ReCreating Europe

FREQUENTLY ASKED QUESTIONS (FAQS) AND GUIDELINES FOR INTERMEDIARY PLATFORMS

Authors

JOÃO PEDRO QUINTAIS AND
SEBASTIAN FELIX SCHWEMER

EXECUTIVE SUMMARY

This information sheet presents answers to 12 questions that are frequently asked regarding the legal rules and practices of copyright content moderation by online intermediaries, namely online platforms like YouTube, Facebook, Instagram, and Twitter. It aims to guide readers regarding the rules, systems and practices of these platforms that deal with copyright-protected content uploaded by users, e.g. video, music, images and text.

The FAQs and Guidelines presented herein are extracted from the research conducted by Work Package 6 (WP6) of the reCreating Europe Consortium. More information on and research results of WP6 can be found on the official website of reCreating Europe and on the Project's open-access repository, Zenodo.

WHAT IS THE FOCUS OF YOUR RESEARCH PROJECT?

Our interdisciplinary research project focuses on legal rules and practices of copyright content moderation by online intermediaries, namely online platforms like YouTube, Facebook, Instagram, and Twitter. Our research concerns the rules, systems and practices of these platforms that deal with copyright-protected content uploaded by users, e.g. video, music, images and text. Relevant examples of moderation of potential copyright infringing content relate to how user-generated content is filtered, taken down, or monetized by the platforms at the request of rights holders.

WHICH GROUP OF PEOPLE DID YOU TARGET WITH YOUR RESEARCH?

The targets of our research are broad. First, we focus on policymakers at European and national level, such as the European Commission and national lawmakers, who are struggling with how to legislate, make policy and interpret the new and complex provisions that regulate copyright content moderation. In EU Law, this includes the famous Article 17 of the Copyright in the Digital Single Market Directive as interpreted by the Court of Justice of the EU. In our view, it also includes the overlapping rules applicable to online platforms in the even more recent Digital Services Act regulation. So from this perspective, our research is also useful and timely for courts, legal interpreters, researchers in this area, and of course for the platforms that are attempting to deal with this new wave of regulation that directly impact how they do business. Finally, our research matters also to end users (of platforms) and rights holders, as it clarifies their legal status, rights and obligations in this complex ecosystem.

Readings

- Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

WHAT PROBLEMS DID YOU LOOK TO SOLVE IN YOUR WORK?

The area of content moderation is challenging to research due to the complexity of the applicable legal rules and the (human and algorithmic) systems and practices of platforms. It is, however, an area of increased economic and cultural significance since online platforms have become crucial gateways and conduits for access to culture and expression.

Our research attempts to tackle these issues through an interdisciplinary approach and a focus on EU law. Our objective is to map, understand and evaluate the impact on access to culture in the Digital Single Market of content moderation of copyright protected content on these platforms. In our view, this is essential not only to make sense of the current regulatory puzzle and real work practices surrounding copyright content

moderation, but also to properly assess existing rules and determine desirable outcomes to improve access to culture on these platforms.

WHICH PLATFORMS ARE COVERED BY THE NEW RULES OF ARTICLE 17 OF THE COPYRIGHT IN THE DIGITAL SINGLE MARKET DIRECTIVE?

Article 17 of the Directive regulates "online content-sharing service providers" or "OCSSPs". These are defined in Article 2(6) as service providers with a profit-making purpose that store and give the public access to a large amount of works or other subject matter uploaded by their end-users, which they organise and promote.

The scope of the definition is further clarified by a *non-exhaustive* list of exclusions, which includes electronic communication services (e.g., Skype), providers of business-to-business cloud services and cloud services (e.g., Dropbox), online marketplaces (e.g., eBay), not-for profit online encyclopaedias (e.g., Wikipedia), not-for-profit educational and scientific repositories (e.g., ArXiv.org), and open-source software developing and sharing platforms (e.g., GitHub). Not all the types of excluded platforms listed follow neatly from the application of the definition. However, the exclusions share one or both of the following characteristics: (a) the main activity of these services is *not* giving access to copyright- protected content; and (b) the listed services are (at least at time of writing) wholly or predominantly not for-profit.

