

Copyright in DSM Directive

The European Parliament Proposal and Wikimedia



Where we are

In a nutshell: In September the European Parliament voted on their proposal for the Directive on Copyright in the Digital Single Market. The dossier is now a subject of discussion between the EP, the Council of EU and the European Commission. The objective of the Trilogues is to work out a compromise that will subsequently be voted upon by the European Parliament as the new EU law.

Article 3 - Text and Data Mining (TDM)

In a nutshell: A mandatory exception that allows research organisations to make reproductions and extractions of works to which they lawful access and made in order to carry out TDM for the purposes of scientific research. Implicitly this could mean that rightholders might restrict the making of copies for text and data mining purposes to everyone else. However, this is a minimal harmonisation, meaning Member States will be free to introduce a full exception for everyone and all uses.

How it influences/affects us directly: We don't expect there to be direct and immediate effects on our projects, as we are not making permanent copies of documents that are not freely licensed anyway. However, free licenses might have to be re-written to cover yet another use case in which rightholders might restrict an activity.

Other consequences to consider: The Commission claims that “temporary technical copies” remain legal across the EU and thus will cover all mining activities that don't require a permanent copy of the original documents.

Score: +/-

Article 4 - Education Exception

In a nutshell: The provision allows for unlicensed non-commercial use of copyrighted materials in educational establishments, which are usually defined in national laws (schools and generally formal education). This version proposes that cultural heritage institutions are also included in this definition when they perform educational activities. However, the mandatory exception may be “switched-off” in a State where collective licenses tailored to the needs of these institutions are available.

How it influences/affects us directly: Projects like Wikipedia do not host copyrighted content so the exception does not apply to us directly.

Other consequences to consider: Our movement’s mission is to bring free educational content to the world. For education to be relevant, all educators should be able to use any sort of content as long as it fulfills the teaching purpose, including copyrighted one. We want our content to be used and remixed into any educational setting and materials. Limiting the exception to formal education and giving precedence to licensing does not let people take full advantage from the possibilities that the digital world has to offer.

Score: +/-

Article 5 - Safeguarding the Public Domain

In a nutshell: A public domain safeguard should guarantee that identical reproductions (e.g. digital copies) of public domain works are free of copyright or related rights. This, in a way, locks public domain works open. Even after digitisation they will remain re-usable.

How it influences/affects us directly: It should solve our [current case](#) with the Reiss Engelhorn Museums in Germany (which claims related image rights on a public domain work), remove additional copyright protection in [Spain](#) (which grants an additional 25 years of copyright protection after digitisation), and protect us from future copyright claims on public domain art by clarifying the currently [inconclusive situation](#) in many EU countries.

Other consequences to consider: In order to achieve the Committee compromise we had to accept a wording which says that such works “shall not be subject to copyright or related rights, provided that *such reproduction is a faithful reproduction for purposes of preservation of the original material.*” The text in italics is the restriction the conservative majority demanded. However, the lawyers we consulted are of the opinion that any reproduction is faithful for the purposes of preservation and thus all copies should be covered.

Score: ++

Article 11 – New Rights for News Publishers

In a nutshell: A new exclusive right for publishers of press and news media makes licenses necessary whenever parts of news media content (digital newspapers, online news sites, online news journals and similar) are used together with with a pointer to their source. The Parliament’s version expressly excludes hyperlinks, also if those hyperlinks are “accompanied by individual words”. The current proposal is a kind of “citation levy” for news content.

How it influences/affects us directly: An exception for “individual words” is not sufficient to exclude the titles of news articles, which usually consist of several words. All footnotes, citations and other references in Wikimedia projects that point to press publications and include at least the title of the respective article would most probably be covered by this new ancillary copyright. It applies to Wikidata properties such as [P1476](#) = publication title and [P1683](#) = publication excerpt. Some rights would need to be cleared where links to news are used on Wikipedia.

Other consequences to consider: Even if the exception is extended to include references to press sources, the new ancillary copyright would have a chilling effect on the exchange of information on the internet within the reach of European jurisdiction, because of the legal uncertainties it produces. It is very dangerous for smaller aggregators and start-up initiatives that may not be able to afford licenses.

Score: --

Article 13 – Liability of Platforms | 1

In a nutshell: Platforms that host content that could be infringing copyright and that is generated by their users should be considered liable and conclude licenses with rightsholders. The proposal vaguely specifies that the platforms should ensure that infringing content is not available also when rightsholders do not want to conclude agreements. Without mandating upload filtering, the proposal sanctions current situation where filtering algorithms operate in obscurity and block content, which use is legal, as a “false positive”.

How it influences/affects us directly: Services acting in a non-commercial purpose capacity such as online encyclopedia are excluded from those obligations (proposed Article 2(4)(a)). It seems that our projects, including Wikimedia Commons are not directly affected.

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Article 13 – Liability of Platforms | 2

Other consequences to consider: Our services do not exist in a bubble, they are a part of the online ecosystem. If that ecosystem is broken, we cannot fulfill our mission. Our content is used in commercial and non-commercial projects across the web. If the filtering becomes ever-present, our contributions will not reach wide audiences of these projects. For referencing purposes we also depend on external sources; if they cannot thrive, our entries will not be well documented. Finally, platforms that already use the technology will be at a great competitive advantage, contributing to further centralisation and privatisation of access to knowledge and information online.

Score: --

Article 14 - Authors & Performers | 1

In a nutshell: Authors and performers experience a “data gap” relating to how much they know about revenues made by intermediaries on the works the creators license. The proposal attempts to improve the European Commission’s idea of a greater transparency by ensuring the right to receive fair remuneration, also through collective bargaining agreements. A creator would have the right to receive information about the direct and indirect revenues both from the the first licensee (such as a music label for example) and every next one that makes the works available (such as a platform getting a license from the label). The author needs to only deal with his/her main licensee in demanding more information. However, that information may be restricted if it is commercially sensitive or a subject to a non-disclosure agreement (NDA) between his/her subsequent licensees.

How it influences/affects us directly: The proposal ensures fair and proportionate remuneration with the exception of non-exclusive licenses granted free of charge for the benefit of all users. Due to their nature, Wikimedia projects are carved out from this obligation.

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Article 14 - Authors & Performers | 2

Other consequences to consider: Our projects are based on voluntary contributions and our contributors are also authors. Our community cares that creators are properly rewarded where remuneration is due. The idea behind articles 14 and 15 is good, but its execution is less than optimal. A good solution would be to ensure that authors and performers have comprehensive information on the profits their market partners make on their works. Instead, the proposal privileges intermediaries by allowing them to lock in that information between themselves via an NDA. Also, the information would only be passed on if it is worth more than the administrative burden it creates, so the numerous small-scale authors will not benefit from this measure at all. The fact that the proposal does not set any standards, such as open machine-readable formats, weakens the actual usability of this provision.

Score: +/-