
Platforms Regulation in the Digital Single Market Strategy- Illegal Content and Intellectual Property as a Key Challenge

Submitted 22/2/19, 1st revision 27/2/19, accepted 1/3/19

Blerim Berisha¹

Abstract:

As part of its Digital Single Market strategy, the European Commission has identified the issue of combating the illegal content online as a key challenge for online platforms. It has now released guidance to online platforms containing a set of principles for tackling not permitted content, that appears online into the European platforms.

The guidelines, as a tool of struggling the impermissible content works and has a focus on three stages of the process: finding the illegal or impermissible content; erase it from online platforms; and avoid it from re-appearing online in platforms.

The Commission's work is motivated by concerns that the removal of illegal content online continues to be insufficiently effective – incitement to terrorism, illegal hate speech, or child sexual abuse material, as well as infringements of Intellectual Property rights and consumer protection online need to be tackled across the EU with determination and resolve.

The Commission's approach of fully privatising freedom of expression online, it's almost complete indifference diligent assessment of the impacts of this privatisation

Keywords: DSM, illegal content, the guidelines, intellectual property.

¹ Vrije Universiteit Brussels, Communication Studies be.blerim@gmail.com

1. Introduction

Choosing this proposition at Brussels Talking Lectures was to give an critical overview about “illegal content” and the guidelines tool and to reflect what we ought do in ethical way .²The Commission's work is motivated by concerns that the removal of illegal content online continues to be insufficiently effective – *incitement to terrorism, illegal hate speech, or child sexual abuse material, as well as infringements of Intellectual Property rights and consumer protection online* need to be tackled across the EU with determination and resolve(Comission2016).One key part of the DSM Strategy targeted actions designed to combat illegal content online, including potential regulation of online platforms (an umbrella term describing a wide variety of online services). The Commission decided in 2016 not to introduce any new laws specifically to regulate online platforms’ operations in Europe. However, in what the Commission sees as a *quid pro quo* for not legislating, it has pushed forward its idea of guidance to online platforms about illegal content. The Commission has now released that guidance, in the form of a non-binding communication to online platforms, containing a set of guidelines for tackling illegal content online (the “Guidelines”). The Guidelines focus on three major stages, to find the “illegal content” then goes through a process of remove ,and finally trackling it from re-appearing.

In the Guidelines, the Commission stresses once again that illegal content online is a key issue that needs to be tackled, but is really hard to trackle it if we look to the freedom of press and free public speech. It ties the need to remove online content not only to the protection of users and society at large but also to an economic benefit for the EU as a whole. Social media giants have again been put on notice that they need to do more to speed up removals of hate speech and other illegal content from their platforms in the European Union. The bloc’s executive body, the European Commission today announced a set of “guidelines and principles” aimed at pushing tech platforms to be more pro-active about takedowns of content deemed a problem.

Specifically it’s urging they build tools to automate flagging and re-uploading of such content.“The increasing availability and spreading of terrorist material and content that incites violence and hatred online is a serious threat to the security and safety of EU citizens,” it said in a press release, arguing that illegal content also “undermines citizens’ trust and confidence in the digital environment” and can thus have a knock on impact on “innovation, growth and jobs”. “Given their increasingly important role in providing access to information, the Commission expects online platforms to take swift action over the coming months, in particular in the area of

² European Commission (2016). *Illegal content on online platforms* . Brussels <https://ec.europa.eu/digital-single-market/en/illegal-content-online-platforms>

terrorism and illegal hate speech — which is already illegal under EU law, both online and offline,” it added.

2. Rationale

In a statement on the guidance, VP for the EU’s Digital Single Market, Andrus Ansip, described the plan as ³“a sound EU answer to the challenge of illegal content online”, and added: “We make it easier for platforms to fulfil their duty, in close cooperation with law enforcement and civil society. Our guidance includes safeguards to avoid over-removal and ensure transparency and the protection of fundamental rights such as freedom of speech” (Andrus 2016). The move follows a voluntary Code of Conduct, unveiled by the Commission, with Facebook, Twitter, Google’s YouTube and Microsoft signed up to agree to remove illegal hate speech which breaches their community principles in less than 24 hours. In a recent assessment of how that code is operating on hate speech takedowns the Commission said there had been some progress. But it’s still unhappy that a large portion of takedowns are still taking as long as a week. It said it will monitor progress over the next six months to decide whether to take additional measures — including the possibility of proposing legislative if it feels not enough is being done. Its assessment (and possible legislative proposals) will be completed by May 2018.

