



Article of faith

After Article 13 was approved by the European Parliament, what happens next?

SECURE YOUR
TICKETS NOW!
CLICK HERE...

Sandbox Summit

#MarketMusicBetter

in association with
 linkfire

AT THE LONDON ART HOUSE | OCTOBER 31 2018

Sandbox Summit LONDON is the only one-day conference that is entirely dedicated to music marketing. Tickets will sell out soon, so be sure to secure your place now to be part of this essential event in the music marketing calendar.

The event includes:

- Label case study presentations from Atlantic (**Callum Caulfield**) and BMG (**Sam Hill and Gemma Reilly**)
- Keynote presentation from YouTube's **David Mogendorff**
- Panel discussions on the tensions between labels and managers; the pros and pitfalls of using the latest tech in marketing campaigns; the merits of bringing advertising in house and a special campaign surgery session
- **Stu Dredge** presents Game On: Fortnite, Esports and the Opportunities for Music
- A chance to vote on the Music Ally Campaign of the Year Award featuring AWAL, Asylum/Atlantic, Polydor, RCA and Republic/Island
- Aftershow drinks reception*

* Our aftershow drinks reception is kindly supported by The Orchard



Check out the [latest agenda here](#).

Speakers include:

Callum Caulfield Head of Marketing, Atlantic Records
Gemma Reilly Director, UK Marketing, BMG
Sam Hill Director, Digital Marketing, BMG
Rachel Stoewer Head of Digital, Cooking Vinyl Records
Chris Garrett MD, Decimal
Brooke Salisbury Head of Marketing, Domino
Stephen O'Reilly Director, ie: Music
John Leahy Director, Ignition Records
Duncan Byrne Digital Marketing Manager, Involved Group
Claire Mas Head of Digital, Island Records
Lars Ettrup CEO & Co-Founder, Linkfire

Patrick Ross Director, Digital Strategy, Music Ally
Dan Griffiths Director, Digital Marketing, The Orchard
Nikoo Sadr Director of Marketing & Sales, Nordics, The Orchard
Kara Mukerjee Head of Digital, RCA Label Group UK
Hannah Neave Head of Global Marketing & Artist Development, TAP Management
Live McKay Commercial Director, Universal (Norway and Sweden)
David Mogendorff Artist Content and Services, YouTube

Be sure to secure your tickets asap here:
<https://SandboxSummit.lnk.to/tickets>

For larger group sales and sponsorship opportunities please contact anthony@musically.com

We look forward to seeing you there.





In this report, we'll explain what happens next: the 'trilogue' process that now takes place to hammer out the text of the final legislation, before another vote in the European Parliament and then implementation by EU member states..."

The music industry celebrated Article 13's progress, but what does it mean and what happens now?

Safe harbour evolves



As it turned out, the vote wasn't even close. 438 members of the European Parliament (MEPs) voted in favour of Article 13 in the proposed new European copyright directive on 12 September, with 226 voting against and 39 abstaining.

It was a notable victory for the music-industry bodies that had been lobbying in support of Article 13, which will create an obligation for internet platforms with large amounts of content uploaded by their users to strike the necessary licences, and use filtering technology to identify and block (if required) unlicensed copyrighted content.

Talk to the leaders and policy heads at those bodies, and you'll realise that the vote - and particularly the margin of victory - came as a genuine surprise. They woke up on the morning of 12 September hopeful that months (or even years) of lobbying had persuaded MEPs of their case.

Yet they also woke up worrying that Article 13 could get voted down, following an equally-passionate lobbying campaign from tech-industry bodies and activists against it.

Passionate, but controversial: an online campaign that battered MEPs' inboxes with emails of protest wasn't matched by large crowds at physical-world protests, leading to accusations of spamming.

As it turned out, the online campaign may have steered MEPs to vote in favour of Article 13 (and the directive's equally-controversial Article 11, which focused on requiring internet services to pay 'press publishers' for reproducing their content - the so-called 'link tax' that was predicted to

cover even short snippets of - for example - newspaper articles.)

In this report, we'll explain what happens next: the 'trilogue' process that now takes place to hammer out the text of the final legislation, before another vote in the European Parliament and then implementation by EU member states.

music:)ally has also been talking to some of the music-industry bodies that were most involved in the lobbying process - the IFPI, IMPALA, BPI and PRS for Music - to get their views on what the crucial vote means for this industry; on the campaigning that led up to it; and on what happens next.

We're well aware this is one side of the story: we'll be following up soon with a report talking to some of the tech-industry bodies and activists who campaigned against Article 13, to understand what their take is on the situation. This issue focuses on the response from the music trade bodies, which were understandably more willing to talk. We have summarised the postvote reactions from the tech industry later in this Report.

We've also dug in to one of the key unsettled questions with the copyright directive: the question of how small a company has to be to qualify for exemption from Article 13's requirements - and how 'small' should be defined.

