

COPYRIGHT DIRECTIVE

Articles 11 and 13

ON THE ARTICLE 11

➔ The paragraph 1 of the article makes it clear that the **remuneration of press publishers is only an option**:

*“1. Member states shall provide publishers of press publications with the rights provided for in article 2 and article 3(2) of directive 2001/29/ec **so that they may obtain fair and proportionate remuneration** for the digital use of their press publications by information society service providers.”*

This gives **a lot of flexibility to the application** of this provision.

Moreover, it is important to note that **Member States shall ensure that authors receive an appropriate share of the additional revenues** that press publishers receive for the use of a press publication by information society service providers.

➔ In order to answer those who are worried about **consequences on social networks**:

NO, **hyperlinks are not included in this article**, and it is very clear in the text:

*“2a. The rights referred to in paragraph 1 **shall not extend to acts of hyperlinking.**”*

NO, there will be **no impact on individual users since private and non-commercial uses of press publications are not covered by the article**.

*“1a. The rights referred to in paragraph 1 **shall not prevent legitimate private and non-commercial use of press publications by individual users.**”*

➔ In addition, **the right established by paragraph 1 of Article 11 only applies to press publications used by “information society service providers**, which are defined in the text, and **not to individual users that are excluded in the paragraph 1 (a) of Article 11**.

*“1. Member states shall provide publishers of press publications with the rights provided for in article 2 and article 3(2) of directive 2001/29/ec so that they may obtain fair and proportionate remuneration **for the digital use of their press publications by information society service providers.**”*

*“1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications **by individual users.**”*

ON THE ARTICLE 13 AND ARTICLE 2 (DEFINITIONS)

➔ It aims to **make platforms accountable, but not all platforms**. Article 13 needs to be seen in conjunction with article 2 of the draft directive.

“Article 2 (4a) ‘online content sharing service provider’ means a provider of an information

society service one of the main purposes of which is to store and give access to the public to copyright protected works or other protected subject-matter uploaded by its users, **which the service optimises.**“

“Services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all concerned rightholders, such as educational or scientific repositories, **should not be considered online content sharing service providers within the meaning of this directive.** Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, **should not be considered online content sharing service providers within the meaning of this directive.**”

➔ Only those that are active, so that optimize the content posted online.

Moreover, Article 2 on definitions **explicitly states that the directive excludes non-commercial services** and, in particular:

- Encyclopedias (Wikipedia)
- Providers of online services where the content is uploaded with the authorisation of all concerned rightholders
- Private cloud services (Dropbox)
- Open source software developing platforms (Github)
- Online market places whose main activity is online retail of physical goods (eBay)

➔ Also, **no general filtering measures are included in Article 13.** The text even emphasizes that this practice is prohibited:

1.b members states shall ensure that the implementation of such **measures shall be proportionate and strike a balance between the fundamental rights of users and rightholders** and shall in accordance with article 15 of directive 2000/31/ec, where applicable **not impose a general obligation on online content sharing service providers to monitor the information which they transmit or store.**”

➔ However, **active platforms need to put in place measures in cooperation with rightholders when they alert platforms about the public availability of infringing content.**

1a. Member states shall ensure that the online content sharing service providers referred to in the previous sub-paragraphs shall **apply the above mentioned measures based on the relevant information provided by rightholders.**”

➔ Finally, Article 13 will not lead to censorship of the entire internet.

- It **does not threaten freedom of expression or fundamental rights.**
- The **meme, mash-up, the gifs are already allowed and included in an existing exception** and will still be after the adoption of this directive (article 5, directive 2001/29/EC)

3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases: (k) use for the purpose of caricature, parody or pastiche

➔ A provision was even added **to ensure a complete protection of users' data, even though GDPR naturally applies to all legislation:**

2.2 Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the **measures** referred to in paragraph 1 **should not require the identification of individual users and the processing of their personal data.**

IT SHOULD BE NOTED THAT THE COMPROMISE TO ARTICLE 13 WAS VOTED BY A LARGE MAJORITY IN THE COMMITTEE OF LEGAL AFFAIRS BY 15 +, 10-, 0 ABS).

Small and medium-sized enterprises

Any platform is covered by Article 13 **if one of their main purposes** is to **give access to copyright protected content to the public.**

➔ **It cannot make any difference** if it is a **“small thief”** or a **“big thief”** as it should be illegal in the first place.

Small platforms, even a one-person business, can cause as much damage to right holders as big companies, if their content is spread (first on this platform and possibly within seconds throughout the whole internet) without their consent.

In view of such a **small business potentially causing such a tremendous damage to right holders, the compromise text does not foresee any exemption for SMESs.**

However, **the text provides safeguards that will benefit SMEs.** Measures must be **appropriate and proportionate.**

➔ We cannot demand the same thing from an SME as from Youtube.

Since the **measures may be very different in nature**, from the content recognition system to a simple notification system, **there are many possibilities for SMEs to find measures corresponding to their means and size.**

Finally, **solutions** compatible with the Directive already exist on the market, are **affordable** for SMEs and the market will continue to develop in this direction.