



# **The EU position on tackling illegal content online**

**The ECD during the Commission's  
2014-2019 mandate**

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- By far not an unregulated sector. And it is not only about copyright or terrorism!
- From liable to “responsible”.
- What is a duty of care, at all?
- The impact on fundamental rights is obvious – the balancing exercise is what counts
- General monitoring obligation? It depends...



365 January 2015

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
1					1	2	3
2	4	5	6	7	8	9	10
3	11	12	13	14	15	16	17
4	18	19	20	21	22	23	24
5	25	26	27	28	29	30	31

365 February 2015

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8	15	16	17	18	19	20	21
9	22	23	24	25	26	27	28

365 March 2015

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14	29	30	31				

365 April 2015

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17	19	20	21	22	23	24	25
18	26	27	28	29	30		

365 May 2015

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21	17	18	19	20	21	22	23
22	24	25	26	27	28	29	30
23	31						

365 June 2015

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25	14	15	16	17	18	19	20
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27	28	29	30	31			

365 July 2015

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365 August 2015

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36	30	31					

365 September 2015

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365 October 2015

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365 November 2015

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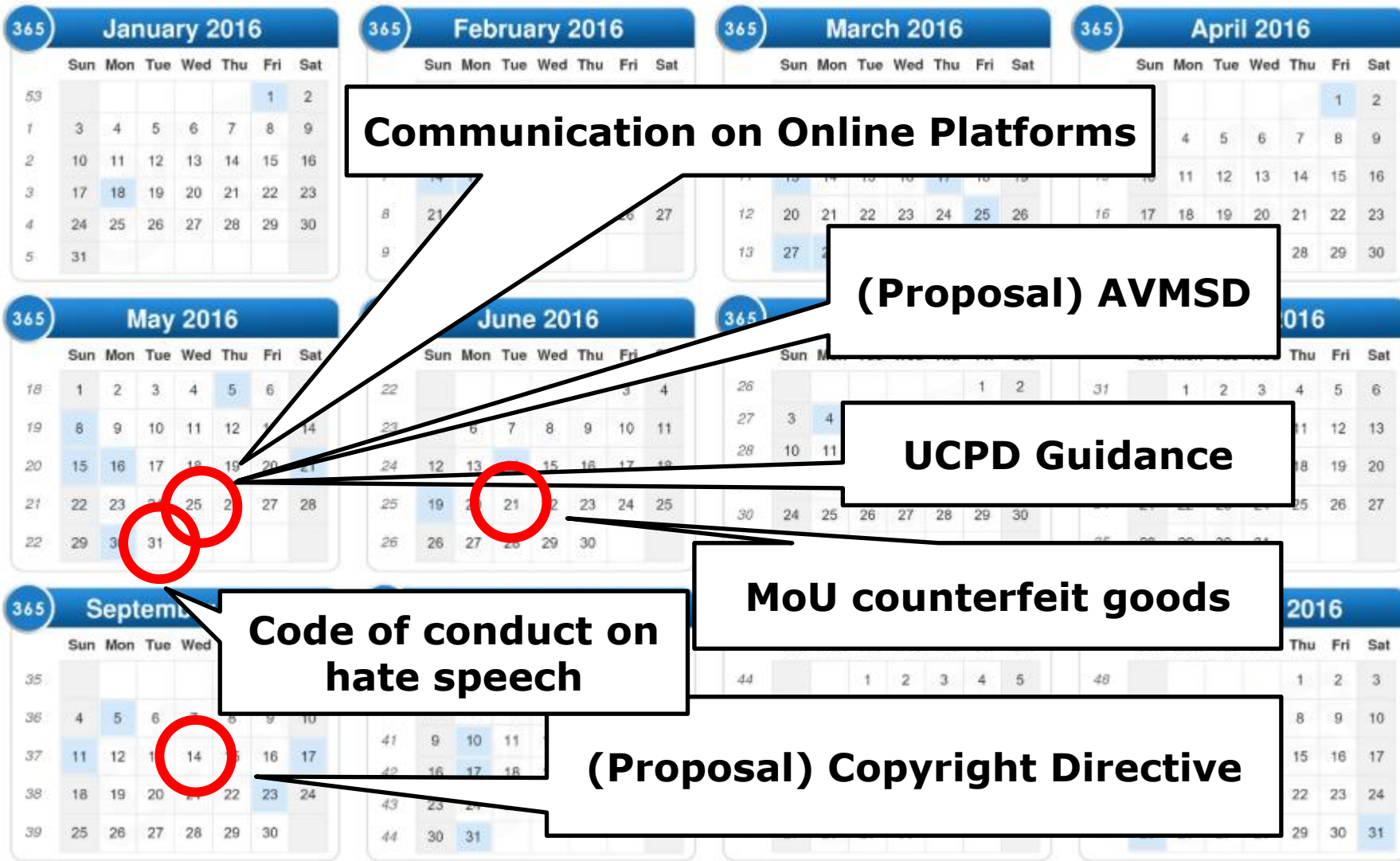
365 December 2015

