

**PROPOSAL FOR A DIRECTIVE ON
COPYRIGHT IN THE DIGITAL SINGLE MARKET**

Draft compromise amendments on Article 13 and corresponding recitals

Article 2

(5) ‘online content sharing service provider’ means a provider of an information society service one of the main purposes of which is to store and give access to the public to copyright protected works or other protected subject-matter uploaded by its users, which the service optimises,

Services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all concerned rightholders, such as educational or scientific repositories, , code sharing services, should not be considered online content sharing service providers within the meaning of this Directive .

Providers of cloud services for individual use which do not provide access to the public, open source software developing platforms and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive.

(5a) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council 1.

ARTICLE 13

Draft compromise amendment covering among others the following amendments: AM 808 (Cavada, Rochefort, Beres), AM 809 (Geringer de Oedenberg, Stihler), AM 810 (Le Grip et. al), AM 811 (Estaras Ferragut), AM 812 (Cofferati, Costa), AM 814 (Niebler, Ehler, Voss), AM 815 (Zwiefka, Brunon Wenta), AM 816 (Negrescu et. al), AM 817 (de Grandes Pascual), AM 818 (Karim, Dzhambazki), AM 819 (Honeyball et. al), AM 820 (Reda et. al), AM 821 (Maullu), AM 822 (Guoga, Maydell), AM 823 (Rohde), AM 824 (Estaras Ferragut), AM 826 (Le Grip et. al), AM 827 (Le Grip et. al), AM 829 (Le Grip et. al), AM 830 (Zwiefka et. al), AM 831 (Niebler, Ehler, Voss), AM 833 (Reda et. al), AM 834 (Guoga), AM 836 (Le Grip et. al), AM 837 (Le Grip et. al), AM 839 (Negrescu et. al), AM 840 (Cavada et. al), AM 841 (Buda), AM 842 (Estaras Ferragut), AM 843 (Geringer de Oedenberg, Stihler), AM 845 (Reda et. al), AM 846 (Le Grip et. al), AM 847 (Maullu), AM 848 (Reda et. al), AM 851 (Zwiefka, Brunon Wenta), AM 853 (Geringer de Oedenberg et al.), AM 854 (Zwiefka, Brunon Wenta), AM 863 (Cofferati), AM 864 (Negrescu et al.), AM 867 (Honeyball et al.), AM 56 (Comodini Cachia), AM 57 (Comodini Cachia), AM 59 (Comodini Cachia), AM 60 (Comodini Cachia), AM 61 (Comodini Cachia), ITRE 48, ITRE 49, ITRE 51, IMCO 69, IMCO 70, IMCO 72, CULT 77, CULT 78, CULT 79, CULT 80, CULT 81, CULT 82, LIBE 9, LIBE 10, LIBE 12, LIBE 13.

<i>Text proposed by the Commission</i>	<i>Compromise amendment</i>
<p style="text-align: center;">Article 13</p> <p>Use of protected content by <i>information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users</i></p>	<p style="text-align: center;">Article 13</p> <p>Use of protected content <i>online content sharing service providers</i></p>
	<p><i>-1a. Without prejudice of Art. 3 (1) and (2) of the Directive 2001/29/EC online content sharing service providers perform an act of communication to the public and shall conclude fair and appropriate licensing agreements with rightholders, unless the rightholder does not wish to grant a license or licenses are not available.. Licensing agreements concluded by the online content sharing service providers with rights holders shall cover the liability for works uploaded by the users of their services in line with terms and conditions set out in the licensing agreement, provided that these users do not act for commercial purposes or are not the rightholder or his representative.</i></p>

1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.

1. Online content sharing service providers referred to in paragraph -1a shall, in cooperation with rightholders, take appropriate and proportionate measures to ensure the functioning of licensing agreements where concluded with rightholders for the use of their works or other subject-matter on those services.

In the absence of licensing agreements with rightholders online content sharing service providers shall take, in cooperation with rightholders, appropriate and proportionate measures leading to the non-availability of copyright or related-right infringing works or other subject-matter on those services, while non-infringing works and other subject matter shall remain available.

1a. Member States shall ensure that the online content sharing service providers referred to in the previous sub-paragraphs shall apply the above mentioned measures based on the relevant information provided by rightholders.

The online content sharing service providers shall be transparent towards rightholders and shall inform rightholders of the measures employed, their implementation, as well as when relevant, shall periodically report on the use of the works and other subject-matter.

1.b Members States shall ensure that the implementation of such measures shall be proportionate and strike a balance between the fundamental rights of users and rightholders and shall not impose a general obligation on online content sharing service providers to monitor the information which they transmit or store, in accordance with Article 15 of Directive 2000/31/EC where applicable.

