Internet not broken – copyright on the mend

So what is all that fervid hoo-ha around the EU Copyright Directive about, then?

COPYRIGHT may yet be improved in Europe – despite a vicious campaign in favour of the internet corporations that make fortunes scrapping up your work and selling ads alongside it. The likes of Google, Apple, Facebook, and Amazon – GAFA for short – will fight on.

You have probably seen messages claiming the proposals will “break the internet”. Members of the European Parliament have seen and heard tens of thousands of them, delivered by websites linked to the corporations. MEPs nevertheless voted on 12 September to proceed with the Directive on copyright in the digital single market.

The untruths
Whenever lobbyists gather together to say something will “break the internet”, it turns out they are… exaggerating. Their claims are most reminiscent of the “they’re coming to take your guns away” mailshots of the US National Rifle Association. For example:

They said that the Directive means “censorship”. It does not. The text that of Article 13 that the Parliament voted on says that GAFA should make licensing agreements to reimburse you and other creators for works uploaded by users – for example through collecting societies, rather like public performance licences for music. Only if they decline to do this, they must “cooperate in good faith in order to ensure that unauthorised protected works or subject matter are not available on their services”.

They said that it would “kill Wikipedia”. Non-profit encyclopaedias are explicitly excluded. The techies said it’s all about machine “filtering”. It isn’t. That’s just the most techy thing they found to talk about.

They said that the Directive means a “link tax” or prevents you linking at all. It does not. Article 11 says that newspaper publishers shall have the right to negotiate licences with GAFA for use of bits of your journalistic work. The Parliament text explicitly excludes “legitimate private and non-commercial use of press publications by individual users”. So the internet is not broken.

The European Federation of Journalists (EFJ) reached a landmark agreement with European newspaper publishers’ organisations to promote a provision that “authors receive an appropriate share” of any income from this. This is in the text approved by the Parliament.

They said that it would “ban memes”. The Freelance is not in favour of internet randoms taking your photo, adding some substandard text, and distributing it without credit or compensation. Nevertheless, EU member states’ laws include an “exception” to copyright for the purposes of parody, and that isn’t changing. (What these laws mean – particularly about credit and uses that damage the creator of the original – remains to be settled in future court cases.)

All this US-style campaigning seems to be based on an assumption that elected representatives don’t read the measures they’re voting on. The Freelance can think of one “haunted pencil” in Westminster who probably thinks one should get one’s butler to do the homework for one.

Stung by accusations that their campaign was “astroturf” – like grass roots, but synthetic – the friends of GAFA called in-person protests in 29 August. Probably the largest was in Berlin, with 80 to 150 warmish bodies.

The good bits
Mercifully absent from the furor, so far, are provisions that would mean that those exploiting your work as a journalist would have to account to you what uses they make of it. In the event that they made much more money than was envisaged when you negotiated a price with them, you could claim a fair share of this “windfall”.

And now…
It’s not over. The next stage in the passage of the Directive is a three-way negotiation between the Parliament’s Legal Affairs Committee; the Commission which is the EU civil service; and the Council which is made up of member states’ governments. Some amendments passed by the Parliament need sub-editing. The EFJ will be vigilant in pushing for the intention of the good bits to stay in.

One issue will be ensuring that the provision for “heritage institutions” to licence “out of commerce” works through collecting societies isn’t used to weaken existing safeguards.

Presuming that the Directive passes, member states – and probably the UK, whatever happens with Brexit – have to “transpose” it into national law. Journalists’ and other authors’ organisations will have our work cut out ensuring they do that sensibly.

A particular concern here is a proposal from the Council to allow member states to share Public Lending Right payments between authors and publishers.

This appears to be necessary to make PLR work as it has in German and Austrian law: it mustn’t be implemented anywhere else – unless budgets are, say, doubled.

The chances of you getting a bit more income after all this work are quite high.

And the importance of making GAFA play by the rules of the real world is only emphasised by how much they hate it.

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No guineas
A member writes: “I wanted to use an image in my book on Virginia Woolf – as an indication of how ubiquitous she now is. It’s a Google search engine banner that appeared on her birthday.” The Freelance would like Virginia Woolf to be better-known for her A Room of One’s Own and Three Guineas – some of the best writing on making a living as a woman writer. The member continues: “At Google’s permissions page I see that they don’t allow anyone to use ‘Google Doodles’: The Freelance advised the member to pull the picture. Google is, of course, possibly the largest funder of anti-copyright campaigns. But it knows the value of its own copyright (and trademarks). Virginia Woolf at Home by Hilary Macaskill is scheduled to be published by Pimpernel Press in May 2019.

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