After which it would need to put any proposed new rules to the European Parliament for MEPs to vote on, as well as to the European Council. So it’s likely there would be challenges and amendments before a consensus could be reached on any new law. Some individual EU member states have been pushing to go further than the EC’s voluntary code of conduct on illegal hate speech on online platforms. In April, for example, the German cabinet backed proposals to hit social media firms with fines of up to €50 million if they fail to promptly remove illegal content.

So, we should look with a point of view about authors which create or make innovations such artistic content, could be everywhere and sometimes is “illegal content”. A new music video song that has been published could be online in platforms such as Youtube, Dailymotion, and it is a illegal content because or that has a explicit content on it, or that has attacked or stole the Intellectual Property of the original author. Moreover, the stolen of the Intellectual Property inventions by the other authors, it will directly use ‘The Guideline’ tool to, detect, remove it, and prevent it from re-appearing. This seems to be a efficient tool. But, what about if there is music video in Youtube, that contains a little bit explicit scenes, to show a message against a regime or power. Intellectual property is a form invented individually or in group, it has a content and message on in e.g. “*Childish Gambino, This is America*” music video that was released in May 2018, it has a killig scene

³ *Vice-President for the Digital Single Market Andrus Ansip*

inside it , a hated speech but , in the public is accepted as a form to describe , how a state works as America. The fact that Childish Gambino’s “This is America” tackles police brutality, gun violence, media misdirection, and the use of African-Americans as a brand shield, all while dancing in Jim Crow-style caricature, shows a transcendence or mere performance and demands attention. If this content then is removed , it is breaking the Intellectual Property (IC). There are also many content files like the song “ This is America “ in Europe , that have been deleted. For e.g the Youtube platform, gives the rights to the third partys as ArkivaShqip with a contract, to remove copyright content , or other videos as “illegal content” but sometimes it ends up to remove the original content which it was not illegal, and then they should re-appear it online in platforms.This happens sometimes with “illegal content” but it is a corruption between third partys and the other groups, of individuals. This happened in Kosovo and many other countries in Europe, while many singers have made the original songs or a intellectual content, but the third party contractors of Youtube have removed the song.

The Commission has divided its set of illegal content “guidelines and principles” into three areas — which it explains as follows:

“Detection and notification”: On this it says online platforms should cooperate more closely with competent national authorities, by appointing points of contact to ensure they can be contacted rapidly to remove illegal content. “To speed up detection, online platforms are encouraged to work closely with trusted flaggers, i.e. specialised entities with expert knowledge on what constitutes illegal content,” it writes. “Additionally, they should establish easily accessible mechanisms to allow users to flag illegal content and to invest in automatic detection technologies” It is really hard to detect , which is the illegal content , in the platforms the files and content could be in many format files and that could be also offline.

“Effective removal”: It says illegal content should be removed “as fast as possible” but also says it “can be subject to specific timeframes, where serious harm is at stake, for instance in cases of incitement to terrorist acts”. It adds that it intends to further analyze the specific timeframes issue. “Platforms should clearly explain to their users their content policy and issue transparency reports detailing the number and types of notices received. Internet companies should also introduce safeguards to prevent the risk of over-removal”. Removing the content ASAP it’s a hard way, it has no step backward, it could directly attack the freedom of speech, intellectual property, the rights of the author. This “Effective removal” tool seems to be as a enforce for free content online. If removing “illegal content“ it is so free then, in the future they will implement a new rule, to erase the unwanted or undesirable content.So, this opens new dangerous ways to remove content.

“Prevention of re-appearance”: Here it says platforms should take “measures” to dissuade users from repeatedly uploading illegal content. “The Commission strongly

encourages the further use and development of automatic tools to prevent the re-appearance of previously removed content,” it adds.

A whole lot of “automatic tools” the Commission is proposing commercial tech giants build to block the uploading of a poorly defined bundle of “illegal content”. Given the mix of vague guidance and expansive aims — to apparently apply the same and/or similar measures to tackle issues as different as terrorist propaganda and copyrighted material — the guidelines have unsurprisingly drawn swift criticism. MEP Jan Philip Albrecht, for example, couched them as “vague requests”(Albrecht 2016), and described the approach as “neither effective” (i.e. in its aim of regulating tech platforms) nor “in line with rule of law principles”. He added a big thumbs down. He’s not the only European politician with that criticism, either. Also I mean that the guidance is a “step backwards” for the rule of law online — seizing specifically on the Commission’s call for automatic tools to prevent illegal content being re-uploaded as a move towards upload-filters (which is something the executive has been pushing for as part of its controversial plan to reform the bloc’s digital copyright rules).

