



EU Copyright Directive Frequently Asked Questions

In a nutshell...

- Copyright reform is for the benefit of both creators and citizens:
 - Creators will have a say online, no matter how big they are or where they come from.
 - Authors and performers will benefit from increased transparency obligations on their contractual counterparts, a contract adjustment mechanism, and dispute resolution.
 - A principle of fair remuneration and a revocation right for authors and performers are also introduced, big wins for the parliament in trilogue.
 - Authors and performers need article 13 to make these provisions meaningful.
 - Commercial platforms giving access to large amounts of copyright works will need licences.
 - Non-profit platforms, online encyclopedias, open source software platforms and online marketplaces will be exempted.
 - Citizens will be in the clear as licences will automatically cover their uploads.
 - Arbitrary take-downs by platforms will have to stop.
 - Platforms will be prevented from using measures for general monitoring or surveillance and will have to respect rules on privacy and processing personal data.
 - Rules allowing caricature, parody, criticism etc. will continue to apply (e.g. to memes).
 - Freedom of expression and fundamental rights will be upheld for creators & citizens.
 - A complaints mechanism will provide redress, including human review and an independent body.
 - Obligations on platforms to keep unauthorised works off their service - in the case where no agreement is found – will vary based on their type, their audience, their size, the works uploaded, the means available to them and their cost.
 - Small startups will benefit from a light regime altogether (take down, not stay down)
- The final compromise reached in trilogue makes sure the above is clear and safeguards are watertight. It represents years of analysis, debate and compromise.
- The copyright debate underlines how certain operators will abuse their network and customers to skew the legislative process. The EU must show strength and leadership.
- This is about putting people first, establishing a fair & sustainable internet for the benefit of creators AND citizens, and ensuring democratic processes are respected.

Why is copyright important?

Copyright is a liberator and helps all creators make a living. It gives artists and their partners a say in how their works are used. Copyright is a fundamental partner of freedom of expression.

Why is this proposal necessary?

In a nutshell, it's about making copyright fair and sustainable for all. It's about balance in the online world. We embrace the fact that creators and citizens enjoy a unique relationship online. We

also embrace the fact that posting and sharing user-generated content, such as memes, is part of our daily life online. At the same time, we need to rewrite certain rules of engagement online because some large platforms claim that responsibility lies only with the user and the owner of the content, and that can't be right. Europe is taking the lead on these issues worldwide.

Why is this text ok?

One of the main provisions is Article 13 dealing with the value gap between platforms and creators (see more under "What are the numbers" below). The text has significant safeguards:

- Only services providing access to large amounts of copyright protected works uploaded by their users as their main purpose and for profit are affected. Not-for-profit online encyclopaedias (e.g. Wikipedia), not-for-profit educational and scientific repositories, open source software developing and sharing platforms (e.g. Github), online marketplaces (e.g. eBay) or b2b cloud services and services which allow users to upload content for their own use (e.g. Dropbox) are untouched.
- There's a special regime for small start-ups which means they'll be subject to lighter obligations.
- Non-infringing works and other works, e.g. covered by exceptions, must not be taken down.
- The complaints mechanism providing redress applies and it must involve human review.
- Rightholders' requests to services to take action against uploads by users will have to be duly justified, and users will be able to access out-of-court redress mechanisms to settle disputes.

Won't the new rules introduce upload filters?

No - services can't use filters to monitor all content. They can only track content that has been flagged by rightholders. General monitoring is banned and so is arbitrary take-down. When no authorisation has been granted, services need to make best efforts to avoid the availability on their services of unauthorised works notified to them. There is no requirement to install « upload filters » or « monitor all content ». Services may choose to introduce technological tools, but the existing technology only relies on « matching », i.e. cross-checking the data provided by rightholders.

In any case, non-infringing works and other works, e.g. covered by exceptions, are protected as they must not be taken down. The directive introduces a complaints and redress mechanism in case of disputes over removal of content. On top of this, requests to remove content must be duly justified and decisions are subject to human review.

Our main priority is about clarifying copyright and licensing. We have completely embraced the user-generated economy and we urgently need the licensing framework to catch up. Not having a directive is simply not an option for those who have actually gone ahead and worked with user-uploaded platforms to facilitate licensing.

What are the numbers?

99% of music businesses are micro, small or medium sized enterprises. Independents account for 80% of all new releases and 80% of the sector's jobs. As a whole, the cultural and creative sector provides more than 12 million full-time jobs (7.5% of the EU's work force), and creates €509bn in value added to GDP (5.3% of the EU's total GVA). Copyright-intensive sectors make a positive contribution to the EU's trade balance with a net export of €15bn. Without copyright, it would be impossible to take risks and help artists have a voice. They are also a vital part of the local economy, creating jobs that can't be relocated elsewhere in the world and that have a higher percentage of youth employment than other sectors.

Today there is a market failure. On the one hand, digital music revenues now account for 54% of total industry revenues, compared to 30% for physical sales. On the other hand, in 2017, with 272 million users, audio streaming services (paid & free) generated \$5.569bn for creators, while video streaming services, such as Youtube, with 1.3 billion users, generated only \$856m.

Audio streams (Spotify, Deezer, etc.)

272m users
\$5.569bn to creators & rightholders

vs

Video streams (Youtube etc.)

1.3bn users
\$856m to creators & rightholders

Isn't this about getting more money for big artists and major music companies?

It's the opposite. We need a level playing field for all creators of today and tomorrow, big and small, and this can be done only by removing the existing friction in the licensing market. This directive will introduce fairness and balance between big platforms and small creators. Today, only the bigger actors have a say in how their content is used online. There is a market failure which needs to be fixed so that revenue generated around creative works can be shared fairly with smaller artists and their partners.

