

Направление: «Юриспруденция»

**Профиль:
«Право информационных технологий
и интеллектуальной собственности»**

КОД: 2102

**Время выполнения задания – 180 мин., язык – русский.
Максимальное количество баллов – 100.**

Блок 1. Вопросы с короткими ответами (максимум – 15 баллов)

Представьте короткие ответы на вопросы. Ответ на каждый вопрос оценивается максимум в 3 балла.

1. Назовите средства индивидуализации, охраняемые в соответствии с законодательством Российской Федерации, и укажите те из них, которые подлежат обязательной государственной регистрации.
2. Перечислите случаи обработки персональных данных, для которых в соответствии с законодательством Российской Федерации требуется получение письменного согласия субъекта персональных данных.
3. Перечислите виды электронных подписей, предусмотренные законодательством Российской Федерации, и для каждого вида электронной подписи укажите условия признания электронных документов, подписанных электронной подписью, равнозначными документам на бумажном носителе, подписанным собственноручной подписью.
4. Перечислите личные неимущественные права автора произведения.
5. Назовите условия предоставления принудительной лицензии на изобретение в соответствии с законодательством Российской Федерации.

Блок 2. «Задачи» (максимум – 50 баллов)

Задача 1 (максимум – 25 баллов)

Компания А и компания Б заключили договор, согласно которому компания А передаёт компании Б на реализацию в розничной сети свою продукцию. По названному договору компания А также обязалась нанести на передаваемую продукцию товарный знак, права на который принадлежат компании Б на основании лицензионного договора, заключенного с правообладателем – компанией В. Впоследствии Компания Б реализовала указанную продукцию потребителям.

Компания В, которая является правообладателем указанного товарного знака, обратилась в суд с иском к компании А о неправомерном использовании товарного знака.

Представьте развернутые ответы на вопросы:

- **Являются ли действия компании А использованием товарного знака?**
- **Оцените правомерность нанесения товарного знака на продукцию и последующую продажу данной продукции в описанной ситуации.**
- **Всегда ли необходимо заключение лицензионного соглашения либо договора об отчуждении исключительного права на товарный знак, чтобы действия по использованию товарного знака третьим лицом являлись правомерными?**

Задача 2 (максимум – 25 баллов)

Интернет-сайт «УЧИТЕЛЯ.РФ» содержит профили учителей государственных, муниципальных и частных школ. Сайт «УЧИТЕЛЯ.РФ» агрегирует информацию о работниках образовательных учреждений из общедоступных источников (в том числе с сайтов образовательных учреждений). Также любой учитель может самостоятельно зарегистрировать персональный профиль (персональную Интернет-страницу) на Интернет-сайте «УЧИТЕЛЯ.РФ», редактировать свою персональную информацию.

Профиль каждого учителя содержит ФИО, специализацию, стаж работы по специальности, место работы.

Пользователи Интернет-сайта имеют возможность оставлять отзывы об учителях на персональных страницах учителей.

Учитель Петрова обратилась в суд с требованием полностью удалить её персональную страницу с Интернет-сайта «УЧИТЕЛЯ.РФ», а учитель Смирнов - с требованием удалить лишь некоторые негативные отзывы, оставленные пользователями на его персональной странице.

Владелец Интернет-сайта «УЧИТЕЛЯ.РФ» отказывается удалять персональную страницу Петровой и отзывы о Смирнове.

Представьте развернутые ответы на следующие вопросы:

- 1) **Какие аргументы можно привести в защиту прав и законных интересов учителей Петровой и Смирнова?**
- 2) **Какие аргументы можно привести в защиту прав и законных интересов владельца Интернет-сайта «УЧИТЕЛЯ.РФ»?**
- 3) **Каким образом суду следует разрешить споры между учителями Петровой/Смирновым и владельцем Интернет-сайта «УЧИТЕЛЯ.РФ»?**

Блок 3. «Анализ англоязычной статьи» (максимум – 35 баллов)

Прочитайте фрагмент англоязычной статьи и сделайте его критический анализ на русском языке, придерживаясь следующего списка вопросов:

- 1) О каких тенденциях в сфере ответственности информационных посредников идёт речь в статье?
- 2) Как авторы статьи оценивают изменения в законодательстве ЕС, которые анализируются в статье? Каким образом, по мнению авторов, эти изменения влияют на фундаментальные права человека?
- 3) Реализован ли аналогичный подход к сфере ответственности информационных посредников в Российской Федерации?
- 4) Поддерживаете ли Вы тенденции в сфере ответственности информационных посредников, о которых идёт речь в статье? Аргументируйте свой ответ.

