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Parlement européen  
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Cc: MEP Joulaud, MEP Stihler, MEP Krasnodębski, MEP Boni

RE: Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market

Brussels, 5 April 2017

Dear Ms Comodini:

We write to you in regard to the proposed Directive on Copyright in the Digital Single Market. We would like to acknowledge your exemplary work in consulting a wide array of stakeholders and in doing so transparently. The JURI Draft Report takes important steps towards much needed balance in the Commission's copyright proposal by taking into account the interests of all the beneficiaries in the copyright value chain, including small businesses and startups. However, there are still further improvements that are necessary. Specifically, we would like to raise our serious concerns regarding proposed Article 13: *Use of protected content by information society service providers storing and giving access to large amount of works and other subject-matter uploaded by their users.*

We are startups and online services with significant user bases in the EU. Some of our businesses were started within the EU. Others have significant physical and employee presences. All count EU citizens as enthusiastic users who benefit from the use of our services. Each of us owe our founding, ongoing investment, and innovative futures in part to the intermediary liability protection regime established by the e-Commerce Directive. Our businesses and our users are all rightsholders who recognize the role that copyright plays in the economy. At the same time, our users rely on the services we provide to bring their creative works to the world.

We are alarmed that the policies described in the proposed Article 13 of the Commission's text could cripple the growth of online innovation for startups that already exist, while also preventing new, innovative startups from entering the marketplace. In particular, we were concerned by the apparent erosion of the well-established and functioning liability protection regime.

We were, however, encouraged to see recent amendments proposed by various Parliamentary Committees involved in this copyright review. While we believe that the best way to address our concerns regarding Article 13 would be to strike this article entirely, some proposed changes may reduce its negative impact.

We were pleased to see that the proposal by the Internal Market Committee (IMCO) explicitly recognized the importance of the existing intermediary liability framework and clarified that nothing in the proposed Article was intended to alter that structure. For information society service providers that operate beyond the scope of the safe harbor framework, fair and balanced agreements that recognize the interests of rightsholders, platforms, and users can benefit all parties involved. The explicit inclusion of users as parties of interest to this process was especially encouraging.

Of concern to our group is the fact that the JURI amendments of 10th March undermine the well-balanced intermediary liability regime that has been key to the growth of online platforms and businesses. Ambiguity around the distinction between information society service providers that are “actively and directly involved” - which in itself is a very broad catch-all phrase - with the making available of works, and activity of a “mere technical, automatic and passive nature” presents challenges for platforms and providers attempting to understand how the Article may, or may not, be applicable. The proposal also continues to raise the possibility that service providers may be forced to compromise the privacy expectations of their users in order to fulfill reporting obligations to large rightsholders. Finally, it is unclear why existing agreements between providers and rightsholders require additional legal enforcement mechanisms beyond those currently available and integrated into the agreements themselves.

In summary, we believe that Article 13, as currently written, would significantly erode the legal protections that we have come to rely on, and reduce the likelihood that our businesses will continue to flourish in the future to the benefit of European users. Legal certainty is critical for all companies, and in particular start-ups, as is the delicate balance of rights set out in the e-Commerce Directive, that we have come to value.

We look forward to a continued dialogue with you and your colleagues regarding this issue.

Sincerely,

Clarifai, Inc.	Source{d}	Ubermetrics Technologies GmbH
Cloudflare, Inc.	SentiOne	Factmata
Meetup, Inc.	Elaisian	MuseScore
Shapeways, Inc.	Startup Poland	Startup Cyprus
Patreon, Inc.	Adback.co	Spanish Startups Association
Silicon Allee	Capsule.fm	Allied for Startups
Subvise UG	Brand24	
Videona Socialmedia S.L.	TogetherData	