

Kluwer Copyright Blog

A Proposal to leverage Article 17 to build a public repository of Public Domain and openly licensed works

Felix Reda (GFF (Society for Civil Rights)) and Paul Keller (Institute for Information Law (IViR)) · Thursday, September 23rd, 2021

We have recently [published a white paper](#), authored by Julia Reda ([Gesellschaft für Freiheitsrechte](#)) and Paul Keller ([Open Future](#)) that proposes to build a public repository of Public Domain and openly licensed works. While the idea of creating repositories of Public Domain and openly licensed works is not new as such, we are proposing to use Article 17 of the EU copyright directive as leverage to create such a repository. Aside from its very problematic blocking and liability provisions, which we have criticized since the EU copyright directive's inception, Article 17 also requires certain providers of online content sharing platforms to ensure that the copyright filters that they deploy “shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights”. This provision was added later in the negotiations to address widespread criticism from civil society and academia.

As a result these platforms need to prevent uploads containing Public Domain or openly licensed works from being blocked or removed as a result of copyright claims from (alleged) rightholders or face sanctions. For example, the German implementation of Article 17 explicitly requires that “after an abusive blocking request in respect of works in the public domain or works whose use by anyone is authorised free of charge, service providers must ensure, to the best of their ability [...], that these works are not blocked again”.

To comply with such obligations providers of these platforms will need to maintain repositories of known Public Domain and openly licensed works that can be used as allow-lists. [In our white paper](#) we argue that, instead of building their own private repositories, service providers should work together to build a shared public repository of Public Domain and openly licensed works. Such a shared public repository would provide value both to the platform providers themselves and to the public. The public would benefit from having access to a growing repertoire of verified Public Domain and openly licensed works, while platform providers would have access to an industry standard resource that allows them to fulfil their obligations under Article 17 and reduce their liability arising from wrongful removals of uploads containing Public Domain and openly licensed works.

The white paper was presented on Tuesday during the “[Protecting Open Licenses in the EU Copyright Reform](#)” session at the Creative Commons global summit. At this stage we are looking for general comments and critical feedback from the CC community on the proposal. What could

be potential uses of this database for the CC community that we haven't thought of? What technical features should the database have to be useful? Where could the database find an institutional home? What are potential unintended consequences or risks of our proposal?

Based on the white paper we will also start a conversation with online content sharing platforms, the EU Commission and civil society to explore the feasibility of our proposal.

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