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[illegible]

It would be important to insist that TikTok is now obliged to fully comply with the new copyright rules. In view of the recent complaints from French rightholders, ask about their compliance policy with Article 17 of the DSM Directive and thus what licences they hold and wish to conclude.

- The European Union has adopted a special copyright liability regime for online platforms that use large amounts of copyright protected work uploaded by users. This requires primarily that platforms take licences to remunerate copyright rightholders from all creative sectors; or to prevent the availability of such protected works through technological measures in the exceptional cases where licences cannot be concluded.
- Article 17 of the DSM Directive has been implemented in almost all MS by now. These national laws require that platforms conclude the necessary licences with all rightholders whose work is widely used on the platform instead of cherry-picking some sector or group of rightholders.

**Defensives**

[REDACTED]

- I [REDACTED]  
[REDACTED]  
[REDACTED]
- I [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

- I [REDACTED]
- I [REDACTED]  
[REDACTED]  
[REDACTED]
- I [REDACTED]  
[REDACTED]  
[REDACTED]

**Background on Article 17**

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

***On Article 17 and TikTok***

We understand that TikTok has concluded some global licenses with the music sector, namely with the major labels (Universal, Warner and Sony) and Merlin, the independent musicians'

group. However, we do not have neither more specific knowledge about these licenses nor the extent of TikTok's licensing policy (e.g. situation with audiovisual industry).

[REDACTED]

One potential feature of its service that TikTok may wish to exploit is the fact that it relies on short and typically user made videos, which is somewhat different than other online video sharing platforms. *See background on that below and defensive above.*

### **General on Article 17**

The main objective of Article 17 is to improve right holders' bargaining position vis-à-vis major online content-sharing service providers and the remuneration for the use of their content on the platforms of these service providers while also introducing a balanced framework considering the interests of users.

Article 17, therefore, aims at increasing the licencing between platforms and rightholders. If platforms, nevertheless, do not hold a licence for a content uploaded by its users, they can be liable for these uploads. However, Article 17 contains a specific mechanism for mitigating the liability of platform under the conditions set out in the Directive.

The specific mechanism for mitigating the liability of platforms relates to content for which rightholders have not granted an authorisation and which allows services to escape liability based on a multilayer "best efforts" obligation.

### **What platforms do fall within the scope of Article 17**

The Directive sets out four criteria to assess whether an information society service provider falls into definition of "online content sharing service" and thus the scope of Article 17 (and it mandates a case-by-case assessment):

[platforms to] have as its main or one of its main purposes:

- 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. (Article. 2(6))

The Directive further specifies in recital 62 that Article 17 aims at platforms that play an *important role on the online content market by competing with other online content service providers, such as online audio and video streaming service providers, for the same audiences.*

### **What is the treatment of short videos under Article 17?**

Article 17 does not make a distinction between the length of use of copyright protected content. Shorter videos could be as much copyright infringing than longer ones. It is the *types of use* of a short video/music that matters from copyright law's perspective.

[REDACTED]

To be aware: the DSM Directive granted press publishers a right for authorizing the online use of their publications (Article 15, ‘press publishers’ right’). The Directive introduced a specific limitation about “very short extract” to the press publishers’ right, which is based on the limited “length” of the use. However, there is no such equivalent limitation under Article 17.