And - brace yourselves, British readers - we've asked what the upcoming exit of the UK from the European Union means for the likelihood of the copyright directive being implemented there, post-Brexit. :)

Next step: the 'Trilogue'

The 12 September vote was just a step in a longer legislative process



In the immediate aftermath of the European Parliament vote, you'd have been forgiven for thinking that Article 13 – and the wider copyright directive – had been passed in to law. It was being hailed as a victory for the creative industries, after all. Yet the vote was merely approval by the Parliament for the legislation to move on to its next stage: the 'trilogue'.

It's not a concept you'd necessarily

know about if you weren't embedded in the world of European policymaking. New laws in Europe are the result of work by three institutions. The first is the European Commission, which is the EU's politically-independent executive arm, responsible for drawing up the initial proposals for new legislation.

The second is the European Council, which consists of the heads of state of the



They have to go away, mix it all together, and work out what recipe they like best. These type of discussions can go fast or they can go slow: it depends how far apart everyone is... – Helen Smith, IMPALA



EU member countries. And the third is the European Parliament, which is the 751 MEPs elected in those member states, from a variety of parties.

As with other legislation, the European copyright directive is essentially three draft texts (or 'negotiating mandates') – one from each institution. The vote on 12 September was for the European Parliament to approve its negotiating position, with the Commission and Council having previously set out theirs.

The trilogue, which kicked off earlier this month, is when the three institutions come together to nail down the final version of legislation.

"They have to go away, mix it all together, and work out what recipe they like best. These type of discussions can go fast or they can go slow: it depends how far apart everyone is," says Helen Smith, executive chair of independent body IMPALA.

An important thing to understand about this process as it relates to the copyright directive and its Article 13 – the three institutions are already broadly in agreement about the need for UUC (user-uploaded content) services to require licences, and to put technology in place (filters) to identify copyrighted content that is uploaded.

"On this matter, they're probably going to find some common ground, I would think, fairly quickly," says Smith. Ian Moss, director of public policy at the BPI, agrees.

"Really, their mandate is to negotiate some way between the texts that are there, not to come up with a new direction or a new set of texts," he says.

"User uploads? Liable for copyright and take a licence. All three texts are very similar, so we can't be in the situation now where that's not dealt with," says Frances Moore, chief executive of IFPI.

Once the trilogue is concluded, there will be another vote in the European Parliament to approve the final, agreed text. That's unlikely to happen until 2019, which introduces an element of tension, since there will be elections for the European Parliament in May.

"We have a time limit to get this through in," says Moore, suggesting that one risk is of delays to the vote which push it beyond the lifespan of this Parliament. "The risk we run is that somebody tries to run this out of time. There are already those suggesting they're going to try to postpone," she adds.

Another risk from the perspective of the music bodies is that MEPs fretting about their re-election chances feel pressured to change their vote, although it would be highly unusual for the European Parliament to reject legislation that had been through the trilogue process.

Once approved, that's not the end of the story: it will then be the job of the EU's member states to implement the copyright directive, which (again, like other European legislation) they have some ability to modify for their own purposes. :)

Lessons from the vote



The margin of approval for Article 13 was considerable, but why? And what does it mean for future lobbying battles?

438 votes in favour to 226 votes against Article 13 is some margin. The first lesson from the Parliament's vote is that it shed a new light on its previous vote, in July 2018, which at the time was reported on as a rejection of the directive by MEPs, and thus a victory for the critics of two controversial articles.

Both IFPI's Frances Moore and BPI boss Geoff Taylor argue that in fact, MEPs voted against fast-tracking the copyright directive – which is what would have happened if the July vote had been in favour – in order to have a full debate on it in September.



The less-informed coverage suggested that YouTube 'spanked our bottom' – we really did see expressions like that. What in actual fact was the case was that Parliament said 'there's enough noise around this for us to have to look at it' – Frances Moore, IFPI

“The less-informed coverage suggested that YouTube 'spanked our bottom' – we really did see expressions like that. What in actual fact was the case was that Parliament said 'there's enough noise around this for us to have to look at it'” says Moore.

“When they did look at it, they came out on our side... So the scaremongering stopped the fast-track, but didn't stop it when it came to a real examination of the evidence.”

We'll get to the scaremongering a little later, but it's fair to say that the music bodies see the 12 September vote as resounding backing for their view that existing legislation providing 'safe harbours' for internet companies has led to the much-discussed 'value gap' between the scale of music consumption on platforms like YouTube and the royalties that it generates for rightsholders, and by extension performers and songwriters.

“The whole of the European Parliament was considering whether they wanted to back creators and the rights of creators to be fairly rewarded for their work, or to listen instead to technology companies who didn't want to be responsible for the content on their platforms,” says Geoff Taylor.

“So this is important in practical terms: it will lead to better remuneration for artists and labels. But also as a matter of principle: that parliamentarians decided that the interests of creators needed to be protected in the digital space, and that the balance that had been struck in previous legislation had not been correct.”

This is the view across the board of the music bodies. “In political terms, it obviously sends a very strong message

that the Parliament believes that this question absolutely needs to be addressed,” says IMPALA’s Helen Smith.

Don’t underestimate the trepidation with which these industry figures were viewing the vote before it happened: Moore freely admits she woke up on the morning of 12 September unsure of which way the result would go.

