

WHAT THEY ARE SAYING:

EU Copyright Directive - Article 15

In 2019, the European Union adopted the Directive on Copyright in the Digital Single Market. Article 15 of the Directive (formerly known as Article 11) changed existing law and introduced a “snippet tax”. This change allows publishers to be paid by digital services, including search engines and social media when hosting links to articles and driving traffic to other websites. The following includes third-party pieces, news articles and research relevant to the directive, its impact on the online news ecosystem and the negative consequences of the decision.

[IGEL - Initiative Against Ancillary Copyright, “EU Commission Tried To Hide A Study That Debunks The Publisher's Right As Ineffective”](#)

“What once seemed to be a single incident turned out to be a habit: Once again it has been revealed that the EU Commission tried to hide the results of a self-requested copyright-related study because the results were not suitable...Taking into account that the study paper debunks various arguments made by the Commission (or by Günther Oettinger to be more precise), it becomes obvious that it was deliberately tried to prevent it from being published and to hide its existence. It is not the first time that something like this happened. The Commission has repeatedly shown that it values academic research on copyright only when it supports a pre-conceived opinion.”

[Nieman Lab, “What the EU’s copyright overhaul means – and what might change for big tech”](#)

“Critics of the reform, however, say it’s filled with blind spots...a German member of the European Parliament and one of the reform’s most outspoken critics, argued the link tax might drastically chill the average person’s ability to post and share news stories. (In fact, the final text adopted exempts individuals, saying that the new rights granted to publishers don’t apply to ‘private or non-commercial uses of press publications by individual users.’)”

[Techdirt, “Why The Snippet Tax In The EU Copyright Directive Is Pointless And Doomed To Fail”](#)

“Just as the impetus for the upload filter came from the music and film industries, so the lobbying for Article 15 came from newspaper publishers. The logic behind their demand, such as it was, seemed to be that Google was making money from ads on its pages that had some links to newspaper sites. That ignored two inconvenient facts. First, that Google’s dedicated news site, Google News, had precisely zero ads on its pages. And secondly, the pages on the main Google search engine that did have ads, had many other search hits alongside links to newspapers. And those links to newspaper sites send a considerable flow of traffic, that publishers have repeatedly shown they are desperate to have.”

[Instituut voor Informatierecht, “Academics against Press Publishers’ Right: 169 European Academics warn against it”](#)

“The proposed right would not improve the economic position of press publishers elsewhere. There is no basis for the suggestion that an “EU wide right” (in fact, separate rights for each MS) would improve the bargaining position of press publishers vis- à-vis platforms: they

already have authors' rights and the EU's sui generis right in databases. If it has any effect, the recognition of a press publishers right would strengthen their bargaining position with respect to authors and creators, a relationship which is hardly one of economic equivalence as it stands. However, such a right may well exacerbate existing media concentration problems, not least because media outlets would themselves have to seek permission from one another for the use of publications (and parts of publications), thus placing SMEs at a bargaining disadvantage."

Felix Reda, ["Copyright expansion plans would kill EU startups"](#)

"Tragically, the law would kill startups that could play a crucial role in helping these troubled industries innovate: By coming up with new sources of income, user experiences and distribution methods for existing players – or, as the case may be, by developing new models that serve the creators, the journalists and artists, just as well...Limiting the spreading of news content in this way would benefit only big players, harming not just startups but also smaller publishers."

International Federation of Journalists, ["New copyright directive makes a mockery of journalists' authors' rights"](#)

"While the directive acknowledges an obligation for journalists and all authors of the works incorporated in a press publication to receive an 'appropriate share' of the revenues press publishers receive for the use of their publications online, it enables publishers to avoid such requirements by relying on existing 'contractual arrangements' and 'laws on ownership'. Such moves could deny journalists any revenue arising from the re-use of their work online."

European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, ["Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive"](#)

"Even if the new right might improve the financial position of press publishers, critics argue that it would come at a cost, and consideration needs to be given to whether those costs are justified by any potential benefits. One representative of press clippings services has noted that the Spanish law has created 'considerable collateral damage to all sectors', and fears the same would be true of an EU-wide right."

Press Gazette, ["Newsnow boss fears 'perverse consequences' for small and medium publishers from new EU copyright law"](#)

"But Bartlett told Press Gazette he had spoken to 'many' small and medium publishers that had not been lobbying for the change and are 'very concerned that this measure will have an adverse impact on their businesses and all the traffic they get, not just from us but from the bigger players, Google News, Facebook, others'...Bartlett said: 'The concern is that the big publishers will cut deals with the biggest sources of traffic and cut out the smaller players and that might happen either just because it's convenient to strike a deal and the big publishers may be thinking we've got an opportunity here to cut out some smaller publishers.'"

[News Now UK, “Common Position Statement on the proposed EU Directive on Copyright in the Single Market”](#)

“Article 11 of the Directive, in its current form, threatens to upset this. While purporting to fund high quality journalism and further the interests of press publications, through a levy on those making ‘digital use’ of their content, it risks benefiting some publications at the expense of others, creating perverse incentives, and putting all EU-based publications at a competitive disadvantage.”

[European Research Centres, “EU Copyright Reform Proposals Unfit for the Digital Age”](#)

“The Proposal aims to change the legal framework for the online use of news, by creating a new exclusive right for press publishers. Any statement that this intervention will not affect the communication of information in a democratic society (and thus the right to freedom of expression) is seriously misleading. While the motivation for the proposed new right is to help publishers in a time of technological change, the consequence will be a fundamental change in the copyright treatment of news. The onus must be on the proponents of the new right to present independently verifiable evidence on the effects and the proportionality of the intervention (including an assessment of the lack of alternatives). This is entirely missing from the Commission’s package, a scandalous omission.”

