

Use of copyright content on the internet and the liability of platforms

or when things do(n't) always go according to plans

Eleonora Rosati

Dansk Selskab for Ophavsret

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The right of
communication
to the public



Article 3(1) of Directive 2001/29 (InfoSoc Directive)

Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

The making
of the right



Criteria

High level of protection!
Individual assessment!

An 'act of communication': transmission or simple accessibility?

- Indispensable intervention (full knowledge)

A 'public': indeterminate number of people above de minimis threshold

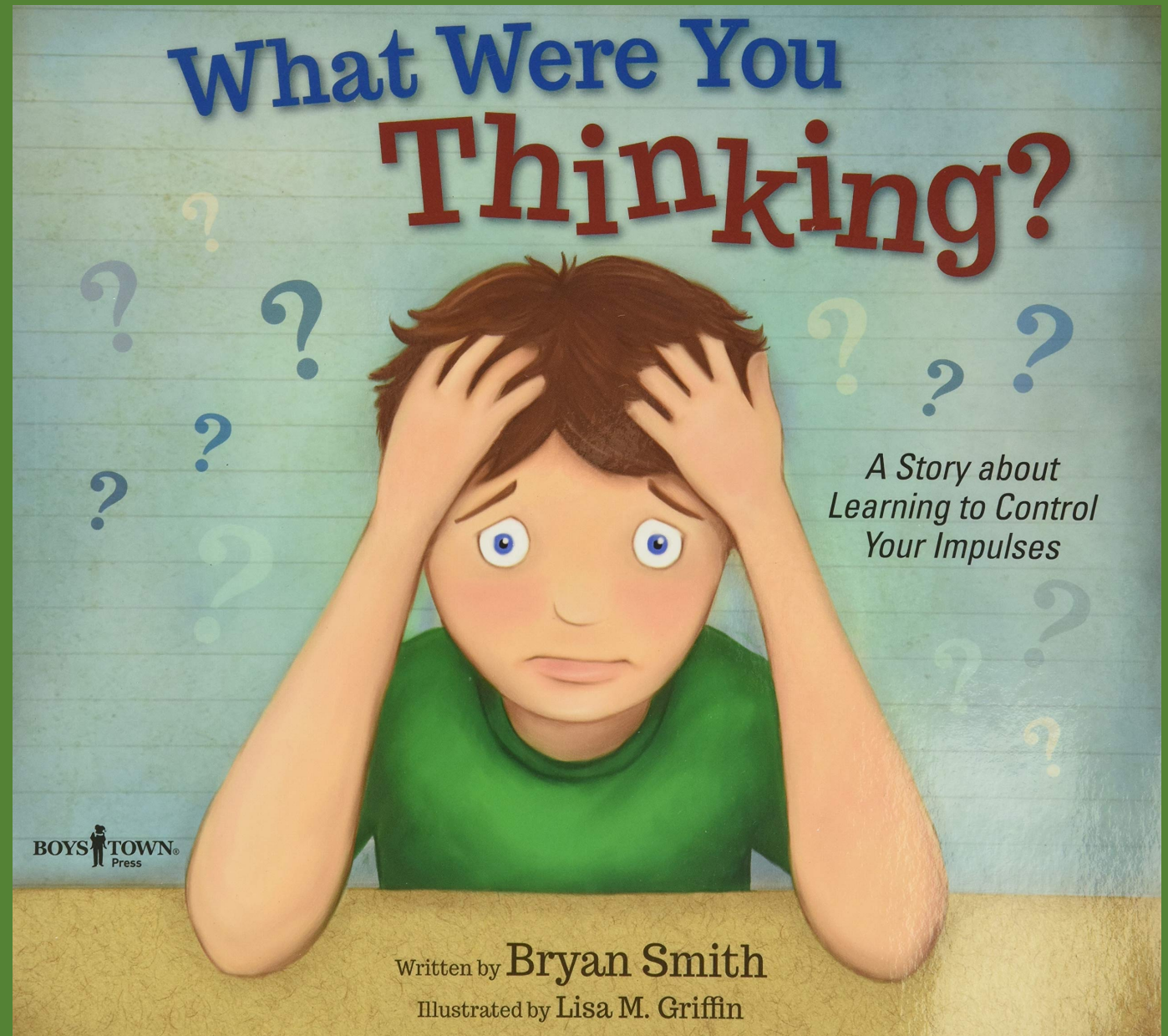
- Technical means; 'new public'

