

# 5TH OF JULY FOUNDATION

5 juli-stiftelsen

c/o Oscar Swartz

Box 549, 101 30 Stockholm, Sweden

Stockholm, 7th September 2020

Regarding the European Commission's  
public consultation on the Digital Services Act

**Dear Sirs / Madams,**

please find below the 5th of July Foundation's comments on the Commission's public consultation on the Digital Services Act.

In the prologue to the Digital Services Act there has been much talk about common EU rules concerning online content, as there are different rules in different member states – e.g. the German NetzDG Act and the French Avia Law.

Given this, we are somewhat surprised that the vast questionnaire for the public consultation contains very little if any on this topic.

## **1) No censorship prior to publication**

Given human rights declarations adopted by the EU, rule of law and fundamental principles of western, liberal democracy – we find upload filters and other forms of internet censorship unacceptable.

It should be a commonly accepted principle that no censorship should be applied *prior* to publication. If someone publishes content that is illegal – legal proceedings should take place against the person responsible *after* publication. And if any content is to be removed, this should be tried by a court of law.

Simply put, you should not punish anyone for a crime not yet committed.

And if you are to infringe on users' rights online despite this, it must be decided through due process / in a court of law. This principle has already been established in the EU Telecoms Package back in 2009.

## **2) No upload filters – especially not for opinions**

A problem with upload filters is that they tend to expand the scope from copyright infringements (the Copyright Directive) to opinions (the Regulation on Terrorist Content Online).

Upload filters are very blunt tools, unable to understand context and exceptions for e.g. »fair use« such as critique and satire – thus restricting an open, democratic debate.

A well-known example of over-filtration is the picture of the »Vietnam Napalm Girl« – a historically important document blocked by Facebook on the grounds of nudity. (Later cleared after being published by the Norwegian ex-prime minister and director-general of the WHO Gro Harlem Brundtland.)

Such shortcomings will become even more obvious if applied to opinions.

Considering the constant tendency to mission creep, we strongly recommend that the EU abstain from stipulating upload filters altogether.

### **3) Mere Conduit for platforms (without curation)**

A central principle in the old eCommerce directive is *Mere Conduit*, stating that ISP's and other operators cannot be held responsible for their users' actions.

This principle should be retained – and it should be made clear that it also applies to social media platforms, as long as they do not curate or edit user-generated content in any substantial way.

As long as the issue is about digital *infrastructure* – service providers and platforms should not be held responsible any more than any other provider of infrastructure like roads or the postal service.

Furthermore, the prohibition of any general monitoring obligation should be upheld.

**Also, see our answers to the consultation questionnaire.**

For the 5th of July Foundation

Oscar Swartz  
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