A bruising lobbying campaign was partly the reason for that. “Parliament is more emotive: it is elected by the people, and MEPs listen closely to their constituents,” says Moore. “And when this got to Parliament, we came up against one of the biggest lobbies it had ever seen.”

The nature of that campaign is one of the most polarising aspects of the whole Article 13 debate. The campaign saw familiar actors line up on both sides: music (and other creative industry) bodies on one side, and an array of tech-industry bodies and internet activists on the other.

Talk to people on the music side, and you’ll hear the view that Google was the near-silent opponent at the centre of a web of proxy-organisations that it often has direct funding relationships with. Talk to people on the tech side, and you’ll find just-as-firm claims that Articles 11 and 13 posed real dangers to free expression online.

(Including the argument that Article 13 would actually benefit Google, because it would squash the likelihood of competition for YouTube, which already has the content-filters (Content ID) mandated by the directive.)

One thing that’s clear, however, is that some of the campaigning tools used by the lobby against Articles 11 and 13 backfired. Websites set up to help people email



Frances Moore

MEPs with their objections to the directive resulted in their inboxes being battered to the point of being unusable.

That may have annoyed MEPs, but it was the fact that the scale of the email campaign wasn’t matched by ‘physical-world’ protests – demonstrations organised to express opposition to Articles 11 and 13 – that may have caused a backlash from MEPs. In contrast to millions of emails, many of the physical-world protests attracted sparse crowds – and in some cases that’s putting it politely.

“They were going to prove they had a million protesters in Europe, but what they had were 30 people here, 90 people there, another 10 elsewhere and so on. I think the biggest turnout was 100 or 150,” says IMPALA’s Helen Smith.

“I think that led many parliamentarians to put into context the millions of emails and tweets they had received. They didn’t want democracy in Europe to be decided

by campaigns that were not as genuine and transparent as the headlines of the campaign would have led you to believe.”

Geoff Taylor agrees. “The sense that bots were being used to spam MEPs’ email addresses wasn’t well received. The disparity between the on-the-ground protests and what was being done electronically was picked up on by most MEPs,” he says.

“It’s difficult to tell how much of an influence the MEPs’ negative impression from those tactics had on the vote, and how much was separately on the substance of the arguments.”

Taylor and Moore both use the same comparison for the campaign against Articles 11 and 13: the protests against the proposed Stop Online Piracy Act (SOPA) and the PROTECT IP Act (PIPA) in the US in 2012. Internet companies including Google, Mozilla, Wikipedia and Reddit encouraged people to email Congress and protest via social media – and ultimately the legislation was shelved.

The memory resurfaced for some of



Geoff Taylor

the European industry bodies battling for Article 13 to be adopted. “Clearly the tech lobby marshalled all their resources and went to length to scare MEPs off from making this stand. They were suggesting that once again this could break the internet. We’ve never believed that’s the case. Those are tactics deployed by big technology companies when it came to SOPA / PIPA in the US,” says Taylor.

“It was like SOPA / PIPA on steroids!” agrees Moore. “It created a lot of misinformation and a lot of fear. And fear for Parliamentarians is tied in to the elections next May. Some of them were telling us that they’d been told if they were to vote for this legislation, their chances of being re-elected were nil.”

“It was like being hit by trucks, to be quite honest. You’re going against this massive hurricane coming towards you, and you’re trying to get through because you have truth on your side. But you can’t even get to the Member of Parliament’s office, because they’re completely blitzed by misinformation and emails. MEPs



It’s difficult to tell how much of an influence the MEPs’ negative impression from those tactics had on the vote, and how much was separately on the substance of the arguments...”

– Geoff Taylor, BPI

stopped looking at their emails: one said they had 10,000 emails on this issue alone.”

The BPI's Ian Moss backs this up. “The volume became so ridiculous as to become farcical. MEPs were getting emails faster than they could delete them,” he says, while stressing that the mismatch with the number of people willing to protest in the streets was telling.

“When they looked at the press in their countries, and those smattering of people at demonstrations, there wasn't the sense that this was a genuine public campaign.”

There are other conclusions about what the vote on 12 September meant. Some see it as further evidence that European legislators, generally speaking, are more sympathetic to the rights of creators than those in the US - historically at least: the successful passage of the Music Modernization Act (MMA) currently has the American music industry purring.

“I do think that European Parliamentarians would say ‘China owns the devices, Americans own the internet, and we own the culture, so somehow we've got to protect what is ours,’” says PRS for Music chief executive Robert Ashcroft.

Geoff Taylor sees a broader context in Europe, too: where politicians are thinking hard about the power of the largest American technology companies, and pushing back where they feel it is necessary - for example on privacy, but also now copyright.

“The broader context of the perception that the tech platforms have been behaving in a way that is rather arrogant: that they haven't been looking after citizens' rights, and have been protecting



Ian Moss



“The volume [of emails] became so ridiculous as to become farcical. MEPs were getting emails faster than they could delete them. When they looked at the press in their countries, and those smattering of people at demonstrations, there wasn't the sense that this was a genuine public campaign...” – Ian Moss, BPI

their own interests ahead of the interests of consumers,” says Geoff Taylor. “Perhaps that was a context in which these issues were considered by MEPs.”