Our research shows that there is significant legal uncertainty as regards this qualification. To be sure, certain large-scale platforms, especially with video-sharing features (e.g., YouTube, Facebook, Instagram), clearly qualify as OCSSPs. Others will also clearly be excluded from the scope of Article 17 because they are covered by the definitional carve-outs in Article 2(6). Still, there remains a significant grey area, which affects both larger platforms and (especially) medium-sized and small platforms. The main reason is that the definition includes a number of open-ended concepts ("main purpose", "large amount", "profit-making purpose") that ultimately require a case-by-case assessment of what providers qualify as OCSSPs. Such assessment would partly take place In the context of the respective national Member State, which may lead to further uncertainty.

For that reason, we we recommend that the Commission reviews its Guidance on Article 17 (COM/2021/288 final) in order to provide clearer guidelines on the definition of OCSSPs, especially for small and medium-sized online platforms and coordinates its application across Member States.

Readings

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market (COM/2021/288 final)
- Quintais, João Pedro and Mezei, Péter and Harkai, István and Vieira Magalhães, João and Katzenbach, Christian and Schwemer, Sebastian Felix and Riis, Thomas, Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis (August 1, 2022). Available at SSRN: https://ssrn.com/abstract=4210278 or http://dx.doi.org/10.2139/ssrn.4210278 // Available on Zenodo: https://zenodo.org/record/7081626#.Y-EJ963MLEY

DOES ARTICLE 17 OF THE COPYRIGHT IN THE DIGITAL SINGLE MARKET DIRECTIVE REQUIRE "UPLOAD FILTERS"?

For a significant part of the legislative process, the legal regime of Article 17 (initially Article 13 of the draft Directive) was criticized for its potential to have chilling effects on freedom of expression. Critics argued that the new rules would have this effect because they mandated the imposition of "upload filters" leading to over-blocking of lawful content, such as that protected by exceptions or limitations benefiting users. On the other side of the debate, some argued that no such obligation was imposed, since there would be other technological solutions to implement the legal obligations without restricting users' freedom of expression.

In its final version, Article 17(4) introduces a liability exemption mechanism for OCSSPs. These providers can only escape liability if they comply with best efforts obligations for preventive measures. For such measures, OCSSPs must first receive from rights holders "relevant and necessary information", upon which they must either carry out "best efforts to ensure the unavailability of specific works" (4(b)) or ensure the works already taken down do not resurface on the platform (4(c)). The first obligation provides incentives for the adoption of ex-ante filtering measures ("upload filters"), while the second institutes a notice-and-staydown regime ("re-upload filters"). However, the provision does not make specific mention to any content recognition and filtering technology.

The matter was clarified by the Court of Justice in its judgment in C-401/19, *Poland v Parliament and Council*. The Court confirmed that Article 17 requires OCSSPs to de facto carry out a prior review of uploaded content in cases where rights holders have provided "relevant and necessary information", as required by paragraph (4)(a) (para 53). Depending on the scale of the task, review of uploads by OCSSPs requires automatic recognition and filtering tools. As the Court noted, no party to this case was able to designate possible alternatives to such tools. Therefore, in certain cases – and certainly for the largest platforms (e.g. YouTube and Meta) – automated content filtering is required to comply with the best efforts obligations in art. 17(4) CDSMD.

Readings

- Case C-401/19, Republic of Poland v European Parliament and Council of the European Union, 26.04.2022, ECLI:EU:C:2022:297
- Quintais, João Pedro and Mezei, Péter and Harkai, István and Vieira Magalhães, João and Katzenbach, Christian and Schwemer, Sebastian Felix and Riis, Thomas, Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis (August 1, 2022). Available at SSRN: https://ssrn.com/abstract=4210278 or http://dx.doi.org/10.2139/ssrn.4210278 // Available on Zenodo: https://zenodo.org/record/7081626#.Y-EJ963MLEY
- Quintais, João Pedro: Between Filters and Fundamental Rights: How the Court of Justice saved Article 17 in C-401/19 - Poland v. Parliament and Council, VerfBlog, 2022/5/16, https://verfassungsblog.de/filters-poland/, DOI: 10.17176/20220516-182406-0.

