

Alert | Intellectual Property & Technology



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EU Parliament Approves Heavily Disputed Copyright Directive

On March 26, the parliament of the European Union approved the “Directive on copyright in the Digital Single Market”, one of the most heavily disputed legislative acts in EU history. The Directive now has to be approved by the member states in the European Council, which is usually a formality (and will possibly happen on April 9).

First published as a draft in 2016 as one of the first activities in the EU’s Digital Single Market strategy, the Directive has become infamous in recent months due to the almost unparalleled controversy about, mainly, its Articles 11 and 13 (which in the final text became Articles 15 and 17). These provisions introduce a new neighboring right of press publishers for the online use of their publications by news aggregators such as social media platforms and search engines (Article 15), and oblige commercial website providers that allow users to upload and share content to take steps to prevent the unauthorized upload of copyrighted material (Article 17).

In particular Article 17, criticised by adversaries as an “upload filtering mandate” and “internet censorship”, had mobilized fierce opposition by internet companies, free speech activists and internet users, culminating in protests and demonstrations in cities such as Berlin and Munich before the Parliament vote. Proponents of the Directive, among them movie studios, record labels and other content owners as well as collecting societies, see it finally closing the “value gap” between rights holders and platforms, and argue that tech companies were previously held to only the lowest standards of diligence.

In any case, the Directive is likely to mark a significant shift from the currently predominant copyright policy of “notice and take down”, which is also in place in the United States.

The Directive was approved by 348 votes in favor, 274 against (and 36 abstentions), in the form of the compromise reached February 13 in the last trilogue negotiations – including Articles 15 and 17. Under Article 17, “online content sharing service providers” are liable for unauthorized uploads of copyright protected content unless they can prove that they have made best efforts, first, to obtain a license for such content, and second, to ensure that content is unavailable if they have been advised accordingly by rights holders. Many say the only way this latter obligation (from which new platforms, online for less than three years, with an annual turnover < EUR 10 million are exempt) can be satisfied is by using an upload filter, even if the Directive does not specifically require it.

The Directive also establishes an EU-wide right of authors and performers to receive appropriate and proportionate remuneration for exclusive licenses, and to this end they also have the right to ask, at least once a year, for disclosure of information on the exploitation of their works from licensees or sub-licensees.

Assuming the Directive will be approved by the European Council, member states will have two years after official publication to implement the Directive into national laws. It remains to be seen how they will use the discretion left by the Directive.

Further information: EU Parliament [press announcement](#) and the [final adopted text of the Directive](#).

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