

Frequently Asked Questions on Copyright Reform

This page will answer all your questions on the Copyright Reform.



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[Page Contents](#)

- 2. Are the new copyright rules limiting users and their freedom online?
- 3. Does the Directive impose upload filters online?
- 4. Does the Copyright Directive prevent users from expressing themselves on internet in the same way as now? Are memes and GIFs be banned?
- 5. How do the new Copyright rules tackle the discrepancy between the remuneration of creators and that of certain online platforms (the so-called 'value gap')?
- 6. How do the new copyright rules on user-uploaded platforms benefit the users?

1. What is the Directive on copyright in the Digital Single Market about?

The Copyright Directive is a new piece of EU legislation, which brings the copyright rules in Europe up to date with the online world.

It aims to create a comprehensive framework, which will benefit a wide range of players acting in the

digital environment: internet users, artists, journalists and the press, film and music producers, online services, libraries, researchers, museums and universities, among many others.

The new Copyright Directive :

- Provides fairer rules for a better-functioning copyright marketplace, namely introducing:
 - a new right for press publishers to be remunerated for the use of newspapers and magazines by online service providers;
 - new rules which reinforce the position of rightholders, such as music and film producers as well as collecting societies acting on their behalf, to negotiate and be remunerated for the online exploitation of their content by user-uploaded content platforms; and
 - new rules which ensure fair remuneration for individual creators such as writers, journalists, musicians and actors.
- Ensure more cross-border and online access to copyright-protected content for citizens: the Directive will increase the availability of audiovisual works on video-on-demand platforms, facilitate the digitisation and dissemination of works that are out-of-commerce and ensure that copies of works of art, that are in the public domain, can be displayed online freely and with full legal certainty.
- Offer wider opportunities to use copyright-protected material for education, research and preservation of cultural heritage: the copyright exceptions allowing these uses have been modernised and adapted to the technological changes, to permit digital and cross-border uses.
- Enhance the data economy: the new rules on text and data mining will give a boost to European research and foster the development of data analytics and Artificial Intelligence in Europe.

2. Are the new copyright rules limiting users and their freedom online?

The Copyright Directive does not limit online freedom, nor does it target users and their behaviour online, including the possibility for them to upload and share content. Freedom of expression is one of the fundamental rights recognised by the European Union, as is the protection of intellectual property.

To take one example: the new rules applicable to the use of press publications online will only apply to commercial services such as news aggregators, not to users. This means that internet users will continue to be able to share such content on social media and link to online newspapers.

The new provisions on user-uploaded platforms will facilitate the conclusion of licences between commercial players and will contribute to improve the remuneration of creators. These rules do not target internet users. Users will benefit from a wide range of common rules applicable to them everywhere in the EU, which will safeguard their freedom of expression when they upload copyrighted content on online platforms. They will also benefit from a robust redress and complaints mechanism to challenge unjustified removal of their content from online platforms.

3. Does the Directive impose upload filters online?

No. The directive does not impose any upload filters nor does it require user-uploaded platforms to apply any specific technology to recognise illegal content.

Under the new rules, certain online platforms will be required to conclude licensing agreements with rightholders - for example, music or film producers - for the use of music, videos or other copyright protected content. If licences are not concluded, these platforms have to make their best efforts to ensure that content not authorised by the right holders is not available on their website. The “best

effort” obligation does not prescribe any specific means or technology.

Also, it only applies in cases where the online platforms covered by the Directive and the rightholders have not concluded licensing agreements for the use of copyright protected content and only for specific content identified by rightholders. The Directive explicitly prohibits Member States from imposing on online platforms a general monitoring obligation of the content uploaded by the users.

4. Does the Copyright Directive prevent users from expressing themselves on internet in the same way as now? Are memes and GIFs be banned?

No. On the contrary, uploading memes and other content generated by users for purposes of quotation, criticism, review, caricature, parody and pastiche (like GIFs or similar) is specifically allowed. Users are able to continue to upload such content online, but the new rules bring clarity in this respect and apply in all EU Member States.

