The Recent Copyright Directive and its Controversial Articles

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***Abstract*—In order to modernize the European Union's copyright policies, to create a fairer digital market for content creators, the 2019's EU Copyright Directive was proposed. However, this Directive is extremely controversial, especially its articles 12, 15 (previously known as 11), and 17 (previously known as 13), that have become three of the most well-known articles published in the history of the European Union. Although these articles came with the intention of better protecting creativity and content creators, by allowing copyright holders to better protect their content, they might bring severe consequences for the EU citizens like Internet's censorship and have adverse effects for smaller companies. Therefore, in this document, we will present these articles in detail and explain the consequences that may derive from their recent approval.**

***Index Terms*—EU Copyright Directive 2019, Article 11, Article 12, Article 13, Article 15, Article 17**

I. Introduction

As a consequence of the widespread of digital technology, especially the Internet, across the world, laws must be made to regulate this new domain. Therefore, the world, and in particular the European Union (EU), needs modern copyright rules fit for the digital age [1], [2], being that the last approved Copyright Directive dates of 2001 [3]. Therefore, with the aim to modernize the EU copyright rules, the 2019's Directive on Copyright in the Digital Single Market was proposed [4]. This Directive, also known as the EU 2019 Copyright Directive, consists in an extension to the existing EU copyright law [5], a component of the EU's Digital Single Market policy [6]. Its objective is to create a fairer marketplace for the exploitation of online content [7]. More precisely, this Directive intends to promote the thriving of European copyright enterprises in a Digital Single Market, through the reduction of the gap on the profits made by Internet platforms and content creators. Initially proposed on 14 September 2018 by the European Commission [8], its final version was approved by the European Parliament on 26 March 2019 [9] and by the Council of the European Union on 15 April 2019 [10], giving two years to each of the 28 EU's countries to pass appropriate legislation to meet the Directive's requirements. Since its proposal, this "Directive has become the most controversial issue in EU history" [11], being generally supported by content creators, yet strongly criticized by major tech companies and Internet users. This division is due to the fact that this Directive is highly ambiguous and provides different assumptions about what the EU's countries must do to include it into their law. Consequently, the services that operate in the EU will probably be obligated to present different versions of their sites to each individual country, which might probably lead to the convergence of these services on the most restrictive national implementation of the Copyright Directive. Therefore, although this directive intends to create a fairer marketplace for copyright, these regulations to the Internet might lead to the Internet's censorship and have adverse effects for smaller companies. In particular, articles 12, 15 (draft article 11), and 17 (draft article 13) of the Directive take the spotlight. On the one hand, Article 12 gives more power to publishers, who gained more rights over the authors' works. In turn, Article 12a specifically gives the organizers of sport events the ability to reserve all footage/images of them, not allowing others to post photos, videos or gifs of these events. On the other hand, Article 15 aims to give press publishers a better control over the licensing of their publications to Internet content aggregators, enabling them to collect a portion of the revenue that other platforms make from sharing their publications. Finally, Article 17 intends to not allow the upload of unauthorized copyrighted content as well as rewarding authors who own the rights to the content uploaded. Therefore, in this document, we aim to explain these articles in detail as well as to highlight their possible consequences, being the remaining of this document structured as follows: on Sections II to V, we present the Articles 12, 15, and 17, respectivelly and, finally, on Section VI, we finish this document with some final remarks.

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II. Article 12: Claims to fair compensation

A. Why does it exist?

To give more power to the publishers. When an author transfers or licenses a right to a publisher, such a transfer or a license constitutes a sufficient legal basis for the publisher to be entitled to a share of the compensation for the uses of the work made and the remuneration for its use. [12]

B. What are the consequences?

Article 12 would allow publishers to claim compensations. However, in most of the Member states, the compensations are not shared between authors and publishers. It is impossible for authors to know the economic value of the transfer of rights and is not fair for authors to sign a publishing agreement without knowing what is the real scope of the transfer of rights. Article 12 does not take into account the contractual models that exist in the markets, which are affected by their diversity of languages, for example. This leads to some questions: Are

compensations for the use of works under exceptions and limitations shared between authors and publishers or not? How high the royalties are? Are compensations paid to authors as grants or copyright compensations? [13]

This article gives a lot of power to publishers. Of course, an author has to turn to publishers to publish a piece of work. In this way, the publishers will gain rights over the work, and, consequently, some remunerations on it. The publishers are more protected, unlike the authors, who have to give some of their part on the work towards the companies.