WHAT TYPE OF FILTERING MEASURES CAN PLATFORMS APPLY TO UPLOAD CONTENT UNDER ARTICLE 17 OF THE COPYRIGHT IN THE DIGITAL SINGLE MARKET DIRECTIVE?

There is still uncertainty as to the precise scope of permissible filtering under Article 17. However, our research argues that some important implications can and should be derived from the Court of Justice's judgment in Case C-401/19, *Poland v Parliament and Council*.

The Commission's Guidance (COM/2021/288 final) states that automated filtering and blocking measures are "in principle" only admissible for "manifestly infringing" and "earmarked" content. However, the Court states unequivocally that only filtering/blocking systems that can distinguish lawful from unlawful content without the need for its "independent assessment" by OCSSPs are admissible. Only then will these measures not lead to the imposition of a prohibited general monitoring obligation under Article 17(8). Furthermore, these filters must be able to ensure the exercise of user rights to upload content that consists of quotation, criticism, review, caricature, parody, or pastiche, under Article 17(7).

On this point, it is noteworthy that the judgment endorses by reference the Advocate General Opinion, which states that filters "must not have the objective or the effect of preventing such legitimate uses", and that providers must "consider the collateral effect of the filtering measures they implement", as well as "take into account, ex ante, respect for users' rights" (para 193). In our view, considering the Court's statements in light of the previous case law and current market and technological reality, the logical conclusion is that only content that is "obviously" or "manifestly" infringing – or "equivalent" content – may be subject to ex ante filtering measures. Beyond those cases, for instance as regards purely "earmarked content", the deployment of ex ante content filtering tools appears to be inconsistent with the judgment's requirements.

It also remains to be seen whether this reasoning applies more broadly to other types of illegal content beyond copyright infringement. If it does, it might help to shape the scope of prohibited general monitoring obligations versus permissible "specific" monitoring, with relevance for future discussions on the Digital Services Act. In drawing these lines, caution should be taken in the application of the "equivalent" standard in the Court's previous judgment in *Glawischnig-Piesczek*, which likely requires a much stricter interpretation for filtering of audio-visual content in OCSSPs than textual defamatory posts on a social network.

Readings

- AG Opinion in Case C-401/19, Republic of Poland v European Parliament, Council of the European Union, 15.07.2021, ECLI:EU:C:2021:613.
- Case C-18/18, Eva Glawischnig-Piesczek v Facebook Ireland Limited, 3.10.2019, ECLI:EU:C:2019:821.
- Quintais, João Pedro and Mezei, Péter and Harkai, István and Vieira Magalhães, João and Katzenbach, Christian and Schwemer, Sebastian Felix and Riis, Thomas, Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis (August 1, 2022). Available at SSRN: https://ssrn.com/abstract=4210278 or http://dx.doi.org/10.2139/ssrn.4210278 // Available on Zenodo: https://zenodo.org/record/7081626#.Y-EJ963MLEY

DOES THE DIGITAL SERVICES ACT APPLY TO PLATFORMS COVERED BY ARTICLE 17 OF THE COPYRIGHT IN THE DIGITAL SINGLE MARKET DIRECTIVE?

Yes. Our research looks into the the interplay between Article 17 of the Copyright in the Digital Sigle Market Directive (CDSMD) and different provisions of the Digital Services Act (DSA). With regard to copyright-protected material and online platforms, the DSA matters at two levels. First, because it replaces the e-Commerce Directive, the DSA and its rules on liability and due diligence obligations will apply to all providers that do not qualify as OCSSPs. Second, because of the direct application of the DSA to OCSSPs covered by Article 17 CDSMD. Both Article 17 CDSMD and multiple provisions of the DSA impose obligations on how online platforms deal with illegal information. Whereas Article 17 CDSMD targets copyright infringing content, the DSA targets illegal content in general, including that which infringes copyright.