Until now, copyright exceptions allowing these uses were only optional and Member States were free not to implement them. Under the new Copyright Directive, this is no longer the case: Member States are obliged to allow these uses. This is a particularly important step for the freedom of expression online.

5. How do the new Copyright rules tackle the discrepancy between the remuneration of creators and that of certain online platforms (the so-called 'value gap')?

One of the objectives of the Directive is to make it easier for creators and rightholders to negotiate the conditions of the exploitation of their work online and be remunerated for the online use of their content by certain platforms based on the “user-uploaded-content” model.

In fact, the new Copyright rules require these online platforms to obtain an authorisation from rightholders for the use of copyright-protected content. If no authorisation is obtained, (for example because rightholders do not wish to do so), the online platforms have to make their best efforts to ensure that content which is not authorised by the right holders and for which they have provided the platforms with relevant and necessary information, is unavailable. Moreover, upon receiving a notification from rightholders, they have to remove specific unauthorised content from their websites.

Finally, not to put excessive burden on small and young platforms, the Copyright Directive provides a specific regime for startups and smaller companies, which are subject to less burdensome rules (see question 9).

6. How do the new copyright rules on user-uploaded platforms benefit the users?

The new rules provide the users with several safeguards when they upload and share content on user-uploaded platforms. They make sure that all users, wherever they are in the European Union, can rely on exceptions to copyright which are particularly important for the freedom of expression.

The Directive allows the users to use content freely for purposes of quotation, criticism, review, caricature, parody and pastiche. These exceptions are currently optional for Member States.

Under the new rules, Member States have to implement those exceptions in their national legal systems. This ensures a uniform protection of users' rights and interests across the European Union. Concretely, users remain free to upload and share content online, such as memes, GIFs and reviews without any fear of infringing copyright in any of the Member States.

Thanks to the new Directive, users will automatically be covered by licences concluded between rightholders and online platforms. As a consequence, they are able to share and use online any content, such as songs and music videos, covered by these licences.

Furthermore, the new Copyright Directive provides for a robust complaint and redress mechanism, which allows users to contest the unjustified removal of their content from online platforms. Member States are also required to set up alternative dispute resolution schemes, with specific safeguards to ensure a fast and efficient procedure. And this procedure does not affect users' rights to go to national courts to assert their rights, as explicitly laid down by the new rules.

Finally, the Directive recalls that Member States shall not impose a general monitoring obligation on platforms and that they have to implement the new rules in full compliance with European data protection legislation.

So, the new copyright rules do not limit the users' rights or creativity. To the contrary: they contribute to stimulate diverse and creative content by giving more legal certainty to users and by increasing the remuneration of creators and of those investing in creative content.

7. What are the services covered by the new rules on user-uploaded platforms?

The new copyright rules on user-uploaded platforms cover online services that store and give public access to a large number of works for profit-making purposes.

Some online services are explicitly **excluded** from the scope of the Directive:

- Not-for profit online encyclopaedias, such as Wikipedia;
- Not-for-profit educational and scientific repositories;
- Open source software developing and sharing platforms, such as GitHub;
- Electronic communication service providers, such as WhatsApp;
- Online marketplaces, such as eBay;
- Business-to-business cloud services and cloud services which allow users to upload content for their own use, such as Dropbox.

8. What is the special regime for startups and smaller enterprises?

According to the new Copyright Directive, new micro and small platforms benefit from a lighter regime in cases where there is no authorisation granted by rightholders.

This concerns online platforms that have existed for less than three years and which have a turnover of less than 10 million euros. If they do not conclude a licence with rightholders for the use of copyrighted content, these small companies only have to act expeditiously to remove the unauthorised works, notified by the rightholders, from their website. However, when the audience of these small companies reaches 5 million unique viewers monthly, they also have to make their best efforts to ensure that works notified to them by the rightholders do not reappear on their website at a

later stage.

9. What happens to online encyclopaedias (like Wikipedia) that are based on content uploaded by users?

Not-for-profit encyclopaedias, such as Wikipedia, are specifically excluded from the definition of "online content sharing service providers", and are therefore not covered by the new rules on user-uploaded platforms. So, internet users can continue uploading content on Wikipedia and other similar platforms as they do today.

