



Internet Society Portugal Chapter

À atenção dos membros da Comissão
12ª - CCCJD XIII do Parlamento da
República Portuguesa,

Data: 13 de Julho de 2018

Assunto: Contribuição do Capítulo Português da Internet Society para a chamada de atenção para os perigos da redação atual do Artigo 13.º da Proposta de Diretiva sobre os Direitos de Autor da União Europeia

Ex.mºs Senhores Deputados,

Na sequência do convite que nos foi endereçado pela Exmª Srª Drª Carla Sousa, Coordenadora do Grupo de Trabalho do Mercado Único Digital, vimos por este meio apresentar a nossa contribuição para a reflexão sobre a proposta acima referida. Pronunciamos-nos na nossa qualidade de membros da direção da Associação Capítulo Português da Internet Society (ISOC PT). No final desta carta, apresentamos uma breve referência ao que são a Internet Society e o seu Capítulo Português.

Como é evidente, a defesa dos direitos dos autores, editores e outras entidades detentoras de direitos conexos, não é por nós posta em causa, e compreendemos que a mesma é fundamental para o desenvolvimento dos eco sistemas da publicação, da inovação, da produção de conteúdos em geral e de obras de arte em particular. Também não nos pronunciamos diretamente sobre a forma como são repartidos, entre os diversos intervenientes no mercado, os resultados dos pagamentos efetuados pelos consumidores finais. A nossa reflexão incide especialmente nas repercussões desastrosas sobre o funcionamento global da Internet que a proposta introduz.

De acordo com inúmeras organizações, entre as quais a plataforma EDRI (European Digital Rights Initiative), o Artigo 13.º da Diretiva tem deficiências de redação em termos legais, de consistência legislativa e de âmbito de aplicação, propõe mecanismos de defesa dos cidadãos que serão ineficazes e são desproporcionados, e fere direitos fundamentais dos cidadãos. Em termos genéricos, estamos de acordo com essa análise e não vamos aqui repeti-la, pois a mesma deverá certamente chegar-vos via associações portuguesas que integram a plataforma EDRI.



A nossa posição fundamental é de concordância total com a carta enviada ao Presidente do Parlamento Europeu, em 12 de Junho passado, por cerca de 80 pioneiros da Internet de renome mundial, entre os quais Vincent Cerf, coloquialmente chamado “o pai da Internet”, e Tim Berners-Lee, inventor da Web. Uma cópia dessa carta encontra-se em anexo. A mesma resume no essencial a nossa posição.

Com os nossos melhores cumprimentos,

Pela Direção do Capítulo Português da Internet Society,

José Legatheaux Martins, Presidente

A **Internet Society (ISOC - <http://internetsociety.org>)** é uma associação internacional, sem fins lucrativos, fundada há mais de 25 anos pelos pioneiros da Internet, que é a organização “chapéu de chuva” do IETF - Internet Engineering Task Force, o organismo mais relevante no estabelecimento de normas abertas para o funcionamento da Internet, e que reúne inúmeras entidades académicas, da investigação, operadores, fabricantes de hardware e software, etc. que participam ativamente na discussão e aprovação dessas normas. Para além desta faceta, a ISOC intervém a nível social, político e cívico com o propósito de manter a Internet como uma infraestrutura aberta, universal, confiável e ao serviço do conjunto da Humanidade, sem exceções de raças, credos ou países. A ISOC tem capítulos nacionais, entre as quais o **Capítulo Português da ISOC (ISOC-PT - <https://isoc.pt>)** que desenvolve atividades com os mesmos objetivos a nível nacional.

Antonio Tajani MEP
President of the European Parliament
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12 June 2018

Mr President,

Article 13 of the EU Copyright Directive Threatens the Internet

As a group of the Internet's original architects and pioneers and their successors, we write to you as a matter of urgency about an imminent threat to the future of this global network.

The European Commission's proposal for Article 13 of the proposed Directive for Copyright in the Digital Single Market Directive was well-intended. As creators ourselves, we share the concern that there should be a fair distribution of revenues from the online use of copyright works, that benefits creators, publishers, and platforms alike.

But Article 13 is not the right way to achieve this. By requiring Internet platforms to perform automatic filtering all of the content that their users upload, Article 13 takes an unprecedented step towards the transformation of the Internet from an open platform for sharing and innovation, into a tool for the automated surveillance and control of its users.

Europe has been served well by the balanced liability model established under the Ecommerce Directive, under which those who upload content to the Internet bear the principal responsibility for its legality, while platforms are responsible to take action to remove such content once its illegality has been brought to their attention. By inverting this liability model and essentially making platforms directly responsible for ensuring the legality of content in the first instance, the business models and investments of platforms large and small will be impacted. The damage that this may do to the free and open Internet as we know it is hard to predict, but in our opinions could be substantial.

