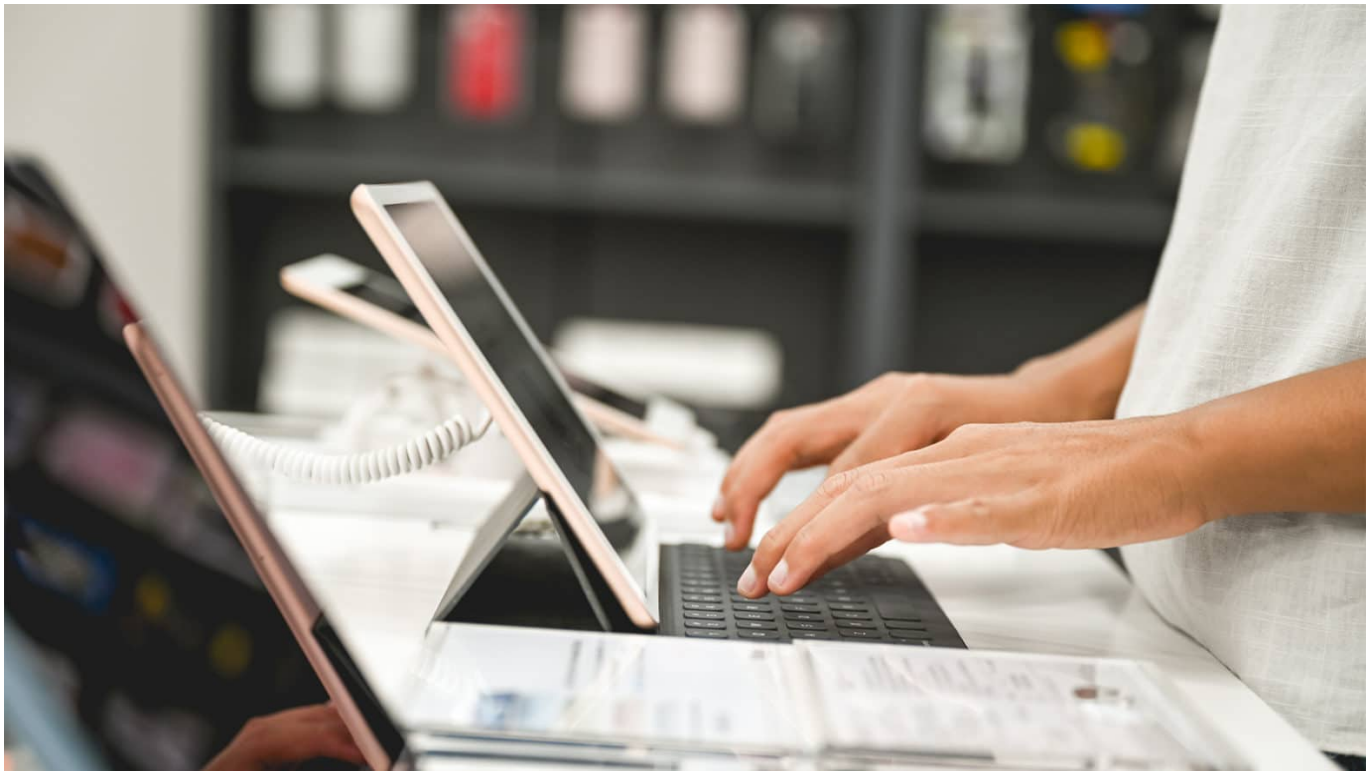
The Digital Copyright Directive



How has it come about?

Back in May 2015, the European Commission published a communication on a Digital Single Market Strategy for Europe which looked at the major challenges to completing a secure, trustworthy and dynamic digital single market. As part of this, it said that it would legislate to further harmonise the EU copyright laws of member states.

As part of this, a directive on copyright in the digital single market was proposed (The Digital Copyright Directive). The directive aimed to update copyright law in light of the new digital age by enhancing the freedoms and rights enjoyed by internet users, allow copyright owners to be better compensated for use of their copyright work through licensing agreements, and clarify the legal framework within which online platforms operate.

Fast forward several years and The Digital Copyright Directive, having gone through the legislative process, was published in the EU Official Journal on 17 May 2019, and will enter into force 20 days from publication i.e. 6 June 2019. Member states will have until 7 June 2021 to transpose the Directive into national law.

How Brexit may impact on the adoption of such measures by the UK remains to be seen and we'll leave that for another blog post.

What is all the fuss about?

The passage of The Digital Copyright Directive through the legal process has been far from smooth and has been the subject to some intense lobbying due to the controversial nature of some of its provisions.

The two main concepts which have caused the most controversy are as follows:

1. A new press publisher's right

This right will allow publishers to obtain "fair and proportionate remuneration" through licensing for the digital use of their press publications by information society service providers (e.g. big news aggregators like GoogleNews and other media monitoring services).

The aim of this right is to try to assist publishers in combating instances where large portions (i.e. not hyper-linking, re-use of "individual words", or "very short extracts") of their publications are re-used without a licence by information society service providers.

For the avoidance of doubt, individual internet users will still be able to share content on social media or link to websites and newspapers without falling foul of this new right.

2. Use of protected content by online content-sharing service providers.

This provision aims to make 'online content-sharing service providers' (e.g. Facebook) liable for infringing content which appears on their platform unless they can show that:

1. they have used best efforts to gain authorisation from the relevant rights holders;
2. made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the right-holders have provided the service providers with the relevant and necessary information; and in any event;
3. acted expeditiously, upon receiving a sufficiently substantiated notice from the right-holders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b).

The above will be judged on a case by case basis.

This new right arguably swings things further in favour of rights holders. How this right will play out in practice is unclear but many see it as having a negative impact and may cause online content-sharing service providers to take an overly cautious approach by blocking or delaying publications.

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