One parallel between the progress of Article 13 and the MMA in the US is the unity of the various elements of the music industry, even though there are other issues which divide them (think managers seeking more transparency from labels, or publishers and labels at loggerheads over streaming royalty splits; or independent labels lobbying against major-label consolidation).

“It's very encouraging that the industry worked together really well. We're all speaking with one voice and supporting

one another,” says Geoff Taylor. “The music industry stood firm together. You go in with one big voice and a big message,” agrees Frances Moore.

Like so many political issues in the modern world, the run-up to the 12 September vote featured accusations of scaremongering from both sides.

Critics of Article 13 accused the music industry of crying wolf over the impact of the ‘value gap’ at a time when recorded-music revenues are bouncing back, while music bodies pushed back at claims the legislation would (for example) outlaw memes and destroy free expression online.

Beneath the wilder noise of these arguments, there were people on both sides trying to engage with the arguments of the opposition. IMPALA, for example, put out a point-by-point response to the key concerns of Article 13 critics - and Helen Smith says they were taken seriously.

“We wanted to be sure ourselves, and we wanted the decision-makers to be sure they were introducing a set of rules that was reasonable,” says Smith. “The whole purpose for us is about providing safeguards in the legislation so that decision-makers and citizens are satisfied that the rules go as far as they need to and not further.”

“We certainly didn't want to just dismiss them out of hand,” adds Ian Moss of the BPI. “Demonstrating that the concerns were overblown did require engaging with the substance of the issues - and trying to explain why an environment in which content is licensed and technology is used to prevent infringement doesn't mean that creativity will be suppressed. In fact, it will encourage creativity.”

This, when you step back, is one of the big takeaways for the music bodies from the copyright-directive campaign: the belief that European politicians, at least, back their message that copyright is a driver of innovation rather than an impediment to it.

“Without copyright protection, there's very little incentive to try to make a career out of being innovative. The tech industry is highly protecting of its patent rights and design rights,” notes Moss. “Without the consent of rightsholders, you're going to impede growth. Copyright is an engine of growth,” adds Ashcroft. :)

Business time: why 'micro' matters

One of the key areas of uncertainty still is around who should be exempt from Article 13

As the trilogue got underway, one of the key issues that needed to be settled concerned possible exemptions for smaller internet services - startups - from requirements of Article 13 including upload filters. The European Parliament's position is clear: "The definition of online content sharing service providers under this Directive does not cover microenterprises and small sized enterprises".

So what are they? We've gone digging into the European Union's archives so you don't have to: the definition the Parliament has in mind is that a microenterprise employs fewer than 10 people and has an annual turnover or balance sheet of less than €2m; a small-sized enterprise employs fewer than 50 people and has an annual turnover or balance sheet of less than €10m; and a medium-sized enterprise (which wouldn't be exempt from Article 13) employs fewer than 250 people and has an annual turnover of €50m or less, and/or an annual balance sheet total of less than €43m.

Music bodies seem comfortable with micro and small enterprises being exempt, in principle. "The Parliament was very clear that small operators and startups should have the chance to innovate: to provide services without being subject to this legislation, which is really intended for platforms that are making a big impact,"



The European Parliament's position is clear: "The definition of online content sharing service providers under this Directive does not cover microenterprises and small sized enterprises..."

says IMPALA's Helen Smith.

That word 'impact' is the key here, however. "You don't need to be very 'big' to have a significant impact," says Smith, "so there is probably some nuance to be incorporated around that in the trilogue, so that if you're making a significant impact then you're not escaping responsibility altogether, just because you're small. You have to measure size in terms of impact, not just the size of the company."

To illustrate this, music:)ally took the obvious European example: SoundCloud. The last year in which it would have matched the official definition of a 'small' enterprise was 2011: a year in which it posted €4.3m of revenues and had an average

headcount of 38 staff. The next year, its revenues grew to €8m and its headcount to 109 - the latter making it a medium enterprise by the European definition.

How big was SoundCloud in 2011? In June that year, the company announced that it had five million registered users, a figure which doubled to 10 million by January 2012 - by which point it had already raised more than \$60m from VC investors. That's a guide to the kind of scale a startup could reach now before it lost its exemption from Article 13 IF the legislation is enacted in roughly its current form.

Rightsholders are well aware - Musical.ly is one recent example - of the speed at which a new digital service can

grow to tens or even hundreds of millions of users with minimal revenues and a small staff, however.

"These are areas in which each of the institutions has a different take. That's the type of thing that will be fine-tuned in the trilogue. Germany is particularly concerned about not stopping European startups, for example," says the IFPI's Frances Moore.

"But that's the whole point of safe harbour in the first place: when they get to the point they're too active, they should be under copyright legislation... One pre-release uploaded onto a site could do enormous damage to an industry.

"If you're talking about small startups, what about a small record company with one or two artists? If a pre-release gets up there, it could massacre their first week of sales."

Robert Ashcroft also highlights the micro-enterprise issue as important in the trilogue. "It was interesting that they said 'we've got to exempt micro-enterprises' but unfortunately their initial definition would have included SoundCloud," he says.

