

Alternative compromise to Art 13, Art 1, Art 2 point 4a and 4b and related recitals, covering:

Alternative compromise on Recital 37 replacing: AM 359 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 360 (Estaràs Ferragut), AM 361 (De Grandes Pascual), AM 362 (Chrysogonos, Maštálka, Kuneva), AM 363 (Buda), AM 365 (Negrescu, Kallas, Charanzová, Schaake), AM 366 (Geringer de Oedenberg, Stihler, Negrescu), AM 367 (Guoga, Maydell), AM 369 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), CULT 29, IMCO 22, ITRE 22, AM 363 (Buda), AM 364 (Niebler, Ehler, Voss), AM 368 (Karim, Dzhambazki), AM 370 (Rozière et al.), AM 371 (Buda), AM 372 (Zwiefka, Wentta), CULT 2, AM 374 (Niebler, Ehler, Voss), AM 373 (Estaràs Ferragut), AM 375 (Cavada, Rochefort, Berès, Ries, Ehler, Marinho e Pinto), AM 376 (Rozière et al.), AM 377 (Niebler, Ehler, Voss), ITRE 23, AM 379 (Rozière et al.), AM 378 (Estaràs Ferragut)

(37) Evolution of digital technologies has led to the emergence of new business models and reinforced the role of the Internet as the main marketplace for the distribution of copyright protected content. Over the years, online services enabling their users to upload works and make them accessible to the public have flourished and have become important sources of access to content online, allowing for diversity and ease of access to content but also generating challenges when copyright protected content is uploaded without prior authorisation from rightholders.

Alternative compromise on Recital 37a replacing IMCO 23

(37a) Nowadays more creative content is being consumed than ever before. That is facilitated by online platforms and aggregation services. They are a means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. At the same time, artists and authors have struggled to see increases in revenues comparable to this increase in consumption. One of the reasons for this could be the lack of clarity regarding the status of these online services under e-commerce law. Thought should be given as to how this process can function with more legal certainty and respect for all affected parties, including artists and users. It is also important to ensure transparency and a fair level playing field. The Commission should develop guidance on the implementation of the intermediary liability framework in order to allow online platforms to comply with their responsibilities and the rules on liability and in order to enhance legal certainty and increase user confidence.

Alternative compromise on Recital 38 replacing: AM 380 (Regner, Weidenholzer), AM 381 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 382 (Maštálka), AM 383 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 384 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 385 (Negrescu, Kallas, Charanzová, Schaake), AM 386 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 387 (Estaràs Ferragut), AM 388 (Honeyball, Rozière, Delvaux, Ward, Griffin, Grammatikakis, Tarabella, Berès, Costa), AM 389 (Niebler, Ehler, Voss), AM 390 (Geringer de Oedenberg, Stihler, Negrescu, Weidenholzer), AM 391 (Buda), AM 392 (Chrysogonos, Maštálka, Kuneva), AM 393 (Zwiefka, Wentta), AM 394 (Maullu), AM 21 (Rapporteur), AM 399 (Karim), AM 395 (Guoga), AM 396 (Le Grip, Niebler, Pietikäinen), AM 397 (De Grandes Pascual), AM 398 (Estaràs Ferragut), AM 400 (Wölken, Köster), IMCO 24, LIBE 1, CULT 30 1st part, ITRE 24, AM 22 (Rapporteur), AM 401 (Geringer de Oedenberg, Stihler, Negrescu), AM 402 (Negrescu, Kallas, Charanzová, Schaake), AM 403 (Guoga, Maydell), AM 404 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 405 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), IMCO 25, LIBE 2, AM 406 (Chrysogonos, Maštálka, Kuneva), AM 407 (Honeyball, Rozière, Delvaux, Ward, Griffin,

Grammatikakis, Tarabella, Berès, Costa), AM 408 (Maullu), AM 409 (Wölken, Köster), AM 410 (Estaràs Ferragut), AM 411 (Karim, Dzhambazki), AM 412 (Zwiefka, Wenta), ITRE 25, CULT 30 2nd part, LIBE 3, AM 413(Geringer de Oedenberg, Stihler,Negrescu), AM 414 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 415 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 416 (Negrescu, Kallas, Charanzová, Schaake), AM 23 (Rapporteur), AM 418 (Le Grip, Niebler, Pietikäinen), AM 419 (Estaràs Ferragut), AM 420 (Wölken, Köster), AM 417(Zwiefka, Wenta), AM 423 (Karim, Dzhambazki), IMCO 26, LIBE 4, CULT 30 3rd part, AM 422 (De Grandes Pascual), AM 424 (Cofferati), AM 427 (Maullu), AM 421 (Guoga), AM 425 (Buda), AM 426 (Boutonnet, Bilde, Lebreton), ITRE 26, AM 24 (Rapporteur), LIBE 5, IMCO 27, AM 428 (Guoga, Maydell), AM 429 (Zwiefka, Wenta), AM 432 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 433 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 430 (Rozière, Honeyball, Guillaume, Berès, Tarabella), AM 431 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei)

(38) paragraph 1

Where information society service providers *offer users content storage services* and provide the public with access to *content and where such activity constitutes an act of communication to the public and is not of a merely technical, automatic and passive nature*, they *should be obliged to* conclude licensing agreements with rightholders *as regards copyright protected works or other subject-matter*, unless they are eligible for the liability exemptions provided for in Directive 2000/31/EC of the European Parliament and of the Council¹.

