
European Union: New Copyright Directive

On April 15, 2019, final approval was granted by both the European Parliament and the Council of the European Union to The European Union Directive on Copyright in the Digital Single Market (the “Directive”), giving EU member states two years to codify the new Directive into their own national laws. [More](#)

On April 15, 2019, final approval was granted by both the European Parliament and the Council of the European Union to The European Union Directive on Copyright in the Digital Single Market (the “Directive”), giving EU member states two years to codify the new Directive into their own national laws.

This new Directive contains two controversial provisions that are likely to have a significant impact on the way the Internet functions, particularly news aggregator sites like Google News and Reddit, and sites featuring user-generated content such as YouTube and Facebook.

The two most relevant provisions in the Directive aim to 1) help content creators seek compensation from aggregators and websites that host and distribute content, and 2) prevent unauthorized users from uploading copyrighted content.

Articles 15 and 17 of the new Directive aim to protect press publications and content creators by making online platforms directly liable for content uploaded to their sites and giving publishers the right to negotiate licensing deals for use of their content at news aggregator sites. These provisions have been widely referred to as the “upload filter” and the “linktax.”

The “upload filter” is intended to limit the unauthorized copying of protected content by removing the safe harbor for online platforms. Such platforms may now be required to ensure that their users do not infringe copyrights of others. While the Directive does not specifically require filters be used, it is widely expected that these regulations will require platforms to implement content filters similar to Google’s [Content ID](#) system that it developed for YouTube. Development of content filters is extremely expensive, with Google having estimated an expenditure of more than US \$100 million on the

technology since its inception. Content filters are also burdensome for rights owners and imperfect at identifying unauthorized uses of content.

Under the Directive, content sharing services will be liable for infringement if they cannot show that they have made efforts to obtain authorization from the copyright owner, made some sort of filter available, or acted expeditiously to remove unauthorized content and taken steps to prevent it from being uploaded again in the future.

These new rules would not apply to companies based in the EU that have been in business for fewer than three years, which have annual turnover of less than €10 million, and which have fewer than 5 million monthly unique visitors to their site. Even these new companies, however, are required to act expeditiously to remove content upon receipt of a sufficiently-substantiated notice of infringement.

The use of filters is likely to result in more content being blocked than is officially required under the Directive. Because of practical limitations, it will be easier for platforms to block more content than to develop the technology or employ the personnel to review and properly filter all content before it is posted by users.

The Directive also has a “link tax” that limits how much of a copyrighted work a site may publish, even when summarizing and linking to the article at a third-party website. This “tax” would be in the form of a license required to publish headlines and brief excerpts from news stories from European content publishers such as newspapers and magazines. Any post that contains more than a “snippet” from an article must be licensed from the copyright owner. Each EU member state would have to define how much of the original work would constitute a “snippet.”

Rather than choose to license their work to sites that republish them (or use more than the “snippet” allowed in the Directive), content creators can also elect to ban links to their articles altogether.

Google has warned that this “link tax” could result in its Google News service being shuttered in Europe. It could also impact services like Facebook and Twitter, as they could be held responsible for the posting of articles by their users.

Of course concerns about the “link tax” and “upload filter” required under the language of the Directive could be allayed once member states implement the Directive, as that codifying language is likely to clarify what sort of filters will be required, how much is too much when uploading or linking to articles

from third parties, and what liability non-commercial actors may have when publishing such links or content to their own websites.

We will continue to monitor the implementation of the Directive and will update our clients once the true impact of the new Directive is clearer. –[TM](#)

Primary Contacts

Todd Martin