При выполнении задания разрешено пользоваться одним печатным изданием любого англо-русского или совмещенного англо-русского/русско-английского словаря.

Monitoring and Filtering: European Reform or Global Trend?

Frosio, Giancarlo and Mendis, Sunimal, Monitoring and Filtering: European Reform or Global Trend? (September 9, 2019). in Giancarlo Frosio (ed), The Oxford Handbook of Online Intermediary Liability (Oxford University Press, 2019 Forthcoming). Available at SSRN: <https://ssrn.com/abstract=3450194> or <http://dx.doi.org/10.2139/ssrn.3450194>

Increasingly, proactive monitoring obligations have been imposed on intermediaries along the entire spectrum of intermediary liability subject-matters. This has happened via voluntary measures, judicial decisions and legislation, as in the case of the recent European Union (EU) copyright law reform. Since its initial introduction, the proposal for a EU Directive on copyright in the Digital Single Market (hereafter C-DSM) has been the subject of heated debate. A critical point of this controversy has been (and indeed continues to be) Article 17 (previously Article 13) of the C-DSM that imposes a heightened duty-of-care and an enhanced degree of liability on online content-sharing service providers (OCSSPs) as regards copyright infringing content that is posted on their services by users. It has been argued that (at least in practical terms), the avoidance of liability under the proposed regime would compel OCSSPs to engage in the monitoring and filtering of user-generated-content (UGC). If this is the case, the proposed Article 17 would signal a transition of EU copyright law from the existing ‘negligence-based’ intermediary liability system — grounded on the principle of ‘no-monitoring obligations’—to a regime that requires OCSSPs to undertake proactive monitoring and filtering of content, and would almost certainly lead to the widespread adoption of automated filtering and algorithmic copyright enforcement systems. In reviewing this magmatic legal framework, this chapter considers the implications of this regulatory shift to the preservation of users’ fundamental freedoms online and in maintaining a healthy balance between the interests of rightholders, users and online intermediaries.

1. OSP as a ‘Mere-Conduit’: ‘No-Monitoring’ Obligations

Since the early days of the Internet-industry, determining the nature and scope of Online Service Provider (OSP) liability for content posted by third-parties on online digital-spaces and services provided by them, has been a pressing issue for judges and policy-makers. In the EU, the eCommerce Directive (ECD) provides the main legal framework for the regulation of intermediary liability while in the United States it is primarily dealt with under s. 512 of the Digital Millennium Copyright Act (DMCA) and s. 230 of the Communications Decency Act (CDA). Both the EU and US legal frameworks are characterized by a ‘negligence-based’ approach to intermediary liability that exempts OSPs from any general obligation to monitor the information stored or transmitted by them, or to actively seek facts or circumstances indicating illegal activity. Together with safe-harbor provisions which impose liability based on knowledge, OSPs may become liable only if they do not take down allegedly infringing materials promptly enough upon knowledge of their existence, usually given by a notice from interested third-parties. Although Article 14(3) read with Recital 47 of the ECD does allow national law to provide for monitoring obligations ‘in a specific case’, it prohibits the imposition of general monitoring obligations. The ECD also acknowledges that Member States can impose duties of care on hosting providers ‘in order to detect and prevent certain types of illegal activities.’ However, their scope should not extend to general monitoring obligations, if any meaning is to be given to the statement in Recital 47 that only specific monitoring obligations are allowed. Furthermore, Recital 48 of the ECD emphasizes that, the duties of care required from service providers should be of a standard which could be ‘reasonably expected’ from them. As a general monitoring obligation goes beyond what could be reasonably expected from service providers, these are explicitly barred by the Directive. In order to distinguish general from specific monitoring obligations, it should be considered that, (1) as an exception, specific monitoring obligations must be interpreted narrowly; (2) both the scope of the possible infringements and the amount of infringements that can be reasonably expected to be identified, must be sufficiently narrow; and, (3) it must be obvious which materials constitute an infringement. As Van Eecke noted:

[i]f [clear criteria] are not defined, or only vague criteria are defined by the court (e.g. ‘remove all illegal videos’), or if criteria are defined that would oblige the hosting provider to necessarily investigate each and every video on its systems (e.g. ‘remove all racist videos’), or if the service provider were required also to remove all variations in the future (e.g. ‘remove this

video, but also all other videos that belong to the same repertory’), a general monitoring obligation would be imposed.

