

What is the Copyright Directive?

The Copyright Directive is a piece of legislation that was finally agreed by the European Union in April 2019. It contains a raft of measures which aim to strengthen Europe's copyright law, particularly in relation to online activity. The EU last legislated on copyright back in 2001 - long before Facebook, YouTube and Twitter even existed – and the Directive seeks to modernise copyright law for the digital age.

[You can read the full text of the Copyright Directive here.](#)

Does the SoA support the Copyright Directive?

Yes, because it will strengthen Europe's copyright regime and the rights of authors. Most importantly, it contains a number of proposals which will give authors new rights in publishing contracts. This includes a right of reversion, a bestseller clause and a new obligation for publishers to provide regular accounting information to authors. Some authors and other creators will also benefit from the new press publishers' right and measures to address the value gap on online platforms. See 'Why the Directive is good news for authors' below for more information.

Why has the Copyright Directive proved so controversial?

The Directive has been heavily opposed by large tech companies such as Google and Facebook. These online giants have spent millions of pounds in lobbying politicians in Brussels and have coordinated an effective campaign against the Directive. Much of this campaign has been characterised by scaremongering and misleading information. The reality is that the Copyright Directive will place new obligations upon tech giants to ensure that the content uploaded onto their platforms does not infringe copyright, which is why they are opposed to its introduction. Our view is that such obligations are necessary to ensure that creators are fairly rewarded for the use of their work.

The first draft of the Directive was published in September 2016, and opposition from the likes of Google and Facebook has meant that getting it passed has been a long and arduous process. MEPs voted to reject the Directive in September 2018, and it has been subject to various revisions along the way. We are relieved that it was finally adopted in the spring of 2019.

So does that mean the Copyright Directive has now passed into UK law?

No. Directives do not automatically come into force in EU member states – they need to be 'transposed' into national law by national governments over a two-year period. The Copyright Directive was published in the EU's official journal on 17 May 2019, initiating the two-year implementation period.

But aren't we leaving the European Union...?

We cannot say for certain whether or not the UK will transpose the Directive. In his letter to the Society of Authors in May 2019 in response to our letter about ebook piracy, Business Secretary Greg Clark said: 'as you will be aware, the negotiations on the EU Copyright Directive have recently concluded. Once implemented, this will place liability on platforms to take action to remove infringing copies of work, once notified'.

However, the final outcome of the Brexit negotiations may change this. Should the UK leave the EU without a deal, the Directive is unlikely to be implemented. If the UK leaves the EU with a deal, but with an implementation period which ends before the Directive's implementation deadline in 2021, the Directive may not be implemented. Either way the SoA is now lobbying in the UK to ensure that these important provisions are introduced in domestic law.

Why the Directive is good news for authors

The most important provisions in the Directive for authors are contained within articles 19, 20 and 22. These articles fall within Chapter 3 of the Directive, entitled 'Fair remuneration in exploitation contracts of authors and performers'.

Article 19: transparency obligation

Article 19, known as the 'transparency obligation', will force publishers to be more transparent when sharing information with authors about the exploitation of their works. This information will show authors where their work has been used and who has benefitted from it.

The Directive states that authors and performers must 'receive on a regular basis, at least once a year... relevant and comprehensive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights or their successors in title, notably as regards modes of exploitation, all revenues generated and remuneration due.'

This information must be 'provided in a manner that is comprehensible to the author' and 'should allow the effective assessment of the economic value of the rights in question'. It includes rights that have been sub-licensed. This additional transparency will enable authors to establish how successful publishers have been at exploiting their rights and make more informed decisions in the future.

Article 20: contract adjustment mechanism ('bestseller clause')

Article 20 of the Directive introduces a 'bestseller clause' into legislation. This would apply in exceptional cases where a work sells considerably better than expected and would ensure that the author is entitled to a fair share of the additional profits.

The Directive specifies that this ‘remuneration adjustment mechanism’ will apply in cases where ‘the remuneration originally agreed under a licence or a transfer of rights clearly becomes disproportionately low compared to the relevant revenues derived from the subsequent exploitation of the work’. This might take the form of an escalator, whereby the author would receive a higher percentage of publisher revenue on the additional sales.

Article 22: right of reversion

Article 22 introduces a right of reversion for authors. This means that if a publisher is found not to be exploiting the rights it has been granted, authors will be permitted by law to have these rights reverted. The Directive states that ‘after a reasonable period of time has elapsed, authors and performers should be able to benefit from a mechanism for the revocation of rights allowing them to transfer or license their rights to another person’.

After reclaiming their rights, authors would be free to self-publish their work or offer it to another publisher. This right goes hand in hand with the transparency obligation, which will give authors a much clearer idea of whether or not their rights are being exploited.

There are other proposals in the Directives which some authors will benefit from. These include Articles 15 and 17, the most controversial parts of the Directive (confusingly, these were known as Articles 11 and 13 before the Directive was passed). Both measures seek to impose greater regulations on online platforms.

Article 15: press publishers’ right

Article 15 will force ‘information society service providers’ (ie news aggregators such as Google News) to acquire licences from ‘press publications’ (ie online news sites) before displaying snippets of their content. As things stand large tech firms such as Facebook drive considerable traffic to their sites through their ability to share extracts of articles from news sites. Despite benefiting commercially from the use of this content, they have not acquired authorisation from the author or publisher. Article 15 will change this and force them to get a licence from news sites before sharing their content.

Crucially, Article 15 contains the following statement: “Member States shall provide that authors of works incorporated in a press publication receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers.” So authors will benefit as well as publishers.

The campaign against Article 15 from large tech companies misleadingly referred to it as a ‘hyperlink tax’. However the text of the Directive makes clear that hyperlinking is explicitly excluded from the proposals, as are ‘individual words or very short extracts of a press publication’. Online encyclopaedias such as Wikipedia will also be excluded.

Article 17: addressing the ‘value gap’

Article 17 will force ‘online content sharing services’ (such as YouTube or Instagram) to ensure that the content appearing on their sites does not infringe copyright. These platforms which host copyright works uploaded by their users must obtain a licence from the relevant rightsholders or else take measures to prevent their availability.

Article 17 of the proposed Copyright Directive is designed as a solution to the “value gap”, ie the gap 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 greater control over and remuneration for their work.

Such licences are not required where content is used for the purpose of quotation, criticism, review” or ‘caricature, parody or pastiche’ – so online memes and gifs are excluded.

Article 17 was attacked by opponents as it could result in ‘upload filters’ being installed on sites like Instagram on YouTube, therefore restricting the availability of content. In fact the Directive does not mention upload filters and makes clear that substantial dialogue will need to take place between governments, tech companies and rights holders to establish how the proposals will work in practice.

One of the more ludicrous arguments against the Directive is that it amounts to censorship and a limit on freedom of expression. What the Directive will actually do is limit someone’s ability to share other people’s ideas and content without the creator being properly remunerated. Not allowing creators to make a living from their work is the real threat to freedom of expression and the free flow of information online. Copyright is founded on the principle that authors and other creators own the rights to their works – the Directive ensures that this principle extends to the online world as well as the offline one.