Access from place and at a time individually chosen

Other, non-autonomous, interdependent criteria

- Profit-making intention
- Knowledge

- What the rightholder thought
 - New public
 - AG Szpunar in *VG Bild-Kunst*: “the legal fiction that all (actual and potential) internet users are targeted whenever a protected work is made freely available to the public on the internet is similarly no longer tenable in the context of hyperlinks.”
 - Type and form of consent
 - Again, *VG Bild-Kunst*
 - Also relevant for Art 4 DSMD
 - An undue formality?
- What the defendant thought
 - Linking cases (*GS Media*)
 - Scaled down in *VG Bild-Kunst*
- What a reasonable person/diligent economic operator would think?
 - Constructive knowledge in *Pirate Bay*
 - Indispensable and deliberate intervention in *YouTube*
 - ‘Best efforts’ in Art 17(4) DSMD?



In all this, does secondary liability still exist? To some extent ...



Platform liability in the shade of Article 17 DSMD

#CsillagSzületik #mozistar

Lady Gaga & Bradley Cooper - Shallow (OSCAR 2019)

4,167,869 views

49K 1.2K SHARE SAVE ...



Mozi Star
Published on Feb 25, 2019

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Mix - Lady Gaga & Bradley Cooper - Shallow (OSCAR 2019) 50+ YouTube



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someone like you, Rolling Deep Adele Live at the Royal Albert Hall 12:53 32M views



SUSAN BOYLE 'I DREAMED A DREAM' BRITAIN'S GOT TALENT kuyaHD Recommended for you



Live Aid | Bohemian Rhapsody (2018) - scene comparison

From C-610/15 to C-682/18 and C-683/18



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Torrent search engine

Search results: black panther Displaying hits from 0 to 30

Type	Name (Order by: Uploaded , Size, U L ed by, SE , LE)	View: Single / Double	SE	LE
Video (HD - Movies)	Black.Panther.2018.1080p.BRRip.x264-BRRIP Uploaded 05-02 07:56, Size 2.17 GiB, U L ed by <i>Anonymous</i>		4509	455
Video (Movies)	Black Panther 2018 NEW PROPER HD-TS X264-CPG Uploaded 02-24 15:35, Size 2.38 GiB, U L ed by xxxlavalxxx		806	100
Audio (Music)	Kendrick Lamar - VA - Black Panther: The Album (2018) Uploaded 02-09 04:23, Size 113.18 MiB, U L ed by Freak0370		339	16
Video (HD - Movies)	Black.Panther.2018.720p.BluRay.x264 Uploaded 05-02 15:46, Size 1.07 GiB, U L ed by SeekNDstroy		275	35
Video (HD - Movies)	Black.Panther.2018.1080p.BluRay.x264-SPARKS[EtHD] Uploaded 05-02 03:14, Size 11.01 GiB, U L ed by EtHD		138	31
Video (Movies)	Pantera Negra.Black Panther.2018.720.TS.Dublado.PT.LAPUMiA.mp4 Uploaded 02-16 08:44, Size 2.44 GiB, U L ed by <i>Anonymous</i>		135	4
Audio (Music)	Kendrick Lamar- Black Panther The Album Music From (2018) Uploaded 02-09 06:30, Size 113.79 MiB, U L ed by kajalsus		126	24
Video (HD - Movies)	Black Panther 2018 4K 2160p BluRay x265 10bit HDR Uploaded 05-16 06:58, Size 15.38 GiB, U L ed by HobbitFilmz		104	39
Video (HD - Movies)	Black.Panther.2018.1080p.BRRip.6CH.MkvCage Uploaded 05-02 08:45, Size 2.63 GiB, U L ed by <i>Anonymous</i>		101	2

