The European Copyright Roundtable is an event conceived in the hope that these risks can be minimized with experts, the organisers hope to lower the risks of national fragmentation. By inviting the Member States’ representatives to the audience and giving them the opportunity to interact with the workshop, the workshop seeks to enhance the effectiveness of the implementation of the Directive. The Digital Single Market is a widely shared aspiration. The recently adopted copyright reform is one of the most significant steps towards creating a true single market for copyright-related services. This is because the current fragmentation of the market is a major obstacle to the functioning of the Digital Single Market. The Digital Single Market Directive (DSMD) aims to create a single internal market for copyright-related services, including online services, that operate within the EU. The Directive seeks to harmonize the national laws and regulations that apply in the EU to online services providing access to content, such as music, video, and text. These services are often referred to as online content service providers (OCSSPs). The Directive seeks to ensure that OCSSPs are treated consistently across the EU, and that they are subject to similar obligations in each Member State. The Directive also seeks to ensure that OCSSPs do not engage in practices that could harm the rights of content creators or their business activities. The Directive introduces a new licensing mechanism, Article 17, which requires OCSSPs to license certain types of content, such as music, video, and text, before they can make it available online. This is intended to ensure that content creators and rights holders are compensated for the use of their works online. The Directive also introduces provisions that seek to define the scope and target of the licensing obligations, and that address the nature of the licenses and their terms. The Directive further seeks to ensure that the implementation of the licensing obligations is consistent across the EU, and that national courts are able to interpret and apply the Directive consistently. The Directive also seeks to ensure that the implementation of the licensing obligations is subject to limited judicial review, and that rights holders are able to enforce their rights through legal proceedings. The Directive is designed to promote fair compensation for content creators and rights holders, and to facilitate fairer attribution of value where it is due. Since the Directive was adopted in 2019, many Member States have implemented it, but there is still much uncertainty about how the Directive will be implemented and enforced across the EU. This is because the Directive is complex, and there is a risk that diverging national implementations will undermine legal certainty and the competitive landscape. There is now a serious risk that the Member States will spend another decade debating what exactly they are meant to do, and how they are going to do it. However, due to political turbulences in the legislative process, the resulting text of the Directive is extremely dramatic, the expectations are high.

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Panel 4: Over-blocking

The final panel analyzes if the creator’s and user autonomy and fundamental rights can be sufficiently reflected in implementations of Article 17. It explores how to ensure the protection of legitimate users’ positions in automated enforcement, to incentivize quality in preventive efforts and to design the mechanics of the follow-up dispute resolution in order to ensure compliance with freedom of expression safeguards.

What is over-blocking?
1. What are the possibilities of implementation of Article 17(2) extension of source code for end-users?
2. What is the actual scope of what constitutes a precaution under Article 17(4)?
3. How to resolve the obvious conflict between exceptions as regulated by Article 5(1) of the InfoSoc Directive and Article 17(7)?
4. How to ensure that malicious and abusive use of automated enforcement are within the scope of Article 17(10) confidentiality obligations?
5. Should the transparency obligation of Article 17(8) extend also to users’ rights to request information?
6. Should the transparency obligations be periodical (e.g. publishing reports/audits) or only on the request (Article 17(10))? What is the meaning of an obligation to allow users to ‘assert the use of an exception or limitation’?
7. Should users be allowed to bear a fee for engaging such a procedure?
8. Should these be limited to OCSSPs or extend beyond?
9. Should the Member States specify what information is required, and how it is accessible, e.g. prescribe API, open standards (suggested in German protocol, seeking to prevent de facto non-adoption of the notice-and-take-down mechanism)?
10. Should these be limited to OCSSPs or extend beyond?

Panel 5: what to do with the right of reproduction not mentioned in the Article?
1. What to do with the right of reproduction not mentioned in the Article?
2. What is the effect of different specifications of these obligations on the Member States’ ability to experiment with these tools?
3. How does the stakeholder dialogue and issued guidelines based on Article 17(10) limit the Member States’ ability to experiment with these tools?
4. How should the Member States ensure transparency of the said preventive tools?
5. Should the transparency obligations be periodical (e.g. publishing reports/audits) or only on the request (Article 17(10))? What is the meaning of an obligation to allow users to ‘assert the use of an exception or limitation’?
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What to do with the right of reproduction not mentioned in the Article?

Speakers

Academics

Martin Husovec Assistant Professor at Tilburg University (Tilburg Institute for Law, Technology, and Society (TILT)), Tilburg Law and Economics Center (TILEC) & Affiliate Scholar at Stanford Law School’s Center for Internet and Society (CIS).

Miquel Peguera Associate Professor at the Universitat Oberta de Catalunya (UOC) and Affiliate of the Center for Internet and Society at Stanford Law School.

João Pedro Quintais Postdoctoral researcher at the KU Leuven Centre for IT & IP Law (CiTiP).

Giancarlo Frosio Director of Legal and Business Affairs EU & APAC at Activision, Legal Advisor for Twitch.tv and Lawyer at Studio Previti, Legal Advisor to Mediaset Group, Member of the Association of Internet & Society (CIS).

Marie-Christine Janssens Associate Professor of Law at the Université Libre de Bruxelles (ULB) and Head of the ID/IP Law Cell for ULB & IP Law (ULIP).

Jan Nordemann All About Law (Germany), partner at BGH-/MWR & AIRW/MB and honorary professor at Konstanz University Berlin.

Miguel Peppers Associate Professor of Law at the University of San Carlos de Ceylon (USC) and Affiliate Scholar at the Center for Internet and Society at Stanford Law School (CIS).


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