“Installing censorship infrastructure that surveils everything people upload and letting algorithms make judgement calls about what we all can and cannot say online is an attack on our fundamental rights,” (Redia 2017) writes ⁴MEP Julia Redia in another response condemning the Commission’s plan. She then goes on to list a series of examples where algorithmic filtering failed. While MEP Marietje Schaake blogged with a warning about making companies “the arbiters of limitations of our fundamental rights”.⁵ “Unfortunately the good parts on enhancing transparency and accountability for the removal of illegal content are completely overshadowed by the parts that encourage automated measures by online platforms,” European digital rights group, which campaigns for free speech across the region, is also eviscerating in its response to the guidance, arguing that: “The document puts virtually all its focus on Internet companies monitoring online communications, in order to remove content that they decide might be illegal. It presents few safeguards for free speech, and little concern for dealing with content that is actually criminal.”

“The Commission makes no effort at all to reflect on whether the content being deleted is actually illegal, nor if the impact is counterproductive. The speed and proportion of removals is praised simply due to the number of takedowns,” concluding that: “The Commission’s approach of fully privatising freedom of expression online, it’s almost complete indifference diligent assessment of the impacts of this privatisation.”

3. Conclusion

⁴ *MEP Julia Redia – Member of European Parliament*

⁵ *MEP Marietje Schaake Member of European Parliament*

The Guidelines, while they are non-binding and do not alter the current legislative framework, do suggest some onerous measures for online platforms to take when detecting and removing illegal content, particularly because the term “illegal content” can encapsulate a wide range of activity. Measures also require a balancing act between protecting society and the fundamental rights of users. While it remains to be seen how concrete the Guidelines become, there seems to be a growing implication that online platforms should take more responsibility for the content on their sites and should be more proactive in managing that content. So, this protective tool can also be not a right, because it can not find what is good and what is bad, what is legal and what is illegal at all the time. Its better to remove the “illegal content” but is hard to find what is really legal or illegal. But, there is hard to find and trackle “illegal content” because, looking from ethic and law point of view, there are many things to describe that content things that are illegal but are thought to be moral. In the Ethics and Law, some illegal acts are morally permissible. Well, when enough people think that something is immoral they will work to have a law that will forbid it and punish those that do it. When enough people think that something is moral, they will work to have a law that forbids it and punishes those that do it repealed. The guidelines seems to be not an effective tool at all, it will attack the freedom of speech.

References:

- Angelopoulos, C. 2017. Online platforms and the Commission’s New Proposal for a Directive on Copyright in the Digital Single Market, Cambridge
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2947800
- Frosio, G.F. 2015. Reforming Intermediary Liability in the Platform Economy; A European Digital Single Market Strategy
<https://cyberlaw.stanford.edu/files/publication/files/Giancarlo%20F.%20Frosio%20%20Reforming%20IL%20in%20the%20Platform%20Economy%20-%20A%20EU%20DSM%20Strategy%20C%20112%20NORTHWESTERN%20U.%20L.%20REV%2019%20%282017%29.pdf>
- Ezrachi, A. 2017. Submission to the house of Lords, Internal Market Sub-Committee.
<https://www.parliament.uk/eu-internal-market-subcommittee>
- European Commission. 2015. Online platforms .
<https://ec.europa.eu/digital-single-market/en/online-platforms-digital-single-market>
- European Commission. 2016. Illegal content on online platforms . Brussels
<https://ec.europa.eu/digital-single-market/en/illegal-content-online-platforms>
- Hajli, N. 2018. Ethical Environment in the Online Communities by Information Credibility: A Social Media Perspective.
<https://link.springer.com/article/10.1007/s10551-016-3036-7>
- Wiewiórowska-Domagalska, A. 2017. Policy Department A: Economy and Scientific Policy
European Parliament PE 607.323
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607323/IPOL_BRI\(2017\)607323_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607323/IPOL_BRI(2017)607323_EN.pdf)