In particular, far from only affecting large American Internet platforms (who can well afford the costs of compliance), the burden of Article 13 will fall most heavily on their competitors, including European startups and SMEs. The cost of putting in place the necessary automatic filtering technologies will be expensive and burdensome, and yet those technologies have still not developed to a point where their reliability can be guaranteed. Indeed, if Article 13 had been in place when Internet's core protocols and applications were developed, it is unlikely that it would exist today as we know it.

The impact of Article 13 would also fall heavily on ordinary users of Internet platforms—not only those who upload music or video (frequently in reliance upon copyright limitations and exceptions, that Article 13 ignores), but even those who contribute photos, text, or computer code to open collaboration platforms such as Wikipedia and GitHub.

Scholars also doubt the legality of Article 13; for example, the Max Planck Institute for Innovation and Competition has [written](#) that “obliging certain platforms to apply technology that identifies and filters all the data of each of its users before the upload on the

publicly available services is contrary to Article 15 of the InfoSoc Directive as well as the European Charter of Fundamental Rights.”

One of the particularly problematic provisions of Article 13 as originally proposed by the Commission, and in the compromise texts put forward by the Council and the Parliament, is that none of these versions of the text would provide either clarity or consistency in their attempts to define which Internet platforms would be required to comply with the provision, and which may be exempt. The resulting business uncertainty will drive online platforms out of Europe and impede them from providing services to European consumers.

We support the consideration of measures that would improve the ability for creators to receive fair remuneration for the use of their works online. But we cannot support Article 13, which would mandate Internet platforms to embed an automated infrastructure for monitoring and censorship deep into their networks. For the sake of the Internet’s future, we urge you to vote for the deletion of this proposal.

Yours sincerely,¹

Vint Cerf, Internet Pioneer

Tim Berners-Lee, Inventor of the World Wide Web

Anriette Esterhuysen, Senior Advisor, Association for Progressive Communications

Brewster Kahle, Founder & Digital Librarian, Internet Archive

Brian Behlendorf, primary developer of Apache Web server, founding member of the Apache Software Foundation

Bruce Schneier, Bell Labs, cryptography writer and expert

Dave Farber, Keio University/CMU

Ethan Zuckerman, Senior Researcher, Berkman Klein Center for Internet & Society at Harvard University

Guido van Rossum, Founder and developer of the Python programming language

Jimmy Wales, Co-Founder, Wikimedia Foundation

Joichi Ito, Director of the MIT Media Lab

John Gilmore, Co-Founder of the Electronic Frontier Foundation and Cygnus Solutions

Katherine Maher, Executive Director, Wikimedia Foundation

Mitch Kapor, Co-Founder of the Electronic Frontier Foundation and Founder of Lotus Development Corporation

Mitchell Baker, Executive Chairwoman, Mozilla Foundation and the Mozilla Corporation

Pam Samuelson, Richard M. Sherman ’74 Distinguished Professor of Law and Information at the University of California at Berkeley, Director of the Berkeley Center for Law & Technology

Radia Perlman, Inventor of routing technology fundamental to computer networks

Rebecca MacKinnon, Director, Ranking Digital Rights at New America

Tim O’Reilly, Founder and CEO of O’Reilly Media, Inc.

Tim Wu, Professor, Columbia Law School

Dame Wendy Hall, Regius Professor of Computer Science, University of Southampton

Aaron Rabinowitz, networking and network security consultant
Aaron Zuehlke, CISSP Senior Risk & Threat Intel Analyst
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Miguel de Icaza, Founder of the GNOME, Mono, and Xamarin projects
Mike Trest, Principal Consultant, Trest Consulting
Neal Gafter, Computer Programming Language Designer
Neil Hunt, CEO, Curai, Inc. (former CPO, Netflix Inc.)
Patrick Koppula, Head of Product and Founder - GarageBand.com and Principal,
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Paul Menchini, past Architect of the VHDL language
Philip Wadler, Professor of Theoretical Computer Science, University of Edinburgh
Ray Charbonneau, computer consultant
Robert Oliver, Solution Architect, Dassault Systèmes
Ron Teitelbaum, Chief Executive Officer, 3D Immersive Collaboration Consulting
Simon Phipps, President, Open Source Initiative
Stefano Zanero, Associate Professor, Dipartimento di Elettronica, Informazione e
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Steve Holton, software engineer
Tim Peieris, President of SeatYourself.biz
Tim Pozar, network architect
Tom Ritter, Security Engineer, Mozilla
Tony Ageh, Chief Digital Officer, New York Public Library.
Tyler Lawrence, CEO, Arcpoint
William Cook, Associate Professor, Department of Computer Sciences at the University of
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