



Committee on the Internal Market and Consumer Protection

2016/0280(COD)

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EPP Alternative COMPROMISE AMENDMENTS on the Value Gap

**Draft opinion
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(PE599.682v01-00)**

Copyright in the Digital Single Market

Proposal for a directive
(COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))

Proposal for a directive
Recital 37

*Text proposed by the
Commission*

(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.*

RAPPORTEUR CA 29
(replacing AMs: 23, 213, 214, 215, 216, 217)

(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 providing access to content uploaded by their users without the involvement of **rightholders** 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.*

EPP Alternative Comp AM
(covering AMs 218, 219, 221, 222)

(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. *Moreover, user uploaded content services attract users and derive economic value from providing access to protected works and other subject matter, often including its optimization of presentation, organisation and promotion. In doing so, they directly compete with licensed content providers for the same users and revenues. However, unlike licensed services, such user uploaded content services either do not pay or underpay the creators for the works on which they rely by wrongfully claiming safe harbour provisions of the Directive 2000/31/EC.*

Or. en

**Proposal for a directive
Recital 37 a (new)**

*Text proposed by the
Commission*

No proposal

*RAPPORTEUR CA 30
(replacing AMs: 220, 223,
224)*

(37 a) Today 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 comparable increases in revenues from 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. Consideration is to be made of how this process can function with more legal certainty and respect for all affected parties including artists and users and it is important to ensure transparency and a fair level playing field. The Commission should analyse whether the liability regimes set in the e-commerce Directive 17 years ago are still fit for purpose rather than introduce new provisions in this Directive. Without a proper assessment and review performed by the Commission, matters affecting the liability of information society service providers should not be introduced under the copyright framework.

*EPP Alternative Comp AM
(covering AMs 220, 224,
225, 226, 227)*

(37 a) Today 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 opportunities for cultural and creative industries to develop new business models. At the same time, the creative sectors have not seen comparable increases in revenues from this increase in consumption. One of the main reasons is being referred to as a transfer of value that has emerged due to the lack of clarity regarding the status of these online services under copyright and e-commerce law. This transfer of value undermines the efficiency of the online market, distorts competition and drives down the overall value of cultural content online. It also limits consumer choice for new and innovative legitimate services in the European Digital Single Market and risks cultural and creative industries that create significant jobs and growth for EU economy as underlined by the European Parliament resolution of 13 December 2016 on a coherent EU policy for cultural and creative industries (2016/2072(INI)). It is therefore of utmost importance to ensure transparency, a fair level playing field, recognition of values and stimulation of innovation, creativity, investment and production of content.

Proposal for a directive
Recital 38 – paragraph 1

*Text proposed by the
Commission*

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*.

*RAPPORTEUR CA 31
(replacing AMs: 24, 230, 231,
233, 235, 238, 239, 241, 242,
243, 244, 245)*

*EPP Alternative Comp
AM (covering AMs 234,
235, 236, 237, 240, 241,
242, 244, 245)*

Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, *Upon obtaining knowledge after receiving notification by the rightsholders that the work is used in an infringing manner and subject to copyright and related rights* they are obliged to *take that content down in order to be eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴. However, in many cases, it is in the interests of all parties involved that the content remains online. Therefore, the service providers should have the opportunity to conclude licensing agreements with rightholders, which should be fair and balanced and ensure fair and appropriate remuneration. To provide legal certainty for the users, the authorisation granted to these service providers shall cover the liability of their users for the copyright-relevant acts. In order to ensure that notifications of works infringing copyright and related rights are valid, rightsholders should provide service providers with an accurate identification of both the protected works and the uploaded content deemed to be infringing, including its exact location. To prevent misuses or abuses of notifications, and protect freedom of information and expression and to allow users*

Where 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 perform an act of communication and/or making available to the public initiated by users uploading such works or other subject matter*. 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 *and at the request of rightsholders, these service providers are obliged to conclude fair and equitable licensing agreements with rightholders for the communication to the public. If these service providers in addition store the works or other subject-matter uploaded by users the licensing agreements comprise also the reproduction rights. In order to provide legal certainty for the users, the authorisation granted to these service providers shall cover the liability of users for the relevant copyright acts, provided the latter are not acting on a professional basis.*

to exercise their right of use under the limitations and exceptions to copyright law that exist under national law in the country in which the use is made, users should have access to redress and complaint mechanisms as well as access to a court of other relevant authority. In order to protect fundamental rights and improve legal certainty for all concerned parties in light of the case law of the Court of Justice of the European Union, it is necessary that any agreements on measures between rightsholders and information society service providers do not impose a general monitoring obligation on information society service providers to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity.

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).

Or. en

Proposal for a directive Recital 38 – paragraph 2

Text proposed by the Commission

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

*RAPPORTEUR
CA 32 (replacing
AMs: 25, 246, 247,
248, 249, 250)*

Deleted

*EPP Alternative Comp AM (covering
AMs 251, 252, 253, 255)*

In respect of the application of Article 14 of the Directive 2000/31/EC, it is necessary to verify whether the role played by the service provider plays an is of an active nature. An active role, including by optimising includes, inter alia, optimisation for

them, irrespective of the nature of the means used therefor.

the purpose of the presentation by the service of the uploaded works or subject-matter or ~~promoting them~~ *their promotion by the service*, irrespective of the nature of the means used therefor. *The service providers that play such an active role are ineligible for the liability exemption of such Article 14.*

Or. en

**Proposal for a directive
Recital 38 – paragraph 3**

Text proposed by the Commission

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.