"There's a little bit of work to do in trilogue to understand what is 'micro' - maybe it's about the number of users. But we've got to be pragmatic about this: we need to get the big players with their various different business models - ad-funded, user-upload, the Pandoras, Spotify, YouTubes and Facebooks - working on a common legislative framework that enables us to create a functional market."

"I have personal sympathy with the micro-enterprise bit. But don't end up defining it so you can create a 200-million user global platform that doesn't earn any money." :)

Table stakes

If Article 13 in its current state becomes law, what will it mean for music-licensing negotiations?

As we've explained, there are still several steps to go in the process of Article 13 - and the copyright directive it's within - becoming law across the European Union. But if that legislation is based on the current positions of the EC, European Council and European Parliament, what will it mean for the relationships between music rightsholders and user-uploaded-content platforms? Particularly YouTube?

It's worth remembering that the lobbying around the copyright directive has been going on for a couple of years, and within that timescale YouTube managed to strike licensing deals with labels and publishers to launch its YouTube Music subscription service.

And even before that, there has been a clear sense of YouTube and rightsholders managing to conduct their partnership negotiations at the same time as being on opposite sides of various lobbying battles. In one sense, then, it's business as usual from now on.

"We can agree with what we agree about," says the BPI's Geoff Taylor. "We believe that the position YouTube took on Article 13 was the wrong position. But we were pleased to see the reaction from Google after the vote, which focused on collaboration and working together. That's what we believe too... We want to partner with them where they



When labels sit down with Spotify, they don't want Spotify to walk away because Spotify is a massive revenue-generator and has huge reach..." - Geoff Taylor, BPI

behave, and where we believe they're not treating music fairly, we'll both privately and publicly exchange our different views."

It's true that Google's on-the-record response to the Article 13 vote (and Article 11 - those news snippets) focused on collaboration. "People want access to quality news and creative content online. We've always said that more innovation and collaboration are the best way to achieve a sustainable future for the European news

and creative sectors, and we're committed to continued close partnership with these industries," said its spokesperson.

But what will it really mean for YouTube and similar UUC services if Article 13 is enshrined in EU member states' laws? The music industry has argued for some time that it will create a 'level playing field' between these platforms and the music-streaming services that have to license their music upfront.

"If you're a Spotify or a Deezer, a straightforward music platform, you do a deal with the industry on a willing-buyer willing-seller basis. The companies have the music, you have the money, you do a deal," says Frances Moore.

"In a YouTube-type service, the music's already up there, put up there by the user. So in a negotiation, the industry's got one hand tied behind its back. 'Here's the money: if you're not happy, notice-and-takedown'" is how she characterises the negotiating position of a YouTube.

"Under the terms of the directive, that can't happen any more. It's an enabler to know that they're operating in an environment where if the music's there, there has to be a licence for it to be allowed to be there."

Geoff Taylor mirrors this view. "It's about creating equality in those negotiations. Previously, when labels sat down with YouTube, both sides knew that YouTube could take the position that it didn't need a licence in the first place. That fundamentally affects the outcome of a negotiation," he says.

"What Article 13 should achieve - once implemented if the text is effective - is that both sides sit down wanting a deal, but with the ability to walk away."

"When labels sit down with Spotify, they don't want Spotify to walk away because Spotify is a massive revenue-generator and has huge reach. Spotify doesn't want to lose a deal with the labels because it needs all the content for its service to be attractive. This has levelled the playing field."

To outsiders, one of the more curious aspects of the Article 13 debates has been that YouTube already has a content-upload



Why would YouTube fight so hard to retain the status quo, rather than accept this new way of working which is strikingly similar to the way they work already?"

– Robert Ashcroft, PRS for Music

filter of the type mandated by the copyright directive: Content ID. The ability for rightsholders to be made aware of infringing uploads, then choose to block, monetise or leave them alone is exactly, in theory, what Article 13 aims to enable for this kind of service.

(Indeed, one of the key arguments against it from critics was that the expense of developing Content ID - which YouTube now says is "over \$100m" - shows that under Article 13 smaller startups would face a daunting expense complying with the upload-filters requirement, and would thus be fatally hamstrung in any effort to compete with YouTube. Music rightsholders argue that cheaper, third-party technology like Audible Magic is available.)

"Why would YouTube fight so hard to retain the status quo, rather than accept this new way of working which is strikingly similar to the way they work already?" says Robert Ashcroft.

"But at present the mechanisms for taking down content are so cumbersome, it's like fighting an army of soldier ants, link by link. Your skeleton is left lying on the ground by the time you take the ant to get it put down."

"All this does in practical terms is change the balance of risk. The risk moves away from the copyright holders and on to the platform holders. And that just makes the negotiations different. It would prevent another large platform with hundreds of millions of users worldwide but no

revenues - the old SoundCloud model - from undermining the legitimately-licensed platforms."

The various bodies are careful not to speculate about what will happen once YouTube gets to a negotiating table with (for example) a major label in an Article 13 world, as that will be a matter for their individual members.

"We're very confident that there will still be a tremendously-successful YouTube, which will still have all kinds of content on it, including music content," says Geoff Taylor. "It's just that more of the fruits of that will get shared with the creators of music."

