



## Client Update | Intellectual Property

### New EU Directive on Copyright in the Digital Single Market

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April 2019

Dear Clients, Colleagues and Friends,

On March 26, 2019, the European Parliament approved the controversial Directive on Copyright and Related Rights in the Digital Single Market (the “**Directive**”).

Although the Directive seeks to facilitate access to online content while providing proper remuneration for copyright owners, it imposes onerous obligations on internet platforms, which might ultimately adversely affect users’ access to online content.

The Directive has yet to be formally approved and this is expected to happen later this year. Once it is approved, EU member states will have two years to implement it in their respective local laws.

The Directive introduces two main amendments to the current legal position, namely:

1. **Imposing direct liability on internet platforms for user generated content; and**
2. **Requiring a license to reproduce all but the most minimal parts of online press publications.**

#### Direct Liability of Internet Platforms

According to the Directive, commercial internet platforms would be directly liable for user-generated content uploaded to their sites, unless they comply with certain rather burdensome obligations, notably concluding license agreements with the rights holders. Start-up platforms, defined as those with less than five million users, will be subject to somewhat lighter obligations. This changes the current legal status, under which, generally speaking, internet platforms are not considered directly liable for content uploaded by users, but are rather obliged to remove infringing content when requested to do so by a rights holder. Such liability is unprecedented.

The Directive, however, specifies that uploading works in a non-commercial manner, e.g. to online encyclopedias such as Wikipedia, or to open source software platforms such as GitHub, will automatically be excluded from its scope. In addition, users are expressly permitted to upload protected works to online platforms for the purposes of quotation, criticism, review, caricature, parody or pastiche. Existing fair use exceptions are not affected.

Although the Directive explicitly notes that it does not impose general monitoring obligations (e.g. filtering measures), as opposed to the initially proposed wording, as a practical matter, we believe certain rights holders are likely to impose such requirements in their agreements.

## License to Reproduce Press Publications Online

The Directive establishes a new right for publishers of press publications in respect of online dissemination of such publications to the general public (i.e., not to professional journals) in the first two years of publication. In the absence of a license, online providers of content are only entitled to show “individual words or very short extracts” of such press publications in their news feeds, search results, previews, etc. This right shall not apply to hyperlinking, or to private or non-commercial uses by individuals.

## Other notable provisions

The Directive states that member states shall ensure that authors and performers receive appropriate and proportionate remuneration when licensing or transferring their rights. It also provides a right of revocation to authors or performers in cases of lack of exploitation of their respective works (“anti-shelving”).

**We will continue to monitor the legislation and implementation process, and would be happy to assist our clients in understanding the applicability and implications of the Directive.**

Sincerely,

**Herzog Fox & Neeman**

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