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Info: [IMDB](#)
Spoken language(s): English
Texted language(s): English

Uploaded: 2018-05-02 07:56:40 GMT
By: *Anonymous*
Seeders: 5839
Leechers: 487
Comments 14

Info Hash:
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Black Panther (2018)
<http://www.imdb.com/title/tt1825683/>
IMDB RATING: 7.7



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Lady Gaga & Bradley Cooper - Shallow (OSCAR 2019)

4,167,869 views



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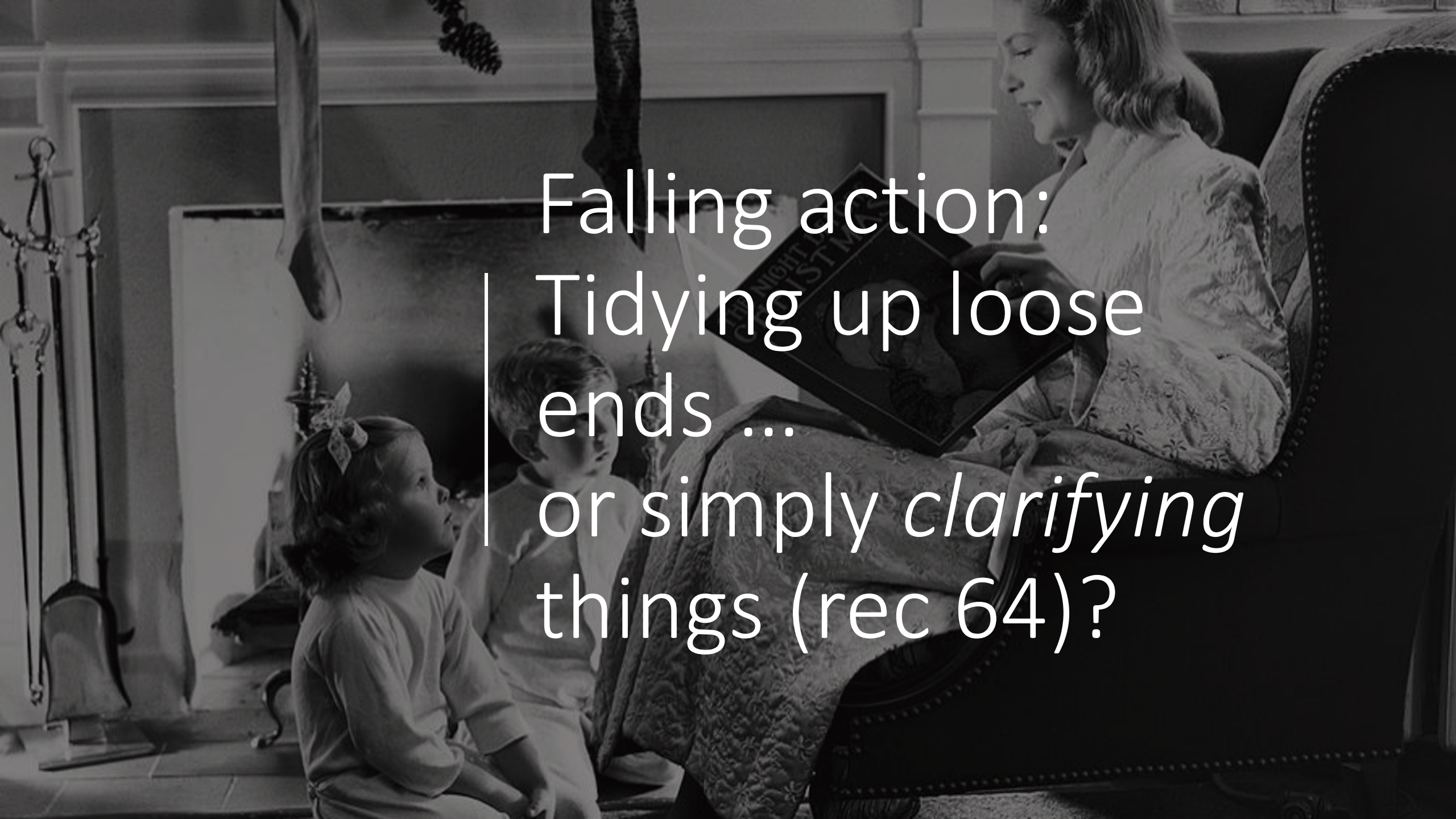
Mozi Star