(38) paragraph 2

Deleted.

(38) paragraph 2a

In order to be eligible for the liability exemption provided for in Article 14 of Directive 2000/31/EC, information society service providers are, upon receiving notification or on becoming aware that a work which is subject to copyright and related rights is used in an unauthorised manner, obliged to act expeditiously to remove the content in question or conclude a licensing agreement with the relevant rightholders on fair and reasonable terms. To prevent misuses or abuses of notifications and to allow the exercise of exceptions and limitations to copyright law, and in order to protect freedom of information and expression, users of information society services should have access to effective and expeditious redress and complaint mechanisms.

(38) paragraph 3

In order to ensure the functioning of any licensing agreement, information society service providers *actively and directly involved in allowing users to upload works, in making works available and promoting works to the public*, should take appropriate and proportionate measures to ensure protection of works or other subject-matter. *Such measures should respect the Charter of Fundamental Rights of the European Union and should not impose a general obligation on* information society service providers *to monitor the information that they transmit or store as referred to in Article 15 of Directive 2000/31/EC.*

¹ 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).

(38a) For the implementation of such measures, the cooperation between information society service providers and rightholders is essential. Rightholders should accurately identify to information society service providers the works or other subject-matter in respect of which they claim to have the copyright. Rightholders should retain responsibility for claims made by third parties over the use of works which the ~~former~~ would have identified as being their own in the implementation of any agreement reached with the information society service provider.

Alternative compromise on Recital 39 replacing: AM 434 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 435 (Geringer de Oedenberg, Stihler, Negrescu), AM 436 (Regner, Weidenholzer), AM 437 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 438 (Maštálka, LIBE 6, IMCO 28, AM 439 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 440 (Zwiefka, Wenta), AM 441 (De Grandes Pascual), AM 442 (Rozière, Honeyball, Guillaume, Berès, Tarabella), AM 443 (Guoga, Maydell), AM 444 (Negrescu, Kallas, Charanzová, Schaake), AM 445 (Wölken, Köster), AM 447 (Karim, Dzhambazki), AM 448 (Le Grip, Niebler, Pietikäinen), CULT 31, ITRE 27, AM 446, (Cofferati), AM 25 (Rapporteur), AM 449 (Buda), AM 450 (Estaràs Ferragut), CULT 32, AM 451 (Honeyball, Rozière, Delvaux, Grammatikakis, Tarabella, Berès, Costa, Griffin), AM 454 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 455 (Estaràs Ferragut), AM 431 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), IMCO 27, AM 452 (Chrysogonos, Mastalka, Kuneva), AM 453 (Estaràs Ferragut), AM 456 (Cavada, Rochefort, Berès, Kuneva, Marinho e Pinto), AM 457 (Cavada, Rochefort, Berès, Marinho e Pinto)

(39)

Deleted.

Alternative compromise on Article 1 replacing: AM 489 (Boutonnet et al.), AM 488 (Ferrara et al.), CULT 40, AM 490 (Adinolfi et al.), AM 491 (Ferrara et al.), AM 28 (Rapporteur), AM 492 (Negrescu et al.), AM 493 (Reda), AM 494 (Karim, Dzhambazki), AM 495 (Geringer de Oedenberg et al.), IMCO 33, AM 496 (Geringer de Oedenberg et al.)

Article 1

Subject matter and scope

1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.

2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2000/31/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

Alternative compromise on Article 13 replacing: AM 798 (Reda), AM 799 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 800 (Maštálka, Kuneva), AM 801 (Negrescu, Kallas, Charanzová, Schaake), AM 802 (Geringer de Oedenberg, Stihler, Negrescu), AM 803 (Zwiefka, Wenta), AM 804 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 805 (Cavada,

Commented [1]: Reply to PO'S (06/13/2018, 12:53): "..."
This refers to the situation where a rightholder employs a third party to send notifications on their behalf. If the third party wrongfully claims that the rightholder holds the exclusive rights in a particular work, the rightholder should be responsible for that wrongful claim made by the third party.

