

Kluwer Copyright Blog

Safeguarding User Freedoms in Implementing Article 17 of the Copyright in the Digital Single Market Directive: Recommendations from European Academics

João Pedro Quintais (Institute for Information Law (IViR)) · Tuesday, November 12th, 2019

On 17 May 2019 the new [Directive \(EU\) 2019/790](#) on copyright and related rights in the Digital Single Market was officially published (DSM Directive). Article 17 (ex-Article 13) is one of its most controversial provisions. As discussed previously on this blog, Article 17 is an extremely complex provision: it suffers from problems of internal consistency and compatibility with the remaining *acquis*, and poses a risk to freedom of expression online (see e.g. [here](#), [here](#), [here](#) and [here](#)).

In a nod to that complexity, Article 17(10) tasks the Commission with organising stakeholder dialogues to ensure uniform application of the obligation of cooperation between online content-sharing service providers (OCSSPs) and rightholders, and to establish best practices with regard to appropriate industry standards of professional diligence. In the discussion on best practices, the provision adds, “special account shall be taken, among other things, of the need to balance fundamental rights and of the use of exceptions and limitations.”

To date, the Commission has organised two stakeholder dialogues, on [15 October](#) (recording [here](#)) and [5 November](#) (recording [here](#)). The first meeting [focused](#) (or was supposed to focus) on current practices of cooperation concerning the use of copyright protected content between rightholders for music, games and software and OCSSPs, as well as users’ perspectives on such practices. The second meeting [addressed](#) the same topics but in relation to rightholders for audiovisual, sports, visual and print content (books, press, news). Readers that did not get a chance to attend the meetings, watch the live stream, or have about 20 hours to spare to watch the recordings, can find critical summaries of both meetings at the Communia website ([here](#) and [here](#)). The next stakeholder dialogues are scheduled to take place on 25 November and 16 December, and will likely address more substantive topics, such as the rights and safeguards of users.

Against this backdrop, a group of European academics (including the author of this post) has drafted a document with recommendations on user freedoms and safeguards included in Article 17 of the DSM Directive – namely in its paragraphs (7) and (9), to be read in the context of the aforementioned stakeholder dialogues. The recommendations are divided into three sections: on promoting licensing and limiting preventive measures; on exceptions and limitations in Article 17 (user freedoms); and on minimizing the risks of broad filtering and over-blocking (user safeguards). Despite the controversial nature of the topic, the recommendation has already been endorsed by around 50 European academics in this area, which is a testament to its balanced

approach. Our intention is that these recommendations and interpretative guidelines are taken into consideration by the Commission, stakeholders, and Member States in their discussions on national implementations of Article 17 DSM Directive.

The Recommendations are available [here](https://www.ivir.nl/nl/recommendationsarticle17/), as well as at <https://www.create.ac.uk/policy-responses/eu-copyright-reform-implementation/>.

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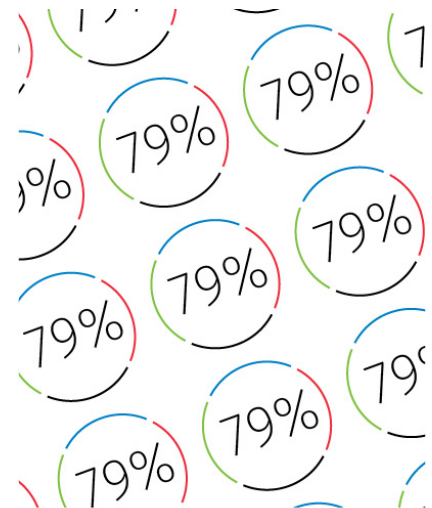
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