III. Article 12a: Protection of sport event organizers

A. Why does it exist?

To ensure that the sport event organizers are the only ones with the broadcast rights of the events. For example, videos of certain game in social media are subject to be eliminated by the events organizers, with the argument that they are the only ones who have the rights to show images of that game. [14]

B. What are the consequences?

Article 12a might stop anyone who isn't the official organizer of a sports match from posting any videos or photos of that match. This could put a stop to viral sports GIFs and might even stop people who attended matches from posting photos to social media. But as with the articles above, all of this depends on how the directive is interpreted by member states when they make it into national law. [15]

For example, a direct on the instagram or on the facebook of a common user that is in a football stadium, could be erased by the company that has the rights of transmission of the game in question. Again, this article comes to give more power to big companies, who may eventually ask for compensations for these videos.

IV. Article 15: Protection of press publication concerning online uses

Article 15, initially proposed as Article 11 (Protection of press publications concerning digital use) is meant to empower news publishers that have their content aggregated by the platforms and services of big tech companies, like Google or Facebook [16].

A. Why does it exist?

Up until now, various Internet platforms, such as Google News, Facebook, or Twitter have been displaying "snippets" of content when linking to a news article. These "snippets", more often than not, include the article's headline, a small excerpt, and an image [17], without any consideration whatsoever over any licensing issues. Some argue that such Internet platforms are profiting unfairly from these "snippets" [18], since around half of the users that read "snippets" do not follow its link to the publisher's domain [19]. With the introduction of Article 15, however, European publishers may now charge platforms that display these "snippets" of their news articles [20], which will, in theory, give them more control over their own content, and help them gain more revenue [21]. In the first draft of the Copyright Directive, Article 11 reserved news publishers' rights over any kind of linking to their content, with or without accompanying "snippets", for a length of twenty years after initial publication [22]. This initial version of the article was criticized for being overly vague on what exactly constituted a "link" and a "news publisher", opening the door for each member state to implement the article according to their own interpretation [23]. This situation would lead to several different versions of the copyright law across the entire EU digital market, while Internet platforms would be compelled to comply with the most extreme one, to avoid litigation [24]. In its revised, approved version, Article 15 explicitly states that publishers reserve licensing rights over the online use of their content by Internet society service providers. These rights do not apply to the act of hyperlinking by itself; they also do not apply to "private or non-commercial uses of press publications by individual users", as well as "use of individual words or very short extracts of a press publication" [25]; The above-mentioned rights of a news publisher over a news publication expire two years after the date of publication and the authors of content that is used in a press publication shall receive a share of the profit that publishers make from Internet society service providers [25];

B. What are the consequences?

The article has been met with criticism since its inception. Some say that smaller content aggregators may lack the funds to secure the licensing to news articles, leaving only big tech companies, with significant funds, as the remaining aggregators [26]. Yet even the big tech companies may simply choose not to pay licensing fees at all, as is the case for Google, which threatens to drop its Google News service from the EU altogether [27]. This could harm press publishers, which would suffer from the increased difficulty in sharing news [28], especially smaller publishers, that depend on content aggregators to spread their news content [26]. Critics also point to copyright measures like Article 15 that have been previously implemented in Germany (2013) and in Spain (2014). In Germany, Google refused to pay for any licensing fees, forcing publishers that wanted to make use of its platform to relinquish the fees. German copyright collective group VG Media, which initially decided to remove their articles from the Google News' service, had to give in and license them for free to Google News, after a noted decrease in traffic, about 40%, to their websites [29]. In Spain, the implementation of such a copyright measure led to Google dropping its Google News service in the country. Consequently, the European Parliamentary Research Service concluded that the copyright measure "clearly had a negative impact on visibility and access to information" [30], and a report by the Spanish Association of Publishers of Periodical Publications found that small publishers noted a decrease in online traffic by 13%, on average [31]. Despite the criticisms presented so far, there is a firm support for Article 15, both

from those in the political world, as well as from professionals in the publishing industry, who emphasize publishers' right to revenue, and dismiss the claims of any possible ill-effects befalling smaller publishers. Jean-Claude Juncker , European Commission President, staunchly supports the article, arguing for "journalists, publishers and authors to be paid fairly for their work, whether it is made in studios or living rooms, whether it is disseminated offline or online, whether it is published via a copying machine or commercially hyper-linked on the web" [32]. António Marinho e Pinto, European Parliament Member, considers that the resulting legislation "works to defend european culture and strengthen the press" and that "it is fair that those that produce information, the news, that pay the salaries and expenses of journalists, can demand from those that share them on the Internet a share of the profit they make" [33]. Mathias Döpfner, CEO of German mega-publisher Axel Springer, and president of the German newspaper publishers' association, voices its support by saying that "if the protection of intellectual property is not ensured, then publishers have no perspective in the digital future" [18]. A collective of several european publishers, along with journalism federations, signed a joint statement in strong support of the article, claiming that the rights it provides are necessary "to protect investment in content, to make copyright management fit for the digital world, to secure fair practices in the online exploitation of news content and to ensure a healthy, democratic, diverse, sustainable and free democratic press to the benefit of European journalists, citizens and European democracy" [34]. The collective also claims smaller publishing enterprises will not be affected by the article, and in fact it might be the first step to "begin to address this asymmetry of power [between publishers and aggregators] and make it easier for all publishers - whatever their size - to monetise and share fairly [...] in the future if they would like to" [35].

