

Article 13: there are no silly questions

When it comes to Article 13, there are no silly questions.

Old arguments, new text

A lot has been said about Article 13, with misleading information and false interpretations clouding the debate. Now that we have a new and final version of the text, agreed in trilogue and approved by COREPER, let's have a fresh look at some of the concerns that continue to be raised.

What's new in comparison to the text of September 2018?

Below are some of the more significant changes:

- Platforms will be encouraged to get licences from the rights holders rather than block content. This means less removals, more content available and greater legal certainty for individuals when posting and sharing creative works
- There is no obligation to put filters in place. Services need to be able to identify specific copyright protected content for which rightsholders provide relevant information. They cannot use filters randomly to stop content from being posted. Therefore, YouTube's claims that it will have to shut down channels and put in place a filtering mechanism for unlicensed content are groundless
- It's a pro startups text: the obligations under Article 13 take into account size, audience and business type. In addition, a special regime with much softer obligations exists for startups. This ensures easy market access and a level playing field
- Individuals will be able to rely on exceptions for quotation, criticism, caricature, parody etc. across the EU when uploading and sharing content. So memes and gifs will remain safe to post!



Will Article 13 result in a censorship machine that would filter all content?

People opposed to Article 13 often say that all platforms will need to check the entirety of their content to find out if anything infringes copyright. They insist that because they won't be able to differentiate between what is protected and what is not, this would lead to censoring information.

False. And here's why:

Incentivising new solutions

Article 13 will incentivise licensing solutions by which rights holders authorise platforms to store and give legitimate public access to the largest possible amount of content. Creators rely on collective management organisations that are one-stop shops for granting licences from their large repertoires. In practice this means more content available, with fair remuneration for creators, and no need to filter and remove content, as it will be authorised. Such licences will also cover the activity of uploaders as long as they are not acting for commercial purposes.

Targeted removals mean no filtering or general monitoring

According to the new text, services don't need to check, understand and make decisions on every single piece content. They need only remove specific works through targeted measures and based on information (metadata) provided by rights holders.

If a rights holder decides that it doesn't want to negotiate a licence with the platform, the two parties have to work together to make sure that the identified works are not made available. Platforms can also rely on 'mitigation of liability' in case any content slips through despite its 'best efforts'.

There is no obligation to put filters in place. Services need to be able to identify specific copyright protected content for which rightsholders provide relevant information. They cannot use filters randomly to stop content from being posted.

Memes are safe

Furthermore, individuals will be able to rely on exceptions and limitations related to freedom of expression such as quotation, criticism, caricature, parody etc. when uploading and sharing content. This means that memes, gifs etc. will continue to be used lawfully in all circumstances and freedom of expression, which is expressly mentioned in the directive, will be safeguarded.

2

Will it Change the internet as we know it?

No.

The only big change is that big platforms will need to remunerate the creators fairly on the basis of copyright. This makes all the difference between an unfair market and a fair one!

Article 13 only applies to a limited number of services

These are big user-uploaded content platforms, such as YouTube, Facebook, DailyMotion, Soundcloud, Vimeo etc. - those whose main purpose is giving access to a large amount of protected works with profit-making purposes.

Article 13 does not apply to a large number of your favourite services, such as:

- Non-profit encyclopaedias like Wikipedia, and non-profit educational and scientific repositories
- Cloud services for private use like DropBox
- Open-source software developing platforms like GitHub
- E-commerce sites that sell physical products like Amazon
- Personal blogs or discussion forums, because they don't store and give access to a large amount of protected works
- Basically, any service that's main purpose is not to upload and share a large amount of copyright protected content and obtain profit from this activity, such as TripAdvisor, Tinder and other dating websites, etc..

Creators will be paid fairly

Article 13 doesn't require platforms to change their business models. It requires them to get authorisation from rights holders for protected content or to remove specific works based on information given to them by rights holders.

More protection for individuals and their channels

Individuals will not be prevented from uploading, sharing protected content and growing their channels. The reality is the exact opposite: the licences granted to platforms will cover all of an individual user's acts. This means they are covered whenever they upload something, and the same goes for when they are not acting on a commercial basis or their activity does not generate significant revenue. Moreover, people can still generate and share content that includes protected works for the purpose of criticism, parody, caricature etc.

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Will it lead to YouTube closing channels?

This was mentioned in statements made by the CEO of YouTube, who said that if Article 13 is not changed then YouTube will close millions of channels in Europe.

False!

Remember, YouTube's CEO was referring to a provisional text adopted by the European Parliament in September. The interpretation was misleading. Article 13 has changed and such an interpretation would now not only be misleading but also totally void!

Making platforms liable, not individuals

Article 13 is not about the users of the service but about the liability of the platforms. The content on YouTubers' channels is typically covered by the licences that YouTube must obtain from rightholders.

YouTube generates huge profits (through ads, selling data, etc.) from providing access to creative content. Will the platform really jeopardise its main source of revenue by shutting down channels and in doing so becoming devoid of all creative content? YouTube's statements sound more like a threat than a risk.

4

Will Article 13 kill European innovation and startups?

No. Today the leading European legitimate online content services are threatened by market distortion caused by free-riding US tech giants. Article 13 puts forward the idea of a level playing field, legal certainty and market fairness to the benefit of innovation and the development of a European Digital Single Market.

As they are so special, a special regime has been designed for startups

Startups are defined as having:

- Existed for less than three years
- An annual turnover of below €10 million
- An average number of monthly unique visitors beneath 5 million
- Online sharing service providers who fit the above description need to make their best effort to obtain authorisation adapted to their size and business model. They also only need to remove specific works when a notification is sent by rightholders (i.e. only "notice and take-down" and no notice and stay down).

This smart exception gives start-ups a fair chance to grow both quickly and with legal certainty by avoiding more stringent measures applied to big services (such as "notice and stay-down").

5

Will it impose cumbersome obligations on small businesses?

No!

Not a one-size-fits-all solution

Article 13 makes it clear that when it comes to a platform's obligations, the principle of proportionality applies. This means taking into account things like the size of the service and the cost of the measures to be put in place.

It's important to remember that Article 13 only addresses services whose main purpose is giving access to a large amount of protected works for profit-making purposes.

6**Will it prevent memes, gifs etc.?**

No! Legitimate uses of content are protected by article 13 and a redress mechanism governed by a third party is dedicated to prevent from any abuse.

The fun does not stop here

People will still be able to freely upload content generated by themselves for the purpose of quotation, criticism, review caricature, parody or pastiche. Memes, gifs and all of that other good stuff that denotes freedom of expression and freedom of art is, of course, allowed!

Freedom of speech is safeguarded and protected from automatic blocking. People will continue to make fun of everything and anything online! The only difference is that now they will be doing so under solid and clear legal grounds.

7**Will it be practical? Algorithms would not be able to differentiate between parody and content that infringes.****Licence means access**

When there is a licence granted to the service – which will be the case most of the time, whether or not the content is a parody is irrelevant, as it will automatically count as legitimate use.

An end to arbitrary removals

Youtubers have long bemoaned the unfair removal of their content. Under Article 13, in the rare cases where a service would need to remove content, uploaders can take advantage of the newly introduced complaints and redress mechanisms subject to human review.

Technical cooperation between rights holders and platforms, as well as the development of more sophisticated technologies, will remove the legal uncertainty that exists today. It will also put an end to platforms using their own arbitrary discretion to remove content.

8**Would it limit the exposure of new artists?**

No. licensing agreements provided by authors societies and online distributors enable artists to make available their content on those online platforms. Those licences are crucial since Article 13 provides that platforms shall henceforth require an authorisation from rightholders.

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