

The Copyright Reform

In an information-based economy, copyright is an underlying mechanism of our activity in the digital world. The copyright reform is a chance to update copyright to the reality of the digital era. Is the European Commission up to the challenge?

a guide for the perplexed

What was proposed?

The Commission aims at modernising EU copyright law to make it work in the Digital Single Market (DSM). Three important changes proposed are: some new rights for users, a new type of levy for news publishers and an upload filter for digital content hosted on platforms.

What is the problem?

The solutions proposed neither respond to the needs of the society nor bring the DSM closer:

- Users across EU will continue to have different rights depending on the country they live in.
- With the snippet levy and the upload filter proposals the Commission tries to solve revenue loss problems that are a result of a changing global economy as well as users' practices. It chose the wrong method – by reinforcing copyright, ignoring the existing evidence, and not looking into the broader market reality.
- The snippet levy and content filtering will infringe fundamental rights of access to information, freedom of communication and privacy.

Why is it important?

The reform is a chance to empower users across Europe to access culture in ways that have been proved not to undermine authors' revenues. This would boost the creation of new business models that will support authors, creators and journalists, and not only powerful intermediaries. The copyright reform should also safeguard freedom of expression and privacy by curbing the surveillance capacity of filtering technologies. The Commission's proposal fails to act on all of these opportunities to secure a better future of Europeans.

Will the proposal fix the problems?

No. The Commission tries to respond to the global change with reinforcing outdated business models. It proposed a solution that proved to be harmful to the market, as the case of the snippet levy in Spain and Germany. It proposed a solution on filtering which has already been rejected by the Court of Justice of the EU. It allows for further fragmentation of European copyright by allowing licensing and negotiation schemes in member states for cases that are currently exempt from those schemes.

How can this be fixed?

- The legislators should make it mandatory for member states to implement all available freedoms to use copyrighted works ("copyright exceptions and limitations") that do not harm the author.
- The snippet levy and the upload filter should not be introduced into the new directive.

1

Copyright proposal: Copyfails reloaded

Different rights for users in different EU countries

What was proposed?

The copyright framework has been outdated for a long time. The current copyright reform creates the opportunity to make the framework both less chaotic and more relevant to the challenges of the digital age. Instead, the European Commission proposed a few patches that do not go far enough to secure user rights online and unleash creative potential of European citizens and business.

What is the problem?

Europeans enjoy different freedoms in relation to copyright. For example, the use of a film character to make a parody of a politician could be an infringement in the UK but not in Portugal. Similarly, in many member states users can copy legally purchased films and music for private use, but in some they cannot, legally. Instead of harmonising the existing user rights, the Commission proposes exceptions that either allow for national licensing schemes (education exception) or exclude important stakeholders from their benefits (text and data mining exception).

Why is this important?

The lack of a harmonised framework creates unnecessary barriers between Europeans and their culture. They cannot learn or produce creative works on equal terms across the EU. Moreover, they cannot get comprehensive information about what they can and cannot do. An [FAQ created by the European Union's Intellectual Property Office](#) demonstrates that European users cannot know which uses of copyrighted materials are legal and which are not.

Will the proposal fix the problems?

No. The directive proposal only partly harmonises a few exceptions and leaves member states the option of creating new barriers to the Digital Single Market by inventing their own licences and practices, which would complicate cross-border collaboration. As a result, citizens will not enjoy equal rights across the EU. SMEs will struggle to create new business models.

How can this be fixed?

A far more extensive and open approach to harmonising copyright exceptions is possible, needed, and legally unproblematic. It is possible without undermining copyright. Make all available copyright exceptions and limitations that do not harm the author mandatory and harmonise them across all member states.

2

Copyright proposal: Copyfails reloaded

Access to news and information content online will be restricted

What was proposed?

The European Commission proposed that online services should pay for linking to articles that are up to twenty years old. Almost every news link with an explanatory extract (a snippet) placed in a search engine will be subject to a fee. The Commission hopes that the payment will reach the publisher of the original news.

What is the problem?

If a service facilitating access to aggregated news content needs to pay for linking, it may decide to exclude some links or news outlets from their service to avoid the costs. As a result, a lot of information will not be accessible to users through online search, for example. Experience from Spain shows that smaller publishers will suffer most. The news will come exclusively from big publishers and companies who have enough negotiating power to contract the flow of the snippet levy revenues.

Why is this important?

The snippet levy creates barriers to freedom of information and expression. The Commission failed to provide a clear definition of what online news services are, so it could include almost all types of publications. Each member state will have its own definition of "news". Furthermore, it is not clear who benefits from the snippet levy. The proposal was made despite clear evidence from Spain and Germany where this experiment was carried out and failed.

Will the proposal fix the problem?

No. The Commission proposes a solution that does not properly address the problem of revenue loss of publishers, while limiting users' access to information. The publishers claim that they lose revenue because readers read the snippets and do not follow through to the original content. The challenges for modern news media are too complex to solve with a simple transfer of revenue from one industry to another, and need to be addressed with policies that do not affect users.

How can this be fixed?

This measure does not address the challenges of the digital era, and harms access to information. The only option is to remove the snippet levy from the proposal.

3

Copyright proposal: Copyfails reloaded

Mandatory upload filters create a censorship machine

What was proposed?

The European Commission proposed rules that appear to have the goal of enabling payments from online content-sharing services to the owners of rights to music, films, and other types of content. Internet hosting services will be obliged to monitor all uploads to identify and filter copyrighted works. The effectiveness and proportionality of the software that would need to be created for this purpose are not evident in the Commission's proposal.

What is the problem?

The proposed measures will require monitoring and filtering of anything that European citizens upload to content-sharing services. The censorship machine required for this will have to ignore any freedoms (existing exceptions to copyright) to use somebody else's creation: for example for the purpose of quotation, teaching or parody, as already foreseen by the European legislator.

Why is this important?

The proposal poses a threat to human rights protected by the European and international law. The censorship machine proposal chooses to ignore the case law of the Court of Justice of the European Union stating that monitoring and filtering content is a breach of freedom of expression and of privacy ([Scarlet/Sabam ruling](#) and [Sabam vs. Netlog](#)).

Will the proposal fix the problem?

No. Creation of a filter that can potentially serve as a censorship machine will infringe users' fundamental rights.

How can this be fixed?

The European Institutions should develop a fundamental rights-compatible approach that would improve payment arrangements between rightsholders and large online services.