

IP Alert: What the New EU Copyright Directive Means for U.S. Copyright Owners and Online Platforms

April 9, 2019

On April 15, 2019, the European Council is expected to approve the "Directive on copyright in the Digital Single Market" — a major change to EU copyright law that was approved by the parliament of the European Union on March 26, 2019 with a vote of 348 yea, 274 nay, and 36 abstentions. After the Council's vote, the next step will be publication of the Directive in the Official Journal of the EU, after which member states will have two years to implement the Directive into their national laws.

Over the last several months the Directive has been heavily criticized, particularly due to Articles 15 and 17 (formerly Articles 11 and 13), the so-called "link tax" clause and the "upload filter" clause, respectively. Prior to the vote by parliament, protestors took to the streets of Europe, cautioning that the Directive will "censor the internet." Meanwhile, supporters and the author of the legislation tout it as necessary to "protect and strengthen the rights of the creatives: authors, performers, singers, songwriters, journalists . . . all copyright-holders."

The main controversy with the Directive is with Article 17 (old Article 13), which makes "online content sharing service providers" liable for uploads of copyrighted content posted on their platforms without permission. In practice, this means that all online platforms will need to monitor all uploaded content to prevent users from posting content that could violate copyright law (a 180-degree burden shift from the current copyright laws). There is an exception to Article 17 for "quotations, criticism, reviews, parodies or pastiche" (which includes memes and gifs). Some have said the Directive's requirements will essentially require online platforms to use "upload filters" for all user-generated content, or face liability from copyright owners.

Article 15 (old Article 11), known as the "link tax" clause, requires web platforms to obtain a license in order to be able to link or quote news articles. In other words, publishers will be allowed to charge a web platform as a way to receive a portion of the revenue generated by such news platforms. The Directive does include an exemption for legitimate private and noncommercial uses of press publications by individual users, however, but it is unclear how this exception may apply to individuals with large social media networks, for instance.



So what do **U.S.** copyright owners need to know about the EU Copyright Directive? Just as with the EU General Data Protection Regulation (GDPR), the EU Copyright Directive is likely to impact internet platforms and content creators on a global scale. Both online platforms and copyright owners should start considering how day-to-day operations will change in such a new regime. Although the Directive has a two-year implementation period, both content providers and online platforms need to start considering how the law will impact current operations and monitor how the Directive is implemented in Europe. Moreover, online platforms should consider whether they also need to seek out and arrange for filtering or other technology to scrub their platforms for infringing content in compliance with the Directive. Lastly, platforms will want to carefully review the several exceptions noted in the Directive to fully understand whether and which exceptions apply and when to avoid potential liability.

For more information or questions, contact a member of the Intellectual Property, Technology, and Privacy Practice Group at Gray Plant Mooty.