Departing from the observation that a platform may qualify as an OCSSP under the CDSMD and an "online platform" (and "very large online platform") under the DSA, we conclude that the DSA will apply to OCSSPs insofar as it contains rules that regulate matters not covered by Article 17 CDSMD, as well as specific rules on matters where Article 17 leaves a margin of discretion to Member States. Importantly, we consider that such rules apply even where Article 17 CDSMD contains specific (but less precise) regulation on the matter. In our view, although there is significant legal uncertainty in this regard, such rules include both provisions in the DSA's liability framework and in its due diligence obligations (e.g., as regards the substance of notices, complaint and redress mechanisms, trusted flaggers, protection against misuse, risk assessment and mitigation, and data access and transparency).

One important consequence from the above is the emergence of a bifurcated or multilevel legal framework for online platforms engaging in copyright content moderation. On the one hand, OCSSPs are subject to the regime of Article 17 CDSMD as regards liability and content moderation. On the other hand, non-OCSSPs are subject to the pre-existing regime under the InfoSoc Directive (2001/29/EC) and e-Commerce Directive (and now the DSA), as interpreted by the Court of Justice (most recently in *YouTube and Cyando*). This may lead to further fragmentation of the Digital Single Market, on top of the fragmentation that is to be expected by the national implementations of the complex mechanisms in Article 17 CDSMD. To this we must add the application of the horizontal rules on content moderation liability and due diligence obligations arising from the DSA. In sum, the multi-level and multi-layered EU legal landscape on copyright content moderation that emerges from our analysis is complex.

Readings

- Quintais, J., & Schwemer, S. (2022). The Interplay between the Digital Services Act and Sector Regulation: How Special Is Copyright? *European Journal of Risk Regulation, 13*(2), 191-217. doi:10.1017/err.2022.1, https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/interplay-between-the-digital-services-act-and-sector-regulation-how-special-is-copyright/EC5405C9E4329329590F6BE95D373086
- Quintais, João Pedro and Mezei, Péter and Harkai, István and Vieira Magalhães, João and Katzenbach, Christian and Schwemer, Sebastian Felix and Riis, Thomas, Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis (August 1, 2022). Available at SSRN: https://ssrn.com/abstract=4210278 or http://dx.doi.org/10.2139/ssrn.4210278 // Available on Zenodo: https://zenodo.org/record/7081626#.Y-EJ963MLEY

- Peukert, Alexander and Husovec, Martin and Kretschmer, Martin and Mezei, Péter and Quintais, João Pedro, European Copyright Society - Comment on Copyright and the Digital Services Act Proposal (January 17, 2022). IIC - International Review of Intellectual Property and Competition Law, 53(3), p. 358-376. (2022), https://link.springer.com/article/10.1007/s40319-022-01154-1 Available at SSRN: https://ssrn.com/abstract=4016208 or http://dx.doi.org/10.2139/ssrn.4016208
- Joined Cases C-682/18 and C-683/18, Frank Peterson v Google LLC, YouTube Inc., YouTube LLC, Google Germany GmbH (C 682/18), and Elsevier Inc. v Cyando AG (C 683/18), 22.06.2021, ECLI:EU:C:2021:503
- Quintais, João Pedro and Angelopoulos, Christina, YouTube and Cyando, Joined Cases C-682/18 and C-683/18 (22 June 2021): Case Comment (HvJ EU 22 juni 2021, YouTube en Cyando) (March 7, 2022). Auteursrecht, Issue 1, No. 1, pp. 46-51 (2022), Available at SSRN: https://ssrn.com/abstract=4052698

WHAT ARE THE BIGGEST CHALLENGES NATIONAL LEGISLATORS AND COURTS FACE WHEN TRANSPOSING AND APPLYING ARTICLE 17?

