

European Parliament approves the new Directive on Copyright

March 27, 2019

After almost three years of intense debates, EU MPs formally passed the new Directive on Copyright in the Digital Single Market on March 26th, 2019. The text was adopted in plenary session by 348 votes in favor, 274 against and 36 abstentions.

Notwithstanding a number of proposals for amendments (all rejected) and fierce opposition until the very end, this vote was a confirmation of the agreement reached by the EU Trilogue on February 13th, in particular regarding its two most controversial issues.

Copyright enhancement

As expected, Article 17 (ex. Article 13 of the draft) requires online platforms that allow their users to publish content themselves to conclude agreements with right holders. In the absence of such agreements, said platforms would be held directly liable for unauthorized acts of communication to the public (exception to Article 14 of Directive 2000/31/EC), unless they demonstrate that they have:

- a. made best efforts to obtain authorization;
- b. acted expeditiously, upon receiving a sufficiently substantiated notice by the rights holders, to remove from their websites or to disable access to the notified works and made best efforts to prevent their future uploads; and
- c. established mechanisms to prevent these works from being published initially and in the future.

These mechanisms, which opponents of the reform fear to be especially detrimental for the right to free speech and creativity, were the focal point of the criticism against the Directive as there is the view that only upload filters can manage the huge amount of data that is uploaded to e.g. Youtube. The Trilogue moderated this measure and created an exception for small platforms (online service providers with less than three years of existence in the Union, a turnover of less than €10 million and less than 5 million users per month). These platforms will only need to prove that they have done everything possible to obtain authorization and that they have acted promptly to remove unauthorized works that have been reported to them by rights holders, in order to avoid being held liable for unauthorized works. Apart from that, it actually sounds unpleasant to submit to an automated process to control one's utterance in the process of expressing opinions. But it is also true that there is a requirement for stakeholders to enter into a dialogue after the Directive has entered into force in order to define best practices and harmonize procedures – certainly a chance to mitigate negative effects of the mechanisms, if any.

Additionally and in response to fears of censorship, filtering mechanisms shall not prevent the posting of quotations, pastiches or parodies online (Memes and GIFs are also excluded from the scope of the Directive). The text further provides for exceptions regarding non-profit encyclopedias, marketplaces, open source software development and sharing platforms, and more generally regarding education, research and the preservation of cultural heritage.

Neighboring right for publishers

As regarding press articles, Article 15 (ex. Article 11) creates a new neighboring right, which imposes online platforms to remunerate press publishers whose content they use, during two years after the publication of an article.

This new right does not apply when said articles are used by individuals or for noncommercial purposes. Further, hyperlinks directing to news articles, alone or accompanied by “isolated words or very short excerpts”, may be freely shared (which questions the applicability of this provision to platforms).

The official definitive version of the Directive should be publicly available in the coming days. Member States will have 24 months to transpose the new rules into their national legislation. This will open a window for debates about sensitive issues on national level. This time gives opportunity to reconcile interests within the framework of effective protection of copyright and defense against threats to freedom of expression that were raised by opponents on the European level. Even the deeply pro-European CDU, the conservative portion of Germany's grand coalition, wants to prevent the use of upload filters at a national level. Maybe the reform will not become so controversial at it appears to be today.

Your Key Contacts



Dr. Constantin Rehaag

Partner, Frankfurt

D +49 69 45 00 12 248

constantin.rehaag@dentons.com