Robert Ashcroft is similarly positive about the future relationship between YouTube and music rightsholders.

"When I talk to the people that we negotiate with in YouTube, we're on a journey together. They've launched a subscription service, and they want to see the thing work! I would like to see a collaborative approach, notwithstanding this bitter fight that we've had. We still have a very good working relationship with YouTube, and I fully expect to have constructive discussions with them."

The bodies all have their eyes on the wider ripple effect from the copyright directive once it's introduced. It comes back to that sense of two different approaches to copyright: the European and the American approach, with the former seen (by the music bodies) as more favourable to rightsholders and creators.

"What you're going to see is that if this goes through in Europe, it will have a knock-on effect," says Moore. "We hear people talking in India and other countries. There we will be looking to see what the

opportunity is to deal with the 'value gap'"

Ashcroft agrees. "The United States is not the place to look to seek a logical copyright environment! Europe is, and the world is looking at Europe. China is looking at Europe!" he says, while harking back to the need to edge away from a purely-oppositional relationship between European rightsholders and American technology companies.

"The first time they tried to enter the subscription market, it was very much under pressure from the labels. This time they're serious, and they have some really strong ideas about how to curate music," he says about YouTube.



"Look at the effect on 12 September on the share prices of the big platforms, and you'll see a little drop in all the people we've been talking about. Guess which one went up? Netflix. My answer is that subscription pays, guys. Subscription pays, so let's get on with it." 😊

The Brexit headache

Timing is everything as the UK prepares to exit the European Union

BREXIT

If the final copyright directive is approved and ready for European Union members to implement sometime in the spring of 2019, there's a big question mark over one of those countries – which may not be a member by the time this happens.

The UK is scheduled to complete its 'Brexit' from the EU on 29 March 2017, but amid talk of extensions, transition periods and even the (still remote) prospect of the UK government falling, a new election and/or a repeat of the Brexit referendum, there is a very real question over its EU membership status at the time the legislation is ready for implementation.

Ian Moss says that the cleanest solution would be for the legislation to be implemented at the moment of the UK's withdrawal, and thus implemented in the UK as part of its withdrawal act.

"The more messy solution is that the British government has been on the record of supporting this issue, and would put it into UK law as a matter of course anyway, post-Brexit," says Moss.

"The UK have been involved in the 'value gap' debate: they've been very constructive and helpful until now, so they would intend for this legislation to become part of their legislation. I would wonder why they would be operating so strongly in Council if they didn't intend to do it afterwards," says Moore.



However, he does outline some possible twists in this process. Moss talks about the difference in the US and European approaches to copyright – tipped a little more towards fair-use in the US, and a little more towards creators/rights in the EU.

Moss suggests that the US is very keen to make its copyright regulations part of any trade treaty that it signs – you can look to the just-signed USMCA trade deal between the US, Mexico and Canada, which extended the US' DMCA safe harbour to both countries, sparking criticism from the RIAA.

The implication, then, is that if the UK

finds itself in the junior position in any post-Brexit trade deal with the US, it could find itself under pressure to swing towards the American copyright approach rather than the European one. But for now, this is speculation. The fact remains that the separate timescales of the copyright directive and the Brexit process mean a certain amount of uncertainty.

"My expectation is that the trilogue will conclude before the end of the year, but I would be surprised if this went for a vote before May: it will be one of the last things that goes through in this Parliament," says Robert Ashcroft.



Robert Ashcroft

“My expectation is that the trilogue will conclude before the end of the year, but I would be surprised if this went for a vote before May: it will be one of the last things that goes through in this Parliament...”

– Robert Ashcroft,
PRS for Music

"So there is a delicate situation: a law will be passed after Britain formally exits the European Union, and then the member states have two years to pass it in to law – and they will undoubtedly pass it in to law slightly differently in each country, as they did with the CRM directive."

"The current government supports our decision: you have to go back to the Cameron government, and [then-chancellor] George Osborne's infatuation with 'Silicon Roundabout' to have a Conservative government that wasn't entirely on the side of the creative industries [on copyright]." :)

Criticism continues

Article 13's critics are disappointed with the Parliament vote, but not defeated



As we've noted earlier in this report, Google's official response to the Article 13 vote was measured, focusing on collaboration with the creative industries. But some of its higher-profile supporters in the lobbying campaign did come out with strong criticism of the vote and the legislation in its current form.

For example, the Computer & Communications Industry Association (CCIA) put out a statement regretting the vote. "Upload filters will introduce a general obligation to monitor user

uploaded content, thereby damaging European citizens' fundamental rights and undermining platforms' limited liability regime, a legal cornerstone for the European digital sector," it said.

"We regret that a majority of Members of the European Parliament ignored the widespread warnings on the risks of the copyright proposal. We now urge the Council and Parliament to come to a balanced outcome in the final negotiations," said its senior policy manager Maud Sacquet.



The neighbouring right will restrict the sharing of news online and the upload filter will restrict user uploads. These are bad outcomes for European citizens..." – Siada El Ramly, EDiMA



This reflects the view among opponents of Article 13 that the legislation is not a done-and-dusted affair: that there is the potential for changes in the trilogue process, and ultimately even the chance for a reversal of the approval when the European Parliament votes on the final directive.

