

Brussels, 16.10.2017

Subject: E-commerce Directive and Copyright Proposal.

Dear Mr x

On 16th and 17th October, the Council Working on Copyright will meet to consider, inter alia, articles 13 and 17 of the proposed Directive on copyright in the Digital Single Market (the "Copyright Proposal").

Article 13 raises a number of difficult legal issues, in particular regarding the articulation of Article 13 and its accompanying recitals with Directive 2000/31 on electronic commerce (the "E-Commerce Directive").

In particular, it is unclear whether the European Commission's Copyright Proposal establishes new, sector specific rules for copyright that supersede the E-Commerce Directive. More specifically, it is unclear:

- whether article 13 and corresponding recitals of the Copyright Proposal should supersede articles 14 (hosting) and 15 (prohibition of general monitoring obligations) of the E-commerce Directive, or
- whether articles 14 and 15 of the E-Commerce Directive continue to apply irrespective of article 13 and corresponding recitals of the Copyright Proposal.

It is clear, however, that in their current forms, the copyright proposal and the e-commerce Directive contradict each other in a manner which is open to conflicting interpretations and which will lead to a lack of legal certainty.

The European Commission's text is fundamentally ambiguous - even on such core issues as to the meaning of the Proposal. According to some commentators, it fails to meet the most basic standards of legal certainty but also, regrettably, deprives EU lawmakers of the possibility of an informed debate on the Proposal. Finally, it undermines the coherence of EU law and EU decision making, as there can be no discussion on the articulation between the Copyright Proposal and the E-Commerce Directive without acknowledging this ambiguity.

We would welcome the acknowledgement that the Copyright Proposal raises issues regarding the E-commerce Directive. Should the Council Working Party on Copyright or the Legal Service of the Council acknowledge this issue, we would further welcome the advice and input of other Council preparatory bodies relevant to the E-commerce Directive - such as the Working Parties on Competitiveness and Telecommunications and Information Society.

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