



31 January 2016

**Re: Proposed content monitoring obligations in Audiovisual Media Services Directive**

Dear Honourable Member of the European Parliament,

We write to you concerning the European Parliament Culture & Education committee's ongoing work on the proposed Audiovisual Media Services Directive (AVMS) revision.

**We strongly urge you to reject amendment 32 in the Parliament's draft report on the legislative proposal.** This amendment seeks to place an *ex ante* obligation on so-called 'video-sharing platforms' to prevent their users from being exposed to potentially harmful or undesirable content. In the absence of any evidence to suggest that this would be effective, let alone necessary and proportionate, it would create a general monitoring obligation for video-sharing websites to filter everything being uploaded by their users.

The Court of Justice of the European Union has repeatedly ruled that, if imposed by law, such filtering would violate article 8 (protection of personal data), article 11 (freedom of expression and information), and article 16 (freedom to conduct a business) of the EU Charter of Fundamental Rights.<sup>1 2</sup>

European internet users and European industry both depend upon a coherent, balanced and predictable EU legislative environment. We fear the proposed amendment would have serious ramifications for all European Internet stakeholders and worse yet, violate the EU Charter of Fundamental Rights. Further, it would have a severe chilling effect upon Internet-driven innovation in Europe due to its unsurmountable cost upon service providers.

Beyond its direct ramifications, the proposal would also severely destabilise the legislative infrastructure of Europe's digital economy. The E-Commerce Directive provides a balanced framework for dealing with illegal content online, with hosting providers acting expeditiously to remove content once they have been notified of its illegality by competent authorities. The framework prescribed by the E-Commerce Directive protects fundamental rights and creates an enabling environment for innovation, while balancing the needs of governments and other stakeholders.

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<sup>1</sup>Charter of Fundamental Rights of the European Union [2012], OJ C 326, available at: <http://bit.ly/1LjeYKz>

<sup>2</sup>Judgement of 16 February 2012, *Netlog*, C-360/10, EU:C:2012:85, paragraph 48, available at: <http://bit.ly/2jY9L3S>

In particular, it is essential for free expression that the liability protections in the E-Commerce Directive be upheld and reinforced. They are core to maintaining the open and free internet because they allow citizens to freely impart and receive information online without fear of monitoring and censorship.<sup>3</sup>

It is for these reasons that the European Commission expressly committed, in both its 2015 Digital Single Market strategy and its 2016 Communication on Online Platforms, *not to reopen* the E-Commerce Directive. However, the imposition of general monitoring obligations in the AVMS Directive would constitute a *de facto* reopening, a threat about which the Commission itself warned.<sup>4</sup> In fact, if the amendment were to be adopted, Member States would be required by the AVMS to impose a general obligation to monitor and by the E-Commerce Directive *not* to do so.

It on this basis that we strongly urge you to remove amendment 32 in the Parliament's draft report on the legislative proposal and to reject *ex ante* content monitoring obligations for video sharing platforms in any other form.

We would welcome the opportunity to exchange views with you further, to create an online media environment where safety, privacy, free expression and innovation can thrive harmoniously.

Thank you in advance for your consideration.

Sincerely,

**Jens-Henrik Jeppesen**  
Director for European Affairs  
Center for Democracy and Technology



**Joe McNamee**  
Executive Director  
EDRi – European Digital Rights



**Innocenzo Genna**  
Innovation & Growth committee chair  
EuroISPA



**Malcolm Hutto**  
Intermediary Liability committee chair  
EuroISPA



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<sup>3</sup>Jeppesen, J.H., 2016, *Audiovisual Media Service Directive: Parliament Proposals Pose New Challenges to Free Expression*, Centre for Democracy and Technology. Available at: <http://bit.ly/2jEMznY>, Accessed on 27.01.2016

<sup>4</sup>European Parliament, CULT Committee, *Audiovisual Media Services Directive consideration of amendments*, 21.11.2016, extract from contribution of Lorena Boix Alonso, Head of Unit G.1, European Commission DG CNECT