The ‘negligence-based approach’ to liability is founded on a perception of OSPs as passive players or ‘mere-conduits’ that facilitate the storing and transmission of content created and uploaded by third-party users. In this role, they are only required to adopt a ‘reactive’ as opposed to ‘proactive’ role vis-à-vis illegal content that may be channeled through the digital-spaces or services provided by them. As noted by Friedmann, the legal frameworks in the EU and the US on intermediary liability were drafted around the beginning of the millennium at a time when ‘electronic commerce was perceived as being “embryonic and fragile”, and Internet auctions and social media were just a fledgling phenomenon’. Therefore, it was assumed that, limiting the liability of OSPs in relation to content hosted on their services would assist in nurturing this fledgling industry and ensure the continued improvement of the efficiency of the Internet and the expansion of the variety and quality of Internet services. This negligence-based approach to intermediary liability has been adopted by jurisdictions across the world and for a long-time remained the prevalent standard for determining the liability of OSPs regarding copyright infringing content disseminated over their services.

Although imperfect because of considerable chilling effects, a negligence-based intermediary liability system has inherent built-in protections for fundamental rights. The European Court of Justice (CJEU) has confirmed multiple times—at least with regard to copyright and trademark infringement—that there is no room for proactive monitoring and filtering mechanisms under EU law. The Joint Declaration of the Special Rapporteurs on Freedom of Expression and the Internet calls against the imposition of duties to monitor the legality of the activity taking place within the intermediaries’ services.

2. From ‘Mere-Conduits’ to ‘Gate-Keepers’?

The Global Shift in Intermediary Liability However, there is increasing evidence of a global shift towards the imposition of a heightened standard of liability on OSPs as regards content uploaded by users. This approach is underscored through the imposition of obligations on OSPs to proactively engage in the monitoring and filtering of content stored and transmitted by them. This signifies a change in the perception of OSPs from being passive players or ‘mere-conduits’ to being active ‘gate-keepers’ with the duty to prevent the posting of illegal content over digital-spaces and online services managed by them. Although exceptions do apply, this transition is steadily gaining ground and evolving into a mainstream approach to intermediary liability. This shift is primarily reflected in developments in case law and appears to be rooted in the ‘Internet threat’ discourse that is characterized by the fear that OSPs are becoming untamable monsters who are likely to inflict imminent harm unless subdued through enhanced legal obligations and liability. It has been supplemented by automated content screening and filtering software adopted by influential industry-players.

3. The EU Copyright Directive in the Digital Single Market: Legitimation through Legislation?

Article 17 of the C-DSM is a significant step towards consolidating the transformation of OCSSPs from passive neutral services to active ‘gate-keepers’, through legislative means. The C-DSM limits itself to OCSSP liability relating to content that infringes upon copyright and preserves the existing intermediary liability framework as regards other illegal content such as defamatory statements, hate speech, violations of privacy etc.

The draft legislative provision has been subject to numerous amendments that have constantly re-framed the scope of OCSSP liability. The first draft of the CDSM was proposed by the Commission in September 2016 (hereafter ‘C-DSM Proposal’). In July 2018, the EU Parliament rejected a mandate proposed by the Legal Affairs (JURI) Committee to enter into negotiations with the EU Council for the purpose of enacting the C-DSM, following which (and after further negotiations) an amended version of the C-DSM (including Article 17—which was

then Article 13) was adopted by the EU Parliament in September 2018 (hereafter ‘version of September 2018’). Finally, in February 2019 a further amended version of the C-DSM and Article 17 (then Article 13) was agreed upon during the trilogue negotiations between the EU Parliament, the Commission and the Council (hereafter ‘agreed-upon text’). This agreed-upon text (with several inconsequential changes) was finally adopted by the Council in April 2019 (following its approval by the Parliament).

Before proceeding to discuss the salient features of Article 17, a brief exposition of the aims and objectives of the C-DSM would be helpful in understanding the context of Article 17 and in locating it within the ‘Internet threat’ discourse. As noted in the explanatory memorandum to the C-DSM Proposal of September 2016, a powerful trigger behind Article 17 is an attempt to close the so-called ‘value-gap’ of the EU online digital economy which refers to an alleged unfair distribution of revenues generated from the online use of copyright-protected works among industry actors along the value chain. To the end of closing the ‘value-gap’, the proposed reform inter alia requires OCSSPs to engage in a more proactive role in preventing the availability of copyright infringing content over services provided by them in order to enable rightholders to receive an appropriate remuneration for the use of their works.

