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Europäische Akademie für  
Informationsfreiheit und Datenschutz  
z.Hd.  
Dr. Alexander Dix  
Bismarckallee 46/48  
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by e-mail only

Ref: OUT2020-0111

Dear Dr. Dix,

Thank you very much for your letter regarding the guidance by the European Commission (EC) on Art 17 Directive (EU) 2019/790 on copyright and related rights (Copyright Directive).

Article 17 of the Copyright Directive provides for a new copyright liability regime for major online content-sharing service providers. In practice this means that there is an important shift from removing infringing content ex post through “notice and take-down”, i.e. to assess content after it has published, to an assessment of specific content before it is put online, without requiring any specific technical solution.

As you highlighted, the issue of upload filters and the possible impact on digital rights and fundamental rights is very important. The EDPB considers that any processing of personal data for the purpose of upload filters must be proportionate and necessary. Therefore, as far it is possible, no personal data should be processed when Art 17 Copyright Directive is implemented.

While this article provides that the platforms shall prevent future uploads of copyright-protected works, it does not as such stipulate that attempts to upload these material should be attributed to a specific data subject.

In the situation when the technical solution to comply with the obligations imposed by Article 17 of the copyright directive should nevertheless require processing of personal data or of electronic communication data, the GDPR and/or the ePrivacy Directive need to be considered, as required by Article 17 itself.

Where the processing of personal data is necessary, such as for the redress mechanism, such data should only concern data necessary for this specific purpose, while applying all the other principles of the GDPR. Regarding your second point, that neither the EDPB nor the EDPS nor any national SA has been involved in the drafting of the EC guidelines on Art 17, we can confirm that so far we have not received an official request by the EC for an opinion on this topic.

However, we continuously are in contact with the EC, who has presented this matter to one of our expert subgroups. Following this presentation, we have raised questions and provided comments on

the current work and issues that could require specific attention and we have signalled our availability for further collaboration on this matter.

Yours sincerely,

Andrea Jelinek