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53	27	28	29	30	31		

**Communication: A Digital Single Market Strategy for Europe**

**(Proposal) Terrorism Directive**

**EU Internet Forum**



365 January 2017  
Sun Mon Tue Wed Thu Fri Sat

365 February 2017  
Sun Mon Tue Wed Thu Fri Sat

365 March 2017  
Sun Mon Tue Wed Thu Fri Sat

365 April 2017  
Sun Mon Tue Wed Thu Fri Sat

**Communication DSM  
Mid-term review**

**Commission Notice on the  
market surveillance of  
products sold online**

365 May 2017  
Sun Mon Tue Wed Thu Fri Sat

365 June 2017  
Sun Mon Tue Wed Thu Fri Sat

365 July 2017  
Sun Mon Tue Wed Thu Fri Sat

365 August 2017  
Sun Mon Tue Wed Thu Fri Sat



365 September 2017  
Sun Mon Tue Wed Thu Fri Sat

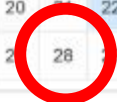
365 October 2017  
Sun Mon Tue Wed Thu Fri Sat

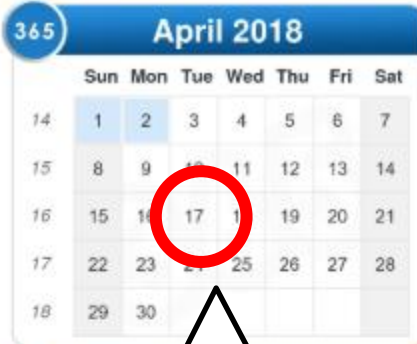
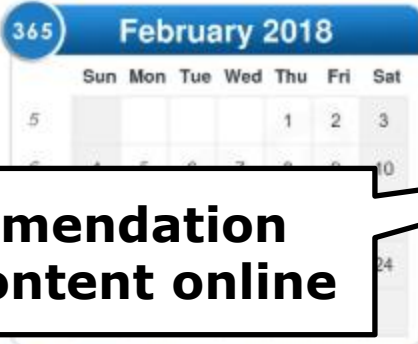
365 November 2017  
Sun Mon Tue Wed Thu Fri Sat

365 December 2017  
Sun Mon Tue Wed Thu Fri Sat

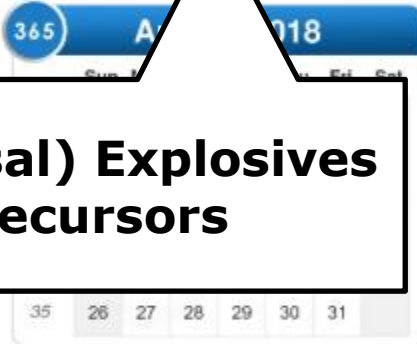
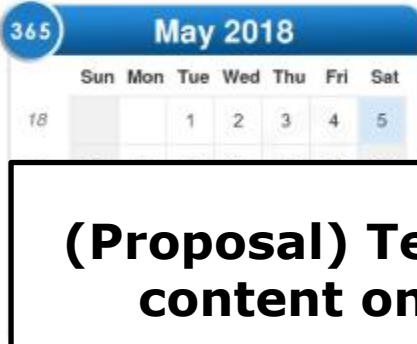
**Communication on  
illegal content online**

