

## **Copyright Directive: Court of Justice of the European Union sets limits for automated content filters.**

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Today, the European Court of Justice has issued its long awaited judgement on the fundamental rights compliance of Article 17 of the 2019 Copyright Directive. Rejecting the request of the Polish government to annul Article 17, the court confirmed that the provisions of Article 17 — which introduce a de-facto obligation for online content sharing platforms to introduce automated upload filters — can be reconciled with the right to freedom of expression and information if certain conditions are met.

According to the court this is only the case if member states implement the provision in a manner that prevents legal uploads from being blocked. Paul Keller, President of the COMMUNIA Association for the Public Domain highlights this aspect of the judgement:

"By requiring member states to ensure that legal uploads will not be blocked, the Court has made it clear that the right to freedom of expression and information must prevail in situations where platforms use automated upload filters. In doing so the Court has confirmed the position taken by civil society and academics and rejected the position advanced by the entertainment industry that users rights are secondary to the protection of the economic interests of rightholders. Today's judgement confirms that freedom of expression and information cannot be overridden by failure-prone technologies employed at the behest of rightholders."

Today's judgement brings a preliminary end to nearly three years of heated discussions on how to implement Article 17 — the most controversial element of the 2019 copyright directive, which sparked massive protests from internet users both online and offline — into national law. It confirms the position developed by COMMUNIA and other civil society organisations that Article 17 requires strong user rights safeguards that prevent upload filters from blocking uploads unless they are manifestly infringing. This reading of Article 17 has since been endorsed by the European Commission — both in its 2021 implementation guidance for Article 17 and in its intervention during the hearing of the CJEU case — and in the national implementations adopted by Austria and Germany.

"Today's ruling means that the majority of member states who have already implemented the directive will need to revisit their implementation laws. Member states such as France, the Netherlands, Spain and Italy, who have merely restated the provisions of the directive in their national laws without limiting the use of automated



filters to cases where the uploads are manifestly infringing and that have not included ex-ante measures to prevent lawful uploads from being blocked, will now need to go back to the drawing table. Those member states who have — wisely — waited for today's judgement to provide them with guidance, should follow the example set by the German and Austrian implementations."

COMMUNIA has been tracking the implementation progress of the copyright directive in the EU member states at <https://eurovision.communia-association.org>. So far 11 of the 27 EU Member states have fully implemented provisions of the Directive.

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