

Amendment

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Jean-Marie Cavada

on behalf of the ALDE Group

Report

A8-0245/2018

Axel Voss

on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market

COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive**Article 5a (new)***Text proposed by the Commission**Amendment***Article 5a**

Use of extracts from pre-existing works and other subject-matter in content uploaded or made available by users

(1) Member States shall provide for an exception to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, point (a) of Article 4(1) of Directive 2009/24/EC and Article 11 of this Directive in order to allow for the use of extracts from pre-existing works and other subject-matter in content uploaded or made available by users, other than in the course of their work, for purposes such as criticism, review, illustration, caricature, parody or pastiche, provided that the extracts:

(a) relate to works or other subject-matter that have been lawfully made available to the public;

(b) are accompanied by the indication of the source, including the author's name, unless this turns out to be impossible; and

(c) are used in accordance with fair practice and in a manner that does not extend beyond the specific purpose for which they are being used.

(2) Any contractual provision contrary to the exception provided for in this Article

(2) Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.

(3) Online content sharing services providers shall not be able invoke for their benefit the exception provided for in paragraph 1 of this Article in order to limit their liability or the extent of their obligations under the agreements concluded with rightholders in application of Article 13 of this Directive.

Amendment

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COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive

Article 11

Text proposed by the Commission

Amendment

Article 11

Article 11

Protection of press publications concerning digital uses

Protection of press publications concerning digital uses

1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.

1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC ***so that they may obtain fair and proportionate remuneration*** for the digital use of their press publications ***by information society service providers.***

Such rights shall not apply to uses of insubstantial parts of a press publication, including individual words or very short excerpts.

The protection shall also not extend to factual information.

1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.

2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the

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1. The right referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.

2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks, which are accompanied by individual words or very short excerpts of texts.

3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.

3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.

4. The rights referred to in paragraph 1 shall expire **20** years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.

4. The rights referred to in paragraph 1 shall expire **5** years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.

The right referred to in paragraph 1 shall not apply with retroactive effect.

4a. Member States shall ensure that authors receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers.

Amendment 3

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COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive

Recital 5a (new)

Text proposed by the Commission

Amendment

(5a) In some Member States reproductions and uses of works of architecture or sculpture, permanently located in public places require prior authorisation of the authors, the right holders or collecting societies. In other Member States, an exception to the rights

places require prior authorisation of the authors, the right holders or collecting societies. In other Member States, an exception to the rights provided for in Art. 2 and 3 of Directive 2001/29/EC has been granted for reproductions or other uses of such works, either for commercial or non-commercial purposes. Given the fragmented legal situation within the EU as regards the so-called “freedom of panorama”, further harmonisation would be beneficial in order to stimulate innovation and the sharing of cultural goods across Europe.

Amendment 4

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on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market

COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive

Article 5b (new)

Text proposed by the Commission

Amendment

Article 5 b

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC and point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, permitting the reproduction and use of works, such as works of architecture or sculpture, permanently located in public places, with the exception of any usage related to a commercial purpose.

2. Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.

Amendment 5

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COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive

Recital 37a

Text proposed by the Commission

Amendment

(37a) Certain information society services, 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 or to stream copyright protected content uploaded / made available by its users and that optimise content beyond the mere hosting of the content, including amongst others promoting, target displaying, tagging, curating, sequencing the uploaded works or other subject-matter, irrespective of the means used therefor, and therefore act in an active way. The definition of online content sharing service providers under this Directive does not cover service providers that act 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 right holders concerned, such as educational or scientific repositories. Providers of cloud services for individual use which do not provide direct 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.</Amend>

Amendment

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Report

A8-0245/2018

Axel Voss

on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market

COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive

Recital 38

Text proposed by the Commission

Amendment

(38) *Where information society service providers store and provide access to the public to copyright protected works or to the public and therefore are responsible for other subject-matter uploaded by their users, thereby going beyond the mere active role, they should conclude fair and appropriate licensing agreements with right holders that so request. Therefore they are obliged to conclude licensing agreements with rightholders, provided for in Article 14 of Directive 2000/31/EC as far as copyright relevant acts are concerned.*

Directive 2000/31/EC of the European Parliament and of the Council³⁴.

Online content sharing service providers perform an act of communication to the public, they are obliged to conclude licensing agreements with right holders that so request. Therefore they cannot benefit from the liability exemption provided in Article 14 of Directive 2000/31/EC as far as copyright relevant acts are concerned.

The responsibility of online content sharing service providers should not extend to hyperlinking with respect to press publications, as defined in this Directive.

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 concluding licensing agreements, subject-matter or promoting them, irrespective of the nature of the means used therefor.

The right holder should not be obliged to conclude licensing agreements where licensing agreements are concluded, they should also cover, to the same extent and scope, the liability of users when they are acting in a non-commercial capacity.

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.*

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. These measures may take different forms, involving and/or combining human review and effective technologies.*

In the absence of agreements with the right holders, it is also reasonable to expect from online content sharing service providers that they remove expeditiously or take appropriate and proportionate measures leading to the non-availability on those services of copyright or related-right infringing works or other subject matter 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. The measures taken in application of this Directive should not be applied beyond the parameters/criteria defined in cooperation with right holders. Right holders should be

parameters/criteria defined in cooperation with right holders. Right holders should be liable for any abuse and unjustified use of the measures taken in application of this Directive.