Other platforms, such as marketplaces, software development and sharing platforms and certain cloud services, are explicitly excluded.

10. How do the new press publishers' right work?

Quality journalism is a key element of any democratic society. The press publishing industry needs a fairer market place and the best possible environment in order to develop innovative business models and continue offering quality content online.

The new Copyright Directive gives press publishers a new right to strengthen their bargaining position and improve their remuneration when they negotiate the use of their content by online platforms. It is a similar right to the ones already enjoyed by music or film producers. This improved better bargaining position allows publishers to negotiate fairer licences for their content. In turn, to make sure that journalists also benefit economically from the press publishers' right, the Directive stipulates that they should receive an appropriate share of the revenues resulting from the online uses of press publications.

These rules only apply to uses of press publications by online service providers, explicitly excluding uses by individual users. Therefore, the way internet users share press publications does not change. The new rules do not affect the availability of information online either.

11. Are small and emerging press publishers affected by the reform?

The new rights granted to press publishers in the Copyright Directive give them the possibility to authorise or prohibit online uses of their press publications by platforms. Publishers are free to set the conditions to authorise the use of their content: they can do it for free or against remuneration, in accordance with their own business models. Any publisher, small or big, who gives free licences for the use of their content can keep doing so.

12. Is the new Copyright Directive creating a "hyperlink tax"?

No, the Directive does not create a hyperlink tax.

Acts of hyperlinking are explicitly excluded from the scope of the new Directive, which means that any user can continue to be free to link to any website, including to online newspapers.

13. With the new rules, is the use of "snippets" forbidden?

No. The directive explicitly excludes "individual words and very short extracts" of press publications, in the public debate sometimes also referred to as "snippets", from the scope of the Directive. This means that they can be used without any authorisation and for free. Moreover, the new rules only apply to online uses by commercial services, such as news aggregators, and uses of press publications by individual users are explicitly excluded.

14. How does the new Directive benefit journalism and journalists?

The Directive recognises the essential role that quality journalism plays for democratic and pluralistic societies. Journalists will benefit both from the revenues generated by the new right granted to press publishers, and also from the new provisions on the fair remuneration of authors and performers.

The Directive makes sure that every journalist will benefit from increased protection across the EU.

In detail, by making it easier for press publisher to negotiate with online platforms and by fostering the visibility of press publications online, the new rights granted to press publishers have a positive impact on journalists. The new rules also ensure that journalists receive an appropriate share of the revenues generated by the new press publishers' right. In addition, journalists are also covered by the principle of appropriate and proportionate remuneration and by other rules protecting individual creators; they will notably receive regular information on the exploitation of their press articles (transparency obligations, see question 17), and be entitled to an additional share of benefits if their articles have achieved an unexpected success (contract adjustment mechanism, see question 18).

15. How does the Directive ensure fair remuneration for individual authors and performers?

The new Copyright Directive aims to strengthen the position of individual creators - such as actors, musicians, journalists and writers - when negotiating with their contractual partners (publishers, producers) in order to get fair remuneration for the exploitation of their works and performances.

It contains five different measures designed to strengthen the position of authors and performers that apply for the first time across the EU:

- The principle of appropriate and proportionate remuneration for creators
- A transparency obligation to help creators to have access to more information about the exploitation of their works and performances
- A contract adjustment mechanism to allow creators obtaining a fair share when the remuneration originally agreed becomes disproportionately low compared to the success of their work or performance
- A mechanism for the revocation of rights allowing creators to take back their rights when their works are not being exploited
- A dispute resolution procedure for authors and performers

16. How do the new copyright rules strike a fairer balance in

the relationships between creators and their contractual partners?

With the new rules, the entities (like film and music producers or publishers) to which the creators (like actors, musicians, journalists and writers) have assigned their rights, have to share with the creators information on the use of their works, in particular with regard to the revenues generated. The creators will be better informed on the exploitation of their works and will be in a better position to assess their economic value and obtain a fairer remuneration for it.

