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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]

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Bruce Schneier, Bell Labs, cryptography writer and expert

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