3.1. Definition of an OCSSP

Article 2(6) of the C-DSM defines an OCSSP as, a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject-matter uploaded by its users, which it organises and promotes for profit-making purposes.

Thus, the application of Article 17 is limited to UGC hosting providers. It is further required that the OCSSP plays an active role in organizing (including categorizing) the UGC content and promoting it for profit-making purposes, thereby excluding the application of the hosting liability exemption in Article 14 of the ECD. In doing so, the C-DSM redeploys the language of the CJEU in *L’Oréal v. eBay* where the optimization and promotion of offers-for-sale hosted on its platform by eBay was linked to the active role played by eBay in respect of those offers-for-sale, thereby removing it from the protection offered under Article 14 of the ECD. As per Recital 62 of the C-DSM, the definition of an OCSSP is expected to target online services which play an important role on the online content market by competing with other online content services such as online audio and video streaming services, for the same audiences. On the other hand, the definition specifically excludes OCSSPs who have another main purpose than enabling users to upload and share copyright protected content for profit-making purposes such as OCSSPs operating from non-profit motives (eg open-source software development platforms, online encyclopedias), electronic communication services, online market places whose main activity is online retail as opposed to giving access to copyright protected content and business-to-business cloud services (eg cyberlockers) that allow users to upload content for their own use. In sum, platforms like YouTube, Facebook and DailyMotion would clearly fall within the scope of the definition of an OCSSP in Article 2(6). This further serves to underscore the primary aim of Article 17 as closing the ‘value-gap’ by compelling platforms which obtain commercial profit through the sharing of copyright-protected content uploaded by users, to appropriately remunerate rightholders. Although this may constitute a legitimate objective, the means employed by Article 17 appear to overreach this aim and threaten to severely upset the balance between the interests of rightholders, intermediaries and users in the dissemination and use of copyright protected content online.

3.2. A General Monitoring Obligation?

Article 17 makes OCSSPs directly liable for copyright infringement based on the assumption that they perform an act of communication to the public or an act of making available to the public, by means of giving public access to copyright protected content uploaded by users. This represents a radical shift from the prevailing regulatory framework under the ECD

that imputes secondary liability based on actual knowledge and ‘take-down’. Thus, under Article 17, OCSSPs would be automatically assumed to infringe copyright and be held directly liable for acts of copyright infringement that are materially committed by users who upload unauthorized content onto online services provided by them.

The imposition of direct liability for copyright infringement is combined with an elevated standard of care and due diligence that is exemplified through a three-tiered framework of direct liability. Firstly, OCSSPs are required to make their ‘best efforts’ to obtain the authorization of the relevant copyright owners (rightholders) before communicating any copyright protected content to the public. Secondly, they are required to make their ‘best efforts’ to ensure the unavailability of specific works concerning which rightholders have provided the relevant and necessary information. Thirdly, upon receiving a sufficiently substantiated notice from the rightholders, OCSSPs are required to act expeditiously to disable access or to remove from their websites the particular work and furthermore, to make their ‘best efforts’ to prevent the future upload of that content (i.e. ‘stay-down’ of infringing content). As noted above, the limitation of liability under Article 14 of the ECD is made expressly inapplicable to situations covered under Article 17.

For the purposes of ensuring the unavailability of unauthorized content, the ‘best efforts’ of OCSSPs are assessed in accordance with ‘high industry standards of professional diligence’ that takes into account whether the OCSSP has taken all steps that would be taken by a diligent operator, in accordance with ‘best industry practices’. The effectiveness of the steps taken and their proportionality in achieving the relevant objective (i.e. to avoid and to discontinue the availability of unauthorized works) are also pertinent to the assessment. Furthermore, Recital 66 of the C-DSM notes that the assessment of ‘best efforts’ should *inter alia* consider ‘(...) the evolving state of the art of existing means, including future developments, for avoiding the availability of different types of content’. 104 Thus, it is anticipated that the standard of due diligence expected from OCSSPs will increase in relation to future technological innovations that offer more improved and effective means of identifying and blocking unauthorized copyright protected content from online platforms.

