

Dear President Juncker,
Dear First Vice-President Timmermans,
Dear Vice-President Ansip,
Dear Commissioner Gabriel,
Dear Director General Roberto Viola,

20 May 2019

The undersigned stakeholders represent fundamental rights organizations, the knowledge community (in particular libraries), free and open source software developers, and communities from across the European Union.

The new Directive on Copyright in the Digital Single Market has been adopted and, as soon as it is published in the Official Journal, Member States will have two years to implement the new rules. Article 17, on 'certain uses of protected content by online services', foresees that the European Commission will issue guidance on the application of this Article.

The undersigned organisations have, on numerous occasions throughout the legislative debate on the copyright reform, expressed their very explicit concerns¹ about the fundamental and human rights questions that will appear in the implementation of the obligations laid down on online content-sharing service providers by Article 17. These concerns have also been shared by a wide variety of other stakeholders, the broad academic community of intellectual property scholars, as well as Members of the European Parliament and individual Member States.²

We consider that, in order to mitigate these concerns, it is of utmost importance that the European Commission and Member States engage in a constructive transposition and implementation to ensure that the fears around automated upload filters are not realized.

We believe that the stakeholder dialogues and consultation process foreseen in Article 17(10) to provide input on the drafting of guidance around the implementation of this Article should be as inclusive as possible. The undersigned organisations represent consumers and work to enshrine fundamental rights into EU law and national-level legislation.

These organisations are stakeholders in this process, and we call upon the European Commission to ensure the participation of human rights and digital rights organisations, as well as the knowledge community (in particular libraries), free and open source software developers, and communities in all of its efforts around the transposition and implementation of Article 17. This would include the planned Working Group, as well as other stakeholder dialogues, or any other initiatives at consultation level and beyond.

Such broad and inclusive participation is crucial for ensuring that the national implementations of Article 17 and the day-to-day cooperation between online content-sharing service providers and rightholders respects the Charter of Fundamental Rights by safeguarding citizens' and creators' freedom of expression and information, whilst also protecting their privacy. These should be the guiding principles for a harmonized implementation of Article 17 throughout the Digital Single Market.

Yours sincerely,



Balázs Dénes
Executive Director
Civil Liberties Union for Europe (Liberties)

- Association for Progressive Communications
- APADOR-CH
- ApTi Romania
- Article 19
- Associação D3 - Defesa dos Direitos Digitais
- Associação Nacional para o Software Livre - Portugal
- Bits of Freedom
- BlueLink Foundation
- Center for Media & Democracy
- Centrum Cyfrowe Foundation
- Civil Liberties Union for Europe
- Coalizione Italiana Libertà e Diritti civili
- COMMUNIA association for the Public Domain
- Creative Commons
- Digital courage
- Digitalegesellschaft
- Electronic Frontier Finland
- Electronic Frontiers Foundation
- Elektronisk Forpost Norge
- epicenter.works
- European Digital Rights (EDRi)
- Fitug e.v.
- Hermes Center
- Hivos
- Homo Digitalis
- Human Rights Monitoring Institute
- Hungarian Civil Liberties Union
- Index on Censorship
- International Federation of Library Associations and Institutions (IFLA)
- Irish Council for Civil Liberties
- IT-Pol Denmark
- La Quadrature du Net
- Metamorphosis Foundation
- Nederlands Juristen Comité voor de Mensenrechten (NJCM)
- Open Rights Group
- Peace Institute
- Privacy First
- Rights International Spain
- Vrijschrift
- Wikimedia Deutschland e. V.
- Wikimedia Foundation
- Xnet

Notes

- 1 | Human rights and digital rights organisations: <https://www.liberties.eu/en/news/delete-article-thirteen-open-letter/13194>
- 2 | Academics from the leading European research centres: <https://www.create.ac.uk/blog/2019/03/24/the-copyright-directive-articles-11-and-13-must-go-statement-from-european-academics-in-advance-of-the-plenary-vote-on-26-march-2019/>
 | Max Plank Institute: https://www.ip.mpg.de/fileadmin/ipmpg/content/stellungnahmen/Answers_Article_13_2017_Hilty_Moscon-rev-18_9.pdf
 | Universities: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3054967
 | Researchers: https://www.southampton.ac.uk/assets/imported/transforms/content-block/UsefulDownloads_Download/A6F51035708E4D-9EA3582EE9A5CC4C36/Open%20Letter.pdf
 | UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression: <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL-OTH-41-2018.pdf>