Rochefort, Berès, Marinho e Pinto), AM 806 (Le Grip, Niebler, Buda, Pietikäinen), LIBE 8, CULT 77, ITRE 48, IMCO 68, AM 807 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 56 (Rapporteur), AM 808 (Cavada, Rochefort, Berès), AM 809 (Geringer de Oedenberg), AM 810 (Le Grip, Niebler, Buda, Pietikäinen), AM 811 (Estaràs Ferragut), AM 812 (Cofferati, Costa), AM 813 (Wölken, Köster), AM 814 (Niebler, Ehler, Voss), AM 815 (Zwiefka, Wenta), AM 816 (Negrescu, Kallas, Charanzová, Schaake), AM 817 (De Grandes Pascual), AM 818 (Karim, Dzhambazki), AM 819 (Honeyball, Rozière, Delvaux, Ward, Grammatikakis, Tarabella, Berès, Griffin), AM 820 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 821 (Maullu), AM 822 (Guoga, Maydell), ITRE 49, AM 823 (Rohde), AM 824 (Estaràs Ferragut), AM 825 (Buda), CULT 78 (IMCO 69), LIBE 9, AM 826 (Le Grip, Niebler, Buda, Pietikäinen), AM 827 (Le Grip, Niebler, Buda, Pietikäinen), AM 57 (Rapporteur), IMCO 70, LIBE 10, AM 828 (Wölken, Köster), AM 829 (Le Grip, Niebler, Buda, Pietikäinen), AM 830 (Zwiefka, Wenta), AM 831 (Niebler, Ehler, Voss), AM 832 (Negrescu, Kallas, Charanzová, Schaake), AM 833 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 834 (Guoga), AM 835 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 836 (Le Grip, Niebler, Buda, Pietikäinen), AM 837 (Le Grip, Niebler, Buda, Pietikäinen), AM 58 (Rapporteur), AM 838 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 839 (Negrescu, Kallas, Charanzová, Schaake), AM 840 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 841 (Buda), AM 842 (Estaràs Ferragut), AM 843 (Geringer de Oedenberg), AM 844 (Guoga), AM 845 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 846 (Le Grip, Niebler, Buda, Pietikäinen), CULT 79 (IMCO71), LIBE 11, ITRE 50, ITRE 52 5th part, CULT 80, CULT 81, AM 59 (Rapporteur), AM 847 (Maullu), AM 848 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 849 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 851 (Zwiefka, Wenta), AM 850 (Negrescu, Kallas, Charanzová, Schaake), AM 852 (Wölken, Köster), AM 853 (Geringer de Oedenberg, Stihler, Negrescu, Lauristin, Weidenholzer), AM 60 (Rapporteur), IMCO 72, LIBE 12, CULT 82, AM 854 (Zwiefka, Wenta), CULT 85, AM 855 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 856 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 857 (Geringer de Oedenberg, Stihler, Negrescu), AM 858 (Zwiefka, Wenta), AM 859 (Negrescu, Kallas, Charanzová, Schaake), AM 860 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 861 (Guoga), AM 862 (De Grandes Pascual), AM 61 (Rapporteur), AM 863 (Cofferati), CULT 83, IMCO 73, LIBE 13, ITRE 51, CULT 84, AM 864 (Negrescu, Kallas, Charanzová, Schaake), AM 866 (Zwiefka, Wenta), AM 865 (Estaràs Ferragut), ITRE 52, LIBE 14, AM 867 (Honeyball, Rozière, Delvaux, Ward, Grammatikakis, Tarabella, Berès, Griffin)

Title IV – Chapter 2 – title Certain uses of protected content online

Article 13

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~~

1. *Where* information society service providers *offer users content storage services* and provide the public *with* access to *content and where such activity is not eligible for the liability exemptions provided for in Directive 2000/31/EC, they shall take appropriate and proportionate* measures to ensure the functioning of licensing agreements concluded with rightholders. *The implementation of such agreements shall respect the fundamental rights of users and shall not impose a general obligation on information society service providers to monitor the information that they transmit or store, in accordance with Article 15 of Directive 2000/31/EC.*

1a. For the purpose of ensuring the functioning of licensing agreements, as referred to in paragraph 1, information society service providers and rightholders shall cooperate with each other. Rightholders shall accurately identify to information society service providers the works or other subject-matter in respect of which they have the copyright. The information society service providers shall inform rightholders of the measures employed and their accuracy as well as, when relevant, periodically report on the use of the works and other subject-matter.

2. Member States shall ensure that the service providers referred to in paragraph 1 **in cooperation with rightholders** put in place complaints and redress mechanisms that are available to users in case of disputes over the **implementation of the licensing agreements** referred to in paragraph 1.

2a. Member States shall ensure that users have access to a court or another competent authority for the purpose of asserting their right of use under an exception or limitation and to appeal any restrictive measures agreed upon pursuant to paragraph 3.

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers **referred to in paragraph 1, user representatives** and rightholders through stakeholder dialogues to define best practices **for the implementation of paragraph 1. The measures undertaken shall be appropriate and proportionate and shall take** into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

3a. Hyperlinking to already publicly available content shall not constitute communication to the public of the source of that content, where the hyperlink only contains information necessary to find or request the source's contents.