

ITA: Disegno di Legge N.1721 “Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea – legge di delegazione europea 2019”

ENG: Draft Law/Bill Nr.1721 of 14 February 2020 “Delegation to the Government for the implementation of EU Directives and other EU acts - European delegation law 2019”

Source: http://www.senato.it/leg/18/BGT/Schede/Ddliter/testi/52774_testi.htm
(available only in Italian language)

Update: Senate of the Republic, 14 September 2020 – amendments approved, report under preparation

Translation of relevant excerpts (by Giulia Priora):

- *From the original version of the Draft Law as presented on 14 Feb 2020 in the Senate:*

“Art. 9. (Principles and guiding criteria for the transposition of Directive (EU) 2019/790)
1. In the exercise of the delegation to implement Directive (EU) 2019/790, besides the principles and general guiding criteria set in Art.32 Legislative Act Nr.234 of 2012, the Government observes also the following principles and specific directive criteria:

a) apply the definition of “cultural heritage institution” in the broadest way possible, with the aim to promote access to the cultural goods held by such institutions;

b) discipline the exceptions and limitations related to the text and data mining as from Art.3 Directive (EU) 2019/790, ensuring adequate levels of networks and database security, and defining lawful access and the requirements for the subjects involved;

c) exercise the option set in Art.5(2) Directive (EU) 2019/790, which allows to exclude or limit the application of the exception or limitation ex paragraph (1) of the same Article for specific uses or types of works or other subject matter;

d) establish procedures allowing right holders, who did not authorize any collective rights management organization to represent them, to exclude their works or other subject matter from the licensing mechanism set in Art.8(1) Directive (EU) 2019/790 or from the application of the exception or limitation as from paragraph (2) of the same Article;

e) exercise the option set in Art.8(5) Directive (EU) 2019/790, which allows to establish specific requirements to determine whether a work or other subject matter can be considered out-of-commerce;

f) identify the applicable regulation to the case of a work, which, besides being out-of-commerce ex Art.8 Directive (EU) 2019/790, is also “orphan”, thus subject to the provisions set in Directive 2012/28/UE;

- g) in light of Art.10(2) Directive (EU) 2019/790, provide more publicity measures for the right holders than those foreseen by paragraph (1) of the same Article;
- h) in light of Art.15 Directive (EU) 2019/790, ensure that, for the online use of press content by information society service providers, adequate protection is granted to press publishers, and the rights of the authors of such content are taken into due consideration;
- i) provide definition of “very short extracts”, without jeopardizing the free movement of information;
- l) define the amount of adequate share of revenues obtained by press publishers from the online use of press content ex Art.15(5) Directive (EU) 2019/790, which is due to authors, taking into high account the rights of the latter;
- m) define the amount of compensation set in Art.16 Directive (EU) 2019/790 due to publishers if the work is used under an exception or limitation, taking into high account the rights of the authors;
- n) define the activities set in Art.17(4) Directive (EU) 2019/790, with particular regards to the level of diligence required to meet the criterion of “best efforts”, respecting the principle of reasonableness;
- o) identify the regulation regarding complaint and redress procedures ex Art.17(9) Directive (EU) 2019/790, including the entity responsible for the management of such procedures;
- p) set the modalities and criteria of the contract adjustment mechanism applying in absence of collective contractual agreements as in Art.20 Directive (EU) 2019/790;
- q) set the modalities and criteria, which can also vary across sectors and types of works, for the exercise of the right of revocation ex Art.22 Directive (EU) 2019/790.”

- *From the list of amendments approved by the appointed Committee on 9 Sept 2020:*

No amendment to the text of Art.9 was approved.

However, three relevant amendments concerning the Bill were approved and reported in the minutes:

G/1721/7/14

Mantovani, Loreface, Gaudio, Giannuzzi, Ricciardi, Botto, Toninelli

Accepted

“The Senate, examining Bill Nr.1721, considered that:

Art.9 sets the specific criteria for the implementation of Directive (EU) 2019/790; even though considered a “self-executing” Directive, its national implementation requires careful reflections; the stakeholders dialogue is considered by the same EU Commission an essential component for the modernization and improvement of copyright rules in the digital technological realities,

commits the Government to initiate a constant dialogue and exchange with stakeholders during the exercise of its delegation as from Art.9, in particular with regards to the implementation of Artt.5, 6 and 14 Directive (EU) 2019/790.”