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COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive

Recital 39

Text proposed by the Commission

Amendment

(39) **Collaboration** between (39) **Cooperation** between **online information society** service providers **content sharing** service providers and **storing and providing access to the public** rightholders is essential for the functioning **to large amounts of copyright protected of the measures. In particular,** rightholders **works or other subject-matter uploaded by** should provide the **relevant information to their users** and rightholders is essential for **online content sharing service providers** to the functioning of **technologies, such as** allow **them** to identify their content **when content recognition technologies. In such applying the measures. The service cases,** rightholders should provide the **providers** should be transparent towards **necessary data** to allow **the services** to rightholders with regard to the deployed identify their content **and the services measures,** to allow the assessment of their should be transparent towards rightholders appropriateness. **To avoid an excessive** with regard to the deployed **technologies, to burden on start-ups, SMEs and micro-** allow the assessment of their **enterprises the measures should be** appropriateness. **The services should in proportionate to their means and size. particular provide rightholders with** **When assessing the proportionality and information on the type of technologies effectiveness of the measures implemented, used, the way they are operated and their due consideration should be given to success rate for the recognition of technological constraints and limitations, rightholders' content. Those technologies their cost as well as to the amount or the should also allow rightholders to get type of works/content or other subject information from the information society matter uploaded by the users of the service providers on the use of their services, the amount of works/content or content covered by an agreement.**

the size of the service. 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 should also strike a balance between the rights of users and those of the right holders under the Charter of Fundamental Rights of the European Union. Measures should be without prejudice to the legitimate use of exceptions and limitations. The measures

European Union. Measures should be without prejudice to the legitimate use of exceptions and limitations. The measures applied should not require the identification of individual users that upload content beyond the strict requirements for the proper functioning of the complaint and redress mechanism and should not involve the processing of data relating to individual users, in accordance with Regulation (EU) 2016/679 and Directive 2002/58/EC.

Since the measures deployed by online content sharing service 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 content concerned is covered by an exception or limitation, online content sharing service providers should be required to offer a complaint 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 there is sufficient information to assess and respond to complaints. A trusted third party designated by the Member State should reply to any complaints received within a reasonable amount of time. The platforms or a trusted third party responsible for the redress mechanism should take corrective action without undue delay where measures prove to be unjustified. </Amend>

Amendment 8

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COM(2016)0593 – C8-0245/2018 – 2016/0280(COD)

Proposal for a directive

Article 13

Text proposed by the Commission

Amendment

Article 13

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**

Use of protected content by **online content sharing service providers**

-1. Without prejudice to paragraph 1 and 2 of Article 3 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 right holders that so request. Such 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 where such users do not act for commercial purposes or are not the right holder or his representative.

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

In the absence of licensing agreements with right holders, online content sharing service providers shall ensure the non-availability of or remove expeditiously from their services copyright-protected works or other subject matter that are identified by right holders and shall take appropriate and proportionate measures to prevent future availability of such works or other subject matter. Any measures taken for this purpose by service providers shall not prevent the availability of non-identified copyright-protected works or other subject matter, including such content covered by a copyright exception.

Member States shall ensure that the online

content covered by a copyright exception.

Member States shall ensure that the online content sharing service providers shall apply such measures based on the relevant information provided by right holders. To ensure the effective functioning of those measures, right holders shall provide the online content sharing service provider with such information.

The online content sharing service providers shall inform right holders in a transparent manner of the measures employed, their implementation, and where relevant, shall periodically report on the use of the works and other subject matter.

Members States shall ensure that the implementation of any measures referred to in this paragraph shall be proportionate, taking into account, among others, the nature and size of the services, the availability of technologies and their effectiveness in light of technological developments, and strike a balance between the fundamental rights of users and right holders, as well as exceptions and limitations provided for in Union law and the rights set out in Article 11 of the Charter of Fundamental Rights, and shall in accordance with Article 15 of Directive 2000/31/EC, where applicable, not impose a general obligation on online content sharing service providers to monitor the information which they transmit or store.

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.

*2. To prevent misuses of or restrictions to 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 without undue delay and be subject to human review by a trusted third party designated by the Member States. Rightholders' liability shall be incurred for any unjustified use of the measures referred to in paragraph 1, and dismissal of complaints shall be motivated.***

Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC, Regulation 2016/679 (General Data Protection Regulation), Article 8 of the Charter of Fundamental Rights and Article 19 of the UN Declaration on

Protection Regulation), Article 8 of the Charter of Fundamental Rights and Article 19 of the UN Declaration on Human Rights Charter, the measures referred to in paragraph 1 shall only require the identification of individual users and the processing of their personal data, to the strict extent necessary for the proper functioning of the complaints and redress mechanism referred to in this paragraph. Once a complaint has been definitively resolved under the complaint and redress mechanism, the personal data related to that complaint shall be deleted.

Member States shall also ensure that, in the context of the application of the measures referred to in paragraph 1, users have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.

3. Member States shall facilitate, where *appropriate*, the cooperation between the *information society* service providers and rightholders through stakeholder dialogues to define best practices, *such as appropriate and proportionate content recognition technologies*, taking into account, among others, the nature of the services, the availability of *the* technologies and their effectiveness in light of technological developments.

3. Member States shall facilitate, where *necessary*, the cooperation between the *online content sharing* service providers, *users* and rightholders through stakeholder dialogues to *agree criteria for determining whether the measures relating to unlicensed works and other subject matter referred to in paragraph 1 are appropriate and proportionate*, taking into account, for example, the nature *and size* of the services, *the number of works or amount of other subject matter available on the service*, the availability of technologies and their effectiveness in light of technological developments. </Amend>