



May 2019

The EU Copyright Directive – Controversial Policing of Online Copyright

Background

Recently, the Directive on Copyright in the Digital Single Market (the “**EU Copyright Directive**”) was approved by a narrow majority of the EU Parliament. The EU Copyright Directive is designed to give authors, artists and publishers fairer remuneration for the use of their work online and to protect those works which are copyrighted. This is an attempt by the EU to harmonise copyright law throughout its Member States, however, certain provisions are still hotly debated, namely, Article 15 and Article 17 as discussed further below.

On one side of the argument, the provisions are lauded as they aim to prevent the tech giants from unfairly profiting from the works of others. Creators of content have pointed out that online platforms such as YouTube and Facebook carry out systemic infringements of their rights without any compensation and it is only fair if such protections are given.

On the other, critics argue that these provisions pose a threat to the freedom of expression and information on the internet. Many tech companies including Google and Amazon have lobbied heavily against the controversial provisions claiming them to be overly cumbersome to the extent that they might need to shut down their operations in Europe.

The “**Link Tax**” – Article 15 (initially Article 11)

Article 15 provides protections to publishers by governing the “online use of their press publications by information society service providers”. This provision aims to give publishers exclusive rights of reproduction, communication and of making their publications available to the public. These exclusive rights will expire two years

For further information on any of the issues discussed in this article please contact:



Lorcan Tiernan
DD: + 353 (0)1 673 1736
lorcan.tiernan@dilloneustace.ie



Owen Brayden
DD: + 353 (0)1 673 1828
Owen.brayden@dilloneustace.ie

after the works have been published and will not apply to those published before the EU Copyright Directive's entry into force. The granting of such exclusive rights means that news aggregators will have to obtain permission to use such content that is covered by the article.

At first, Article 15 had been dubbed the "link tax" as it was initially proposed that the likes of Google would have to provide such publishers with remuneration for hyperlinking or reproducing very short extracts of their articles. These restrictions are no longer covered by the provision nor does the provision apply to private or non-commercial uses such as sharing press publications on a social media platform.

"Upload Filters" – Article 17 (initially Article 13)

Previously, online platforms such as YouTube and Facebook were only required to act after becoming aware of unlawful content on their platform. Article 17, however, now holds such platforms responsible for any content uploaded and made publicly available by their users which is subject to copyright. The consent of copyright holders is now required for uploading such content and it is believed that the surveillance required to prevent the uploading of unauthorised content will only be possible if upload filters are used.

Critics of the initial Article 13 provision had argued that only the dominant platforms will be able to introduce an upload-filter which would ultimately restrict the freedom of expression on the internet by diminishing media plurality. Further, any upload-filter is likely to be imperfect leading to the restriction of authorised content and again restricting the freedom of expression and information online.

It must be noted that there are a number of exceptions to this monitoring obligation such as the use of "*quotation, criticism, review*" and also the "*use for the purpose of caricature, parody or pastiche*". Further, Article 17 provides a definition of smaller platforms which would not be required to implement filter controls. Rather such platforms must do their best to obtain the relevant consents from copyright holders for any publications uploaded.

Article 17 now also provides that the application of this provision "shall not lead to any general monitoring obligation". However, critics are sceptical as to how this would be achieved in tandem with the conflicting requirement to prevent the uploading of unauthorised content.

The EU Copyright Directive was published on 15 April 2019 and Member States have two years to transpose its requirements into national laws.

Dillon Eustace

May, 2019

DILLON  EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2019 Dillon Eustace. All rights reserved.