

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

Draft compromise amendments on Article 13 and corresponding recitals

ARTICLE 13

Draft compromise amendment replacing all relevant amendments, including: 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 information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users</p>	<p style="text-align: center;">Article 13</p> <p>Use of protected content by information society service providers storing and giving access to works and other subject-matter uploaded by their users</p>
	<p><i>-1a. Information society service providers that 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 shall conclude fair and appropriate licensing agreements with rightholders. Licensing agreements concluded by the information society service providers shall cover the works uploaded by the users of their services, provided that these users do not</i></p>

<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.</p>	<p>act for commercial purposes.</p> <p>1. Information society service providers that store and provide to the public access to significant amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take appropriate and proportionate measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter.</p> <p><i>In the absence of agreements with rightholders, information society service providers that store and provide access to the public to significant amounts of works or other subject-matter shall take, in cooperation with rightholders, appropriate and proportionate measures to prevent the availability on their services of works or other subject-matter.</i></p> <p><i>1a. Member States shall ensure that the information society service providers referred to in the previous sub-paragraphs shall apply the above mentioned measures based on the necessary data provided by rightholders.</i></p> <p><i>The information society service providers shall be transparent towards rightholders and shall inform rightholders of the measures employed, their implementation, their accuracy as well as, when relevant, shall periodically report on the use of the works and other subject-matter.</i></p>
<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><i>2. To prevent misuses or limitations in the exercise of exceptions and limitations to copyright law, Member States shall ensure that the service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. Any complaint filed under such mechanisms shall be processed within a reasonable period of time.</i></p> <p><i>Moreover, in accordance with Directive</i></p>

	<p><i>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.</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 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 the 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 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 <i>copyright protected</i> content online. <i>Digital platforms 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.</p>

<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) 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 Council ³⁴.</p>
<p>In respect of Article 14, it is necessary to verify whether the service provider plays an</p>	<p>In respect of Article 14 <i>of the Directive 2000/31/EC of the European Parliament</i></p>

<p>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.</p>	<p><i>and of the Council</i>, 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.</p>
<p>In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to <i>large</i> 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, information society service providers storing and providing access to the public to <i>significant</i> amounts of copyright protected works or other subject-matter uploaded by their users should take appropriate and proportionate measures to ensure <i>the</i> 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><i>In the absence of agreements with the rightsholders it is also reasonable to expect a duty of care from information society service providers which store and give access to significant amounts of protected works uploaded by their users. 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 prevent the availability of works or other subject matter as identified by right holders.</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,</i></p>

	<i>including scientific or educational repositories.</i>
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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).

<p>(39) Collaboration between information society service providers <i>storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users</i> and rightholders is essential for the functioning of <i>technologies, such as content recognition technologies. In such cases</i>, rightholders should provide the necessary data to allow <i>the services</i> to identify their content <i>and the services</i> should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. <i>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.</i></p>	<p>(39) Cooperation between information society service providers and rightholders is essential for the functioning of <i>the measures. In particular</i>, rightholders should provide the necessary data <i>to the services</i> to allow <i>them</i> to identify their content <i>when applying the measures. The service providers</i> should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. <i>When assessing the proportionality and effectiveness of the measures implemented, technological constraints and limitations should be taken into due consideration.</i></p> <p><i>Moreover, the application of the measures by the service providers should not consist in an abstract monitoring thereby amounting to a general monitoring obligation but should apply to specifically identified content. They should be limited to preventing the unauthorised communication to the public of specifically identified and duly notified works based on the information provided by rightholders.</i></p> <p><i>When implementing such measures, the service providers shall also respect users' rights 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</i></p>
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	<p><i>users, in accordance with Directive 95/46/EC and Directive 2002/58/EC.</i></p> <p><i>Since the measures and technologies deployed by information society services providers in application of this Directive could have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the concerned content is covered by an exception or limitation, information society service providers should be required to offer a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. It should prescribe minimum standards for complaints to ensure that rightholders are given sufficient information to assess and respond to complaints. Rightholders should reply to any complaints received within a reasonable amount of time and take corrective action where measures prove to be unjustified.</i></p>
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