In our research, we carried out a two-phase questionnaire that looked into (1) the legal status quo of intermediaries preceding the transposition deadline of Article 17, and (2) the implementation of this rule in ten selected Member States: Denmark, Estonia, France, Germany, Hungary, Ireland, Italy, the Netherlands, Portugal and Sweden. The findings of our first phase questionnaire indicate that the majority of the Member States has conceptualized service providers that store and give the public access to a large amount of protected content uploaded by their users preceding the new Article 17 regime. However, the direct liability of such service providers was far from uniform across Member States. E-Commerce, criminal and civil law concepts were alternatively or complementarily applied. In this context, Article 17 looked like a timely and necessary intervention to harmonize the regime of copyright liability for platforms in the EU. We also found that the Member States had very limited amount of procedural safeguards (namely, complaint-and-redress mechanisms) to guarantee the proper functioning of platforms' content moderation activities. Finally, while end-users were subject to direct liability for unauthorized uploading of protected subject matter to platforms' systems under existing copyright laws, such liability was rarely enforced in the Member States. Also, several Member States had to make significant changes related to end-user flexibilities (especially parody, caricature and pastiche).

The key findings of the second phase questionnaire are as follows. The implementation of the primary building blocks of Article 17, i.e., the economic rights affected; the new liability regime; or the balancing of fundamental rights of stakeholders show a diverse picture in the selected Member States. Such diversity suggests that the initial goal of the Directive to harmonize certain aspects of copyright in the Digital Single Market may not be met, resulting instead in a fragmented legal landscape.

The nine countries analyzed at this stage (Portugal had no legislative documents to report on) can be divided into three groups. In group one, the German and the Swedish models show above-the-average detail in the implementation of the new regime, with a special focus on the strengthened protection of user rights and detailed liability mechanisms. In group two, the Estonian, French and the Dutch legislation contain a smaller

number of individual solutions. In group three, Denmark, Hungary, Ireland and Italy took a rather restrictive approach through an almost verbatim transposition of Article 17.

The CJEU's judgment in Case C-401/19, *Poland v Parliament and Council*requires that Member States implement Article 17 in a fundamental rights compliant manner. As of now, various national solutions seem to be rather limited in terms of e.g., the priority of user rights over content filtering. Despite that, it is important to note that there is still no consensus on scholarship on the proper transposition method of the new rules, namely as regards the question of whether it is preferable to follow a (near) verbatim vs sophisticated implementation. With that being said, if one considers the Commission's Guidance, the Advocate General Opinion and the Court of Justice's judgment in case C-401/19, there are strong arguments that national implementations must go some way beyond quasi-verbatim transpositions.

Our findings indicate that it is plausible that a number of preliminary references on different aspects of Article 17 will find their way to the Court of Justice in the short to medium term. These references will most probably focus on the interpretation of the newly introduced autonomous concepts of the Directive; the consistency of national transpositions with the EU law, especially in a fundamental rights dimension; and the exact scope and implications of "user rights" and respective safeguards under Article 17(7) and (9).

Readings

- Quintais, João Pedro and Mezei, Péter and Harkai, István and Vieira Magalhães, João and Katzenbach, Christian and Schwemer, Sebastian Felix and Riis, Thomas, *Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis* (August 1, 2022). Available at SSRN: https://ssrn.com/abstract=4210278 or http://dx.doi.org/10.2139/ssrn.4210278 // Available on Zenodo: https://zenodo.org/record/7081626#.Y-EJ963MLEY

WHAT ARE THE MOST RELEVANT EMPIRICAL FINDINGS OF YOUR RESEARCH?

The empirical research has addressed both the structures of platforms' copyright content moderation as well as its (potential) impact on cultural diversity and access.

With regard to the *structures of copyright content moderation*, our longitudinal analysis has identified two interlinked processes that characterize these current structures. Firstly, platforms' policies have become more intricate and detailed. Over time, more (kinds of) rules were introduced and made public, and these rules were communicated in increasingly more diverse sets of documents. This complexification is certainly a response to increasing public pressure. Although this provides more information about platforms, it also makes understanding the trajectory of platforms and policies challenging. Secondly, platforms have changed their copyright policies towards allocating more control and power themselves, usually by increasing the number of their own obligations and rights, which were, in turn, largely aligned with their own interests, logics and technologies. In addition, we have identified the complex integration of automated copyright content moderation systems as key instrument of platforms structures of copyright content moderation.

