“Stakeholder dialogue” meetings on Article 17 of the DSM Directive

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In October and November 2019, the European Commission organised three “stakeholder dialogue” meetings, as required under Article 17(10) of the recently-enacted Directive on Copyright in the Digital Single Market (“DSM Directive” – see IRIS 2019-4/5). As explained below, these meetings were aimed at discussing best practices for cooperation between online content-sharing service providers and rightsholders.

Article 17 of the DSM Directive is entitled ‘Use of protected content by online content-sharing service providers’. This provision, in general terms, establishes the responsibilities of online content-sharing service providers (OCSSP) that give access to user-uploaded protected works. It provides that where an OCSSP enables access to copyright-protected works uploaded by its users, this act shall be considered as an act of communication to the public.

Importantly, under Article 17(4), OCSSPs are liable for any unauthorised dissemination of copyright-protected works to the public , unless they can demonstrate that they have: “(a) made best efforts to obtain an authorisation, and (b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightsholders have provided the service providers with the relevant and necessary information; and in any event, (c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightsholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b)”.

Crucially, under Article 17(10), the European Commission is required to organise stakeholder dialogue meetings to discuss best practices for cooperation between online content-sharing service providers and rightsholders. The Commission shall take into account the results of the stakeholder dialogues, in order to issue guidance on the application of Article 17 – in particular regarding the “cooperation” referred to in Article 17(4).

In this context, the stakeholder dialogue meetings held pursuant to Article 17(10) aimed to hear stakeholders’ views and to discuss possible practical solutions for

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the application of Article 17 – including actions to be taken by online content-sharing service providers with regard to unauthorised content. The objective is to submit input in order to guide the Commission on the proper application of Article 17, which will assist the uniform application of the obligations of the OCSSPs and the rightsholders, as well as the establishment of industry-wide standards of professional diligence.

More specifically, the first stakeholder dialogue meeting held on 15 October 2019 aimed to map out existing practices relating to the use of copyright-protected content by online content-sharing service providers in cooperation with rightsholders, as well as to gather user experiences. Furthermore, at the second and third meetings on 5 and 25 November 2019, the Commission invited stakeholders to make technical presentations as regards licensing and the application of content identification tools and technologies. The Commission also invited presentations by users' organisations that would focus on concrete examples of problems that end-users may face in uploading their content to content-sharing services, and their experiences with available redress mechanisms when seeking to challenge the blocking or removal of their content.

Further meetings will be organised in early 2020, and the final dates for the meetings will be confirmed in due time.

European Commission, First meeting of the Stakeholder Dialogue on Art 17 of the Directive on Copyright in the Digital Single Market, 15 October 2019

https://ec.europa.eu/digital-single-market/en/news/first-meeting-stakeholder-dialogue-art-17-directive-copyright-digital-single-market

European Commission, Second meeting of the Stakeholder Dialogue on Art 17 of the Directive on Copyright in the Digital Single Market, 5 November 2019

https://ec.europa.eu/digital-single-market/en/news/second-meeting-stakeholder-dialogue-art-17-directive-copyright-digital-single-market

European Commission, Third meeting of the Stakeholder Dialogue on Art 17 of the Directive on Copyright in the Digital Single Market, 25 November 2019

https://ec.europa.eu/digital-single-market/en/news/third-meeting-stakeholder-dialogue-art-17-directive-copyright-digital-single-market

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