What is the Copyright Directive?

The draft "**Directive on Copyright in the Digital Single Market**" is an important piece of European Union legislation designed to modernise copyright for the digital age.

Current EU copyright laws were passed in 2001 — three years before the launch of Facebook, four years before YouTube and five years before the arrival of Twitter — and are in urgent need of updating to reflect the way in which creative content is used online today.

The proposed new legislation aims to ensure, for example, that individual creators (such as musicians, photographers, authors etc), publishers and performers benefit from the online world in the 21st century. As well as providing three new exceptions (on text and data mining, educational institutions, and cultural heritage organisations) to assist users of copyright works, the proposals offer:

- a new right for press publishers (Article 11)
- fair compensation for publishers
- transparency and contract adjustment mechanisms for authors and performers
- a system to increase the responsibility of internet platforms, such as YouTube and Facebook, for the creative content uploaded on their platforms (Article 13)

The last of these proposals is designed to fix the so-called "value gap" — the yawning disparity between the profits earned by some user upload platforms that pay little or nothing for the use of works such as music and images, and the incomes of those who create the content in the first place.

The proposals were first put forward in 2016 and — following two years of debate and amendment — face a crucial vote in the European Parliament on **12 September**.

However, there has been coordinated opposition across the EU, particularly against Article 11 and Article 13. The campaign has been characterised by misconception and misinformation, including claims that the directive will end the sharing of hyperlinks and introduce censorship. These are myths. Read our explainer — "Articles 11 and 13 – the facts" — on the following pages to find what the text of the directive as presented to the EU Parliament by its legal affairs committee (aka JURI committee) really says:

Articles 11 and 13 — the facts

What is Article 11?

Article 11 of the proposed Copyright Directive creates a **new right for press publishers** that is designed to protect them against the mass exploitation of their content by online service providers, such as news aggregators and others, without remuneration. It is similar to the right long ago granted to broadcasters and film producers and would strengthen their legal bargaining position to help them "obtain fair and proportionate remuneration for the digital use of their press publications" (Article 11, paragraph 1).

What Article 11 isn't

Article 11 is **not a "link tax"**, as claimed by some opponents who say it threatens an individual's ability to share a hyperlink.

In fact, the amended text being discussed by the European Parliament plainly states: **"The rights referred to in paragraph 1 shall not extend to acts of hyperlinking"** (see below).

The JURI draft also states that the press publishers' right **"shall not prevent legitimate private and non-commercial use of press publications by individual users".**

Amendment

Article 11

Protection of press publications concerning digital uses

1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC so that they may obtain fair and proportionate remuneration for the digital use of their press publications by information society service providers.

1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.

2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.

2a. The rights referred to in paragraph 1 shall not extend to acts of hyperlinking.

3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.

4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.
The right referred to in paragraph 1 shall not apply with retroactive effect.

4a. Member States shall ensure that authors, receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers.

What is Article 13?

Article 13 of the proposed Copyright Directive is designed as a **solution to the "value gap"**, ie the gulf between the revenues earned by internet giants that host copyright works — often without consent — and the money received by authors and performers who made those works in the first place. It aims to give creators, authors and right holders better control and remuneration for their work by stating that commercial content-sharing services which host copyright works uploaded by their users (eg music, images) must obtain a licence from the relevant rightsholders or else take measures to prevent their availability.

What Article 13 isn't

Article 13 **isn't "a censorship machine"**

Opponents claim Article 13 will "impose **widespread censorship of all the content you share online**" by "filtering" and "blocking" copyright works. This is simply and demonstrably untrue

- Firstly, the proposals apply only to a narrow type of online sites, ie the commercial platforms whose main purpose is to give public access to copyright works that have been uploaded by users
- Secondly, the content recognition measures such platforms would be required to implement do not — by definition — block unrecognised content. They only recognise work for which the rightsholder has actively provided information.
- Thirdly, the proposals clearly state the measures mustn't stop non-infringing content being uploaded
- So, this just leaves big platforms to recognise — based on information provided by the rightsholder — a likely small amount of copyright content that hasn't been licensed for use.
- Finally, this all comes with the explicit caveat that such measures must balance the fundamental rights of users and rightsholders

Amendment

Article 13

Use of protected content by online content sharing service providers

1. [. . .] In the absence of licensing agreements with rightholders online content sharing service providers shall take, in cooperation with rightholders, appropriate and proportionate measures leading to the non-availability on those services of works or other subject matter infringing copyright or related-rights, while non-infringing works and other subject matter shall remain available.

1b. Members States shall ensure that the implementation of such measures shall be proportionate and strike a balance between the fundamental rights of users and rightholders and shall in accordance with Article 15 of Directive 2000/31/EC, where applicable, not impose a general obligation on online content sharing service providers to monitor the information which they transmit or store.

[. . .]

Article 13 **isn't a "threat to parodies"**

The widespread claim that Article 13 "threatens the sharing of parodies" does not survive an encounter with the facts. Parodies, caricatures and pastiche are already covered by established exceptions to copyright, and Article 13 does nothing to change this. It does, however, go further by suggesting a mandatory complaint mechanism so creators of parodies (and memes – see below — and other uses under exception) can challenge any over-removal of content by the upload platforms.

Amendment

Article 13

2. To prevent misuses or limitations in the exercise of exceptions and limitations to copyright, Member States shall ensure that the service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. Any complaint filed under such mechanisms shall be processed without undue delay. The rightholders shall reasonably justify their decisions to avoid arbitrary dismissal of complaints.

Article 13 isn't **"a threat to memes"**

This is strongly connected to the parody point above and again is false. Firstly, most memes will be covered by an exception such as parody (there are other exceptions, such as for the purposes of 'criticism and review').

Secondly, the Copyright Directive does not place any new restrictions on internet users — the obligations are solely and squarely on the content-sharing services to buy a licence to use copyright works, just as happens in the offline world. If that licence is in place at platform level, internet users are free to upload memes, mash-ups and other UCG with all the confidence of knowing they are covered against liability, which they don't have at the moment (unless they've gone to the trouble and cost of individually clearing the rights themselves).

Amendment

Article 13

1. Licensing agreements concluded by the online content sharing service providers with rightholders shall cover the liability for works uploaded by the users of their services in line with terms and conditions set out in the licensing agreement, provided that those users do not act for commercial purposes or are not the rightholder or his representative.

[. . .]

Article 13 **isn't a threat to Wikipedia**

Despite Wikipedia dramatically taking down its site in several EU countries ahead of the last vote in Parliament, claiming Article 13 threatened to "disrupt the open internet", Article 13 explicitly does not apply to online encyclopaedias. In fact, it applies only to a specific type of online service provider and not to non-commercial services nor those whose main purpose is not providing access to copyright works. The list of services it excludes is long, as highlighted in the text below.

Amendment

[. . .]

(4b) 'online content sharing service provider' means a provider of an information society service one of the main purposes of which is to store and give access to the public to copyright protected works or other protected subject matter uploaded by its users, which the service optimises. Services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all rightholders concerned, such as educational or scientific repositories, should not be considered online content sharing service providers within the meaning of this Directive. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive;

Thank you