

**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.

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Text proposed by the Commission	Compromise amendment
Article 13	Article 13

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>	Use of protected content <i>online content sharing service providers</i>
	<p>-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.</p>
<p>1. <i>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</i> 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>1. <i>Online content sharing service providers referred to in paragraph -1a</i> shall, in cooperation with rightholders, take <i>appropriate and proportionate</i> measures to ensure the functioning of licensing agreements <i>where</i> concluded with rightholders for the use of their works or other subject-matter <i>on those services</i>.</p> <p>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.</p> <p>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 <i>relevant information</i> provided</p>

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	<p>by rightholders.</p> <p><i>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.</i></p> <p><u><i>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.</i></u></p>	<p>Deleted: <i>their accuracy</i></p> <p>Deleted: <i>agreements or</i></p> <p>Commented [HL3]: This part comes from IMCO 69</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 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</i></p>	<p>Deleted: <i>within a reasonable period of time</i></p>

	<i>or limitation to copyright rules.</i>
<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, users 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>

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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>

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<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>(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.</i></p>

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~~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-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.

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Text proposed by the Commission	Amendment
<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) <i>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.</i> <i>The rightholder should not be obliged to conclude licensing agreements.</i></p>
<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.</p>	<p>In respect of Article 14 <i>of the Directive 2000/31/EC of the European Parliament 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 therefor. Where licensing agreements are concluded, these should also cover the liability of the users when they are acting in a non-commercial capacity.</p>

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<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, online content sharing service providers should take appropriate and proportionate measures to ensure <i>the</i> protection of works or other subject-matter uploaded by their users, such as implementing effective technologies. This obligation should also apply when the <u>information society service providers</u> 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 rightholders it is also reasonable to expect from online content sharing service providers <u>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.</u> 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 <u>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.</u></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

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	<p><i>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.</i></p> <p><i>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 concerned content is covered by an exception or limitation, online content sharing 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.</i></p> <p><i><u>Rightholders or a representative</u> should reply to any complaints received within a reasonable amount of time. <u>The platforms or a trusted third party responsible for the redress mechanism</u> should take corrective action <u>without undue delay</u> where measures prove to be unjustified.</i></p>
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Art. 2

(4) 'press publication' means a fixation of publishers or news agencies of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider.

Art. 11

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 in order to obtain fair and proportionate remuneration for the digital use of their press publications.

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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 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.

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2a. The rights referred to in paragraph 1 shall not extend to acts of hyperlinking.

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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. Legitimate private and non-commercial use of press publications by individual users shall therefore remain unaffected by the right referred to in paragraph 1.

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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.

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.

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(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. **The increasing imbalance between powerful platforms and press publishers, which can also be news agencies, has already lead to an remarkable regression of the media landscape on regional level.** In the transition from print to digital, publishers and news agencies of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.

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(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry and thereby to guarantee the availability of reliable information. It is therefore necessary for European Union Member States to provide at Union level legal protection for press publications in the European Union for digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses in order to obtain fair and proportionate remuneration for such uses. Private uses should be excluded from this reference. Also, the listing in a search engine should not be considered as fair and proportionate remuneration.

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(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public according to the judgements of the Court of Justice of the European Union, notably hyperlinking to content which is available in the internet to the punlic with the consent of the rightholder, and hyperlinking to content which is available on another website without the consent of the rightholder for non commercial purposes by a person who did not know or could not reasonably have known the illegal nature of the publication of those works on that other website.

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(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. Member States should be able to subject the right to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.

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(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press

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publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. **Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for license of their work to the press publisher, authors whose work is incorporated in a press publication shall be entitled to an appropriate share of the new additional revenues press publishers receive for certain types of secondary use of their press publications by information society service providers in respect to the rights provided for in Article 11 paragraph 1. The amount of the compensation attributed to the authors shall take into account the specific industry licensing standards regarding works incorporated in a press publication which are accepted as appropriate in the respective member State; and the compensation attributed to authors shall not affect the license terms agreed between the author and the press publisher for the use of the author's article by the press publisher.**

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