[Techdirt, “Just As Everyone Predicted: EU Copyright Directive's Link Tax Won't Lead To Google Paying Publishers”](#)

“How hard is this to understand? If you make something against the law (aggregating news and posting snippets without a license), don’t be surprised if the companies who have been doing that stop doing that. You outlawed something, and so Google obeyed your new law and stopped doing it. If the EU Parliament wanted a different outcome, perhaps instead of attacking those of us who warned this would happen, they should have listened to us. Apparently that’s just too difficult.”

[Center for European Policy Research, “News aggregators and the reform of the copyright legislation in Europe”](#)

“This controversy has motivated the amendment of copyright laws in several countries, limiting the use aggregators can make of the publishers’ content. Now, after long and fierce debates, the EU has decided to regulate these practices, and allows the creation of a ‘link tax’ that would require aggregators to pay licensing fees to publishers for using their media content. In the next few years, European countries will have to transpose the new directive to their own legislations. This new legal framework opens the question of whether and how national governments should design publishers’ compensation for their content.”

[Felix Reda, “Article 11 of the proposed EU copyright reform/expansion”](#)

“This provision would restrict not just businesses, but also individuals who publish news snippets, e.g. bloggers. Because a neighbouring right, unlike a copyright, doesn’t require originality to apply to content, it would protect even short and uncreative snippets, such as purely factual headlines.”

European Independent Media Publishers, “[Open letter on the introduction of a new neighboring right under art. 11 of the Copyright Directive](#)”

“Moreover, Article 11 will also have serious negative effects on the quality of the press, freedom of opinion and freedom of expression of EU citizens. A new publisher right makes it harder for small and medium sized publishers to reach their audience and raises barrier to entry. In Spain and Germany, small and medium sized news publishers suffered more from the introduction of the right than large and established publishers.”

Copybuzz, “[Article 11: Driven by Rhetoric, Not by Arithmetic](#)”

“The problem here is that the main EU publishers aren’t actually concerned that much about receiving money from ancillary copyright, since they know the sums would be vanishingly small – which also means that the promised ‘benefits’ for EU journalists are negligible too. Publishers are more interested in using the rhetoric of ‘sustaining’ newspapers to achieve their real goal: to attack and hobble the US Internet behemoths that have succeeded where traditional media companies failed because of the latter’s stubborn refusal to adapt their businesses to the new digital reality.”

European Parliament Briefing, “[The Exception for Text and Data Mining \(TDM\)in the Proposed Directive on Copyright in the Digital Single Market - Technical Aspects](#)”

“A mandatory exception allowing TDM is a welcome proposal. Its scope, however, should not be unduly narrow and such as to stifle innovation coming from different sectors, whether research organizations or businesses. In this sense, the EU legislature should carefully consider who the beneficiaries of the resulting exception should be, as well as the uses allowed of works or other subject-matter for TDM purposes.”

Corporate Europe Observatory, “[Copyright Directive: how competing big business lobbies drowned out critical voices](#)”

“Lumping in big industry players like Google with every other critical voice, such as NGOs and activists, and then tarnishing them both, was a successful strategy in this debate. Using this approach, all criticism, regardless of where it came from or what it focused on, could simply be dismissed.”

MediaWrites, “[The EU Copyright Directive: the press publishers’ right](#)”

“The text of the DSM Directive leaves a number of key points unaddressed, which are likely to be crucial during the national transposition phase and, later on, in practice and – potentially – litigation. The DSM Directive does not tackle the issue of waivability of the right in Article 15. It is unclear whether beneficiaries of the right will be able to waive it, lacking a specific prohibition to the contrary and considering the wording of Recital 82 in the preamble to the directive. Overall, it appears likely that different Member States might opt for different ways to implement the DSM Directive into their own laws, and that influencing the debate at the national level would be of significant importance for interested stakeholders.”

The IPKat, “[BREAKING: First CJEU referral on press publishers’ related right \(Italian-style\)](#)”

“Meta has lodged an action before the competent administrative court (TAR Lazio) seeking the annulment of the AGCOM Regulation. The parent company to inter alia Facebook claims that – unlike the Italian transposition – Article 15 would not impose any obligation on the side of ISSPs to secure a licence for the use of press publications, nor an obligation to remunerate press publishers. The Italian transposition of Article 15 would be, according to Meta, a clear instance of ‘goldplating’.”

Law Society Gazette Ireland, [“Copyright rules ‘no silver bullet’ for publishers”](#)

“Dr. Hyland said that the legislation was “no silver bullet”, but there was now harmonised legal protection throughout the EU for press publishers and publications, strengthening their bargaining position against the news aggregators. Press publishers now had a “clear legal right” that they could invoke against a digital platform that scraped their content without permission, he said.”

Kluwer Copyright Blog, [“Taking freedom of information seriously: The ‘very short extracts’ limitation in Article 15 CDSM Directive and how *not* to implement it - Part 1”](#)

“This two-part post focuses on the ‘very short extracts’ (VSE) exclusion and its ongoing implementation into Member State laws. In order to understand the challenges raised by this carve-out to the press publishers’ right, we will first need to examine its legal nature and rationale. That is the task I take up in this first part of the post. Tedious as it may sound, this is a vital first step for us to understand what Member States should and should not do when implementing Article 15. That, in turn, will be the subject of the post’s second part.”

Kluwer Copyright Blog, [“Taking freedom of information seriously: the ‘very short extracts’ limitation in Article 15 CDSM Directive and how *not* to implement it – Part 2”](#)

“This second part will delve on the limitation’s transposition. The post will start by describing a worrying trend across Member States: that of constraining the limitation’s coverage, namely by drawing on the final part of Recital 58 of the CDSM Directive. It will then explain why this implementation approach runs counter to the fundamental freedom of information and to basic principles of copyright law.”