



# What is Article 13 of the EU Copyright Directive?

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Briefing, 4 July 2018

- A key controversy in copyright reform debates in the EU and elsewhere focuses on the treatment of Internet platforms hosting content uploaded by users
- Current EU proposals would place a responsibility on these platforms to check whether content is infringing before it appears online
- This raises concerns about freedom of speech, as well as the reliance on private actors to enforce public laws

The 'Value Gap' – the disparity in revenues generated by rightsholders of protected content and the online platforms that host the content – is, for right or for wrong, at the centre of discussions about how copyright is working in an online world.

The European Commission has sought to use a new directive on copyright to respond, under the banner of bringing the European copyright framework up to date with the digital environment.

At the heart of this legal debate is Article 13 of the draft Directive<sup>i</sup>, a section of the proposed legislation that focuses on the use of copyrighted content by information society service providers (ISSPs) that has been uploaded by users. This includes, for examples, videos uploaded to YouTube, photos to Facebook, or text to Wikipedia for example.

However, the draft legislation presented by the Commission<sup>1</sup> has received intense criticism from digital rights groups, civil society and prominent members of the internet governance community. They note that, in the Internet ecosystem, Internet Society Service Providers are central to the way people access and exchange ideas.

If Article 13 is adopted as it stands, the Directive will impose upload filters on such platforms to check for potential copyright infringement.

The According to the Article, those providers should “take measures to ensure the functioning of agreements concluded with right holders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by right holders through the cooperation with the service providers.”

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<sup>1</sup> [Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market](#).

In effect, for information society service providers, only filtering software would be able to process the large quantity of content they provide access to. It would be the algorithms behind these filters will decide which texts, video, music and other content will be allowed on the Internet<sup>2</sup>.

The provisions are of concern to IFLA's Freedom of Access to Information and Freedom of Expression Advisory Committee, as the adoption of the Directive as it stands would dramatically limit freedom of expression online by obliging ISSPs to pre-scan and exclude certain content in a manner that it is neither appropriate, proportionate nor transparent.

The Internet, as highlighted in a recent letter to the [G20 Presidency](#) signed by IFLA is a platform for economic and social development. It is for the people and should be unhindered by censorship and enable freedom to information and freedom of expression. IFLA believes that "as the Internet becomes ever more essential to the creation and sharing of information, we need to ensure that it works in a way that protects rights and promotes development".

### **Why is Article 13 controversial?**

Article 13's critics claim that it violates the fundamental rights of Internet users in many ways. At a very basic level, the article misunderstands the way people use and engage with material online. The concepts of re-use and remix, and overall digital creativity, are at the core of many online activities. They rely on exceptions and limitations to copyright, such as parody or criticism, and would be put at risk by any restriction of these freedoms.

Civil society organizations<sup>3</sup> say that the EU's measures "stem from an unbalanced vision of copyright as an issue between rightsholders and infringers", and that the proposal "chooses to ignore limitations and exceptions to copyright, fundamental freedoms, and existing users' practices". Upload filters risk censoring works that are put online legitimately (i.e. because the use falls under an exception or the work is in the public domain), given an inability to recognise legitimate uses.

This stands in contradiction to rules previously established by the EU's E-Commerce Directive with regards to safe harbours. The term indicates that Member States shall not impose general obligations to monitor information that ISSPs transmit or store<sup>4</sup>. There is an academic consensus<sup>5</sup> that Article 13 changes the obligation on service providers to what will become a filtering obligation that benefits big players (those who can afford to manage filters)

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<sup>2</sup> <https://edri.org/tag/article-13/>

<sup>3</sup> <https://www.communia-association.org/>

<sup>4</sup> <https://voxscentia.eu/>

<sup>5</sup> <https://www.create.ac.uk/blog/2018/06/29/the-copyright-directive-misinformation-and-independent-enquiry/>

and copyright holders (those big enough to bring cases), limiting the freedom of expression of citizens, civil society and the least powerful.

In fact, rights holders could demand that ISSPs invest in more and more invasive filters to provide more detailed metadata on how a particular text, image, audio, and other content have been implemented and are working.

Academics have therefore also expressed their concern on the applicability of such a provision, which is likely to negatively affect smaller internet service providers rather than the bigger ones which have already developed software in line with this article<sup>6</sup>.

### **What's next?**

Article 13 greatly limits the ability of Internet users to use, share, and access material online freely. This legislation, if adopted, risks violating free access to information and freedom of expression online and it will limit freedom of expression and information as set out in Article 11 of the Charter of Fundamental Rights of the European Union.

IFLA's FAIFE committee has already underlined that legal remedies should be adopted in a manner that is proportionate and pursuant to a legitimate aim and that it should always guarantee access to information for all. The current EU copyright legislation does not fulfil these obligations but greatly limit citizens freedoms and actions online.

As set out in its submission on the subject, IFLA agrees with the UN Special Rapporteur on Freedom of Expression<sup>7</sup> that "state obligations on companies to restrict content under legal criteria and without prior judicial review involve risks to freedom of expression by putting significant pressure on companies so that they might remove lawful content in a broad effort to avoid liability".

On this important matter for freedom of expression and access to information, please, make your voice heard: distribute this document widely and call your Member of Parliament at <https://changecopyright.org/en-US/>

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<sup>6</sup> [https://juliareda.eu/wp-content/uploads/2017/09/2017-09-06\\_Better-Regulation-for-Copyright-Academics-meet-Policy-Makers\\_Proceedings.pdf](https://juliareda.eu/wp-content/uploads/2017/09/2017-09-06_Better-Regulation-for-Copyright-Academics-meet-Policy-Makers_Proceedings.pdf)

<sup>7</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/72/350](http://www.un.org/ga/search/view_doc.asp?symbol=A/72/350)