EDiMA, another trade association representing tech companies, issued its own statement following the vote on 12 September.

"The measures adopted today are remarkably similar to those already rejected by a majority of MEPs last July and this is both disappointing and surprising," it claimed – although music bodies disagree with the 'rejected' element, seeing the July vote as one in favour of further scrutiny of the directive plus a full debate, rather than a rejection of its contents.

"The neighbouring right will restrict the sharing of news online and the upload filter will restrict user uploads. These are bad outcomes for European citizens," said director general Siada El Ramly.

"We hope that the concerns of EU citizens, and all of the academics, small publishers, startups, and the UN, that have been expressed will still be taken into account during the next stage of negotiations. We look forward to working with everyone involved in the aim of a better outcome for all."

Copyright for Creativity put out its own blunt statement. "The European Commission promised to modernise copyright, but instead of creating a well-functioning legal framework addressing the concerns of creators and end-users it proposes to protect old business models by creating what it claims to be a 'well-functioning marketplace,'" said its coordinator Caroline De Cock.



"To do so, the EC creates 'RoboCopyright', compelling intermediaries hosting user-uploaded content to implement content filtering technologies and handing over the content policing to the right holders. Our message to the EC: Stop 'RoboCopyright' and ancillary copyright, and start to focus on users and creators."

The Communia Association, which advocates for policies that expand the

public domain and limits the scope of copyright, published criticism too.

“There is no way around it, the outcome of today’s vote on the copyright directive in the European Parliament is a big loss for user rights and the open internet. MEPs have decidedly sided with the demands of the creative industries to hand them more control over how we access, use and share copyrighted works,” it wrote.

“Under Article 13, rightsholders would get more control over how copyrighted works can be shared on online platforms. It will allow them to force platforms to filter content in ways that will negatively impact users rights.”

Like other critics, Communia thinks that the battle is not over yet, even though its piece admitted that the trilogue process would likely be relatively swift before the next vote in the European Parliament.

“This vote, which will likely take place at the end of this year or early next year will be the last possibility to prevent (or at least limit) the effects of today’s land grab by rightsholders,” it suggested.

One of the prominent figures within the European Parliament throughout the copyright-directive process has been MEP Julia Reda, who represents the Pirate Party Germany.

The week after the vote on 12 September, she published a guest piece for tech site Wired outlining her views on the possible impacts of Article 13, and in contrast to some of the rhetoric quoted above, her arguments are something the music industry should be prepared to engage with, as the process continues.

“It does not recognise and legitimise the new stakeholders, the masses of new



It doesn't unify what's allowed and what isn't in different EU member states, even though we all use the same internet to share and access works..."

– Julia Reda,
Pirate Party Germany

creators. It does not nurture and protect our new forms of expression, many of which build on existing works in ways that are only partly covered by today’s copyright exceptions,” wrote Reda.

“It doesn’t unify what’s allowed and what isn’t in different EU member states, even though we all use the same internet to share and access works.”

Reda’s view is that the vote represented politicians viewing copyright “primarily through one very particular lens: that of big media companies, with their waning control over distribution channels” – in other words, that Article 13 is about reversing a shift in power (and a redirection of revenues) back to rightsholders.

“They are meant to be sticks EU-based publishing and music giants can wield to force US-based internet platform giants

to the negotiation table on their terms,” wrote Reda, referring in the former case to Article 11. “To achieve that, some kind of license needs to be required, and the media industry needs to get to set the price.”

The emphasis on ‘giants’ is one of the points that music bodies – particularly IMPALA, given its representation of independent music companies – disagree with. It was notable that individual musicians as well as the independent community were a key part of the lobbying effort in support of Article 13.

Reda did make a good point about the polarised nature of the debate, however, when referring to the music industry’s response to Article 13 critics’ views on the possible unintended knock-on effects of the legislation.

“Since they don’t consciously intend

to cause these effects, it must just be hyperbole. And since their politics are driven by supporting one particular oligopoly over another, it’s natural for them to assume the “other side” must be similarly motivated,” she wrote.

“Any opposition is dismissed as a Google-orchestrated campaign – an absurd belief, but like most conspiracy theories, highly effective at shutting down factual debate.”

Google’s role in any lobbying campaign focused on copyright tends to elicit passionate views, to say the least: its funding relationships with some of the organisations lobbying against Article 13 came under scrutiny this year, as they have done in past campaigns. This scrutiny is justified and relevant to the debate.

At the same time, some of those critics *were* arguing that Article 13 will cement YouTube’s dominant position rather than harm it. Writing them off as Google ‘skills’ craftily finding an argument that seemed to distance themselves from the company, as some (not all) pro-directive campaigners did, ignores the fact that a number of the legislation’s critics are as worried about the power of ‘big tech’ as music rightsholders.

Reda’s Wired piece made it clear that the debate about the directive’s potential impact is far from over, in any case.

