



Heller føre var enn etter snar?

Om delingsplattformers ansvar for brukergenererte opplastninger etter digitalmarkedsdirektivet artikkel 17

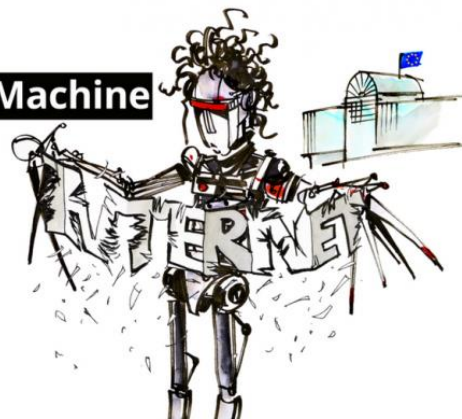
DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

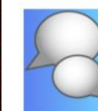


Stop the
#CensorshipMachine
Delete
Article 13



ACT NOW

Huge Protests Across Europe Protest Article 13; Politician Lies And Claims They Were Paid To Be There



Say That Again

from the *not-bots* dept
Mon, Mar 25th 2019 12:28am – Mike Masnick

As expected, people took to the streets in the EU this week to protest the EU Copyright Directive, the censorship filters of Article 13, and the snippet tax in Article 11. Most of the protests took place in Germany, where reports are that over 150,000 protesters showed up to let their elected officials know that this law is a disaster (other reports put the number closer to 200,000 protesters).



Indeed, things got so crazy, that the Berlin police announced that there were way more people than expected, and protesters needed to change their planned route to roads that could better accommodate such a large crowd.

Delingsplattformer

Felleskarakteristika:

- Brukerne initierer opplastingene
- Operatøren oppretter og administrerer plattformen – derigjennom fasiliteres deling av innhold



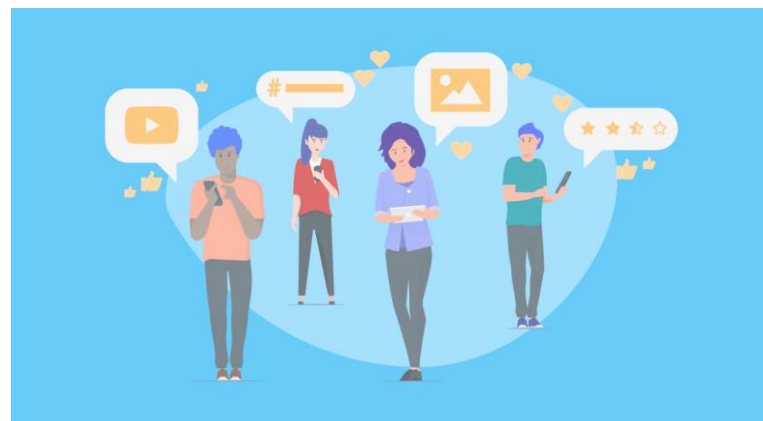
Plattformansvaret

Fellesbetegnelse på ansvaret for operatøren av en delingsplattform for innhold brukerne laster opp



Brukergenerert innhold

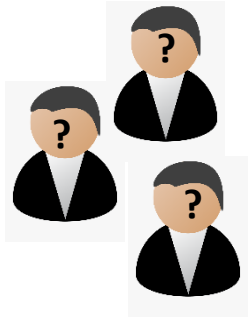
Brukergenerert innhold er digitalt innhold som lastes opp av brukerne av en tjeneste – det kan både være brukerskapt, men også direkte kopi av åndsverk



The world's most valuable resource is no longer oil, but data



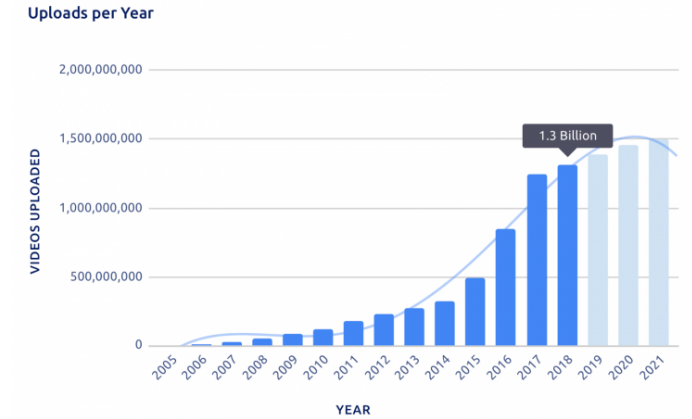
Anonyme brukere



Global deling



Antall opplastninger



BRUKERANSVAR



GA Szpunar i C-610/15 *The Pirate Bay*:

