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The EU's Directive on Copyright in the Digital Single Market

by Caroline Winter | 18 October 2019 | English, Observations | 0 comments



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This observation was written by Caroline Winter.

At a glance:

Title	Directive on Copyright in the Digital Single Market
Creator	European Parliament
Publication date	26 March 2019
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What is the Policy?

On March 26, 2019, the European Parliament adopted the Directive on Copyright in the Digital Single Market, legislation intended to update copyright laws for the digital age across the European Union. The Directive was approved by the Council of the European Union and came into effect on June 7, 2019. Member States now have two years to write the Directive into national law.

The intent of the Directive is to protect the rights of content creators and copyright holders and facilitate access to content. The legislation has support from content creators and the music and film recording industries, but has faced widespread international protest from citizens, news media, the tech industry, legal experts, and human rights advocates (Kaminsky 2019). Two articles in the directive—Articles 15 and 17—are particularly controversial because of their potential to limit access to information and how it can be used and reused. In March, a vote to delete these two articles was defeated by a very small margin due to votes that were made in error (SPARC Europe 2019c).

Article 15 (formerly Article 11) allows publishers to charge a fee for the use of their content—even snippets of it—such as in news aggregation services like Google News. The intent of this article is to ensure that content creators are remunerated for their work, but its critics argue that, rather than pay a “link tax,” aggregators will limit services or display free content only, which would limit the free transmission of information and potentially drive smaller media outlets out of business (Lehrman and PC 2019; Vincent and Brandom 2018).

Article 17 (formerly Article 13) puts the onus on content sharing platforms to prevent the dissemination of copyrighted material. Although Article 17 does not specify how this should be done, its critics note that the sheer amount of material to be screened calls for an automated process, probably some kind of “upload filter.” Because of technical limitations and the potential legal costs of copyright infringement, these filters would likely block more content than necessary, limiting what users would be able to post online (Lehrman and PC 2019; Vincent and Brandom 2018).

The Directive is expected to face numerous legal challenges as Member States interpret and implement it in their national laws. In late May, Poland challenged the legislation on the grounds that it amounted to “preventive censorship,” a practice that is barred by the Polish constitution and EU treaties (Liptak 2019). The challenge calls for Article 17 to be amended drastically or removed from the legislation completely (Doctorow 2019). In September, Czechia’s Pirate Party called upon Czech leaders to add its voice to Poland’s challenge (Fraňková 2019).

The French parliament adopted copyright legislation in accordance with the Directive in late July, becoming the first country to do so (*The Local France* 2019).

How has the policy been covered in the press?

The development of the Directive and its adoption by the European Parliament has been widely covered in European and international press. Much of the coverage focuses on its potential impacts on business, such as in [The Wall Street Journal](#) and [Bloomberg](#).

How has the broader academic community responded?

An international consortium of universities and university libraries, library associations, and advocates for Open Scholarship, including Creative Commons, Science Europe, and SPARC Europe, lobbied to have Articles 15 and 17 deleted. They succeeded in amending these and other articles to include exemptions for research and cultural heritage institutions and scholarly communities (SPARC Europe 2019a, 2019b, 2019c).

How does the Policy affect Open Scholarship as a Whole?

The effect of the Directive on information exchange outside the EU, and on Open Scholarship, remains unclear (Boulogne 2019). Some critics predicted the death of “meme culture” and the internet as we

know it (Vincent and Brandom 2018). Others suggest that providers might simply block their services in Europe, as some did after the introduction of the General Data Protection Regulation (GDPR) (European Commission n.d.; Vincent and Brandom 2018). It is also unclear how legal challenges will be handled, and under what authority (Kaminsky 2019).

In late September, Google announced that, when France's new copyright legislation comes into effect in October, it will not pay for content snippets in France, and will instead display only linked titles (Horowitz 2019).

Although the Directive applies to EU Member States, international standards for technology often follow the EU's lead, so this legislation could inform similar legislation in North America and throughout the world (Kaminsky 2019; Loucaides 2019).

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