Published on Feb 25, 2019

YouTube, C-682/18 and Cyando, C-683/18

- Actual knowledge but also knowledge that could be expected from a diligent operator
- Appropriate technological measures to counter and prevent “**credibly and effectively**” copyright infringements
- Content selection
- Tools to infringe copyrights or promote infringing activities (eg evidence through financial model)
- Profit-making intention not irrelevant but not enough alone
- Percentage of illegal content vis-à-vis legal one

In all this, general/abstract knowledge not enough



Falling action:
| Tidying up loose
ends ...
| or simply *clarifying*
things (rec 64)?

Article 17 DSMD

NOTION OF 'VALUE GAP'

ALLEGED ABUSE OF SAFE
HARBOURS

WHO'S LIABLE FOR WHAT?

Say goodbye to gifs and memes if this new European copyright law passes



End of internet memes? EU approves controversial copyright law that 'could kill off the web's user-generated content' such as reaction GIFs, quotes from online articles and music remixes

- The Copyright Directive intends to update copyright for the internet age
- It hands more power to companies to block their copyrighted content online
- But this also includes user-generated content, such as online memes, that include copyrighted material

WIRED Opinion

If we don't act now, Article 13 could break the internet by mistake

With [Article 13](#) of the Copyright Directive, the EU Parliament wanted to give a sop to big media corporations. This will backfire horribly

Wikimedia warns EU copyright reform threatens the 'vibrant free web'

