scale.

What should you do? Both content providers and online platforms may seek to review their licensing agreements prior to a final agreement of this legislation. Online platforms will also need to seek out and arrange for filtering or other technology to scrub their platforms for infringing content in compliance with the legislation. Lastly, platforms will want to carefully review the several exceptions noted in the legislation to know whether they apply.

For more information or questions, contact your attorney in the Intellectual Property, Technology, and Privacy Practice Group at Gray Plant Mooty.

1 "Parliament adopts its position on digital copyright rules"

2 Specifically, the text of the legislation states, "Online content sharing service providers [defined as providers that "perform an act of communication to the public"]...shall, in cooperation with rightholders, take appropriate and proportionate measures to ensure the functioning of licensing agreements where concluded with rightholders for the use of their works or other subject-matter on those services. In the absence of licensing agreements with rightholders online content sharing service providers shall take...appropriate and proportionate measures leading to the nonavailability on those services of works or other subject matter infringing copyright or related-rights, while noninfringing works and other subject matter shall remain available." Copyright in the Digital Single Market, Article 13, (Sept. 12, 2018).

3 Copyright in the Digital Single Market, Article 11, (Sept. 12, 2018).

4 "Axel Voss on copyright reform: 'We want to protect the rights of creatives'"

5 Copyright in the Digital Single Market, Article 41, (Sept. 12, 2018).

6 Finley, Klint, "Europe's New Copyright Law Could Change the Web Worldwide," September 12, 2018.