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LEGAL ISSUES

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Legally Speaking — European Commission's Copyright Reform Raises Issues

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On October 18, 2018, **President Trump** signed the **Music Modernization Act** that was created to update the U.S. Copyright Law to contend with the numerous streaming online platforms. The significance of the Act was the support for artists, producers, and copyright owners. First, the law provided compensation for producers and engineers through the Act. Secondly, compensation was provided for copyright holders pre-1972 recordings. Finally, the Act addressed the streaming technology and compensation to copyright holders by allowing copyright owners to receive royalties easier.

Prior to this Act, the first major law to address the digital age was the **Digital Millennium Copyright Act** in 1998 (DMCA). According to the U.S. Copyright Office, "the **Digital Millennium Copyright Act** provides for the implementation of the **WIPO** (World Intellectual Property Organization) Copyright Treaty and the Performances and Phonograms Treaty, limited online infringement liability for online service providers, and created a form of protection for vessel hulls, and clarified the role of the Copyright Office."

The importance of the **DMCA** is that it addressed the issue of online copyrighted material. The Act allows online service providers to utilize the "notice-of-takedown" procedure, which protects the online service provider from copyright liabilities, while assisting copyright owners with securing their rights. Currently, these two major Acts have benefitted copyright holders and addressed the continuous change in technology in the United States. Recently, the European Union enacted a change in their copyright laws through the Digital Singles Market Directive.

It had been nearly 20 years since the European Commission revised and updated the copyright laws for its members in regard to online information and technology. The most recent activity regarding digital copyrights was in 2014, as the Court of Justice of the European Union addressed online copyright issues with the ruling regarding hyperlinking to copyright material. The court defended copyright holders that have copyrighted material online from links to their works by others. The courts stated that the copyright holders can protect their online works through restrictive access

tools and the copyright owners will be able to take action against infringed works by those linking to their copyrighted works.

Based on technological changes, the European Commission began to create new legislation to meet the demands of online copyright laws in 2016. According to the European Commission, "Europe needs to seize the opportunity and take the lead in updating copyright rules to support its culture and be competitive." The Commission noted that 72% of Internet users read online news sites, 56% of Internet users listen to music online, 66% of Internet users watch videos from commercial or sharing services, and 42% of Internet users watch Internet streamed TV from TV broadcasters. The legislation was created to assist the 11.65 million jobs in the creative industry that contributes to €915 billion per year as part of the 6.8% of Europe's GDP.

The European Commission described the goals of the new copyright legislation. First, the clearer digital rights and fewer worries for citizens' goal is to ensure that Internet users will not have to worry about violating copyright laws by placing the burden on online platforms. They will also provide information on those copyrighted materials that have been removed due to copyright, which would allow for the appeal of the removal. In addition, Europeans will have access to books, films and audio works that were no longer commercially available in Europe through on-demand providers, as well as sharing copies of paintings, sculptures, and other works of art in the public domain without fear of copyright infringement.

The second goal of the new legislation is to provide more control for creators of audio-visual, music, films, songs, etc. of their uploaded materials and to be compensated for the uploads. The press publishers also have the right to negotiate better pay for the use of their newspapers and magazines by online services and the journalists will receive revenue through this agreement.

The final goal is opportunities for science, education, and cultural heritage stated by

the European Commission, "Students and teachers will be able to use digital materials and technologies for learning without facing copyright-related restrictions in their digital teaching activities." The goal also allows European museums, libraries, film archives, and other cultural heritage institutions to digitize cultural works.

Based on these goals, the European Commission began to update the European copyright laws for the digital demands. The European Commission noted, "The new copyright rules strike the right balance between the interests of different players in the digital environment — authors, other creators, and the press sector are better off, Internet users are better protected and the obligations online services are proportionate." The commission's goals was to provide "clearer digital rights and fewer worries for citizens, a better deal for all creative sectors and the press, more opportunities for science, education, and cultural heritage, and fair remuneration for individual creators and journalists."

Due to the changing online commerce, the European Commission created the "Directive on Copyright in the Digital Single Market" that has already provided numerous debates for and against the legislation. The Council of the European Union approved the directive on April 15, 2019. This leaves the 28 European members two years to establish and enforce the new copyright law, which can also have various interpretations once the members have complied with the law.

Some of the issues that have brought attention to the European Union's copyright law include censorship, free speech, intellectual property, amount of content available, and criminal copyright law procedures. However, artists, publishers, and legislators state that the copyright law meets the demands of the digital era. Due to the controversy, the European Commission, on August 28, 2019, called for open discussion regarding the legislation that would invite all stakeholders to "discuss best practices on how content-sharing platforms and service providers should cooperate with rights holders."

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Before the European Parliament voted to approve the copyright law, online platform providers that includes Google, YouTube, Facebook, Instagram, and other sharing platforms opposed the legislation. The reason the sharing platform providers opposed the legislation is based on Article 17 that requires the platform providers to install filters to catch copyright violations. In addition, the legislation is requiring a “link tax” for online platforms. According to **Andrew Tyner** (J.D. Candidate for 2020), the link tax “requires online platforms to pay fees to news outlets and other content creators for news shared on their sites.”

The legislation also caused protest from Internet users through the *www.savetheinternet.info* website that documented over five million petition signees. The concern regarding the filter was based on the concept that the filter could over block content and even filter content erroneously. The responsible party for copyright infringement on the Internet is placed on Platform Sharing Online Services, such as Facebook or YouTube. **Tyner** stated, “if a user shared a copyright protected song on YouTube without first licensing it, YouTube would be liable.” In addition, this issue is unclear for other types of informative platforms. For instance, blogs or RSS feeds similar to Google and Yahoo News may fall into this category. According to **Marcello Rossi** (The Journalism Company Nieman Lab), there was mention that Google News would shut down, which they had done previously in Spain due to a similar law.

