

Brussels, 2 June, 2020

Subject: copyright in the digital single market and data protection

Dear Commissioner Breton,

We, the underlying signatories of this letter are writing to you regarding the Commission's upcoming guidance on the Directive on Copyright in the Digital Single Market.

The European Commission organises regular Stakeholder dialogues on the application of Article 17. The outcome of the discussions will also feed into the preparation of the guidance that the Commission will issue in order to help Member States implementing the Directive.

On 14 January, 40 fundamental and digital rights organizations, the knowledge community, and users' organizations, including those who participated at the stakeholder dialogue, sent an open letter to the European Commission. As part of their demand they asked to ensure that the guidelines are in line with the right to the protection of personal data as guaranteed by the Charter of Fundamental Rights.¹

While Article 17(9) of the Copyright Directive foresees that the application of its provisions shall not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC and Regulation (EU) 2016/679, it also introduced in article 17(4) provisions obliging platforms to ensure the unavailability of specific works, and prevent their future reupload (stay-down obligation).

It is clear that in times when platforms can face up to 500 hours of video uploaded per minute, the only way to comply with such obligations is to use automated filters. Such filters inherently carry the risk of monitoring users and can lead to automated decision-making and profiling.

In the past, the European Data Protection Supervisor acknowledged the potential risks of interference of Article 17 (formerly known as Article 13) with fundamental rights and suggested as safeguards the strict scrutiny of the Member States' transposition of the Directive and supervision of the measures taken by service providers and rightholders.²

1 <https://dq4n3btxmr8c9.cloudfront.net/files/FJ1kpU/open-letter-copyrightSD-14012020.pdf>

2 https://edps.europa.eu/sites/edp/files/publication/18-07-03_cover_letter_comments_copyright_en.pdf

We believe that given the evident risks, it is imperative that the European Data Protection Board is involved in scrutinizing the issues at hand and in drafting a guidance. We therefore call on the Commission to request the EDPB, pursuant to Article 70(1)(e) of the GDPR, to examine the matter and issue guidelines, recommendations and best practices in order to ensure that Member States' transposition in national law will include strong and consistent protection of personal data. And we ask the Commission to involve the EDPB in the procedure of drafting the Copyright in DSM guidelines.

Yours sincerely,

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