For example, thanks to the new rules, a screenwriter will receive regular information from the film producer on the exploitation of the film he or she contributed to, including on the generated revenues. If the film achieves unexpected success and generates much more revenues than initially expected, the information obtained this way can be the basis for a review of the remuneration for the screenwriter through a contract adjustment mechanism (see: question 18).

17. What is the contract adjustment mechanism? Does it interfere with contractual freedom?

The contract adjustment mechanism (or "better-seller clause") allows a creator, for example a writer or a musician whose work or performance has achieved an unexpected success, to get an additional share of this success if the originally agreed remuneration is clearly disproportionate to the generated revenues. This mechanism has existed in several Member States for a long time and it is now extended to the whole European Union. It does not interfere with contractual freedom, as its purpose is to restore the original balance of contracts in the interest of creators. It is meant to apply in exceptional situations in order to ensure fairness.

Thanks to this mechanism, a screenwriter will also be able to request additional remuneration from the producer where the agreed remuneration turns out to be disproportionately low compared to the revenues generated by the film.

18. What is the revocation mechanism and why is it needed?

Copyrighted works are created to be used and shared with an audience. Any work that is not exploited is a loss for European culture. However, sometimes works get locked up in long-term contracts and creators have no way to renegotiate even if there is no exploitation.

The revocation mechanism allows creators to take back their rights in case their works are not being exploited at all. A number of procedural guarantees, which Member States can complement on a sector specific basis, will make sure that the legitimate interests of producers, publishers and investors are considered.

For example, the revocation mechanism can only be used a reasonable time after the licensing agreement has been concluded; creators also need to notify their producers or publishers of their intention to revoke the rights within a reasonable time frame. This is to ensure that the producer or publisher has the opportunity to start exploiting the work if they so desire.

19. What are the new exceptions to copyright laid down in

the Copyright Directive?

Exceptions or limitations to an exclusive right allow the beneficiary of the exception – an individual or an institution – to use protected content without the prior authorisation from right holders. Exceptions and limitations exist to facilitate the use of copyrighted content in certain circumstances that are particularly relevant for public interest objectives such as education, research, and culture. The existing EU copyright rules, dating back to the early 2000s, allow Member States to introduce copyright exceptions in these areas, without obliging them to do so.

The new Directive brings the EU framework on exceptions up to speed with digital uses in certain areas like education, research and cultural heritage.

It obliges Member States to introduce five mandatory exceptions for:

- Text and data mining (TDM) for research purposes;
- A general TDM exception going beyond the area of research;
- Teaching purposes;
- Preservation of cultural heritage.
- Use of out-of-commerce work in specific cases where licenses for these uses cannot be concluded because no collective management organisation exists that can issue them.

These new exceptions open up the possibilities that digital technologies offer to research, education and heritage preservation and dissemination, also taking into account online and cross-border uses of copyright-protected material.

20. How do the new copyright rules benefit researchers?

The Directive includes a new exception for text and data mining for scientific research purposes and provides more legal certainty to researchers. Text and data mining is an automated process which allows information to be gathered through the high speed machine reading of massive amounts of data and texts. The new rules allow researchers to apply this technology on large numbers of scientific journals that their research organisations have subscribed to, with no need to ask for authorisation for text and data mining purposes. So, the new Directive will give a boost to top notch European research with the potential of facilitating the discovery of cures for diseases like cancer or genetic and rare diseases.

21. What is the purpose of the other, general, text and data mining exception?

The Directive contains a second, more general exception for Text and Data Mining, also mandatory for Member States to implement in their laws, going beyond research. The provision applies to all beneficiaries for content to which they have lawful access, including content publicly available online. The new provision covers, for example, data analytics carried out on content over the internet for the purposes of market research, machine learning and investigative journalism, etc. It will foster the development of data analytics and artificial intelligence in the EU.

