

The exclusive rights of the creators

Communicating to the public

Origin and history

The term originated in the Berne Convention for the Protection of the Literary and Artistic Works, 1886, where it was stated that

(i) national laws will govern how public speeches, speeches delivered in the course of legal proceedings, lectures delivered in public and other works of the same nature could be reproduced by the press, broadcast, communicated to the public 'by wire' (Art. 2bis)

(ii) authors of dramatic, dramatico-musical works and musical works shall have the exclusive right to authorize how the performance of their work will be communicated to the public (Art. 11)

(iii) national laws will govern how the exclusive rights of authors to authorize the broadcast, rebroadcast, communication to the public 'by wire', by wireless means by diffusion through 'signs, sounds or images' or by loudspeaker or other analogous means are exercised (Art. 11bis)

Useful fact:

The word 'bis' added to the text of a legal document shows that that section was added later, and was not part of the original document.

Useful fact: The text of the Berne Convention has been revised or amended 6 times since it was first agreed.

Useful fact: The right to communicate to public was supplemented in 1996 with new right of making available to public to fit internet realities (see below).

Important addition to the Berne Convention provisions:

This right, after Berne Convention, was mostly invoked in relation to uses of protected works by traditional broadcast media (point-to-multipoint communication). In 1996, the WIPO Copyright Treaty, added 'right of making available' to the public for the internet-related communication (point-to-point) uses where public could access works at a time and place of their choosing (Art. 8).

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Jurisdiction: The European Union (EU)

The digital sphere

1) Communicating to the public is governed by national laws within the overall framework provided by the Berne Convention and the WIPO Copyright Treaty.

2) In the EU, the governing legislations in August 2025, are the Digital Copyright Directive (DCD) (Directive (EU) 2019/790) and the Digital Services Act (DSA) (Regulation (EU) 2022/2065).

3) Other pertinent legislations may be Directives 96/9/EC, 2000/31/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

4) Apart from laws and other legal instruments enacted under their authority, Case Law, (the interpretations offered by the law courts, by the European Court of Justice in particular) is an important source of guidance for practitioners advising in the field, users of digital services and online service providers of what are known as 'Information Society Services' (ISS) in EU law.

Useful Fact: ISS are defined in EU law to have distinct features (Directive 2000/31/EC, Recitals 17,18) and to deal with storage and processing of data.

Useful fact: The 1st feature of Online Service providers is that they provide services at a distance, electronically.

Useful fact The 2nd feature of Online Service providers is that their services are at the individual request of recipient, e.g., free email, and provide income to the provider directly, or indirectly.

In Practice: Important change made by the Digital Copyright Directive 2019 : Until this Directive, the EU had recognised content-sharing service providers, e.g., YouTube, as NOT making a communication of copyrighted works to the public because the users initiated the communication. However, under this Directive, 'Online Content-Sharing Service Providers' (OCCSP) ARE NOW considered as making a communication of copyrighted works to the public, if they are included in any uploaded material.