**IPRED Guidance**





**Recommendation  
illegal content online**



**(Proposal) Terrorist  
content online**

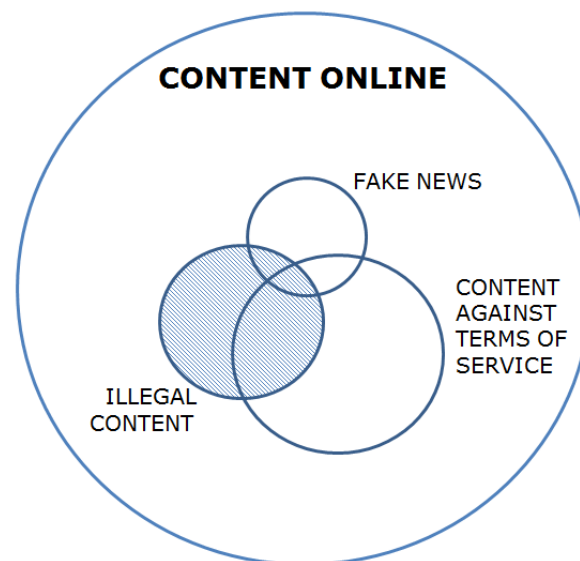
**(Proposal) Explosives  
precursors**



# Commission position on illegal content

- **Addressed to hosting services providers**
- **Concerning illegal content online**

**Illegality** is determined by specific legislation at EU level, as well as by national law.



- ***Act responsibly, but...***
- ***...beware impact on fundamental rights***

# Recommendation on illegal content

**Effective 'notice and action' procedures**

**More efficient tools and proactive technologies**

**Stronger safeguards to ensure fundamental rights**

**Transparency**

**Closer cooperation with authorities and trusted flaggers**

**Specific chapter on Terrorism**



# Safeguards to protect fundamental rights

- *Notice and action mechanisms, including redress mechanisms*
- *Filters produce false positives. A "human in the loop" is necessary*
- *Due diligence to avoid unintended and erroneous decisions*
- *Special attention to contextual illegality*

# What is a duty of care?

Bonus pater familias?

Due diligence?

Responsibility?

**Recital 48 ECD:** *This Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can **reasonably be expected** from them and which are specified by national law, in order to detect and prevent certain types of illegal activities.*

**LVMH:** *further clarify the role of online sales platforms and other intermediaries by introducing the principle of Duty of Care. Such a Duty would oblige intermediaries that create or control a dangerous situation to take any reasonable measures to prevent damages to third parties.*

**DSM Strategy (2015):** *"...whether to require intermediaries to exercise greater responsibility and due diligence in the way they manage their networks and systems – **a duty of care.**"*

*AVMSD/Copyright/Terrorist content... specific duties of care?*

# “Duties of care” – terrorist content

## *Article 3 Duties of care*

1. Hosting service providers shall take appropriate, reasonable and proportionate actions in accordance with this Regulation, against the dissemination of terrorist content and to protect users from terrorist content. In doing so, they shall act in a diligent, proportionate and non-discriminatory manner, and with due regard to the fundamental rights of the users and take into account the fundamental importance of the freedom of expression and information in an open and democratic society.
2. Hosting service providers shall include in their terms and conditions, and apply, provisions to prevent the dissemination of terrorist content.

- *“in accordance with this Regulation”* =
  - **Duties of care ≠ (only) proactive measures!**
  - **Legal representative/contact person**
  - **Transparency reports**
  - **Complaint mechanisms**
  - **Due regard to fundamental rights...**

# General monitoring obligations?

No general monitoring obligation	It depends	General monitoring obligation
Terrorism Directive	Terrorist content online (tbc)	Explosives precursors (tbc)
Consumer Protection – new Deal (tbc)		
CSAM Directive		
GDPR		
AVMSD		
copyright (EP, tbc)		
IPRED		

# Epilogue

*To geoblock or not to geoblock?*

- **“remove or disable access”**
- **Global or local de-referencing? (C-507/17, Google v CNIL)**
- **Global or local takedown? (C-18/18, Eva Glawischnig-Piesczek v Facebook)**
- **Terrorist content proposal**