

Dear MEP «Last_Name»,

This is why Article 13 could irrevocably change the Internet as you know it...

- 1) ***It drastically reinterprets and narrows the e-Commerce Directive:*** Articles 14 and 15 of the e-Commerce Directive (eCD) set out a limited liability regime for online platforms which forms the foundation of the Internet as we know it today. Under this regime, platforms are not liable for the content uploaded by users until they are notified that some part of that upload is illegal – once the platform has this knowledge, it must take it down. However, Recital 38 of the JURI copyright report explicitly removes most platforms (i.e. the online content sharing service providers described in the text) from the scope of this limited liability regime, thereby making them responsible for all of the content uploaded by users.
- 2) ***It dramatically broadens the scope of copyright to target user uploads and open platforms:*** Articles 2.4b and Article 13 together state that a service provider which stores and gives access to the public to copyright-protected works uploaded by their users, and which optimises those works, is performing a communication to the public. This means that the service provider is now liable for a copyright activity. Currently, under existing EU law ([Directive 2001/29](#), Article 3), the court relies on numerous criteria to establish an infringement. It has *never* found that it was enough to show that a service “gives access” to establish infringement.
- 3) ***It obliges service providers to conclude licence agreements:*** Article 13 then obliges all service providers within the scope to conclude agreements with all rightholders for user-uploaded content, unless a rightholder does not wish to do so or the licence is not available. The breadth and diversity of content uploaded to online platforms means it is theoretically and practically impossible to license everything – especially when you consider that users are rightholders too. Moreover, if license agreements are a precondition for operating a platform or offering such a service, this will form an additional and prohibitive obstacle to European start-ups and SMEs who are attempting to scale-up.
- 4) ***It obliges platforms to use content filters:*** Article 13 states that the service providers must take measures to ensure the functioning of the licence agreements they have (see point 3 above), and in the absence of such agreements they must take measures which lead to the “non-availability” of copyright-infringing content on its service. Recital 38 adds that the necessary measures could include the implementation of effective technologies. Because the service providers described under Article 13 will be automatically and directly liable for the copyright-relevant acts of their users (see points 1 and 2 above), they will have no choice other than to proactively filter users’ uploads to check for the presence of copyright-infringing works or face direct liability themselves. This is the only means available to proactively, ex-ante, prevent users from uploading infringing content online – and it is largely fallible and non-existent or unworkable for many types of content (pictures, text, gifs, etc.). This is not a special and specific monitoring obligation, it is a general monitoring obligation that is in direct contradiction to Article 15 eCD and CJEU case law (See

Scarlet v. SABAM, SABAM v. Netlog, Telekabel, L'Oréal v. eBay).

- 5) **All of this, with no safeguards for users:** Finally, the proposal does not provide adequate redress mechanisms, in the inevitable instance that authorised and completely legal content and creations are removed. Instead, Article 13 requires service providers to put a redress mechanism in place – making the service providers the judges of whether a particular user is infringing copyright. It fails to provide any limit on actors claiming content they do not own, public domain content, or content of a competitor. This and the over-cautious filtering of the online space will impact users' freedom of expression, as filters cannot identify when a user's upload would fall under a legitimate copyright exception such as quotation or parody.



Want more info? Check out:

[Latest statement](#) from academics ahead of copyright vote, The Copyright Directive: Misinformation and Independent Enquiry – via CREATE

What can you do?

This Thursday 5 July you will have the opportunity to vote on whether or not this proposal can proceed to trilogue discussions. Less than 2% of MEPs have decided on behalf of all EU citizens to introduce measures that will censor the Internet. Now is your chance to have a say!

All the best,

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