**Experts warn of a legislative blunder.
The government sends an amendment to the Copyright Act to the Chamber of Deputies that does not respect the recommendations of the European Commission and the opinion of the Advocate General of the European Court of Justice.**

 **The government plans to put an amendment to the Copyright Act resulting from the EU's Digital Single Market (DSM) Directive and implementing the controversial Article 17 of the Directive to the Chamber of Deputies for consideration in the coming days. However, according to European experts, the form of implementation of Article 17 of the Directive by the Ministry of Culture is contrary to the recommendation of the European Commission (EC) and the opinion of the Advocate General of the European Court of Justice (AG EC). In fact, the Ministry of Culture merely copied the original text of Article 17 from the Directive and did not incorporate the other key recommendations and opinions at all.**

*"The Fiala’s government, contrary to its own programme, is sending Babiš's legislative junk to the Chamber of Deputies. The botched amendment does not respect EU recommendations and is probably unconstitutional,"* says Jan Karabina, chairman of EACSP[[1]](#endnote-2), the European Association of Cloud Service Providers.

The text of the amendment, which is now pending in Chamber of Deputies for approval, does nothing to protect users' rights thanks to the government's poor work, creates legal uncertainty, burdens internet companies and platforms with many new and ambiguously defined obligations, and contravenes the Charter of Fundamental Rights and Freedoms and the EU Charter. This is precisely what the EC Recommendation and the EC AG's Opinion were meant to prevent.

Moreover, the government is in breach of its own programme statement where it committed to „*sensitively implement the Directive with an emphasis on users' rights“*.

*“Copying and pasting article 17 just doesn’t do the job and won’t be compliant with the national constitutions and the EU charter.”*says Martin Husovec[[2]](#endnote-3), an expert on the issue and Assistant Professor at The London School of Economics and Political Science.

The Ministry of Culture denies everything and does not reflect the criticism of European experts and representatives of the IT industry.

*"The ministry only, according to the slogan 'fast and wrong', points to the implementation deadline of July 2021 and the possibility of sanctions from the EU. However, at the moment only 11 out of 27 EU countries have implemented the directive and no sanctions are being considered, because the European Commission is aware of the incompleteness of the whole directive, which is why it has issued the very important recommendation for implementation, not only in the matter of Article 17,"* adds Jaroslav Skřivan, vice-chairman of the EACSP.

Moreover, Article 17 of the Directive itself was sued in 2019 by the Polish government in the European Court of Justice. On 26.4.2022, a decision will be published[[3]](#endnote-4) which will probably definitively confirm the contradiction of the Czech implementation with the EU Charter and the need for an amendment.

*„With the compliance of Article 17 with the right to freedom of expression in doubt and compliance of the majority of the national implementations in doubt, all eyes remain fixed on the CJEU in Luxembourg whose ruling will — no matter where it falls — require a number of Member States to revisit their implementation laws.“* explains Paul Keller[[4]](#endnote-5), of the Institute for Information Law, University of Amsterdam.

This piece of legislation is ready in the House of Commons and is just waiting to be tabled for debate. Among other things, the Czech Republic is putting itself at risk of sanctions from the EU for poor implementation of the directive.

*"It is indeed necessary to exclude Article 17 from the pending amendment to the Copyright Act and return it to the ministries for reworking. And this time correctly, i.e. taking into account the EC decision and the EC recommendations,"* concludes Jan Karabina, chairman of the EACSP.

1. The European Association of Cloud Service Providers, www.eacsp.eu [↑](#endnote-ref-2)
2. Copyrights and related laws in the EU’s Digital Single Market conference, hosted by the Institute of Political Studies of the Polish Academy of Sciences and the Faculty of Law and Administration of the Adam Mickiewicz University in Poznan 3.12.2021, <https://www.youtube.com/watch?v=JRPlG9tWzkI> [↑](#endnote-ref-3)
3. The resolution of Polish challenge of Article 17 of the DSM Directive will be published at 9:30 on 26 April 2022 (Case C-401/19) [https://curia.europa.eu/jcms/jcms/j\_6/en/](https://curia.europa.eu/jcms/jcms/j_6/es/) [↑](#endnote-ref-4)
4. Article 17, the year in review (2021 edition), 24.1.2022, Paul Keller, Institute for Information Law (IviR) <http://copyrightblog.kluweriplaw.com/2022/01/24/article-17-the-year-in-review-2021-edition/> [↑](#endnote-ref-5)