

Brussels, 13 September 2017

Subject: Digital stakeholders urgently requests clarity on article 13 of the proposal for Directive on Copyright in the Single Market

Dear Representatives of the Member States to the European Union,

Honorable Members of the European Parliament,

The under-signed trade associations and stakeholder organisations representing consumers, digital rights groups and technology businesses urge the Council and Parliament to re-assess the current proposal for a **Directive on Copyright in the Digital Single Market**.

We highlight in particular **article 13 (and accompanying recitals 37-39)** on intermediaries and user uploads. This provision is one of the most discussed and controversial proposals in the draft Directive, having met intense scrutiny and overwhelming criticism from a broad array of stakeholders across businesses, consumer associations, civil liberties NGOs, copyright experts and academics.

These concerns relate mainly to:

A far-reaching provision, incompatible with EU law – directly impacting digital users and businesses, discussion fora and news websites, online marketplaces, hosting providers and social media platforms. The provision would in practice oblige these actors to employ content recognition software to implement ex-ante blocking measures filtering all user uploads and posts, in violation of European fundamental rights;

Creating legal uncertainty and confusion – by re-writing the understanding of the 'communication to the public' concept, contrary to the established case law of the European Court of Justice;

Dismantling the 'safe harbour' of article 14 of the eCommerce Directive - the provision would put into question one of the backbones of the Internet ecosystem, by vastly lowering the threshold for what is considered to be an 'active' intermediary and ignoring European Court of Justice case law on the required knowledge of infringement to establish liability.

These criticisms have not only been raised by academics and legal experts, but also within the European Parliament and Council. Many points were addressed to a positive extent in the draft report of MEP Comodini Cachia. In the Council, the new Estonian Presidency text (11783/17) laid out different options demonstrating the division in Member States views, but still fails to properly alleviate these problems.

A questionnaire to the Council's Legal Service as brought forward by a strong contingent of Member States however clearly shows that the concerns are shared and must be addressed in-depth. For the sake of transparency and to give due consideration to this complex legal file, **we urge the Council's Legal Service to provide written answers to the questionnaire**.

We therefore call on the Council and Parliament members to thoroughly assess the criticisms from this large group of stakeholders across civil society, industry sectors and professions.

Signatories:

- DIGITALEUROPE
- AFNUM
- Agoria
- Allied for Startups
- Article 19
- Bitkom
- Bundesverband Deutsche Startups
- CCIA
- eco
- EDiMA
- EDRI
- EuroISPA
- Free Knowledge Advocacy Group EU
- GetStarted by Bitkom
- IT-Branchen
- SEPE
- techUK
- ZIPSEE

DIGITALEUROPE

AFNUM
Alliance Française des Industries du Numérique

.AGORIA

ALLIED
FOR
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ARTICLE 19

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Bundesverband
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Industry Association
Tech Advocacy Since 1972

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