



GIOVANNI BUTTARELLI
SUPERVISOR

Ms Catherine STIHLER
Acting Chair of IMCO
European Parliament
B-1049 Brussels

Brussels,
GB/CD/mt/D(2018)1509 C2018-0584
Please use edps@edps.europa.eu for all
correspondence

**Subject: Comments of the European Data Protection Supervisor on Article 13 of
the proposal for a directive of the European Parliament and of the
Council on copyright in the Digital Single Market**

Dear Ms Stihler,

Thank you for your email to me of 26 June, sent in your capacity as the Rapporteur in the Internal Market and Consumer Protection (IMCO) committee of the European Parliament on the proposal for a Copyright Directive, requesting my views on whether Article 13 of the text adopted by the Committee on Legal Affairs committee on 20 June 2018 would ‘impose a general monitoring obligation on EU citizens’.

We are fully aware of the vigorous debate surrounding this proposal, the importance of the matters in hand for all sides and the difficult balance to be struck between the rights and interests at stake. My comments are restricted to Article 13 of the draft resolution and accompanying Recital 38. We have examined in particular Article 11 of the draft resolution, which would require Member States to ‘provide publishers of press publications with the rights provided for in Article 2 and Article 3 (2) of directive 2001/29/EC so that they may obtain fair and proportionate remuneration for the digital use of their press publications by information society service providers.’ We do not consider the provisions of this article to be a matter for EDPS. Our analysis has focused exclusively on questions of privacy and data protection, because it is not our role to advise on implications of legislative proposals for other rights and freedoms which may be affected by the proposed copyright directive, like public access to information, freedom to conduct a business and the right to property.

Having examined Article 13 in the context of the wider proposal, the EDPS:

- 1) welcomes the efforts made in the proposal and in the draft resolution to restrict interference with fundamental rights including the rights to privacy and to data protection while safeguarding copyright in the digital age;
- 2) welcomes, in particular, the personal data minimisation requirement, the references to the Charter of Fundamental Rights of the EU and to the Regulation 2016/679 and Directive 2002/58/EC;

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 30 - B-1000 Brussels

E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

- 3) recognises the distinction between, on the one hand, the requirement under the proposal to prevent copyright-infringing content uploads, and the general monitoring of user activity which has been ruled incompatible with the Charter by the Court of Justice of the EU in the SABAM cases and criticised by EDPS in the case of ACTA;
- 4) takes note that the provisions contained in this proposal or the draft resolution do not aim to mandate general surveillance of activities on the internet. Given, however, the already endemic monitoring of people on the internet, there is a risk that this proposal would exacerbate the situation if the measures taken prove not to be 'appropriate and proportionate'. Strict scrutiny of the Member States' transposition of the Directive and supervision of the measures taken by service providers and rightholders are additional safeguards to be considered;
- 5) considers that the measures required of content sharing service providers in Article 13 (1) of the proposal will almost certainly involve the processing of personal data, and that Regulation 2016/679 will be duly applicable;
- 6) recommends the co-legislator continue to reflect carefully on likely practical consequences of the obligations created in Article 13 (1), on the risk of interference with fundamental rights and of circumvention of safeguards, and on the potential for distorting competition in ways which will harm fundamental rights. In such a delicate area, EU law must be as precise and clear as possible. The EU should vigilantly evaluate the implementation of the directive and ensure that data protection by design and other safeguards are effectively put into place.

Further analysis can be found in our formal comments, which I attach to this letter.

It is of course for the legislator to determine the most appropriate moment, whether prior to or during the trilogue negotiations, to consider this advice.

I am copying this letter to the rapporteurs for the proposed copyright directive of committees JURI, CULT, ITRE and LIBE, and to the heads of their respective secretariats.

Yours sincerely,

Giovanni BUTTARELLI

Cc: Mr Axel VOSS, Rapporteur, Committee on Legal Affairs (Committee responsible)
Mr Zdzisław KRASNODEBSKI, Rapporteur, Committee on Industry, Research & Energy
Mr Marc JOULAUD, Rapporteur, Committee on Culture & Education
Mr Michal BONI, Rapporteur, Committee on Civil Liberties, Justice and Home Affairs
Mr. Pavel SVOBODA Chair, Committee on Legal Affairs

Ms Petra KAMMEREVERT, Chair, Committee on Culture & Education
Mr Jerzy BUZEK, Chair, Committee on Industry, Research & Energy
Mr Claude MORAES, Chair, Committee on Civil Liberties, Justice and Home Affairs
Mr Diego CANGA FANO, Head of Cabinet of Antonio Tajani, President of the European Parliament
Mr Panayotis KONSTANTOPOULOS, Head of Unit, Committee on the Internal Market & Consumer Protection
Ms Ewa KOENIG-WOJTOWICZ, Head of Unit, Committee on Legal Affairs
Mr Klaus BAIER, Head of Unit, Committee on Industry, Research & Energy
Mr Nils DANKLEFSEN, Head of Unit, Committee on Culture & Education
Mr Antoine CAHEN, Head of Unit, Committee on Civil Liberties, Justice and Home Affairs

Contact person: *Christian D'Cunha (tel: 02 28 31994)*