*RAPPORTEUR CA 33
(replacing AMs: 26, 257, 259, 260, 263, 264)*

*EPP Alternative Comp AM
(covering AMs 261, 262)*

Where information society service providers *act in an active manner in such a way that they have control or knowledge of the content uploaded, they should endeavour to conclude licensing agreements with rightholders, they* should take appropriate and proportionate measures to *their profit and size to* ensure protection of works or other subject-matter, such as implementing *notice and takedown mechanisms or other means, consistent with industry best practices.* This obligation *shall not* apply when the *service provider does not have actual knowledge of the infringing nature of the use of the works or is not aware of facts or circumstances from which the illegality is apparent; or where the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.*

In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to large significant 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.

Or. en

**Proposal for a directive
Recital 39**
PE604.530v01-00

Text proposed by the Commission

(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.**

*RAPPORTEUR CA 34
(replacing AMs: 27, 272, 273, 275, 276, 278)*

(39) Collaboration between information society service providers **actively involved in the making available of significant amounts of copyright protected works and rightsholders engaged in voluntary agreements is essential to facilitate the accurate identification of infringing works online. Appropriate safeguards should however be put in place where they agree on the introduction of voluntary measures to ensure that these do not infringe the fundamental rights of users, namely their right to protection of their personal data and their freedom to receive or impart information, in accordance with Articles 8 and 11 of the Charter of Fundamental Rights of the European Union, in particular their rights to the use of works made in accordance with an exception or limitation to copyright. These measures should not require the identification of uploaders, thus not posing any risk for privacy of individual end users. Methods tackling infringing content, such as notice and take down, should be available to be used as they can be effective in addressing infringing content. In such cases, rightholders should provide the necessary data to allow the services to identify their content and the services should be transparent towards all affected parties with regard to the deployed measures, to allow the assessment of their appropriateness.**

*EPP Alternative Comp AM
(covering AMs 276, 277)*

(39) Collaboration between information society service providers storing and providing access to the public to **large significant 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. For start-ups¹ the use of such technologies would probably constitute an insurmountable financial obstacle, for which reason start-ups should be exempted from the obligation to employ such technologies.**

as micro-enterprises and small enterprises in accordance with the Commission recommendation concerning the definition of micro-enterprises and small and medium-sized enterprises and in existence for less than five years.

Or. en

**Proposal for a directive
Recital 39 a (new)**

*Text proposed by the
Commission*

RAPPORTEUR CA

**EPP Alternative Comp AM
(covering AMs 279, 280,
282)**

No proposal

No proposal

(39 a new) The use of technical measures is essential for the functioning of online licensing and rights management purposes. Such technical measures therefore do not require the identity of uploaders and hence do not pose any risk for privacy of individual end users. Furthermore, those technical measures involve a highly targeted technical cooperation of rightholders and information society service providers based on the data provided by rightholders, and therefore do not lead to general obligation to monitor and find facts about the content. The provision of Article 13 therefore is fully compatible with Article 15 of Directive 2000/31/EC and the European Charter of Fundamental Rights.

(39 b new) In view of the requirements imposed by this directive regarding contracts and cooperation between information society service providers and rightholders, it is necessary to provide for an intermediate procedure which will permit the parties to seek an amicable solution to any dispute concerning

the relevant provisions of this directive. Member States should support such a mechanism by designating an impartial body with relevant experience and competence to assist the parties in the resolution of their dispute.

Or. en

**Proposal for a directive
Article 13 – paragraph 1**

Text proposed by the Commission

Certain uses of protected content by online services

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. 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

RAPPORTEUR CA 40
(replacing AMs: 62, 63, 448, 449, 455, 456, 459, 462, 463, 464, 465, 466, 468, 471, 473, 474, 480, 481, 483, 484, 485)

Certain uses of protected content by *the users of* online services

Use of *copyright* protected content *uploaded by users of* information society service providers

1. *Where* Information society service providers that *actively promote and curate content in the making available to the public copyright protected digital works or other digital subject-matter uploaded by their users and with knowledge by the information society service provider of the infringing nature of the uses of those works or subject matter* should *endeavour to achieve, where appropriate, fair and balanced agreements with rightholders governing this content and* in cooperation with rightholders, *they should* take measures to ensure the functioning of *those* agreements. *Those measures, such as notice and takedown mechanisms,*

EPP Alternative Comp AM
(covering AMs 456, 457, 458, 460, 461, 467, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 481, 482, 508)

Certain uses of protected content by online services

Use of *copyright* protected content by information society service providers *storing and giving access to large amounts of works and other subject-matter uploaded by their users*