22. Who can benefit from the new teaching exception?

The new teaching exception covers digital uses of copyright-protected content for the purpose of illustration for teaching. For example, this will ensure that educational establishments (e.g.

universities, schools) can make available teaching material or online courses to distance students in other Member States through their secure electronic environment, e.g. a university's intranet or a school's virtual learning environment.

23. Will the new copyright rules enhance the preservation and availability of cultural heritage?

Yes, on the one hand the new rules will allow libraries and other cultural heritage institutions, like archives, libraries or museums, to make copies of EU cultural heritage protected by copyright and related rights to preserve it, using modern digital techniques.

They will also make it easier for cultural heritage institutions to conclude licences with collecting societies, which cover all the out-of-commerce works in their collections. This will significantly facilitate the use of works that are no longer commercially available while ensuring that the rights of rightholders are fully safeguarded. It will make it possible for cultural heritage institutions to digitise and make available their collections of out-of-commerce works for the benefit of European culture and of all citizens.

This mechanism is complemented by an exception that will apply in specific cases when no collective management organisation exists that can licence the use of out-of-commerce works to cultural heritage institutions.

24. What changes for users with regards to "public domain" content?

When a work of art is no longer protected by copyright, it falls into what the legal terminology calls "public domain". In such cases, anyone should be free to make, use and share copies of that work, be it a photo, an old painting or a statue. However, this is not currently always the case, as some Member States provide copyright protection to copies of those works of art.

The new Directive makes sure that all users are able to disseminate online with full legal certainty copies of works of art that are in the public domain. For instance, anybody will be able to copy, use and share online photos of paintings, sculptures and works of art in the public domain available on the web and reuse them, including for commercial purposes or to upload them in Wikipedia.

25. What is the provision of the Out-of-commerce works about?

The Directive introduces a new licensing mechanism for **out-of-commerce works**: books, films and other works that are still protected by copyright but cannot be found commercially anymore. This will make it much easier for cultural heritage institutions, like libraries, archives and museums, to obtain the necessary licences to disseminate to the public, notably online and across borders, the heritage held in their collections. This system makes it much easier for cultural heritage institutions to obtain licences negotiated with the collective management organisations representing the relevant right holders.

The new rules also provide for a new mandatory exception to copyright in case there is no representative collective management organisation representing the right holders in a certain field, and therefore cultural heritage institutions do not have a counterpart to negotiate a licence with. This

so-called “fall-back” exception allows cultural heritage institutions to make the out-of-commerce works available on non-commercial websites.

The crucial role in the new system is played by the publicly accessible European transparency online portal run by the European Union Intellectual Property Office (EUIPO): Out-Of-Commerce Works Portal. It is the main publicity measure of this new regime. Relevant information will be recorded on the portal for the purposes of easy and effective identification of the out-of-commerce works as well as to make it easier for the rights holders of these works to exercise their rights. To learn more please visit the Out-Of-Commerce Works Portal.

26. What is the new provision on collective licensing with an extended effect about?

The new provision on collective licensing with an extended effect enables Member States to allow collective management organisations to conclude licences covering rights of non-members, under certain conditions. This mechanism facilitates the clearance of rights in areas where otherwise individual licensing may be too burdensome for users. The provision includes a number of safeguards that protect the interests of right holders.

27. How does the new copyright rules foster the availability of EU audiovisual works on video-on-demand platforms?

Despite the growing popularity of on-demand services (like Netflix, Amazon Video, Universcine, Filmin, Maxdome, ChiliTV) relatively few EU audiovisual works are available on video-on-demand (VoD) platforms. The negotiation mechanism consists of a mediator or neutral body that will help to reach contractual agreements and unblock difficulties related to the licensing of rights to make films and series available on VoD platforms. More licenses means that more European audiovisual works will be available in VoD platforms. The impact will also be positive on the type and variety of works made available on VoD platforms.

Related Content

Big Picture

The EU copyright legislation

The EU copyright law consists of 11 directives and 2 regulations, harmonising the essential rights of authors, performers, producers and broadcasters.

See Also

Stakeholder dialogue on copyright

The Commission organised a stakeholder dialogue to discuss best practices for cooperation between online content-sharing platforms and copyright rightholders.

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