The new copyright laws are up to the member countries to determine how to implement these laws based on the requirements set forth by the European Commission. Finland, Italy, Luxembourg, the Netherlands, Poland, and Sweden were the European members that also opposed the legislation, whereas Belgium, Estonia, and Slovenia abstained from the vote. Foo Yun Chee noted, “Google said the new rules would hurt Europe’s creative and digital economies, while critics said it would hit cash-strapped smaller companies rather than the tech giants.” Representatives for Poland also noted that the requirement to filter would lead to censorship. **Rossi** noted that Google stated

the company had already spent more than \$100 million dollars on the Content ID service.

YouTube would have issues because they are required to receive permission from the rights holders of songs users upload. The concern for YouTube and Internet activists is the system used to enforce copyright infringement. Currently, YouTube uses the Content ID to enforce copyright, which cannot locate all copyright infringement content. Google also makes the argument that it would be extremely complex to locate all copyright holders to negotiate agreements.

As for the book publishing industry, the new Digital Single Market addresses digitalization practices for libraries, education, museums, and cultural heritage preservation projects. **Jedrzej Maciejewski** (Cracow University of Economics, Faculty of Economics and International Relations, Department of European Economic Integration, Krakow, Poland) stated, “The book market in Europe is characterized by diversity and fragmentation in comparison with, for example, the American market, and is losing its share in the global book market with the development of book markets in emerging markets.” He noted that the European Union implemented the Digital Single Market Strategy “to meet the challenges of the ongoing digitization” which controlled about 6-7% of the European book market. The new legislation “will create a new legal framework for European book markets.”

According to **Maciejewski**, the United States had 26% shares of the world book market, followed by China with 12% in 2014, whereas The United Kingdom, Germany, and France collaboratively held 15%. However, the new legislation addresses the use of digitization and eBook lending that will change the book market in Europe. The new law will increase the digitization of out-of-commerce books, by working with copyright holders and publishers, as well as relieving the restrictions on licensing agreements for eBook lending. Currently, most European publishers do not license eBooks for lending or interlibrary loans.

Further information about the impact of the new Digital Single Market directive will be more evident as members of the European have two years to implement the law and analyze the impact through the court systems. According to the opponents, the copyright changes place

more control to the copyright holders, which are considered by the opponents as a restriction towards the freedom of speech and the lack of access to information. **Tyner** stated, the copyright directive’s “overreaching, copyright protections will weaken online platforms’ ability to do business cheaply, curb Internet users’ ability and willingness to share information or expression, and encroach on Internet users’ privacy rights in the online space.”

References

Chee, Foo Yun. 2019. “EU Copyright Reforms Pit Creative Industry Against Internet Activists, Consumers.” *Reuters*. <https://www.reuters.com/article/us-eu-copyright/eu-copyright-reforms-pit-creative-industry-against-internet-activists-consumers-idUSKCN1R61ZM>

Chee, Foo Yun. 2019. “EU Approves Tougher EU Copyright Rules in Blow to Google, Facebook.” *Reuters*. <https://www.reuters.com/article/us-eu-copyright/eu-approves-tougher-eu-copyright-rules-in-blow-to-google-facebook-idUSKCN1RR0NY>

European Commission. 2019. “Digital Single Market: Modern EU Copyright Rules for the Benefit of All Europeans.” <https://ec.europa.eu/digital-single-market/en/news/digital-single-market-benefit-all-europeans>

European Commission. 2019. “Copyright: Commission Launches Dialogue Between Platforms and Rights Holders.” <https://ec.europa.eu/digital-single-market/en/news/digital-single-market-benefit-all-europeans>

Maciejewski, Jedrzej. 2019. “Book Markets in Europe: Facing the Challenges of the Digital Single Market.” *Comparative Economic Research* 22 (2): 173-87.

Rossi, Marcello. 2019. “What the EU’s Copyright Overhaul Means and What Might Change for Big Tech.” *Nieman Lab*. <https://www.niemanlab.org/2019/04/what-the-eus-copyright-overhaul-means-and-what-might-change-for-big-tech/>

Timeline 1998-2012: U.S. Copyright Office. 2019. https://www.copyright.gov/timeline/timeline_1998-2012.html

Tyner, Andrew. 2019. “The EU Copyright Directive: ‘Fit for the Digital Age’ or Finishing It?” *Journal of Intellectual Property Law* 26 (2): 275-88. 🌿

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four generations of **Morgans** and the powerful, secretive firms they spawned, ones that would transform the modern financial world. Tracing the trajectory of **J. P. Morgan’s** empire from its obscure beginnings in Victorian London to the financial crisis of 1987, acclaimed author **Ron Chernow** paints a fascinating portrait of the family’s private saga and the rarefied world of the American and British elite in

which they moved — a world that included **Charles Lindbergh, Henry Ford, Franklin Roosevelt, Nancy Astor, and Winston Churchill**. A masterpiece of financial history — it was awarded the **1990 National Book Award for Nonfiction** and selected by the **Modern Library** as one of the **100 Best Nonfiction Books of the Twentieth Century** — *The House of Morgan* is a compelling account of a remarkable institution and the men who ran it, and an essential book for understanding the money and power behind the major historical events of the last 150 years.”

I am sure that you have noticed that I am a huge lover of all kinds of books. I was interested to read **The Association of American Publishers (AAP) StatShot** report for October 2019 reflecting reported revenue for all tracked categories, including Trade (consumer publications), K-12 Instructional Materials, Higher Education Course Materials, Professional Publishing, and University Presses. Paper formats continued to dominate Trade, accounting for \$528.6 million, or 79.9% of the category’s \$661.2 million in revenue

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