For information society service providers that *store and make available and/or provide to the public access to large amounts of copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities, the liability exemption provided for in Article 14 of Directive 2000/31/EC shall not apply. At the request of rightholders, these service providers shall be obliged to conclude fair and equitable licensing agreements with rightholders for the communication to the public. If these service providers in addition store the works or other subject-matter uploaded by users the licensing agreements*

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.

shall be appropriate and proportionate and may take into account various available technological developments that would be appropriate for the nature of services of information society service provider. Those service providers shall cooperate and work together with rightholders to ensure that the functioning and implementation of such agreements are rapid, full and transparent, including towards its users. The implementation of such agreements shall respect the users' fundamental rights and shall in particular not convey an obligation upon the information society service provider to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

For the purpose of ensuring the functioning of the abovementioned agreements, rightsholders shall provide service providers with accurately identified works or other subject matter over which they enjoy rights, including the exact location of the work in question.

comprise also the reproduction rights. Under the terms of the agreements concluded with the rightholders, the information society service providers shall take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter. The agreements should cover the liability of users of information society service providers when these users are not acting professionally in respect of acts falling under Articles 2 and 3 of Directive 2001/31/EC which they perform.

When information society service providers (i) play an active role but are not required to conclude a licence agreement, or (ii) are eligible for the liability exemption provided for in Article 14 of Directive 2000/31/EC, but make available and/or provide to the public access to a significant amount of copyright protected works or other subject-matter, these information society service providers shall take measures to prevent protected works or other subject-matter identified by rightholders in cooperation with the service providers from being made available. Those measures, such as the use of effective content recognition technologies, shall be effective, appropriate and proportionate and compliant with the relevant industry standard. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate and timely

reporting on the recognition and use of the works and other subject-matter.

Rightholders shall cooperate with information society service providers for the provision of all relevant and necessary details to ensure the functioning of measures taken by the service providers pursuant to this article.

Paragraph 1 shall not apply when the service provider does not have actual knowledge of infringing uses of the works or is not aware of facts or circumstances from which the infringement is apparent, or where the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Micro-enterprises and small enterprises^{1b} less than ten years old shall be exempted from the obligation to take measures to ensure that the agreements concluded with the rightholders are complied with that would be disproportionate to their size.

^{1b}in accordance with the Commission recommendation concerning the definition of micro-enterprises and small and medium-sized enterprises

Micro-enterprises and small enterprises^{1b} in existence for less than five years shall be exempted from the obligation to use content recognition technologies, but not from the obligation to take measures to prevent protected works or other subject-matter identified by rightholders from being made available.

^{1b}in accordance with the Commission recommendation concerning the definition of micro-enterprises and small and medium-sized enterprises

Or. en

**Proposal for a directive
Article 13 – paragraph 2**

*Text proposed by the
Commission*

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.

RAPPORTEUR CA 41
(replacing AMs: 64, 488, 490, 491, 493, 495, 497)

2. Member States shall ensure that the service providers referred to in paragraph 1 put in place **effective mechanisms, including for complaint** and redress, that are available to users in case of disputes over the application **and implementation** of the measures referred to in paragraph 1. **These mechanisms shall in particular ensure that where the removal of the content referred to in paragraph 1 is not justified, the content in question shall be reinstated online within a reasonable time.**

EPP Alternative Comp AM
(covering AMs 489, 492)

2. Member States shall ensure that the service providers referred to in paragraph 1 **put in place provide users with appropriate** complaints and redress mechanisms that are available to users **through which users can seek answers, necessary guidelines or solutions** in case of disputes over the application of the measures referred to in paragraph 1, **especially where the content uploaded by users is unjustifiably prevented by the service provider. Any complaint filed under one of the mechanisms shall be processed by the relevant rightholder within a reasonable period of time. The rightholder shall provide evidence for the rights being claimed.**

The agreements referred to in paragraph 1 shall be implemented without prejudice to the use of works made within an exception or limitation to copyright. Member States shall ensure the possibility of judicial redress and provide users access to a court or other relevant authority for the purpose of asserting their right of use under an exception or limitation. To this end Member States shall ensure that users are allowed to communicate rapidly and in an effective manner with the rightsholders who have requested any measures within the scope of agreements referred to paragraph 1 in order to challenge the application of those measures. In order to

ensure uniform protection of users and rightsholders across the Union, the Commission shall develop guidelines or legislative proposals on the conditions that need to be met for the validity of the notification referred to in paragraph 1 and for the complaint and redress mechanisms referred to in paragraph 2.

Or. en

**Proposal for a directive
Article 13 – paragraph 3**

Text proposed by the Commission

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.*

*RAPPORTEUR CA 42
(replacing AMs: 65, 500,
501, 502, 503)*

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers, *user representatives* and rightholders through stakeholder dialogues to define best practices *for the implementation of paragraph 1 in a manner that is proportionate and efficient.*

*EPP Alternative Comp AM
(covering AM 503, 504)*

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers, *user representatives* 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.

In cooperation with the Member States, the Commission shall encourage the exchange of best practices across the Union regarding the results of any cooperation established pursuant to the implementation of paragraph 1.

Or. en