



Will the EU get its copy right?



After four years of debates, the Commission published on September 14th five proposals to **adapt copyright to the digital era**: a [directive](#) on copyright, a [regulation](#) on online transmission of TV and radio programmes, [two regulations](#) to transpose the [Marrakesh Treaty](#) for the visually impaired and a [communication](#). Expectations were high; were they all met?

The most mediatised copyright provision is the creation of an **ancillary right for press publishers** whose business models have been disrupted by the Internet. Yet, by fostering public debate and democracy, the press is arguably not a business like others.

Despite mitigated experiences in Germany¹ and Spain², the Commission proposes a 20-year ancillary right for press publishers. However, many stakeholders (platforms, some authors, consumers) [oppose](#) this initiative and a group of trans-partisan Members of the EU Parliament (MEPs), who fear it amounts to censoring links, launched a [SaveTheLink campaign](#).

More in line with many stakeholders' views, the Commission enables press publishers to **claim compensation for uses made under copyright exceptions**, which the European Court of Justice outlawed in 2013 (Reprobel case).

The Commission also addresses the **disruption of the copyright traditional value chain by platforms** who are accused of capturing the remuneration that belongs to right holders.

In order to create a more balanced relationship, the Commission intends to **strengthen audiovisual right holders' contractual position**. Hence, authors and performers have to be informed on the exploitation of their works, they may request additional remuneration and they can resort to a dispute resolution mechanism.

More controversially, the Commission specifies **the rules applicable to platforms**. According to the 2000 [e-commerce directive](#), they are not liable for the content they store as long as they have no actual knowledge of illegal activity or information, and they have no general obligation to monitor it. On

the one hand, one recital of the copyright proposal considers that platforms become liable regarding copyright protected works as soon as they play an "active role", e.g. if they optimise the content, and that they have to monitor it. For some stakeholders, this reasoning goes far beyond interpretation... Moreover, one article states that all the platforms who store an (undefined) "large" amount of copyrighted works, whether they are active or not, have to protect the content.

On the other hand, the recital also interprets the [2001 copyright directive](#) by introducing a new concept of "**providing access to works to the public**". Under the current directive, authors have the exclusive right to allow or prohibit the platform to use their works if the platform is deemed to "communicate" them to the public. If the platform is simply seen as providing physical facilities, it is difficult for authors to exert this right. The Commission interprets "providing access" as a subcategory of communicating to the public, which **increases the number of cases where authors are entitled to copyright**.

Last but not least, the Commission further **harmonises some European exceptions** to the remuneration of right holders for their works, namely for text and data mining, teaching activities and cultural heritage.

Contrary to what Pirate party MEP Julia Reda [wanted](#), the Commission leaves out the "panorama exception" (i.e. the use of images of works located permanently in public places). Although the Commission's approach can appear moderate, authors are in favour of contractual solutions rather than harmonised exceptions.

It is now up to Maltese centre-right MEP Therese Comodini Cachia and German socialist Dietmar Köster to lead the upcoming impassioned parliamentary debates...

¹ Some publishers immediately waived their ancillary right in 2013 to remain indexed by Google

² The right was unwaivable so Google News stopped its service



The 2016 State of the European Union address

On September 14th, the President of the Commission, Jean-Claude Juncker, delivered to the European Parliament his **second State of the European Union speech**, which presented **the political and legislative milestones of his institution's action** for the coming year. Complementing this address, a letter of intent sent to the presidents of the Parliament and the Council detailed how the Commission will keep implementing the [ten priorities](#) President Juncker set at the beginning of his mandate.

[Last year](#), he put the emphasis on the refugees' issue. However, after some Member States rejected the Commission's proposal on their resettlement, with the difficulties lying ahead with the Brexit and just before the Bratislava summit that aimed at relaunching the EU, his [2016 speech](#) was **less controversial**. All the more since the European Parliament had clearly stated [its 2017 priorities](#) in July: employment, social rights and growth followed by refugees, foreign affairs and security.

Unsurprisingly, President Juncker acknowledged that the EU was "at least in part in an existential crisis" and he exposed his vision of "a **better Europe**" which he interprets as a Europe that **preserves the European way of life, empowers, defends and takes responsibility**.

The more concrete announcements came under the

"empower" heading:

- free [wireless](#) everywhere in Europe by 2020 and full deployment of 5G by 2025;
- [double](#) the [European fund for strategic investments](#) (EFSI) to reach €500 billion in investments by 2020;
- launch an [investment plan for Africa and the EU neighbourhood](#) to raise €44 billion in investments;
- set up a [European Solidarity Corps](#) in which 100 000 young Europeans could take part by 2020.

As far as defence is concerned, the Commission proposes to increase the troops of the [European Border and Coast Guard](#) and to create a European Defence Fund for R&D.

In the parliamentary debate that followed, Jean-Claude Juncker's speech was welcomed by his own centre-right party, by the Socialists and by the Liberals who supported the extension of the EFSI. The Conservatives and the Eurosceptics opposed a deepening of the EU, particularly on the defence ground. The Europe of Nations and Freedom group's president Marine Le Pen even said the speech had no vision and compared it to an EU funeral eulogy.

The [2017 work programme](#) of the European Commission was published on October 25th. The Commission, the Council of the EU and the Parliament are now working on a joint declaration on the 2017 priorities.

EU public consultations*

Single market	Single market information tool	07.11.2016
Innovation	Evaluation of the European Institute of innovation and technology	20.11.2016
Single market	Single digital gateway	28.11.2016
Social	European pillar of social rights	31.12.2016
Competition	Evaluation of procedural and jurisdictional aspects of merger control	13.01.2017
Research	Interim evaluation of Horizon 2020	15.01.2017

Bruxelles (EU)

Square de Meeûs, 35

Paris (FR)

260, Bd Saint-Germain

More information

www.lysios.eu

info@lysios.eu

Tel : +32 2 893 97 27

* For an exhaustive list : <http://ec.europa.eu/yourvoice/>