



WHAT THE HELL IS ARTICLE 13?

F.A.C. NOT FICTION

A music myth-buster for the Copyright Directive and online copyright reform

Article 13 is one part of the proposed new Copyright Directive which is being considered by the European Authorities. Law is much slower than technology and creativity so it always lags behind how the innovative world works. This Directive is intended to update the law around all kinds of creative content and copyright to work in the digital age.

We live online; creatives make the internet alive – so we all need to make sure that online is fair, ethical and pays the people who make all the good stuff.

Article 13 talks about what online platforms and services should do to be good players.

The whole Directive looks at the world around music makers and the businesses making money from that music online – from the music industry to services streaming and sharing home videos.

To make this work takes law – providing a reliable and modern framework to describe what good looks like. To make law takes agreements between different countries, stakeholders, creatives and businesses. Europe is a collective and a way to give music makers a big, consistent space to earn money from their music, to flourish and evolve and to give fans what they love. It must be fair, it must be relevant to the way things work now and the rules must be the same for everyone.

Doing this means answering some questions:

If services let the world enjoy and use other people's creativity – should they be responsible for protecting it and paying the people who made it?

If one kind of online service pays for the music on their service, shouldn't they all have to?

If a record label, publisher or collective organisation is entrusted to manage and monetise someone's music, shouldn't they be fair, clear and accountable?

If someone doesn't live up to that trust, shouldn't that music maker be able to work with someone else with that music?

Play fair
Pay fair
Show us the money
Use it or lose it

All of the suggested wording for this law is currently in debate.

People in different businesses have different opinions on it.

Some people want to fix the old systems, some people want to protect their businesses and rights, some people want to get paid more, some people don't want to pay more.

It's like Christmas with too many relatives.

But like every good gift – it's for life.

We have to fight for good futures for artists.



Why is there so much noise about Article 13 right now?

Article 13 is about what online services are responsible for when their business uses lots of music.

After two years of extensive discussions about the wording of this law – the process is now in its final phase. A final text, which will be the result of negotiation and compromise between proposals from different groups, must be agreed and approved before the end of March 2019.

Therefore, everyone affected by the proposals are lobbying – making their case to gain political and public support for their respective positions.

Seen a few pop-ups lately?

YouTube says it supports the principle of fairly paying, so why are they opposing Article 13?

YouTube and similar services have stated they agree with the principle of fairly paying creators and argue they already pay significant amounts to rightsholders and musicians. However, these services, the music industry and other creative sectors, don't agree yet about what constitutes fair and, essentially, how that fairness should be defined and put into practice.

The creative industries like music, believe that the only way to ensure fairness, is to be clear that online platforms which host music uploaded by people, should be more responsible for the copyright involved. They should not put the responsibility for that copyright on to the person uploading their birthday video. In taking responsibility, they should pay the person who made the music.

Taking responsibility means that the everyday user of that service isn't worried about copyright responsibilities (- did you know that you should be?!).

Taking responsibility across the whole world means that a music maker can share in the profits made from their music.

In principle this is fair and fairly obvious.

In practice it is technically complicated, legally complicated and the many people between music makers and making money from music, make it a long conversation with some very different interests around the table.

Ultimately however, this is still about catching up with creativity, modernizing clunky systems and making sure that the creative future is flourishing, fair and fit for purpose. That has to happen.

It is **not** about switching off the internet, meme by meme.



Responsibility for all music will be impossible! Services will have to block most uploads.

Some online services argue that if made responsible for content they will be forced to block most things as it will be impossible for them to identify all of the rightsholders and get the necessary licences to pay for the music. If they didn't block these things, then they would be exposed to multi-million-pound claims for damages. For example, YouTube has suggested that incomplete information on the track Despacito would have forced them to block it. A massive track to block.

This is simply not what Article 13 is currently suggesting should happen. Also, it just is as much up to rightsholders to give services good information and to tell them what should not be online, as it is the responsibility of services using music to share the money they make, with those who make the music.

All online music services manage changes and gaps in information - particularly for new releases which might be put out before the full copyright information is formalised. For much of this, licenses called 'blanket' licenses are there to literally provide cover for gaps and make sure that the right people get paid - eventually. This requires taking the responsibility that you need a blanket license, of course.

Some gaps will always remain in a net for fast flowing content, with many different sources of data. The Directive language proposes that there is a collaborative and reasonable relationship between music rightsholders, the services and the law. The final words are still to be decided but, they include positive descriptions like "effective, proportionate..fair and equitable..best efforts..cooperation".

Unlike in the US, European law says that damages cannot be punitive, so we all have to act reasonably both to resolve a problem and to fight for change. This also means that the services can reasonably hold back money when they don't know how to find the right person to pay – without getting sued straight away. Therefore, there is no reason to block everything and proposals for Article 13 don't say that should happen.

Article 13 will only benefit big businesses, like record labels. Whose 'Value Gap' will Article 13 fill?

The music business is not always a very happy, cohesive family. Indeed, the FAC exists to fight for a better, fairer world for artists and we have an important seat at the influencer tables.

However, Article 13 has received support from right across the music industry, representative bodies, collecting societies, writers, performers, artists and publishers alike.

That speaks for itself, against an accusation that only one part of the sector will benefit.

We need services to have the same responsibilities for using music – why should one pay and not another?

We need to make sure that artists get paid when someone else makes money with their music.

We need to make sure that due money and power go in the right direction – to those who make the music we all love, the creative innovators and to sustain the music we all want to hear.

This leads us nicely on to the later parts of the Directive - **Articles 14 to 16.**



These parts look right at **where** money goes – both the money already coming in and the potential money from better, more equal systems of responsibility.

These are the meaty, empowering Articles for artists – even if they do talk about things you might think are so obvious that they shouldn't be news:

- The right to good information on the use of music.
- The right to good payments for the use of music – fair, clear and comprehensive.
- The right to independent help if there is a problem with the party controlling rights or money.
- The right to get music rights back if the person entrusted to manage and monetise them systematically fails a deal.
- The right to a contract suitable for the modern age, the digital age, the way people actually reach music.
- The right to share in success.

**Full
Fair
Fit for Purpose**

Is there a better way of doing this? What is this better way?

Nobody likes change. Some people are louder about resistance to change than others. However, the world **is** changing and, the **future** is important.

It will take collaboration to find the right words and to make the framework stable for everyone involved in this complicated but exciting music ecosystem. It is exciting because it is innovative, creative and evolving. That is bound to be tricky for law to put into words but, all the more important that we don't stick with laws that were made decades ago, for a different time and which have been shown to have holes in them for the people who make the stuff at the heart of this – the music makers.

Old laws don't work now and, they don't help us have a healthy future.

This process is tough, often tedious and the ultimate in 'too many cooks'.

But let's not poison the soup with fake news.

Let's make online work.

**#LoveMusic
#EuropeforCreators
#CopyrightDirective
@EU_Commission
@featuredartists**