With regard to the *impact of copyright content moderation on cultural diversity and access,* the key result of this research is a call for action: researchers need clearly defined and robust access to platform data. Our

empirical work shows the clear limitations of existing research options given the notorious scarce access to data held by platforms.

Investigating *(1) transparency reports*, we have identified an almost uniform trend towards reporting certain aggregated data. There is obviously strong co-orientation between platforms with a clear upward trend to disclose more data. With a view to substantial data on copyright content moderation, we see between 2012 and 2021 a strong increase of notice, takedown, and conflicting cases, but mostly reflecting the general growth of the platforms. With regards to removal rates, the picture is much more complex, not yielding a specific trend.

On *(2) the content level*, we have investigated the diversity of available content on YouTube as a major platform. Results show a general decrease of diversity. While this might be interpreted as a confirmation of major concerns that critics of Article 17 had raised in the political process, the country-specific results do not substantiate the interpretation that this decrease can be directly linked to the implementation of the new rules.

Based *(3) on interviews*, we have surfaced that creators are indirectly impacted by copyright regulations and copyright content moderation already at the level of content creation by ways of self-censorship, avoiding posting certain of content or adjusting it in advance to anticipated automated filters and platform policies. Yet their understanding of these is vague. For example, creators were not aware of the provisions of Article of the new Copyright Directive and general legislative mechanisms to appeal or contest content moderation decisions by platforms.

In sum, the results indicate a strong impact of copyright regulation and content moderation on diversity, and potentially an impact that leads to a decrease in diversity of content. But more importantly, it indicates a strong need to implement robust mandatory data access clauses and procedures so that research can rigorously study the impact of platforms on society.

WHAT ARE SOME OF THE KEY RECOMMENDATIONS TO ENHANCE ACCESS TO DIGITAL CULTURE FOR THE STAKEHOLDER GROUPS TARGETED BY YOUR RESEARCH?

We have a number of recommendations aimed mostly at policymakers at EU and national level, at courts and at platforms. For the European Commission, for example, we consider that our analysis provides support to review and update key elements of its Guidance on Article 17 (COM/2021/288 final) in a manner that is more consistent with the fundamental right to freedom of expression. We identify different aspects where a review would be welcome, for instance, as regards a better definition of what platforms are covered by Article 17, the concrete implications of user rights on those platforms, the limited application of so-called upload filters, the complementary role of complaint and redress mechanisms, and the articulation of Article 17 with the recent Digital Services Act. To the extent applicable, we mirror these recommendations and adjust them to national lawmakers implementing Article 17 international laws across the EU, and we also identify important gaps in existing rules that should be object of further research and potentially future legislative intervention. Chief among these are rules on monetization of users, content on platforms and their remuneration, and on transparency and access to data on platforms by researchers.

Importantly, for intermediaries, our research provides valuable input regarding how and to what extent the new rules should be operationalized. There are also certain aspects that we cover where current legislation is unclear or has blind spots. For example, regarding the question of over-blocking, where there's still plenty of room for private platforms to improve their systems and practices towards a better access to culture regime, which takes into consideration the balance of the different conflicting fundamental rights.

Readings

- D.6.3 - Schwemer., Sebastian Felix; Katzenbach, Christian; Dergacheva, Daria; Riis, Thomas; Quintais, João Pedro, *Impact of content moderation practices and technologies on access and diversity* (February 2023). Available on Zenodo https://zenodo.org/record/7705391#.ZBHHwnbMK3A
- D.6.4. João Pedro Quintais, Christian Katzenbach, Sebastian Felix Schwemer, Daria Dergacheva, Thomas Riis, Péter Mezei, and István Harkai, *Copyright Content Moderation in the EU: Conclusions and Policy Recommendations*. Available on Zenodo https://zenodo.org/record/7774112#.ZCFzGHZBy3A

WHAT COMMON MISCONCEPTIONS EXIST REGARDING COPYRIGHT CONTENT MODERATION AND INTERMEDIARIES IN THE CONTEXT OF YOUR RESEARCH?

