

Article 13 – Monitoring and Filtering of Internet Content is Unacceptable

Open letter

Dear President Juncker,
Dear President Tajani,
Dear President Tusk,
Dear Prime Minister Ratas,
Dear Prime Minister Borissov,
Dear Ministers,
Dear MEP Voss, MEP Boni

The undersigned stakeholders represent fundamental rights organisations.

Fundamental rights, justice and the rule of law are intrinsically linked and constitute core values on which the EU is founded. Any attempt to disregard these values undermines the mutual trust between member states required for the EU to function. Any such attempt would also undermine the commitments made by the European Union and national governments to their citizens.

Article 13 of the proposal on Copyright in the Digital Single Market include obligations on internet companies that would be impossible to respect without the imposition of excessive restrictions on citizens' fundamental rights.

Article 13 introduces new obligations on internet service providers that share and store user-generated content, such as video or photo-sharing platforms or even creative writing websites, including obligations to filter uploads to their services. **Article 13 appears to provoke such legal uncertainty that online services will have no other option than to monitor, filter and block EU citizens' communications** if they are to have any chance of staying in business.

Article 13 contradicts existing rules and the case law of the Court of Justice. The Directive of Electronic Commerce (2000/31/EC) regulates the liability for those internet companies that host content on behalf of their users. According to the existing rules, there is an obligation to remove any content that breaches copyright rules, once this has been notified to the provider.

Article 13 would force these companies to actively monitor their users' content, which contradicts the 'no general obligation to monitor' rules in the Electronic Commerce Directive. **The requirement to install a system for filtering electronic communications has twice been rejected by the Court of Justice**, in the cases Scarlet Extended (C 70/10) and Netlog/Sabam (C 360/10). Therefore, a legislative provision that requires internet companies to install a filtering system would almost certainly be rejected by the Court of Justice because it would contravene the requirement that a fair balance be struck between the right to intellectual property on the one hand, and the freedom to conduct business and the right to freedom of expression, such as to receive or impart information, on the other.

In particular, the requirement to filter content in this way would violate the freedom of expression set out in Article 11 of the Charter of Fundamental Rights. If internet companies are required to apply filtering mechanisms in order to avoid possible liability, they will. This will lead to excessive filtering and deletion of content and limit the freedom to impart information on the one hand, and the freedom to receive information on the other.

If EU legislation conflicts with the Charter of Fundamental Rights, national constitutional courts are likely to be tempted to disapply it and we can expect such a rule to be annulled by the Court of Justice. This is what happened with the Data Retention Directive (2006/24/EC), when EU legislators ignored compatibility problems with the Charter of Fundamental Rights. In 2014, the Court of Justice declared the Data Retention Directive invalid because it violated the Charter.

Taking into consideration these arguments, we ask the relevant policy-makers to delete Article 13.

Civil Liberties Union for Europe (Liberties)
European Digital Rights (EDRi)

Access Info
ActiveWatch
Article 19
Associação D3 - Defesa dos Direitos Digitais
Associação Nacional para o Software Livre (ANSOL)
Association for Progressive Communications (APC)
Association for Technology and Internet (ApTI)
Association of the Defence of Human Rights in Romania (APADOR)
Associazione Antigone
Bangladesh NGOs Network for Radio and Communication (BNNRC)
Bits of Freedom (BoF)
BlueLink Foundation
Bulgarian Helsinki Committee
Center for Democracy & Technology (CDT)
Centre for Peace Studies
Centrum Cyfrowe
Coalizione Italiana Libertà e Diritti Civili (CILD)
Code for Croatia
COMMUNIA
Culture Action Europe
Electronic Frontier Foundation (EFF)
epicenter.works
Estonian Human Rights Centre
Freedom of the Press Foundation
Frënn vun der Ënn
Helsinki Foundation for Human Rights
Hermes Center for Transparency and Digital Human Rights
Human Rights Monitoring Institute
Human Rights Watch

Human Rights Without Frontiers
Hungarian Civil Liberties Union
Index on Censorship
International Partnership for Human Rights (IPHR)
International Service for Human Rights (ISHR)
Internautas
JUMEN
Justice & Peace
La Quadrature du Net
Media Development Centre
Miklos Haraszti (Former OSCE Media Representative)
Modern Poland Foundation
Netherlands Helsinki Committee
One World Platform
Open Observatory of Network Interference (OONI)
Open Rights Group (ORG)
OpenMedia
Panoptikon
Plataforma en Defensa de la Libertad de Información (PDLI)
Reporters without Borders (RSF)
Rights International Spain
South East Europe Media Organisation (SEEMO)
South East European Network for Professionalization of Media (SEENPM)
Statewatch
The Right to Know Coalition of Nova Scotia (RTKNS)
Xnet

CC: Permanent and Deputy Permanent Representatives of the Members States to the EU
CC: Chairs of the JURI and LIBE Committees in the European Parliament
CC: Shadow Rapporteurs and MEPs in the JURI and LIBE Committees in the European Parliament
CC: Secretariats of the JURI and LIBE Committees in the European Parliament
CC: Secretariat of the Council Working Party on Intellectual Property (Copyright)
CC: Secretariat of the Council Working on Competition
CC: Secretariat of the Council Research Working Party