

Brussels, 9 May 2017

Dear Mr Vice President,  
Andrus,

At the mid-term review of the Digital Single Market Strategy, rapid technological developments require ever more European ambition and leadership to remove unnecessary barriers, boost the digital economy and safeguard the rights of internet users.

Specifically, we recognize intermediaries have a growing responsibility to take down illegal content and to counter the misuse of their platforms as soon as they are notified. The e-commerce directive explicitly provides for this possibility in article 14, but the lack of clarity about the procedures described in that article results in diverging implementations in the Member States. We need an updated legal framework for notice and action procedures.

This need is exacerbated by a number of worrying trends.

A number of Member States are taking unilateral actions to regulate the takedown of illegal content as well as 'fake news', especially by online intermediaries, which might infringe the e-commerce directive.

At the same time large internet platforms are independently taking their own actions to take down online content, without transparency or independent scrutiny. We must avoid privatization of norm setting and law enforcement online.

Finally, we witness that a number of ongoing initiatives taken in the context of the digital single market, such as the proposal for a new AVMS-directive and the new copyright directive, have a clear impact on intermediary liability.

As a result, 28 different platform laws could emerge, going against the idea of the Digital Single Market altogether. Ordinary internet users also run the risk of not having the same options for redress for wrongful takedown of content throughout the Union.

A notice and action directive could counter these trends towards fragmentation. It would provide a framework which guarantees legal certainty for businesses and users alike, while increasing the transparency, effectiveness, and proportionality of takedown procedures. Most importantly, such a directive should secure compliance with our fundamental rights.

A new directive would offer a unique chance to create for example European rules to determine what an appropriate response time is for taking down content, and it allows the EU to set up minimum European safeguards that protect freedom of speech online in a transparent way.

In January 2012 the Commission announced that it was "necessary to set up a horizontal European framework for notice and action procedures". Last year, the Commission announced that it would "review the need for formal notice-and-action procedures, in light

of the results of, inter alia, the updated audio-visual media and copyright frameworks and ongoing self-regulatory and co-regulatory initiatives."

We encourage you to take initiative and to put forward a Notice and Action Directive as soon as possible during this mandate.

With our highest regards,

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