V. Article 17: Use of protected content by online content-sharing service providers

Originally proposed as the article 13 of the original draft of the Copyright Directive, its content has changed over time due to the controversy generated [36] being article 17 a rewriting of the original and even more controversial initial proposition (article 13). In short, article 17 defines that digital platforms, such as Facebook, YouTube, Google, and others, must ensure that none of the content uploaded to it is infringing the copyright directive [36].

A. Why does it exist?

Until now, those platforms have been exploiting an old legal framework that allows them to claim to be equivalent to storage host (like AWS, Google Drive, etc.), and so "cannot be held responsible for the content their user's posts" [37]. In order to change that, article 13 was created with the objective of guarantee that no unauthorized copyrighted content is uploaded and also to ensure that the eventually generated revenues are fairly split between the copyright holders and the digital platform. At this point, you are probably thinking this sounds great, why is it so controversial then? Well, as originally proposed, online platforms could only accept content if the user uploading it is in fact 100% owner of the content being upload, meaning that platforms like youtube will be forced to block thousands of videos [38] (such as educational videos, fan covers, mashups, parodies, and others), not only that, building such system will require serious financial and engineering power, meaning that a lot of companies would have no choice to either pay to use other companies systems or to block content at upload phase.

B. What has changed?

After some intense debate and pressure, changes were made to the initial article 13 proposition and so the article 17 was created. Article 17 only apply to certain companies whose main purpose is to store and give access to a large number of protected works (music, films, series, etc) that are posted by their users, and those that are organizing and promoting protected works for profit-making purposes (apps like Youtube, Facebook, etc). There were also implemented some exceptions: Non-profit encyclopedias like Wikipedia, and non-profit educational and scientific repositories, Cloud services for private use like DropBox, Open-source software developing platforms like GitHub, E-commerce sites that sell physical products like Amazon, Personal blogs or discussion forums, and TripAdvisor, dating websites, etc. – as long as the main purpose of the service is not to give access to a large amount of protected works posted by users and organized to make a profit from that activity [37].

C. What are the consequences?

1) For the Companies: With Article 17, platforms like those referred above can no longer argue that they are simple technical intermediaries between the users and content, "they are "performing an act of communication to the public or an act of making available to the public" and this is why it reaffirms that they are required to negotiate license agreements with rights holders" [37], and for that they will be obligated to negotiate licensing agreements with the copyrights holders. In case the copyrights holders don't want their content to be shared on those platforms, these last ones have to make a proven effort to prevent that to happen. Some digital platforms are concerned about the consequences that may arise and for example, Youtube already prepared an Action Plan [39]. However, these rules do not apply in the same way in the case of a new service provider under three years old, whose annual turnover is less than EUR 10 million and whose average number of visits per month is less than EUR 5 million. In this case, the service provider has fewer responsibilities [40].

2) For Users: This article has been causing concerns and many YouTubers are worried about what can happen with their content already produced and content that will be produced in the future. In the worst case, they can be forbidden to upload the content. However, the norm seven of the article says that each member state warrants that it will not be barred from disclosing protected material that does not infringe copyright

when these are covered by exceptions or limitations. In this way, the material may be uploaded in the case of "citations, critique, analysis" and "for the purposes of caricature, parody or pastiche" [40]. In this way "memes, gifs and all of that other good stuff that denotes freedom of expression and freedom of art is, of course, allowed". Moreover, this article should respect the freedom expression, arte and property [37]. On the other hand, this article also protects creators once they will be rewarded for the work as they have the possibility to negotiate with the big digital companies. Additionally, it ensures that content is share accord to the legal aspects [37].

VI. Final Remarks

Intending to modernize its copyright policy, the EU 2019 Copyright Directive was proposed. Nevertheless, this directive became one of the most controversial Directives published in the history of the European Union. In particular, its articles 12, 15 and 17 take the spotlight. Hence, in this document, we explained in detail each one of those articles as well as their possible consequences. Finally, although these articles came with the intention of better protecting creativity and content creators, they might bring severe consequences like the Internet's censorship and have adverse impacts for smaller companies.

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