

**EUROPEAN COMMISSION**

Directorate-General for Communications Networks, Content and Technology

Media Policy
CopyrightBrussels,
CNECT/I2/SJ/lb (2017) 6621120

Subject: Reply to Open Letter – Monitoring and Filtering of Internet Content is Unacceptable

Dear Mr McNamee,

President Juncker has asked me to reply to the letter from EDRI and other organizations criticizing article 13 of the proposal on copyright in the Digital single market.

We thank you for your input on these important issues.

As explained in the proposal for a directive on "Copyright in the Digital Single market", online services providing access to copyright protected content uploaded by their users without the involvement of rights holders have become main sources to access content on line. This affects right holders' possibilities to determine whether and under which conditions their works are used as well as their possibility to negotiate the conditions of such use.

The proposed article 13 is a sector-specific obligation related to copyright. It aims at improving the possibilities of rights holders to determine the conditions of availability of their content on certain user uploaded content service providers. Concretely, it sets an obligation on online services which store and provide access to a large amount of protected works uploaded by their users to take measures, such as content recognition technologies, aimed at preventing the upload of infringing content or enabling such upload where an authorisation exists between the platform and the relevant right holders.

In your letter, you raise concerns on the grounds of fundamental rights and the E-commerce directive.

As you know, the Charter of fundamental rights is legally binding on the Commission and the Commission examines the impact of each proposal on fundamental rights before adoption. In addition, in its 2016 Communication on online platforms, the Commission committed itself to maintaining a balanced and predictable liability regime for online platforms, as a key regulatory framework supporting digital innovation across the Digital Single Market; this has been equally recalled in the recent Communications on "Tackling

Illegal Content Online"¹ and on a "Balanced IP enforcement system responding to today's societal challenges"².

In the Commission's view, the proposed article 13 strikes a fair balance between the protection of copyright and other applicable fundamental rights and interests, and it does not entail a general monitoring obligation as set out in the E-commerce directive (where applicable).

Among the elements ensuring the balance of what is a sector-specific obligation related to copyright, stand the required collaboration from right holders for the identification of the works and the functioning of the measures, the fact that the services providers are not under an obligation to apply specific measures of monitoring, but measures that need to be proportionate, and the requirement of a redress mechanism for the users in case the measures would prevent the upload of legal content.

As you know, proposed article 13 is now being discussed at the European Parliament and Council levels. The Commission is following closely these discussions.

With my best regards,

Marco GIORELLO
Head of Unit

¹ COM(2017) 555 final.

² COM(2017) 707 final