G/1721/8/14 (testo 2)

[Mantovani](#), [Lorefice](#), [Gaudio](#), [Giannuzzi](#), [Licheri](#), [Naturale](#), [Evangelista](#), [Ricciardi](#)

Approved

“The Senate, examining Bill Nr.1721, considered that:

Art.9 sets the specific criteria for the implementation of Directive (EU) 2019/790; the full implementation of Directive (EU) 2019/790 can effectively draw the picture of a more modern copyright if jointly operated with the full implementation of Directive 2001/29/EC (InfoSoc), which has been only partially transposed by the Italian legislator;

Considered also that Directive (EU) 2019/790 provides in its Art.25 the possibility for Member States to adopt or maintain broader provisions for the uses or sectors covered by exceptions and limitations, as long as compliant with InfoSoc Directive; the InfoSoc Directive, in particular, allows in its Art.5(3)(h), (i), (k) Member States to provide exceptions or limitations to the right of reproduction in the following cases:

- for uses of works, such as works of architecture or sculpture, permanently located in public spaces (so-called freedom of panorama), whose missing implementation restraints the valorization of the Italian cultural heritage;
- for occasional inclusion of works or other subject matter, for example in remix or other very limited digital creative expressions, such as digital sampling, fan videomaking, fan fiction writing, mash-up, which promote the works and their uses;
- for uses for the purpose of caricature, parody or pastiche;

[considered also that] equally important is the full implementation of the exception ex Art.5(2)(c) InfoSoc Directive, which allows Member States to provide exceptions or limitations to the right of reproduction for specific acts carried out by public libraries, education institutions, museums or archives, which pursue no direct or indirect commercial or economic purpose; the missing implementation of this exception restraints the digital reproduction of works in the collections of such entities also for their internal uses necessary to run their ordinary activities; [the Senate] therefore

commits the Government, while implementing Art.25 Directive (EU) 2019/790 to assess the opportunity to implement the exceptions and limitations set in Art.5 InfoSoc Directive, with the aim to promote the Italian cultural heritage, notwithstanding the full respect of the provisions of the Cultural Heritage and Landscape Code, and of specific provisions adopted by cultural institutions.”

G/1721/18/14 (testo 2)

[Iannone](#), [Fazzolari](#)

Accepted

The Senate, examining Bill Nr.1721, considered that:

The need to redesign copyright law to adapt it to the digital information society has led to the adoption of Directive (EU) 2019/790; press publishers play a central role in the creation of high quality press content and represent, to date, the main gatekeeper opposing the spreading of fake news and disinformation; in order to safeguard the quality of information, it is necessary to strengthen the independence of authors and press actors, by way of a higher protection of press publishers' investments; there is a remarkable imbalance between the value generated by press content for the digital platforms, and the revenues received by press publishers: press contents are often used by "over the top" digital platforms, partially or in full, without any payment to the right holders; already in 2014 the Italian Communication Guarantees Authority acknowledged this strong imbalance and its negative economic impact on the whole information system, with the related risk to jeopardize its entire functioning; [...] the systematic distribution of protected works and missing remunerations for the related rights risks to infringe the digital national sovereignty; [...] such considerations cannot depart from the analysis of the dramatic consequences of the epidemiologic emergency, which have hit the press industry [...]; the definition of "short extract" is likely to lead to behaviors – especially by information society service providers -, which are potentially infringing the rights of press publishers [...];

commits the Government

to assess the opportunity to safeguard the rights of press publishers by way of imposing a mandatory negotiation process, which, relying on the most representative relevant trade associations and within a certain timeframe, will identify the adequate share of revenues generated by information society service providers and aimed to remunerate the rights of press publishers;

to assess the possibility of assigning to the Italian Antitrust and Competition Authority the task of, in case of missing agreement between the contracting parties within the set timeframe, setting the conditions, including the economic conditions, of use of press content by digital platforms;

to assess initiatives aiming at clarify the definition of "very short extracts" in order not only to preserve the free movement of information, but also to promote the effectiveness of the rights set in the Directive."