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# Licences vs. Upload Filters

In the discussion regarding Article 13, the recurring argument is that upload filters would be the logical consequence of Article 13 because the platforms affected by Article 13 would not be able to license the entire content in practice, and therefore would have to filter all uploads.

This causal conclusion is false on two counts:

***No obligation to use "upload filters"***

Article 13 does not stipulate any obligation to use "upload filters". The term "upload filter" does not even appear in the Directive.

What is right is that the online platforms are supposed to permanently remove **non-licensed content which is notified by the respective rights holders**. A specific process is, however, not prescribed, and the requirements for the platforms need to be measured based on the principle of proportionality pursuant to Article 13 (4a). Apart from the size and the type of the service, the cost of specific measures must be taken into account. Moreover, any potential decision to remove or disable access to uploaded content shall always be subject to "human review".

Other than sometimes reported in the media, platforms therefore have **no obligation to generally check uploaded content "for copyright infringements".** The platform does not have to identify each copyright infringement but **only find and remove such works on the platform which have been reported to them by the rights holders that have not been licensed.**

***The overarching objective of Article 13 is licensing – and not content blocking***

And that's the crucial point, because: The overarching objective of Article 13 is the conclusion of licensing agreements in order to guarantee the participation of creators in the exploitation of their content – and not content blocking. To this end, Article 13 has been significantly refined during the course of the trilogue, and especially the importance of licensing agreements has been highlighted.

When it comes to licensing, it is important to know: **In order to avoid being held liable, platforms do not have to acquire a separate licence for each individual content protected by copyright** - even if this impression often arises in the media:

- Pursuant to Article 13 (4), platforms must undertake their best efforts in order to conclude licensing agreements with rights holders. Pursuant to Article 13 (4a), the principle of proportionality does, when it comes to establishing whether platforms have met their obligations, always have to be respected. The type of the works that have been uploaded by the users also has to be taken into account.

- Therefore, a platform has to prove that it has undertaken every proportionate and reasonable effort in order to conclude licensing agreements with the rights holders for the content published via the platform.

- Regarding the licensing process, collective management organisations will play a particular role. It is their core business to offer licensing solutions where an individual rights clearing between an individual user and an individual rights holder fails due to the mere amount of the required licences. Collective management organisations bundle the rights of countless rights holders. At international level, and especially in the music sector, they are linked to their sister societies abroad via a network of agreements and can thus offer a huge international rights portfolio from a single source and subject to fixed tariffs. With respect to rights holders who are not members of a collective management organisation, the Directive opens a possibility to enable usages in Art. 9a via “extended collective licensing”. Content protected by copyright such as music or image rights could be licensed from the rights holders in a simple and legally compliant manner, by concluding respective framework agreements or by acquiring blanket licences, especially via the collective management organisations. It is therefore not necessary for the platforms to “track down” individual rights holders.

- Example image: VG Bild-Kunst (and its sister societies abroad) is prepared to conclude blanket agreements with the platform providers by means of which they remunerate the rights of the third-party contents uploaded by users (bloggers, private users, who share their photos in the communities). As a consequence, all forms of expression on the internet remain unencumbered without the need for images having to be filtered out.

- Example music: GEMA already has a licensing agreement with YouTube in place and is going to authorise other platforms via the respective licensing agreements to use the musical works represented by GEMA. Popular music services such as Spotify which offer millions of songs also obtain their rights in this way.

In general, it can be expected – also with a view to other content – that the rights market is going to consolidate in line with demand – just like it had done for the licensing of “mass usages” on the radio and on TV back in the day.

As far as platforms affected by Article 13 continue to hold on to the position that upload filters would be inevitable for them, this ultimately only means that these platforms are not willing to acquire the collective licences which are available in the market. They rather threaten to reduce their services instead of paying creators.

Why is the anger of the users based on this blatantly wrong argumentation not directed against the platforms themselves which are obviously unwilling to seek out licensing solutions? It isn’t the Directive that’s the problem, but the providers of the platforms who are not willing to adapt their business models and to fairly remunerate creators!