TARGETED CONSULTATION ON ARTICLE 17 OF THE DIRECTIVE ON COPYRIGHT AND RELATED RIGHTS IN THE DIGITAL SINGLE MARKET (EU 2019/790)

Summary Report on the targeted consultation on the application of Article 17

Disclaimer: the views presented in this factual summary report are not the views of the European Commission but of the stakeholders that participated in this targeted consultation. It cannot in any circumstances be regarded as the official position of the Commission or its services.

TEASER: In order to finalise the stakeholder dialogue on the application of Article 17 of the Directive on Copyright and Related Rights in the Digital Single Market, the Commission organised a targeted consultation from 27 July to 10 September 2020. The consultation was addressed to the participants to the stakeholder dialogue organised by the Commission pursuant to Article 17(10) of Directive (EU) 2019/790. The objective of the consultation was to gather feedback on the Commission’s initial ideas for the guidance that the Commission is required to issue on the application of Article 17.

Objectives of the consultation

Article 17 of the Directive on Copyright and Related Rights in the Digital Single Market (EU 2019/790) requires the European Commission to organise a stakeholder dialogue to discuss best practices for cooperation between online content-sharing service providers and rightholders and to issue guidance on the application of Article 17.

The Commission organised six stakeholder dialogue meetings between October 2019 and February 2020 to hear stakeholders’ views and to discuss possible practical solutions for the application of Article 17. The dialogue gathered representatives of rightholders, online content-sharing service providers, consumers, users and fundamental rights organisations. The targeted consultation held between 27 July and 10 September 2020 finalised the stakeholder dialogue. The aim of the consultation was to gather the views from participants to the stakeholder dialogue on the initial ideas of the Commission for the guidance to be issued on the application of Article 17.

Who replied to the consultation?

A total of 107 replies to the consultation were received through the EU Survey tool from organisations representing rightholders, online content-sharing service providers, consumers, users, fundamental rights organisations, as well as some individual companies, public authorities and one individual.
Preliminary findings observed in the replies

Without prejudice to the in-depth analysis of the replies which will be taken into account in the guidance to be prepared by the Commission, the following overall trends can be summarised as follows*:

* The written contributions have been analysed by the services of the Commission in order to provide a preliminary analysis of the main trends.

On the scope of service covered (Article 2.6) - stakeholders views diverge on the need to transpose all elements of the definition and the recitals explaining the scope of services covered (recitals 62 and 63).

On authorisations (Article 17.1 and 17.2) – different views were expressed on the nature of Article 17 as well as on the different authorisations schemes that can be used to transpose Article 17. Organisations representing rightholders and service providers insisted on the need to preserve their contractual freedom. Service providers underlined the importance of maintaining sufficient flexibility on the forms of authorisations. Organisations representing rightholders expressed different views on the licensing models that can be used under Article 17. Users’ organisations are generally in favour of Member States introducing mechanisms to facilitate the grant of authorisations.

On the liability regime under Article 17.4 – the importance of applying the principle of proportionality when assessing the 'best efforts' to be made by online content-
sharing service providers was underlined by many stakeholders, notably by organisations representing service providers and users’ organisations. Rightholders’ organisations considered that the ‘best efforts’ obligation needs to be assessed case by case and that technologies should play an important role in ensuring the unavailability of unauthorised content. On the other hand, organisations representing service providers and users consider that there should not be any obligation to use content recognition technologies.

**On the specific liability regime for start-ups (Article 17.6)** – service providers and users’ organisations emphasised the need to apply the principle of proportionality and the need to avoid costly obligations beyond the first three years of the existence of the service. Organisations representing rightholders consider that the same assessment of ‘best efforts’ should apply to all services and that it is important to avoid abuses of the system.

**On safeguards for legitimate uses (Article 17.7 and 17.9)** - stakeholders expressed diverging views on how to implement the safeguards for legitimate uses when services apply content recognition technologies to comply with their obligation under Article 17.4(b) and (c). Many stakeholders, above all users’ organisations but also organisations representing service providers, consider that Article 17(7) should be explicitly transposed and that it is not enough to only restore legitimate content ex post, through the redress mechanism. Rightholders’ organisations consider that legitimate uses should be safeguarded only through the ex post redress mechanism and that content should not be available online during the human review.

**Information to rightholders (Article 17.8)** – organisations representing service providers consider that there should be reasonable limits on the type of information and level of detail required by rightholders. Several organisations representing rightholders underlined the importance of getting precise and complete information on the functioning / efficiency of content recognition tools and on the use of their works. Users’ organisations stressed the need for transparency on the practices by service providers and the content blocked/removed.

**Next steps**

The replies (.xls) to the targeted consultation will feed into the Commission’s guidance on the application of Article 17.