Natasha Lomas @riptari / 4 weeks ago

Comment



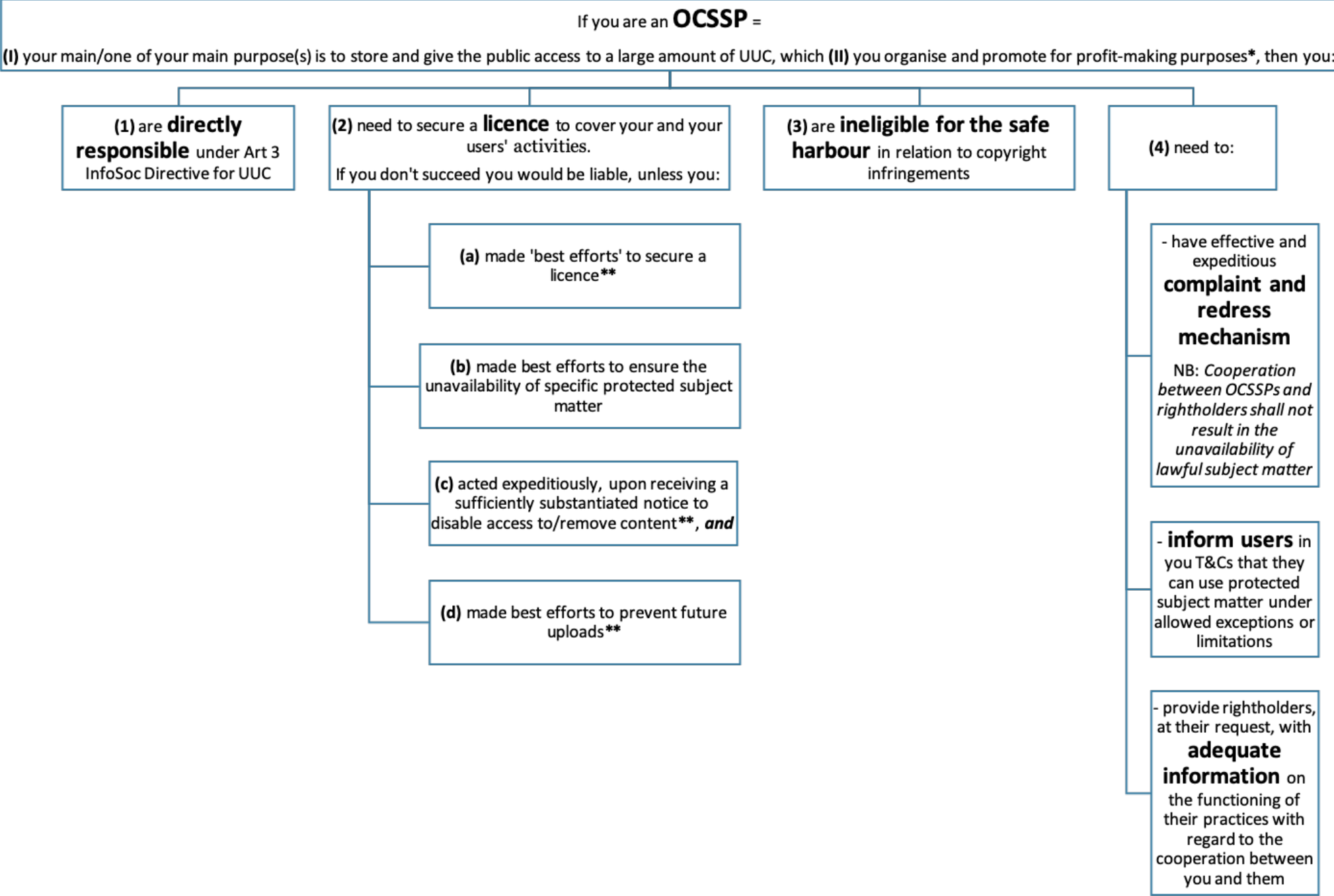
About Issues Our Work Take Action

Why the Whole World Should Be Up in Arms About the EU's Looming Internet Catastrophe

BY CORY DOCTOROW | SEPTEMBER 5, 2018

* The notion of ‘OCSSP’ does *not* include providers of services like: not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, electronic communication service providers as defined in Directive (EU) 2018/1972, online marketplaces, B2B cloud services and cloud services that allow users to upload content for their own use

** If your service (i) has been available in the EU for less than 3 years *and* (ii) has an annual turnover below €10m, then you only need to comply with (a) and (c). If, in addition to (i) and (ii), (iii) the average number of monthly unique visitors exceeds 5 million, then you also need to comply with (d).



Towards a Digital Single Market?


NATIONAL
TRANSPPOSITIONS
BY 7/6/2021

DELAYS FOR
VARIOUS
REASONS

SO FAR:
DIVERGING
SOLUTIONS!

C-401/19 (PL
CHALLENGE TO
ART 17)

Adopted:



 [Netherlands](#) 🏆
 [Hungary](#) 🏆
 [Germany](#) 🏆
 [Malta](#)

- France (Article 15, 17 and 18-23)
- Denmark (Articles 15 and 17)










Delegation legislation adopted:

 [France](#)
 [Italy](#)









In Parliament:

 [Croatia](#)
 [Estonia](#)
 [Luxembourg](#)

Draft laws publicly available:

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 [Belgium](#)
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 [Lithuania](#)
 [Romania](#)
 [Slovakia](#)
 [Slovenia](#)

Ongoing process:

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 [Greece](#)
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 [Ireland](#)
 [Latvia](#)
 [Norway](#)
 [Poland](#)
 [Portugal](#)
 [Spain](#)
 [Sweden](#)



Conclusion

- Still working on joining all the dots
 - National transpositions
 - Polish challenge
 - But also DSA
 - Fair balance
 - Know your boundaries!
- 



Thanks for your attention!

eleonora.rosati@juridicum.su.se

@eLAWnora