One common misconception, which our research will hopefully help clarify is that the rules on online platforms in the Digital Services Act do not apply to the so-called online content sharing service providers (OCSSPs) regulated by Article 17 of the new copyright directive. We argue that they do and show to what extent they do, even if there is still some uncertainty on the topic (see FAQ above on this topic).

Another related misconception, this one more common among some policy makers and members of the public, is that the content recognition tools deployed by platforms such as so-called upload and reupload filters are sophisticated enough to be deployed by different platforms in a manner that is consistent with the law and does not lead to over-blocking of lawful content. In fact, due to the matching nature of the technology used, these filters are incapable of recognizing context and nuance. This is problematic since freedom of expression exceptions that users benefit from, and which the Court of Justice as called “user rights”, relate precisely to contextual users like quotation, caricature, parody, or pastiche. This suggests that the use of these filters to block content uploaded by users that has not been assessed by human moderators must be limited and deployed in a thoughtful and careful manner (see FAQ above on the topic of permissible filtering measures).

WHERE CAN I LEARN MORE ABOUT COPYRIGHT LAW AND ACCESS TO DIGITAL CULTURE ON PLATFORMS?

All of our reports, publications, and tutorials, as well as blog posts (e.g. on the Kluwer Copyright Blog) are available on the reCreating EU website. as well as in our main repository, which is Zenodo. We also have our

peer reviewed articles available on open access on the journals where they're published, in our institutional repositories and other academic repositories, such as SSRN.

If you're interested in knowing more about this research, please don't hesitate to reach out to any of us.

Materials

- Recreating EU WP6 webpage
- Tutorial Video WP6
- D.6.2. - Quintais, João Pedro and Mezei, Péter and Harkai, István and Vieira Magalhães, João and Katzenbach, Christian and Schwemer, Sebastian Felix and Riis, Thomas, *Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis* (August 1, 2022). Available at SSRN: https://ssrn.com/abstract=4210278 or http://dx.doi.org/10.2139/ssrn.4210278 // Available on Zenodo: https://zenodo.org/record/7081626#.Y-EJ963MLEY
- D.6.3 - Schwemer., Sebastian Felix; Katzenbach, Christian; Dergacheva, Daria; Riis, Thomas; Quintais, João Pedro, *Impact of content moderation practices and technologies on access and diversity* (February 2023). Available on Zenodo https://zenodo.org/record/7705391#.ZBHHwnbMK3A
- D.6.4. João Pedro Quintais, Christian Katzenbach, Sebastian Felix Schwemer, Daria Dergacheva, Thomas Riis, Péter Mezei, and István Harkai, *Copyright Content Moderation in the EU: Conclusions and Policy Recommendations*. Available on Zenodo https://zenodo.org/record/7774112#.ZCFzGHZBy3A
- reCreating Europe event reports and blog posts

THE RECREATING EUROPE PROJECT AIMS AT BRINGING A GROUND-BREAKING CONTRIBUTION TO THE UNDERSTANDING AND MANAGEMENT OF COPYRIGHT IN THE DSM, AND AT ADVANCING THE DISCUSSION ON HOW IPRS CAN BE BEST REGULATED TO FACILITATE ACCESS TO, CONSUMPTION OF AND GENERATION OF CULTURAL AND CREATIVE PRODUCTS. THE FOCUS OF SUCH AN EXERCISE IS ON, INTER ALIA, USERS' ACCESS TO CULTURE, BARRIERS TO ACCESSIBILITY, LENDING PRACTICES, CONTENT FILTERING PERFORMED BY INTERMEDIARIES, OLD AND NEW BUSINESS MODELS IN CREATIVE INDUSTRIES OF DIFFERENT SIZES, SECTORS AND LOCATIONS, EXPERIENCES, PERCEPTIONS AND INCOME DEVELOPMENTS OF CREATORS AND PERFORMERS, WHO ARE THE BEATING HEART OF THE EU CULTURAL AND COPYRIGHT INDUSTRIES, AND THE EMERGING ROLE OF ARTIFICIAL INTELLIGENCE (AI) IN THE CREATIVE PROCESS.

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