



NEW COPYRIGHT DIRECTIVE APPROVED BY THE EU PARLIAMENT

APRIL 2019

On 26 March 2019, a fierce battle took place in the arena of the EU Parliament. Arguments flowing back and forward resulted in a close majority in favour of the supporters of the new Directive (EU) 2019 of the European Parliament and of the Council on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (hereinafter: the **New Copyright Directive**). You may find the debate [here](#) and the final text as adopted [here](#).

The fact that the European Commission launched the proposal back in September 2016 with a legislative process lasting nearly two and a half years and only 348 Members of the European Parliament (hereinafter: MEP) voting in favour, while 274 MEP voted against and 36 MEP abstained, illustrates the controversial nature of the New Copyright Directive. This led to the adoption of the current text containing merely 32 articles to be accompanied with almost three times that amount of recitals, i.e. 86.

Closing the value gap

The biggest battle was fought over the new obligations and the personal scope of Online Content-Sharing Service Providers (hereinafter: OCSSP). When reading between the lines of the personal scope, the thresholds and the exemptions, it seems that the new rules on the internet are tailored towards big information society service providers such as YouTube, Facebook and similar platforms. The goal of the New Copyright Directive is clear: the EU only intends to regulate the internet to the extent necessary to tackle the famous “*value gap*” and ensure appropriate remuneration for rightholders for the use of their protected works on the internet.

Under the New Copyright Directive, an OCSSP means “*a provider of information society service of which the main or one of the main purposes is to*

store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes”.

Despite clear indications, the New Copyright Directive still leaves room for interpretation of this new key concept. It will be interesting to see how courts will define the boundaries and interpret the open notions like “*main*” and “*large*”. What is certain, is that activities of providers of services like Wikipedia (online encyclopaedia), Dropbox (online storage), eBay (online marketplace) and Telenet or Belgacom (electronic communication services) are not included in the scope as they are explicitly excluded for the reason that they do not have as their main purpose to give to the public access to a large amount of copyright-protected works.

The new obligations on OCSSP flowing from the New Copyright Directive include amongst others that OCSSP must now obtain an authorisation in exchange for an appropriate remuneration from the rightholders in order to communicate the protected works to the public. In the event that they cannot obtain such authorisation, they must demonstrate best efforts to obtain it, demonstrate best efforts to make unavailable unauthorised content for which relevant and necessary information was provided and organise an expeditious notice, take down and stay down mechanism for unauthorised content. The latter must include an effective and expeditious complaint and redress mechanism with a human review in the event of disputes. At the same time the OCSSP must refrain from general monitoring and over-blocking.

Other key features of the New Copyright Directive

Besides the above-mentioned, other key features of the New Copyright Directive include:

- New exceptions and limitations covering text and datamining, the use of works in digital and cross-border teaching activities and copies made for the preservation of cultural heritage
- Measures to ensure a wider access to out-of-commerce works by providing the grant of non-exclusive licences to cultural heritage institutions for non-commercial purposes, together with measures to ensure transparency and stakeholder dialogue
- Measures to facilitate collective licensing and rules governing collective management organisations offering such collective licenses

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- Negotiation mechanism to assist parties facing difficulties related to the licensing of rights for the purpose of making available audiovisual works on VOD platforms
- New publisher's rights with regard to online uses of their press publications
- A right for authors and performers to receive information as well as appropriate and proportionate remuneration when they license or transfer their exclusive rights
- A right of revocation for authors and performers in case of a lack of exploitation after transferring or licensing their rights on an exclusive basis

Conclusion

The journey is far from over. The Council of Ministers still has to give its final opinion over the New Copyright Directive and it is expected that it will accept the final text on 9 April 2019. After that, the text will be published in the *Official Journal* and the Member States will have 2 years after the date of entry into force of the directive to transpose it into their national laws.

The rules laid down in this new directive aim at creating a fair balance between access to creative works and appropriate remuneration for the rightholders. It would be in the interest of all stakeholders that users and rightholders come to a mutual understanding and conclude the necessary licenses to keep contents available while at the same time ensuring appropriate remuneration of the rightholders, and ultimately prove the sceptics wrong.

We will keep monitoring the progress of the New Copyright Directive and its implementation and keep you updated.