<p>2. Member States shall ensure that the service providers referred to in paragraph 1 put in place complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1.</p>	<p>2. <i>To prevent misuses or limitations in the exercise of exceptions and limitations to copyright law</i>, Member States shall ensure that the service providers referred to in paragraph 1 put in place <i>effective and expeditious</i> complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. <i>Any complaint filed under such mechanisms shall be processed without undue delay. The rightholders should reasonably justify their decisions to avoid arbitrary dismissal of complaints.</i></p> <p><i>Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the measures referred to in paragraph 1 should not require the identification of individual users and the processing of their personal data.</i></p> <p><i>Member States shall also ensure that, in the context of the application of the measures referred to above, users have access to a court or other relevant judicial authority to assert the use of an exception or limitation to copyright rules. .</i></p>
<p>3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, <i>such as appropriate and proportionate content recognition technologies</i>, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.</p>	<p>3. Member States shall facilitate, where appropriate, the cooperation between the <i>online content sharing service providers</i> information society service providers, <i>users</i> and rightholders through stakeholder dialogues to define best practices <i>for the implementation of the measures referred to in paragraph 1 in a manner that is proportionate and efficient</i>, taking into account, among others, the nature of the services, the availability of technologies and their effectiveness in light of technological developments.</p>

RECITALS 37 to 39

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(37) Over the last years, the functioning of the online content marketplace has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to content online. This affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it.</p>	<p>(37) Over the last years, the functioning of the online content market has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to <i>copyright protected</i> content online. <i>Online services are means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. However, if they allow for diversity and ease of access to content they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders.</i> This affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it, <i>since some user uploaded content services do not enter into licensing agreements on the basis that they claim to be covered by the “safe-harbor” exemption of Directive 200/31/EC.</i></p>

<i>Text proposed by the Commission</i>	<i>Amendment</i>
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	<p>(37a) Certain information society services providers, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter uploaded by their users. The definition of an online content sharing service provider under this Directive shall cover information society service providers one of the main purposes of which is to store and give access to the public to or stream copyright protected content uploaded / made available by its users. and that optimise content, including amongst others promoting displaying, tagging, curating, sequencing the uploaded works or other subject-matter, irrespective of the means used therefore The definition does not include services that store and provide access to content for non-for-profit purposes and where the content is uploaded with the authorisation of all concerned rightholders, such as online encyclopaedia, educational or scientific repositories, code sharing services. It does not cover neither providers of cloud services for individual use which do not provide access to the public and online market places whose main activity is online retail of physical goods.</p>
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<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(38) Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of communication to the public, they are obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴.</p>	<p>(38) Online content sharing service providers perform an act of communication to the public and should conclude fair and appropriate licensing agreements with rightholders, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴. The rightholder should not be obliged to conclude licensing agreements</p>

In respect of Article 14, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefor.

In respect of Article 14 *of the Directive 2000/31/EC of the European Parliament and of the Council*, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefore.

Where licensing agreements are concluded, these should also cover the liability of the users when they are acting in a non-commercial capacity.

<p>In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users should take appropriate and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective technologies. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.</p>	<p>In order to ensure the functioning of any licensing agreement, online content sharing service providers should take appropriate and proportionate measures to ensure the protection of works or other subject-matter uploaded by their users, such as implementing effective technologies. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.</p> <p><i>In the absence of agreements with the rightsholders it is also reasonable to expect from online content sharing service providers to take appropriate and proportionate measures leading to the non-availability of copyright or related-right infringing works or other subject matter on those services. These service providers are important content distributors, thereby impacting on the exploitation of copyright-protected content. Such service providers should take appropriate and proportionate measures to ensure the non-availability of works or other subject matter as identified by right holders. These measures should however not lead to the non-availability of non-infringing works or other subject matter uploaded by users.</i></p> <p><i>The obligation to take measures should remain targeted and not affect services such as internet access providers and providers of cloud services which do not give access to the protected content to the public and are used for private use, or online market places. The obligation should not cover situations where content is mainly uploaded by the rightholders themselves or is authorized by them, including scientific or educational repositories.</i></p>
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³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

(39) Collaboration between information society service providers *storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users* and rightholders is essential for the functioning of *technologies, such as content recognition technologies*. *In such cases*, rightholders should provide the necessary data to allow *the services* to identify their content *and the services* should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. *The services should in particular provide rightholders with information on the type of technologies used, the way they are operated and their success rate for the recognition of rightholders' content. Those technologies should also allow rightholders to get information from the information society service providers on the use of their content covered by an agreement.*

(39) Cooperation between online content sharing service providers and rightholders is essential for the functioning of *the measures*. *In particular*, rightholders should provide the necessary information ~~data~~ *to the services* to allow *them* to identify their content *when applying the measures*. *The service providers* should be transparent towards rightholders with regard to the deployed measures, to allow the assessment of their appropriateness. *When assessing the proportionality and effectiveness of the measures implemented, technological constraints and limitations as well as the amount and the type of works or other subject matter uploaded by the users of the services should be taken into due consideration.*

In accordance with Article 15 of Directive 2000/31/EC, where applicable, the implementation of measures by service providers should not consist in a general monitoring obligation and should be limited to ensuring the non-availability of unauthorised uses on their services of specific and duly notified copyright protected works or other subject-matter.

When implementing such measures, the service providers shall also strike a balance between the rights of users and those of the rightholders under the Charter of Fundamental Rights of the European Union. The measures applied should not require the identification of individual users that upload content and should not involve the processing of data relating to individual users, in accordance with Directive 95/46/EC and Directive 2002/58/EC.

Since the measures deployed by online content sharing service providers in application of this

