

Article 13 Obligations Do Not Apply or Map to Education / Research Online Content Providers

The obligations created in Article 13 are aimed at consumer focussed entertainment platforms run by YouTube, Facebook etc. Applying other content providers to this unique scenario is like putting a square peg in a round hole – it does not work. The effect on the drafting creates law that simply does not work in regards to publicly available online content services from universities and research organisations, such as institutional repositories. Moreover, the Commission’s own impact assessment fails completely to take account of these impacts, representing a serious weakness in the approach taken up to now.

The table below seeks to summarise why Article 13 obligations as drafted make no sense when applying to the running of institutional repositories and other publicly available educational online content services.

For this reason we request that educational repositories are **clearly** removed from the scope of Article 13 as with cloud service providers and open source software development platforms.

Article 13 Obligations Framed Around the “YouTube” scenario	Is this the situation for education and research institutional repositories / online providers?	What is the situation for research repositories?
The definition of ‘ <i>online content sharing provider</i> ’ states that content is uploaded to the platform “ <i>by its users</i> ”.	No	<p>We are unaware of a single educational or scientific repository where material is solely uploaded by the user. The content is either entirely uploaded by the university / educational provider, or most commonly by a combination of university / provider / author and end users.</p> <p>Action: Given this the current definition of online content sharing provider, it is unclear to what extent the repositories run by our organisations could be covered by this provision. We therefore support steps to clarify this in the text by clearly excluding educational or academic repositories, as well as their users.</p>
Neither the platform, or in the vast majority of cases the uploaders own any intellectual property rights in the content being uploaded.	No	<p>Many different types of content / media are uploaded onto educational services / institutional repositories and often they are, or <u>originally were</u> the copyright holder, or for which some other body of law allows. These include:</p> <ul style="list-style-type: none"> • Journal articles where the author was originally the copyright holder, but was forced to assign copyright to a publisher. • Journal articles for which copyright has been assigned to a publisher, and which can be uploaded because of a publisher’s

		<p>Green Open Access policy.</p> <ul style="list-style-type: none"> • Journal articles which have been assigned to a publisher which can be uploaded in line with a Member State Open Access legislation. • Journal articles whose copyright has been whose status is unclear because there is a clash between a funder's Open Access Policy and a publisher's Green Open Access policy. • Materials for which the institution / uploader owns the intellectual property. e.g Datasets created by a researcher, a journal article under a CC BY licence paid for by the university, a video of a seminar, an original educational resource, etc. • A picture, sound clip, video clip uploaded under the Quotation exception in the Information Society Directive.
Neither the platform, or in most cases the uploaders own any moral rights in the content being uploaded.	No	In the case of both of institutional and educational repositories, the uploader will own the moral rights in the material they are uploading. This is notably true for institutional repositories, where the uploader may have been obliged to sign away their economic rights.
The platform is run for economic gain by the provider.	No	Institutional repositories / educational platforms are not run for economic gain by educational establishments, cultural heritage institutions, research organisations but to promote education and learning. This is pure public interest.
Content is uploaded with the authorisation of all rightholders concerned	No	In the case of institutional repositories, while much content is uploaded by academics, institutions or even publishers as part of Green Open Access policies, in others, academics and institutions will rely on the law and a best guess as to the rights situation to do this. Educational resources created for others may include permissible small excerpts of

		others. It is not reasonable to expect the clearance of all rights by institutions and academics with various levels of knowledge of intellectual property law, before a work is uploaded – notice-and-take down, where mistakes are made, is the only feasible approach.
The platform is run for entertainment purposes.	No	Institutional repositories / educational platforms are run to support pupils, students, researchers and life long learners in their education and research activities. This is pure public interest.
The content uploaded is predominantly video and sound recordings.	No	The content is predominantly text and increasingly pure datasets of research findings.
Because the content uploaded is predominantly video and sound recordings there are existing licences available from collecting societies and trade or representative bodies in the case of film. This means that “simple” negotiations between a few well defined licensors is undertaken.	No	As the content is predominantly not consumer in nature, and not film or music, combined with the many different copyright / legislative reasons for the content being available on educational repositories, the licence related provisions in the draft Directive do not map to the situation faced by universities, schools, libraries etc. Seeking prior licences is simply unfeasible, and likely not worth it given the small scale at which most users are operating.
The platform enjoys a significant competitive advantage compared to publishers	No	As usually small, non-commercial operators, institutional and educational repositories are not major market players, in particular compared to the multi-billion dollar operators in the educational and science publishing fields.