“The supporters of Articles 11 and 13 believe they are merely regulating a struggle between powerful industries. But legal and technical experts examining the actual provisions, and forecasting their consequences, are near-unanimously sounding the alarm: by interfering with the basic dynamics of the internet, what they are regulating is our freedom of expression,” she claimed. :)

Music Ally's verdict

Celebrations for rightsholders, but it's not the end of the road

Music industry bodies and rightsholders celebrated on 12 September, with their joy only enhanced by the element of uncertainty about the European Parliament's vote right up until it happened. But there are several reasons why these celebrations were restrained.

First, there's the fact that the European copyright directive isn't law yet: there is still scope for it to be refined during the trilogue process; MEPs must vote on the final text at a time (in early 2019) when many may be feeling jumpy about their re-election prospects in May; and then individual EU member states will be responsible for its actual implementation.

Chickens should certainly not be counted at this stage by anyone concerned. And second, that's also because it's vital that the final directive does nail down the precise language and definitions to make it absolutely clear what Article 13 covers - and to protect freedom of expression online well beyond the battle around copyrighted music and YouTube.

Writing those worries off as scaremongering would be foolish, especially for an industry whose individual musicians are both creators and internet users - and thus have their own personal stakes in freedom of expression on digital platforms, alongside their right to be paid for use of their work.

There are lessons to be learned here about what is and isn't effective lobbying,



in Europe at least. Several of the music-industry bodies mentioned the shelved SOPA / PIPA legislation in the US as a spectre haunting their thoughts in the run-up to the European copyright directive vote - because online pressure on decision-makers had a crucial impact then.

Its impact this time round may have been crucial in the opposite way: steeling a number of MEPs to back Article 13, especially those with inboxes rendered unusable by the sheer force of incoming emails protesting about it. That's something both sides will learn from for future clashes around copyright reform,

wherever it happens in the world.

This may be an unpopular view within the music world, but... **music:)ally** would push back a little against the view that sparse 'real-world' demonstrations showed the online protests up as purely a scam. It seems more reflective of modern society: very willing to click a button or sign an e-petition, but perhaps less willing to get out on the streets and protest.

The level of automation in some of the online tools, geared towards people sending lots of emails to MEPs, was certainly negative - and ultimately counterproductive, though.

Above all, though, **music:)ally's** view is one that we've held for some time: that YouTube's potential as a partner for the music industry and for musicians is immense, and that resolving the questions and arguments around safe harbour is going to be a necessary step towards realising that full potential.

Even with the early days of YouTube Music Premium, you get a sense of the sheer power of YouTube turning on the throttles when it comes to features like personalisation and recommendations, as well as artist-marketing partnerships.

Perhaps freed entirely from the need (in lobbying terms) to be a 'passive, neutral intermediary' qualifying for safe harbour, YouTube can become a truly pro-active, aggressively-innovative platform for music.

That's what the goal should be now for the music industry, rather than relish at the prospect of making YouTube's pips squeak at the negotiating table next time its licensing deals are up for renewal.

Tech giants and music rightsholders will always have tensions laid bare in the corridors of power in Brussels and Washington (or, indeed, in Beijing and New Delhi), but the ultimate prize here isn't revenge on platforms that have previously benefited from safe-harbour protection. It's deeper, more effective partnerships that benefit both sides - and most importantly, the music-makers and their fans. :)

Music Ally is a music business information and strategy company. We focus on the change taking place in the industry and provide information and insight into every aspect of the business, consumer research analysing the changing behaviour and trends in the industry, consultancy services to companies ranging from blue chip retailers and telecoms companies to start-ups; and training around methods to digitally market your artists and maximise the effectiveness of digital campaigns. We also work with a number of high profile music events around the world, from Bogota to Berlin and Brighton, bringing the industry together to have a good commonsense debate and get some consensus on how to move forward.



Andrew Fisher,
CEO, Shazam
Entertainment

Music Ally is an example of perceptive journalism at its best, with unrivalled coverage of the digital music sector"



ANTHONY CHURCHMAN

Business development
anthony@musically.com



STUART DREDGE

Editor at large
stuart@musically.com



EAMONN FORDE

Reports editor
eamonn.forde@me.com



WESLEY T. A'HARRAH

Head of training & development
wesley@musically.com



PATRICK ROSS

Director, digital strategy
patrick@musically.com



CHIARA MICHIELETTO

Digital marketing
chiara@musically.com

Contact:

music:)ally
Studio 11, Holborn Studios, 49-50 Eagle Wharf Rd,
London N1 7ED
Tel: +44 (0)20 7250 3637
www.MusicAlly.com mail@MusicAlly.com

Registered company number: 04525243
VAT number: 858212321

© Music Ally Ltd. For the purposes of personal, private use the subscriber may print this publication or move it to a storage medium; however, this publication is intended for subscribers only and as such may not be redistributed without permission. Subscribers agree to terms and conditions set up on the Music Ally website, except where a separate contract takes precedence. Music Ally has taken all reasonable endeavours to ensure the validity of all items reported within this document. We do not assume, and hereby disclaim, any liability for loss or damage caused by errors or omissions. In particular the content is not intended to be relied upon in making (or refraining from making) investments or other decisions. We cannot be held responsible for the contents of any linked sites.



Our clients include:



SONY MUSIC

