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# The new EU Copyright Directive

## Parliament text passed 12 September 2018

### Executive Summary

On 12<sup>th</sup> of September, the European Parliament voted on the Directive on Copyright in the Digital Single Market. This was a huge step forward in the fight for fair remuneration for creators online. The Directive now moves to the next and final step in the legislative process, which involves discussions among the European Commission, the Parliament and the Council of the European Union, on the final version of the text.

### Background

The Directive was originally proposed by the European Commission in 2016. Among the proposals was Article 13, which requires user generated content sites (such as YouTube) to have a license from rightsholders for content, and to cooperate with rightsholder to ensure non-licensed content is not available on their platforms. Article 11 created a new neighbouring right for press publishers, allowing them to obtain remuneration each time a written publication is shared via an aggregator (the so-called “link tax”).

The 12 September vote at Parliament came after this summer’s complicated events concerning the first round of discussions on the Directive. On the 21<sup>st</sup> June, JURI (the European Parliament’s Committee on Legal Affairs) voted on a compromise text. However, its negotiating mandate (the ability to bypass MEP approval and negotiate the final version of the bill) was rejected by the Parliament on the 5<sup>th</sup> of July, due to a huge lobbying campaign organized by media platforms and tech companies. This meant that the full text of the Directive needed to be discussed and voted on by the full European Parliament plenary and that Members of the European Parliament (MEPs) or political groups could propose amendments to the text. It also opened the text to amendments at the Parliamentary level, and indeed Parliament received 158 amendments, many of which affected Articles 11 and 13.

### The Directive

On the 12<sup>th</sup> of September, MEPs voted in favour of the Copyright Directive, with 438 supporting and 226 rejecting votes, with 39 abstentions. The new, slightly changed text of Article 13 declares that online content sharing service providers (such as YouTube) perform an act of communication to the public and must have in place fair and appropriate licensing agreements with rightsholders. These agreements shall cover their liability for works uploaded by the users. Platforms must also “cooperate” with rights holders to find measures ensuring non-authorized protected works are not available.

Article 13 is a huge step forward in solving the problem of transfer of value. However, small and microenterprises, non-commercial services such as online encyclopaedias (e.g. Wikipedia), and educational or scientific repositories will be exempt from these obligations, as will content already subject to another copyright exception.

Article 11 concerning press publishers' neighbouring right has also been adopted, with little amendment. It establishes that press publishers will receive fair remuneration for the digital use of their publications by service providers, but this shall not prevent legitimate private, non-commercial use of press publications (i.e. "hyperlinks which are accompanied by individual words" can be published).

Finally, the so-called "transparency triangle" (under Articles 14-16) was also adopted. The Directive declares the right to fair remuneration for authors and performers for every exploitation of their work, including online, and the right to receive information on such exploitation at least once a year, although specific obligations may be adjusted relative to the revenue generated by the work (e.g. if the obligation is prohibitively expensive in comparison to the revenue, provided that transparency is maintained). It also introduces a contract adjustment mechanism if remuneration is disproportionately low when a collective bargaining agreement is not in place. This is a huge development for authors to have more control over the use of their works and the remuneration they receive. It is important to note for our members that part of this transparency obligation specifically exempts organizations which are subject to the collective rights management directive of 2014.

The official press release of the European Parliament can be found on the following link: <http://www.europarl.europa.eu/news/en/press-room/20180906IPR12103/parliament-adopts-its-position-on-digital-copyright-rules>

The text of the newly adopted directive along with the amendments can be read here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0337+0+DOC+PDF+V0//EN>

## Next Steps

Now that Parliament has adopted its text, triilogue negotiations between the Parliament, the Council of the European Union, and the European Commission will begin in order to agree on the final version that will be adopted. This is expected to conclude in early 2019. Once the Directive is adopted, all EU Member States will be required to update their domestic laws, within a certain timeframe, to meet the Directive's requirements.