It is argued here that the transformation effected by Article 17 to the nature and scope of OCSSP liability for copyright infringement within the EU reflects a legitimization through legislative means of the shift initially observed through case law in perceiving OCSSPs as ‘gate-keepers’ with a proactive role in preventing the storage or transmission of copyright infringing content over the online services provided by them. On the one hand, Article 17 is unprecedented in its imposition of direct liability on OCSSPs for copyright infringement and the high standard of care to which OCSSPs are required to adhere. Even CJEU case law that may be interpreted as reinforcing the position upheld by the C-DSM has hitherto not reached so far.

On the other hand, it is difficult to envision how an OCSSP could avoid liability under Article 17 without engaging in a general monitoring of content. Ensuring the unavailability of specific works for which rightholders have provided relevant and necessary information would necessarily require the general and indiscriminate inspection of all content uploaded by users of an online service in order to promptly identify and block any potentially infringing content. Preventing future uploads of unauthorized content once they have been taken down, would be especially difficult to achieve without engaging in a general monitoring of all content uploaded onto the online service so as to ensure the exclusion of specific ‘black-listed’ works or subject-matter.

Through the decisions delivered in the cases of *Scarlet*, *Netlog* and *L’Oreal v eBay*, the CJEU has authoritatively defined the distinction between general and specific monitoring obligations. In *Netlog*, referring specifically to hosting providers, the CJEU held that European law must be interpreted as precluding to require a hosting provider to install a system for filtering: (1) information which is stored on its servers by the users of its service; (2) which applies indiscriminately to all of those users; (3) as a preventative measure; (4) exclusively at its expense; (5) for an unlimited period; and, (6) which is capable of identifying electronic files

containing musical, cinematographic or audio-visual works. It is evident that any obligation to monitor all content uploaded by users onto a website for the purpose of identifying specific works would qualify as a general monitoring obligation within the meaning of this definition. This is further substantiated by the decision delivered by the CJEU in the L’Oreal v eBay case where the CJEU made it clear that an active monitoring of all data uploaded by users in order to prevent any future infringements would be precluded by EU law.

As noted above, a monitoring obligation against a ‘black list’ of ‘specific and duly notified copyright protected works’ would still apply indiscriminately to all users, operate as a preventative measure over an unlimited time at the exclusive expense of the OCSSP and apply to all kind of infringements, thus remaining general rather than specific. Therefore, although Article 17(8) explicitly states that, ‘[t]he application of the provisions of this article shall not lead to any general monitoring obligation’, in practical terms, by requiring OCSSPs to make their ‘best efforts’ to ensure the unavailability of specific unauthorized content over services provided by them, Article 17 (albeit indirectly) compels them to engage in a general monitoring of content posted by users on their services.

However, a monitoring obligation is never spelled out in the reform and, as long as monitoring and filtering schemes (to fulfill the obligation of making best efforts to ensure unavailability of infringing content) is developed on a voluntary basis under the aegis of Art 17(10), the policy arrangement in Art 17 would effectively circumvent formal non-compliance with Art 15 of the ECD. While the preclusion of a general monitoring obligation under Article 17(8) would prevent a Court — or a Member State legislation or administrative regulation— from imposing a general monitoring obligation on OCSSPs, it does not in any way preclude OCSSPs from voluntarily engaging in the general monitoring of content uploaded by users in order to avoid liability under Article 17. In view of the high standard of care required of them, it is natural to assume that many risk-averse OCSSPs would engage in the general monitoring of content uploaded onto their services as a safeguard against copyright infringement suits. A framework for defining this voluntary monitoring scheme will be developed under stakeholder dialogues, organized by the Commission ‘to discuss best practices for cooperation between online contentsharing service providers and rightholders’. The results of the stakeholder dialogues will be crystallized in guidance issued by the Commission. Art 17 would be de facto imposing monitoring obligations but not ex lege, making the chances of success of a challenge on the basis of the aforementioned inconsistency with the ECD extremely low.

Of even greater concern is the high likelihood that the enhanced risks of liability for copyright infringement would compel OCSSPs to adopt automated filtering systems (eg content recognition technologies) and algorithmic enforcement mechanisms (eg automated content blocking). The achievement of general and indiscriminate monitoring of all content uploaded by users through a manual filtering of content would impose a considerable financial and logistical burden on OCSSPs. Thus, automated filtering and blocking tools would prove to be the most efficient and cost-effective means of ensuring the unavailability of unauthorized content over online services. In fact, the assessment of ‘best efforts’ in accordance with industry standards and evolving technologies implies that OCSSPs may even be legally required to employ algorithmic monitoring and enforcement systems if these are determined to be the most effective and proportionate means of achieving the unavailability of specific copyright protected content over online services, and moreover reflect the prevailing industry-standard—which is increasingly becoming the case with powerful players such as Google resorting to automated monitoring systems. It is also interesting that, in defining best-practices for OCSSPs in preventing the availability of unauthorized content, the C-DSM Proposal promoted the use of effective technologies such as content-recognition tools. This reference to the use of effective technologies was expunged from the version of September 2018 which moreover included an explicit counsel to avoid the use of automated content-blocking in defining best-practices. Surprisingly this reference to the avoidance of automated content-blocking systems has been deleted from the

