

Ms Corina Panaitopol
Permanent Representation of
Romania to the EU

The Consumer Voice in Europe

B - Brussels

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17 January 2019

Subject: Copyright Reform - Article 13 and user generated content

Dear Ms Panaitopol,

I am writing on behalf of BEUC, The European Consumer Organisation, in view of the next trilogue meeting on the proposal for a Copyright Directive which will take place on Monday 21st January.

BEUC is extremely concerned about the negative impact that Article 13 can have on consumers' daily activities online. We would also like to reiterate our call for the introduction of a user-generated content exception in the Directive.

Today, consumers are used to making a video of their holidays or their daughter's first steps, adding a popular song and posting it online for their friends to watch and comment. It was this culture of creating and sharing that helped make the Internet as popular as it is.

First, as things stand, Article 13 is likely to limit consumers' freedom of expression. If adopted, the proposals tabled by the co-legislators would lead to a very problematic outcome. Platforms where consumers upload their content (e.g. Facebook, YouTube, Twitter and many others) will virtually have no other option than to put in place ex-ante automatic filtering mechanisms to prevent any copyrighted content from being uploaded.

As several examples have showed us recently¹⁻², these automatic filtering tools are not intelligent enough to distinguish between copyright infringing content and content which is legally uploaded (such as content falling under the scope of an existing copyright exception). As a consequence, there is a very high chance that legal non-commercial videos created by consumers will be prevented from being uploaded.

Second, the introduction of a new liability regime and a *de facto* filtering obligation on certain platforms would fundamentally deviate from the 'safe harbour' provision of the EU's e-Commerce Directive. In specific situations, article 14 of the e-Commerce Directive exempts online platforms from being liable for the content uploaded by its users on its services. This is a key measure which has paved the way for the growth of the online economy in Europe over the last 17 years.

Ever since the publication of this proposal in September 2016, BEUC has been calling for the adoption of a balanced approach regarding Article 13 that would benefit both authors *and* consumers. We fully support the reform's aim of ensuring fair remuneration for creators but regret that consumers' interests have been overlooked in the discussions.

¹ <https://thenextweb.com/eu/2018/09/11/copyright-takedown-notice-are-completely-baroque-en/>

² <https://www.bbc.com/news/technology-42580523>

In this regard, we have repeatedly called for the **introduction of a mandatory user-generated content exception** ('UGC exception') as a key element of this reform. The addition of such an exception would counter-balance the most disturbing effects of Article 13 by enabling consumers to freely upload content they made using copyrighted works if they do not affect the normal economic revenue of the author. An UGC exception was considered during the debate in the European Parliament but since then disappeared from the discussions around the reform.

We understand that an UGC exception is now being reconsidered. We fully support this and call on Council and European Parliament to introduce such an exception in the Directive, as included in the opinions of the European Parliament's IMCO³ and CULT⁴ committees.

We also call on Parliament and Council not to rush into an agreement on the reform without resolving the fundamental problems that arise from Article 13, which would negatively affect how consumers experience the internet and undermine their freedom of expression.

We trust you will take our concerns and demands into account in your deliberations and stand at your disposal should you have any questions.

Yours sincerely,

Frederico Oliveira da Silva
Legal Officer

³ www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-599.682+02+DOC+PDF+V0//EN&language=EN

⁴ www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-595.591+03+DOC+PDF+V0//EN&language=EN