



A Closer Look at the European Union Copyright Directive

How it affects
law libraries and
information sharing.

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Earlier this year, the European Parliament passed the Directive on Copyright in the Digital Single Market (Directive 2019/790) to reform copyright law in the European Union (EU). The Copyright Directive directly

affects EU citizens, content creators, and online platforms, but it will also affect internet users, companies, and libraries outside of the European Union, similar to how implementation of the EU General Data Protection Regulation (GDPR) has affected internet users around the world.



Article 17 (formerly Article 13) imposes liability on service providers for distributing copyright-infringing content uploaded to their platforms by users. The directive requires online platforms such as YouTube to obtain authorization from rights holders prior to uploading works protected by copyright; otherwise they risk liability for copyright infringement.

TIMELINE: PROPOSAL, APPROVAL, AND IMPLEMENTATION

- **September 2016:** Legislative proposals aimed at modernizing the EU copyright framework presented to the Commission
- **February 2019:** Council of the European Union, European Parliament, and European Commission agreed to the new directive
- **March 2019:** European Parliament voted to approve final text of the directive
- **April 2019:** Council of the European Union endorsed the directive
- **May 2019:** Directive published in *Official Journal of the European Union*
- **June 2021:** Deadline by which EU member states are required to transpose the directive into their national laws

How Does the Copyright Directive Adversely Affect Libraries?

Two controversial provisions—opposed by libraries, internet users, and online companies—made it into the final text of the directive:

Restricted Access to News

Article 15 (formerly Article 11) permits publishers to charge news aggregators for using news articles for up to two years. The provision is intended to encourage news aggregators and media monitoring sites to enter into licensing arrangements with copyright owners. If companies such as Google (with its Google News app) do not enter into licensing agreements with publishers, they will need to reduce the amount of content displayed in search results, which will hinder the ability of internet users to efficiently and freely gather news.

Substantive text snippets and preview images provide necessary context to assist internet users with quickly

identifying whether certain articles are relevant and worth taking a closer look. Although Article 15 does still allow for “the use of individual words or very short extracts of a press publication,” the provision does not offer any guidance on the length of snippets permitted.

Law librarians are frequently asked to conduct news searches on recent developments and find news articles about certain topics or issues. Right now, librarians can rely on Google News to quickly skim through headlines, preview images, and read snippets to identify relevant articles. Once this directive is implemented, librarians likely will need to rely on subscription databases that license content from the publishers instead. Examples include Access World News, Factiva, and Lexis News. But many subscription databases do not add content in real time, whereas Google News currently provides access to content pulled from a wide range of news sources within the past hour, or even the past few minutes.

Article 15 will impede our ability to share breaking news and information and reduce the usefulness of free sources for gathering news.

Encroachment on Fair Use

Article 17 (formerly Article 13) imposes liability on service providers for distributing copyright-infringing content uploaded to their platforms by users. The directive requires online platforms such as YouTube to obtain authorization from rights holders prior to uploading works protected by copyright; otherwise they risk liability for copyright infringement. Where no authorization has been obtained, online platforms will be held liable for distributing copyrighted works to the public unless they can show that they “made best efforts to obtain an authori[z]ation” and “acted expeditiously” to take down the content upon being notified of copyright violations.

In the United States, the Digital Millennium Copyright Act (DMCA) requires online hosts to remove copyright-infringing content upon receiving a DMCA takedown request to avoid

liability. In contrast, Article 13 imposes more obligations on online platforms *before* the content is uploaded, rather than just requiring them to respond quickly to takedown notices *after* the content is uploaded. Although the directive does not explicitly require upload filters, content-sharing platforms will likely need to start relying on automated systems to filter content uploaded by users to avoid liability.

Exceptions still exist for quotation, criticism, review, caricature, and parody, which is similar to the fair use exception in U.S. copyright law (17 U.S.C. § 107). However, automated filtering systems will inevitably filter and block content that is not infringing and that fall within these exceptions from ever being posted online. The provision weakens the ability of users to share creative works that take advantage of these exceptions and will lead to blocking some speech before it occurs.

Article 17 does not strike an appropriate balance between the rights of copyright owners and the rights of individuals. The provision will prevent the free exchange of information and impede on users' rights to receive information, which goes against the core tenets of libraries.

How Does the Copyright Directive Benefit Libraries?

The directive does include some provisions and exceptions that are favorable to libraries:

Text and Data Mining Exception

The directive includes a new exception that allows libraries to engage in text and data mining of works for the purposes of scientific research. Article 3 provides a mandatory copyright exception for research organizations (including university libraries) and cultural heritage organizations (including publicly accessible libraries).

Text and data mining allow researchers to use automated techniques to analyze digital text and data to uncover and identify patterns, trends, and correlations across large datasets. Text and data mining generally require copying a large volume of copyrighted

Another exception that is good news for libraries is set out in Article 6, which allows cultural heritage institutions to make digital reproductions of works in their collections for preservation purposes. Preservation has always been a key mission for libraries.

material. The content is then organized and analyzed using computer programs. For example, with text and data mining, a researcher can efficiently count how often a particular word or term is used throughout a large volume of documents and then draw inferences on how the usage of that term or phrase has changed over time.

Licensing agreements for electronic resources often prohibit automated searching, scraping, or downloading content, but Article 7 ensures that publishers cannot use a contract to circumvent this exception.

Article 3 will have a positive effect on scientific and scholarly research as well as in the development of artificial intelligence.

Preservation Exception

Another exception that is good news for libraries is set out in Article 6, which allows cultural heritage institutions to make digital reproductions of works in their collections for preservation purposes. Preservation has always been a key mission for libraries. This provision will allow libraries to ensure that both history and culture can continue to be documented and maintained.

Publishers and copyright owners will not be able to circumvent this exception either, thanks to Article 7.

Digitization of Out-of-Commerce Works

Articles 8-11 make it easier for cultural heritage institutions to obtain licenses to digitize and make out-of-commerce works available to the public. Out-of-commerce works are works that are still protected by copyright but are not commercially available. Out-of-commerce works include both out-of-print works and unavailable digital-first works.

These provisions empower libraries to ensure that they can provide continued access to works even if they are no longer available for sale.

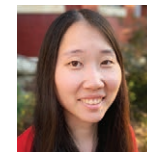
What Can the U.S. Learn from the EU Directive?

The United States needs to modernize and adapt its own copyright law. Even though the EU Copyright Directive does not have legal force in the United States, the effects of this directive will be felt outside of the European Union as EU member states begin to transpose the directive into their national laws. When considering how to adapt U.S. copyright law to the digital age, Congress should consider carving out similar exceptions for libraries not yet addressed in the library exception (17 U.S.C. § 108) and also impose a provision similar to Article 7 to explicitly prevent copyright owners from using contracts or licensing agreements to circumvent either the library exception or other limitations on exclusive rights. ■

EXTRA

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