«(...)liability for sites of this type is a matter of copyright application, which can be resolved not at the level of EU law but under the domestic legal systems of the Member States. **Such an approach would, however, mean that liability, and ultimately the scope of the copyright holders' rights, would depend on the very divergent solutions adopted under the different national legal systems.** That would undermine the objective of EU legislation in the relatively abundant field of copyright, which is precisely to harmonise the scope of the rights enjoyed by authors and other rightholders within the single market. That is why the answer to the problems raised in the present case must, in my view, be sought rather in EU law»

MEDVIRKNINGSANSVAR FOR PLATTFORMENE



C-610/15 *The Pirate Bay*:

EU-domstolen la til grunn at direkte ansvar inntrådte der plattformen

«(...) intervenes, in full knowledge of the consequences of his action, to give his customers access to a protected work, particularly where, in the absence of that intervention, those customers would not be able to enjoy the broadcast work, or would be able to do so only with difficulty»

Ansvarsfritak
E-handelsdirektivet artikkel 14 for lagringstjenester



Ikke vurdert



«The limited availability of data in this area (...) did not allow to elaborate a quantitative analysis of the impacts of the different policy options»

Impact Assessment

Angivelig?

VERDIGAP

Article 17

Use of protected content by online content-sharing service providers

1. Member States shall provide that an online content-sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of this Directive when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.
4. If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have:

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (6) 'online content-sharing service provider' means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes.

Providers of services, such as not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, providers of electronic communications services as defined in Directive (EU) 2018/1972, online marketplaces, business-to-business cloud services and cloud services that allow users to upload content for their own use, are not 'online content-sharing service providers' within the meaning of this Directive.

REAKTIVT

Ansvarsfritak

E-handelsdirektivet artikkel 14 for lagringstjenester

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, MS shall ensure that the service provider **is not liable** for the information stored at the request of a recipient of the service, on condition that:
 - (a) the provider **does not have actual knowledge of illegal activity or information** and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
 - (a) the provider, upon **obtaining such knowledge** or awareness, **acts expeditiously to remove or to disable access to the information**.

PROAKTIVT

4. **If no authorisation is granted**, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have:

- (a) made best efforts to obtain an authorisation, and
- (b) made, in accordance with high industry standards of professional diligence, best efforts to **ensure the unavailability of specific works and other subject matter** for which the rightholders have provided the service providers with the relevant and necessary information; and in any event
- (c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to **prevent their future uploads** in accordance with point (b).

Rettighetsklarering – «authorisation»

INDIVIDUELL



KOLLEKTIVT



Artikkel 17(1): OCSSPene «shall obtain an authorisation from the *rightholders*»

Fortalen: rettighetshaverne «should not be obliged» til å gi sitt samtykke til overføring av sine verk

Avtalefriheten skal ikke påvirkes.

Problemer



- Artikkel 12 er en territoriell «kan»-bestemmelse
- Få land som har kollektive rettighetsorganisasjoner
- Kostnader og transaksjonskostnader blir enorme
- Favoriserer de største OCSSPene
- Artikkel 12 gir rettighetshaverne en mulighet for opt-out

Rettighetsklarering kan kun være en del av løsningen

Filtering?

4. If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have:

- (a) made best efforts to obtain an authorisation, and
- (b) made, in accordance with **high industry standards of professional diligence**, best efforts to **ensure the unavailability of specific works and other subject matter** for which the rightholders have provided the service providers with the relevant and necessary information; and in any event
- (c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to **prevent their future uploads** in accordance with point (b).

2016: artikkel 13

- Forslaget til utforming inneholdt en oppfordring til å ta i bruk «**content recognititon technologies**» for å hindre at uautorisert innhold ble lastet opp på nettplattformen.

- Mars 2018: «Commission Recommendation on measures to effectively tackle illegal content online»

- **Faster proactive detection and effective removal:** Proactive measures, including automated detection, are needed to effectively and swiftly detect, identify and expeditiously remove or disable content

Oktober 2019: Sak C-18/18 «its defamatory content of an equivalent nature does not require the host provider to carry out an independent assessment, **since the latter has recourse to automated search tools and technologies**».

Mai 2016: «Code of conduct»-avtale inngått mellom blant andre Facebook, Twitter, YouTube og Microsoft og Kommisjonen om å hindre ulovlige hatefulle ytringer

- September 2017: meddelelsen «Tackling Illegal Content Online – Towards enhanced responsibility of online platforms»

- Online platforms should (...) **adopt effective proactive measures to detect and remove illegal content online** and not only limit themselves to reacting to notices which they receive.
- Herunder opphavsrett

April 2019 DMD art 17: «in accordance with **high industry standards of professional diligence**, best efforts to **ensure the unavailability of specific works and other subject matter**» + «best efforts to **prevent their future uploads**»



C. Michael Gibson MD
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Folgen



Determining if an image is a Chihuahua or muffin is a tough problem in artificial intelligence



16:53 - 14. Mai 2017

7.665 Retweets 9.993 „Gefällt mir“-Angaben



210 7,7 Tsd. 10 Tsd.

