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LIABILITY OF CLARIN CENTRES AS SERVICE PROVIDERS: WHAT CHANGES WITH THE NEW DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET?
NEW DIRECTIVE ON COPYRIGHT (DSM)

• Directive 2019/790 of 17 April 2019 on copyright in the Digital Single Market
  • European Commission draft: 14 September 2016
  • rejected by the European Parliament in July 2018, then accepted September
  • finally adopted on 26 March 2019, mostly due to the votes from France
  • most ambitious EU copyright effort since 2001 (InfoSoc Directive)

• Many provisions of relevance to CLARIN and digital humanities:
  • text and data mining exceptions (articles 3 and 4)
  • use of out-of-commerce works by heritage institutions (articles 8-11)
  • possibility to introduce extended collective licensing (article 12)
  • new rules on liability of content-sharing service providers (article 17)
CLARIN CENTRES AS SERVICE PROVIDERS

Content Provider

Hosting Provider

End User
LIABILITY LIMITATION FOR HOSTING PROVIDERS

• Directive 2000/31/EC of 8 June 2000 on e-commerce
  • hosting provider is not liable for information provided by content providers iff:
    • the hosting provider is not aware of the content of the information AND
    • once he becomes aware, he acts promptly to remove it (notice-and-take-down procedure)

• Court of Justice of the European Union, 23 March 2010, Google vs. Louis Vuitton
  • in order to qualify for the liability limitation, the provider has to play a passive role so as not to have control over the content
### Content Provider

- Has ‘editorial power’ over the content
- Can be liable for the content

### Hosting Provider

- Passive role AND
- Notice-and-take-down procedure
- Is not liable for the content

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**SO FAR SO GOOD…**
SO FAR SO GOOD...

Content Provider

- Has ‘editorial power’ over the content
- Can be liable for the content

Hosting Provider

- Is not liable for the content IFF:
  - passive role AND
  - notice-and-take-down procedure
What’s New in the DSM Directive? (1/2)

- New category: online content-sharing service providers (OCSSPs)
  - A provider of a service of which the main purpose is to store and give the public access to a large amount of copyright-protected works uploaded by its users, which it organises and promotes for profit-making purposes.
- Exclusions:
  - Non-for-profit online encyclopaedias (Wikipedia)
  - Non-for-profit educational and scientific repositories (CLARIN Centres?)
  - Open source software-developing and-sharing platforms (GitHub)
  - Online marketplaces (Amazon?)
WHAT’S NEW IN THE DSM DIRECTIVE? (2/2)

• OCSSPs are liable for copyright infringement UNLESS:
  • they obtain a license from the right holder, covering also non-commercial use by end-users OR
    • best efforts to obtain the license (due diligence) AND
    • best efforts to make notified content unavailable and prevent it from re-appearing (notice-and-stay-down)

• highly criticised ‘censorship machines’
  • threat to user-generated content (e.g. memes), but also to some copyright exceptions (criticism, parody, review...)
  • even though the Directive obliges Member States to protect the exceptions...
### The Landing Stripe is Getting Thinner

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THE FUTURE OF THE DSM DIRECTIVE

• Member States have until 7 June 2021 to implement the DSM Directive
  • implementation of EU law is often delayed, but
  • procedures for non-conformity

• Poland has challenged art. 17 in front of the CJEU
  • limitation of freedom of expression
  • strong political flavour to the complaint
TAKEAWAY MESSAGE FOR CLARIN CENTRES

• To avoid liability, be a hosting provider, not a content provider!
  • assume a passive role, do not edit the content provided by users
  • implement a notice-and-take-down procedure

• If you want to have a more active role in the process (e.g. modify the content), assume the responsibility
  • conduct thorough copyright clearance, do not *trust* the providers

• If you want to engage in a for-profit activity (e.g. paid access, ads, public-private partnerships?), think twice and be aware of the consequences!
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vieLEN dank