final version, thereby leaving the door open for OCSSPs to use automated contentblocking in fulfilling their obligations under Article 17.

4. Effect on Fundamental Rights

The implications of an increase in the general monitoring by OCSSPs of content uploaded onto online services and the enhanced use of automated filtering and enforcement systems for this purpose, raise important questions relating to the preservation of users' fundamental rights to expression and information. The CJEU has emphasized that general monitoring and filtering measures would fail to strike a 'fair balance' between copyright and other fundamental rights. In particular, automatic infringement assessment systems may undermine freedom of expression and information by preventing users from benefitting from exceptions and limitations granted under EU copyright law to make certain privileged uses of copyright protected content. At the prevailing level of technological sophistication, automated systems are often unable to correctly appreciate the nuances between unauthorized uses of copyright protected content and uses that are permissible by reason of falling within the ambit of copyright exceptions and limitations. Therefore, there is a high risk of false positives that may result in chilling effects and negatively impact users' fundamental rights to freedom of expression and information. Also, complexities regarding the public domain status of certain works may escape the discerning capacity of content recognition technologies. In the CJEU's own words, these measures 'could potentially undermine the freedom of information, since that system might not distinguish adequately between unlawful content and lawful content.'

The redress mechanism that is proposed under Article 17(9) to enable users to challenge the removal or blocking of access to content uploaded by them, falls short of adequately preserving users' interests to make privileged uses of copyright protected content. An arrangement where all specific works duly notified shall be blocked regardless of whether their use is privileged or not, with a redress mechanism operating ex post, defies the fundamental goal of the ECD's liability system for hosting providers, which is intended to operate ex ante for the purpose of minimizing chilling effects, especially given the critical role of virality in online content distribution. Actually, the introduction of a complaints and redress mechanism inter alia to prevent misuses of or restrictions to the exercise of exceptions and limitations, turns a traditionally ex ante review mechanism into an ex post mechanism while content is taken down proactively by automated algorithmic filtering regardless of the fairness of the use, the application of exceptions and limitations or the public domain status of the works. Again, Article 17 confirms this departure from traditional procedural arrangements for the enforcement of intellectual property rights (IPR) by providing that, 'Member States shall ensure that users have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright and related rights.' Traditional IPR enforcement focuses on the merits of claims of infringement by rightholders, rather than on re-users asserting the use of an exception or limitation in court after their content is blocked through private-ordering. To do otherwise means placing a heavy burden on non-professional creators and user-generated content, as transaction costs of litigation will usually be too high for these creators, who will predominantly choose not to seek any legal redress even if the blocking or take-down has been apparently bogus.

5. Conclusions

The foregoing discussion demonstrates that the imposition of proactive monitoring obligations on OCSSPs under Article 17 of the C-DSM is not a novel contrivance wrought by an inventive EU legislature, but rather, represents the legislative culmination of a global trend that inclines towards the imposition of proactive monitoring and filtering obligations on OSPs. It argues that it constitutes a legitimation by legislative means of an emerging shift in the perception of OSPs from being passive players or 'mere-conduits' to active 'gate-keepers' of content stored or transmitted through their services by third parties. It thereby reflects 'a broader

move towards enlisting OSPs as the Internet police' and provides an impetus for the increased use of automated filtering and algorithmic enforcement systems with the potential to severely curtail the ability of users to benefit from legally granted exceptions and limitations that enable certain privileged uses of copyright protected content and may even curb the use of certain public domain content.

It remains to be seen whether the legislative transformation of the role of OSPs under Article 17 as regards copyright protected content will expand to other types of subject-matter along the spectrum of intermediary liability such as defamation, hatespeech, violations of privacy etc. In the meantime, it is vital to ensure that Article 17 is interpreted and enforced in a manner that preserves an equitable balance between the interests of users, intermediaries and rightholders, especially in relation to the preservation of the fundamental rights to expression and information.