A comic book panel with a teal background. Two characters are shown from the chest up. The character on the left has dark hair and is wearing a dark jacket. The character on the right has blonde hair and is wearing a yellow top. Two speech bubbles are present. The first speech bubble, coming from the character on the left, contains the text 'DESCRIBE OUR RELATIONSHIP IN TWO WORDS.' The second speech bubble, coming from the character on the right, contains the text 'OUR WHAT?'.


*DESCRIBE OUR
RELATIONSHIP
IN TWO WORDS.*

*OUR
WHAT?*

The DSA and its relation to the Digital Single Market Directive

Eleonora Rosati

24 January 2023

A comic book panel showing a man and a woman in conversation. The man is on the left, looking towards the woman on the right. Two speech bubbles are visible above them. The background is a dark, textured blue.

DESCRIBE OUR
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OUR
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“It should be clarified that this Regulation is without prejudice to Union law on copyright and related rights, including Directives 2001/29/EC , 2004/48/EC and (EU) 2019/790 of the European Parliament and of the Council, which establish specific rules and procedures that should remain unaffected.”

Contents

- Quick recap of Article 17
- Interplay between Article 17 and DSA
- Some observations

Use of protected content by online content-sharing service providers

1. Member States shall provide that an online content-sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of this Directive when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.

An online content-sharing service provider shall therefore obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of Directive 2001/29/EC, for instance by concluding a licensing agreement, in order to communicate to the public or make available to the public works or other subject matter.

2. Member States shall provide that, where an online content-sharing service provider obtains an authorisation, for instance by concluding a licensing agreement, that authorisation shall also cover acts carried out by users of the services falling within the scope of Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis or where their activity does not generate significant revenues.

3. When an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in this Directive, the limitation of liability established in Article 14(1) of Directive 2000/31/EC shall not apply to the situations covered by this Article.

The first subparagraph of this paragraph shall not affect the possible application of Article 14(1) of Directive 2000/31/EC to those service providers for purposes falling outside the scope of this Directive.

4. If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers 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 rightholders 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 rightholders, 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).

5. In determining whether the service provider has complied with its obligations under paragraph 4, and in light of the principle of proportionality, the following elements, among others, shall be taken into account:

- (a) the type, the audience and the size of the service and the type of works or other subject matter uploaded by the users of the service; and
- (b) the availability of suitable and effective means and their cost for service providers.

6. Member States shall provide that, in respect of new online content-sharing service providers the services of which have been available to the public in the Union for less than three years and which have an annual turnover below EUR 10 million, calculated in accordance with Commission Recommendation 2003/361/EC⁽²⁰⁾, the conditions under the liability regime set out in paragraph 4 are limited to compliance with point (a) of paragraph 4 and to acting expeditiously, upon receiving a sufficiently substantiated notice, to disable access to the notified works or other subject matter or to remove those works or other subject matter from their websites.

Where the average number of monthly unique visitors of such service providers exceeds 5 million, calculated on the basis of the previous calendar year, they shall also demonstrate that they have made best efforts to prevent further uploads of the notified works and other subject matter for which the rightholders have provided relevant and necessary information.

7. The cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation.

Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services:

- (a) quotation, criticism, review;
- (b) use for the purpose of caricature, parody or pastiche.

8. The application of this Article shall not lead to any general monitoring obligation.

Member States shall provide that online content-sharing service providers provide rightholders, at their request, with adequate information on the functioning of their practices with regard to the cooperation referred to in paragraph 4 and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.

9. Member States shall provide that online content-sharing service providers put in place an effective and expeditious complaint and redress mechanism that is available to users of their services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them.

Where rightholders request to have access to their specific works or other subject matter disabled or to have those works or other subject matter removed, they shall duly justify the reasons for their requests. Complaints submitted under the mechanism provided for in the first subparagraph shall be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review. Member States shall also ensure that out-of-court redress mechanisms are available for the settlement of disputes. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law, without prejudice to the rights of users to have recourse to efficient judicial remedies. In particular, Member States shall ensure that users have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright and related rights.

This Directive shall in no way affect legitimate uses, such as uses under exceptions or limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC and Regulation (EU) 2016/679.

Online content-sharing service providers shall inform their users in their terms and conditions that they can use works and other subject matter under exceptions or limitations to copyright and related rights provided for in Union law.

10. As of 6 June 2019 the Commission, in cooperation with the Member States, shall organise stakeholder dialogues to discuss best practices for cooperation between online content-sharing service providers and rightholders. The Commission shall, in consultation with online content-sharing service providers, rightholders, users' organisations and other relevant stakeholders, and taking into account the results of the stakeholder dialogues, issue guidance on the application of this Article, in particular regarding the cooperation referred to in paragraph 4. When discussing best practices, special account shall be taken, among other things, of the need to balance fundamental rights and of the use of exceptions and limitations. For the purpose of the stakeholder dialogues, users' organisations shall have access to adequate information from online content-sharing service providers on the functioning of their practices with regard to paragraph 4.

Interplay between Article 17 and DSA

When will the DSA's lex generalis come into consideration?

Also to be read in light of C-401/19

Availability of hosting safe harbour

Handling of complaints + summary for VLOPs

- Procedural safeguards
- Users have 'rights'

Transparency obligations for content moderation, incl. notices processed through automated means, training of content moderators & accuracy/error rate

- ACR technologies and filtering tools must be capable of adequately distinguishing between unlawful and lawful content

Notice-and-action requirements

- Actual knowledge linked to identifiability of illegality w/o detailed legal examination
- No general monitoring obligation (independent assessment)
- OCSSPs shall be led to make content unavailable under Article 17(4)(b) and (c) upon condition that rightholders provide them with the relevant and necessary information

Trusted flaggers

Some observations

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RACHEL WEISZ TOM WILKINSON TIMOTHY SPALL

DENIAL



Jay marion Tenichi garner Latresia D Bobo


IN BAD FAITH

WHO CAN YOU TRUST WHEN YOU CAN'T BE TRUSTED?



A FILM BY WRITER DIRECTOR SUAVE INHD FILMS

Directed by suave

A comic book panel with a teal background. Two characters are shown from the chest up. The character on the left has dark, curly hair and is wearing a dark jacket. The character on the right has blonde hair and is wearing a light-colored top. Two speech bubbles are positioned above them. The first speech bubble, on the left, contains the text 'DESCRIBE OUR RELATIONSHIP IN TWO WORDS.' The second speech bubble, on the right, contains the text 'OUR WHAT?'.

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Thanks for your attention!

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