Of course it doesn't mean all platforms have to pay the same as every single service is different. It's more about being able to have a normal negotiation with platforms providing access to creative works and making sure all services play by the same rules. It is vital that the position on copyright and licensing at least is clarified. We want more services to be able to enter the market and compete with established players. If things don't change, one service will continue to dominate and stifle the market for other services and start-ups. That's what monopolies do.

What will the new rules do for artists and authors?

They benefit from new rules obliging their contractual partners to pay them fairly and transparently. They will also have access to dispute resolution and a contract adjustment mechanism in certain circumstances, as well as revocation of rights. Two of these provisions (fair remuneration and revocation of rights) were won by the parliament in the final trilogue. The new rules will be meaningless if they are not also accompanied by Article 13. That's why it's important the whole directive goes through.

Is it going to be the end of the internet as we know it?

No. Article 13 only covers user-uploaded services whose main purpose is to make a profit from providing access to large amounts of creative works. Others are excluded (see above "why is this text ok?") passive platforms, as well as open source software, online marketplaces, non-profit online encyclopaedia and scientific repositories etc. In addition, users can rely on the following exceptions which will be mandatory: uploading contents quotation, criticism, review, use for the purpose of caricature, parody or pastiche.

Won't it stop memes?

No – memes are safe. Rules allowing caricature, parody, criticism etc. will continue to apply to memes. The text only applies to certain for-profit platforms, not to the internet as a whole. On top of that, a licence given to a platform will also cover its users. If anything, the legislation will only positively affect the creation of memes. A new complaints mechanism will also provide redress for users under EU law, including human review and access to an independent body to assert their use of copyright exceptions.

Won't Wikipedia threaten to switch off again?

It already has. Wikipedia and others are specifically exempted but say they need to object because the new rules are against an open internet. Wikipedia's German platform already said they would switch off again as a threat before the vote, so we all have to stand up and be counted. This is not just about copyright. Every time there is any attempt to introduce any level of control or measures to be taken, whether it comes to data protection, copyright, hate speech, trafficking etc., there is a massive hand washing exercise and claims of attacks against freedom of expression, against start-ups, end of the internet etc. The rules against general monitoring and surveillance are expressly incorporated in the current text.

What about the counter lobbying this time?

Gatekeepers are change averse – they fight very hard to defend their kingdom. Beneath clever messages about innovation lies a deeply conservative and defensive approach. Millions are invested in lobbying

every year to defend the status quo. Parliamentarians were subject to a lot of anti-copyright lobbying before (more on this [here](#)) and there were already [threats from digital rights groups](#) in the summer about shaming Parliamentarians who vote yes to the proposed reform of copyright. Now [the pledge19 campaign](#) aims to force MEPs to vote against the directive with the following message: “We will only vote for politicians who vote against Article 13 and say no to upload filters”. The website shows the name and face of MEPs who did and did not pledge to vote against. Google may also try and [influence the press](#) again. Certain actors are very skilful in aligning citizens’ interests with their own commercial interests. We are concerned that this creates a false divide between creators and citizens.

What we have seen since the September vote is a new chapter - unprecedented in terms of advertising and messaging by Google/YouTube to its own subscribers (see [here](#) and [here](#)). It has also been revealed ([here](#) and [here](#)) how YouTubers are being paid to protest. No media or broadcast operator could use their network in this way to promote political or other messaging or advertising. This is about competition as well as ethics. How can it be that these operators should be able to secure an unfair competitive advantage by using their own platform and scale to carpet bomb people (not least children) with their own agenda? It would be prohibitively costly for those with different views to get even close to advertising at this scale. An [open letter](#) to YouTube has asked for access to their network to send emails to YouTubers and use banner ads in the same way YouTube has.

Why can’t we just get rid of Article 13 or modify it again?

Voting against article 13, or seeking to change it, would not only make things worse for creators, but also for citizens and smaller platforms. If platforms don’t share revenues properly, improved transparency and fairness (Articles -14 to 16a) can never have full effect. Second, citizens would lose protection as licences wouldn’t cover their uploads, and they would still be responsible. Exceptions would not be mandatory, so memes would not be safer. Smaller platforms would be worse off as they would lose the benefit of flexibility based on their type, their audience, their size, the works uploaded, the means available to them and their cost. Small start-ups would lose their special regime. The reality is that those who stand to benefit most from deleting Article 13 are the ones who want to hold onto the status quo and stifle competition such as big incumbent platforms, and that surely can’t be the right outcome.

We also need to remember that years have been spent on drafting this. Various alternatives have been examined and rejected along the way, mostly because they would make the status quo worse. In addition, this directive is a legislative and political package. Opposing or amending Article 13 would be tantamount to voting against the directive, as the directive would never see the light of day.

What is the bigger picture?

It’s all about balance in the online world – it’s not just copyright. The EU is taking the lead in many areas - fake news, data protection, making sure public opinion can’t be manipulated and ensuring online operators can’t abuse smaller suppliers. Other tools to recalibrate the digital market are in the pipeline, such as a new regulation to tackle the “power gap” between platforms and smaller players. It’s not a coincidence that these issues are being tackled now and Europe’s leading worldwide.

The bigger economic picture is also important in this debate. Copyright reform is a fundamental part of this general desire to see more balance in the online world, and also to create new provisions for artists and writers in their relations with labels and publishers. It is vital this reform goes through; otherwise all of the goals flagged above will fail.

The European Parliament should decide itself what it can and can’t discuss. The debate is about copyright today, but tomorrow it will be about elections, unless Europe establishes itself as a true leader and sets out clear boundaries.

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