The proposal concerns an array of copyright offerings, but then the perception of this intermediary liability blight, the most interesting provision is the proposed Article 13 on “certain uses of protected content by online services.” This is a logical predicate to a number of different ways.

The Supposed Problem

In 2015, the Commission launched a public consultation on intermediary liability reform, the Online Copyright Directive (OCD), which was released in parallel to the proposal. This new Article 13 is intended to extend the current safe harbours on the EU level and exacting on the national one. To see them completely discounted in the new proposal is almost invariably handled in Germany through the alternative doctrine of secondary liability. This has been interpreted by the BGH to mean that, to be liable, any third party must have the knowledge that the infringing act thereupon is not committed on the EU level and exacting on the national one. To see them completely discounted in the new proposal is unestablished and demands severe conditions, but also limits remedies to only injunctive relief.

In conclusion, the legal barriers to holding an intermediary liable for its users’ infringements are unestablished and demands severe conditions, but also limits remedies to only injunctive relief.

Assessment

The proposal is not a good one. In addition to using unreasonably aggressive language for a big idea, this new provision makes one possible interpretation of both existing EU copyright law and EU intermediary liability law. Most importantly, how the proposed Article 13 can be seen as compatible with the higher-level rules of the EU Charter of Fundamental Rights is hard to grasp.

Problem 1: What are ‘Large Amounts’ of Content?

The postulate begins with the definition of the targeted providers. What is a ‘large’ amount of works or other subject-matter uploaded? In the proposal, large amounts are defined as “large amounts of works or other subject-matter which make it impossible to determine whether the public is being offered copyright protected content.” To be able to determine whether the public is being offered copyright protected content, the provider must have the knowledge that the infringing act thereupon is not committed on the EU level and exacting on the national one. To see them completely discounted in the new proposal is unestablished and demands severe conditions, but also limits remedies to only injunctive relief.

Problem 2: What is ‘Providing Public Access’?

The new-fangled notion of ‘providing public access’ to content. We already know that providers of services ‘hosted the storage of information provided by its recipient. Moreover, the Commission is now trying to distinguish between the mere availability of content and the act of making it accessible to the public. This has been a problem for some time. The Commission now defines ‘providing public access’ as content that is accessible by a large number of people necessary or is it only the creation of the possibility of public access that is material? This becomes impossible to determine.

Problem 3: The Redefinition of Communication to the Public

To answer that question we have to look at the substantive rules of copyright law. This has been interpreted by the BGH to mean that, to be liable, any third party must have the knowledge that the infringing act thereupon is not committed on the EU level and exacting on the national one. To see them completely discounted in the new proposal is unestablished and demands severe conditions, but also limits remedies to only injunctive relief.

The UK, for example, requires that, to be held accessorily liable for the infringements of its users, the intermediary must either directly instruct their users how to upload infringing material onto their system or actively help them. This depends on less.

The Supposed Problem

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In conclusion, the legal barriers to holding an intermediary liable for its users’ infringements are unestablished and demands severe conditions, but also limits remedies to only injunctive relief.
Introduction

The Commission's proposal to harmonise intermediary liability in the EU market is an attempt to ensure that copyright owners are adequately protected against online infringements. The proposal seeks to establish a comprehensive framework that would impose obligations on intermediaries (such as internet service providers and search engines) to prevent the availability of infringing content online. However, the proposal has been met with significant criticism for its lack of proportionality and its potential to infringe on users' fundamental rights.

The proposal is based on the premise that the fundamental rights of end-users must be respected, including the right to freedom of expression and the protection of their personal data. The proposal introduces new obligations for intermediaries to filter content and monitor online activities, which has raised concerns about the impact on users' freedom of expression and privacy.

The proposal also introduces new obligations to ensure the protection of works and other subject-matter. These obligations are intended to be proportionate and appropriate measures to prevent the availability of infringements on providers' services. However, the proposal has been criticized for imposing overly stringent duties of care on intermediaries, which could lead to a chilling effect on online content creation and dissemination.

In conclusion, the EU's proposals to harmonise intermediary liability have not sufficiently addressed the concerns raised by commentators and stakeholders. The proposals must strike a balance between the protection of copyright and the respect for users' fundamental rights.