



22.11.2017

# **OPINION**

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council  
on copyright in the Digital Single Market  
(COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))

Rapporteur: Michał Boni

PA\_Legam

## SHORT JUSTIFICATION

The draft opinion of the LIBE Committee focuses on Article 13 of the Directive and respective recitals.

As the LIBE Committee is responsible for the protection of fundamental rights and freedoms and legislation regarding the protection of personal data recognised by the Charter of the European Union this draft opinion reflects the objective to make sure that any solutions adopted in this legal instrument will be respecting the Charter of Fundamental Rights.

The draft opinion provides clarifications on which information society service providers are covered by the Article. The information society services providers that perform an act of communication to the public and are actively and directly involved in allowing users to upload, making works available and promoting works to the public, shall conclude licensing agreements with rightholders. Those that provide a service of mere technical, automatic and passive nature will be out of scope of these provisions. Article 13 also underlines that service providers eligible for the liability exemptions under Directive 2000/31/EC shall also be excluded from the scope.

In order to implement the licensing agreements, service providers shall take appropriate and proportionate measures. For the sake of technological neutrality and taking into account the technological capabilities of SMEs and startups, the draft opinion talks about 'appropriate and proportionate measures' as this is a broader term that might include technologies and/or other measures. Such approach ensures as well technological neutrality. Any measures applied shall respect fundamental rights and Article 15 of Directive 2000/31/EC.

In order to implement the licensing agreements, the draft opinion emphasises the necessity of cooperation between the service providers and rightholders. Certain details of this cooperation were explained in the draft opinion. The rightholders shall accurately identify to information society service providers the works or other subject-matter in respect of which they have copyrights. The information society service providers shall inform rightholders of the measures employed and about the accuracy of their functioning.

Member States shall ensure that the service providers in cooperation with the rightholders establish a complaint mechanism for users who claim to have right or exemption to use protected works. Member States shall also ensure for the redress mechanism for users.

In order to make sure that the voice of users is taken into account when establishing best practices for implementation of the agreements, users' representatives shall be allowed to take part in the dialogue with all involved stakeholders.

## AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

### **Amendment 1**

#### **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 Council<sup>34</sup>.

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<sup>34</sup> 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).

*Amendment*

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 in *Directive 2000/31/EC* of the European Parliament and of the Council<sup>34</sup>.

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<sup>34</sup> 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).

## Amendment 2

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

## Amendment 3

### Proposal for a directive Recital 38 – paragraph 2 a (new)

*Amendment*

*deleted*

***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 of limitations and to prevent the exercise of exceptions to copyright law, and in order to protect freedom of information and expression, users of the information society services should have access to effective and expeditious redress and complaint mechanisms.***

*Justification*

*The addition intends to add a clear, positive definition of what measures internet society service providers are expected to take when receiving notification of copyright infringements.*

**Amendment 4**

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

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***

In order to ensure the functioning of any licensing agreement, information society service providers ***actively and directly involved in allowing users to upload, 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***

information society service providers *are eligible for the liability exemption provided* in Article 14 of Directive 2000/31/EC.

obligation *on* information society service providers *to monitor the information which they transmit or store as referred to* in Article 15 of Directive 2000/31/EC.

## Amendment 5

### Proposal for a directive Recital 38 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

*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 they would have identified as being their own in the implementation of any agreement reached with the information society service provider.*

## Amendment 6

### Proposal for a directive Recital 39

*Text proposed by the Commission*

*Amendment*

*(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*

*deleted*

*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.*

#### **Amendment 7**

##### **Proposal for a directive Title IV – Chapter 2 – title**

*Text proposed by the Commission*

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

*Amendment*

Certain uses of protected content online

#### **Amendment 8**

##### **Proposal for a directive Article 13 – title**

*Text proposed by the Commission*

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*

*Amendment*

Use of protected content by information society service providers storing and giving access to works and other subject-matter

#### **Amendment 9**

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

*Text proposed by the Commission*

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*

*Amendment*

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*

*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.*

*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 which they transmit or store, in accordance with Article 15 of Directive 2000/31/EC.*

## **Amendment 10**

### **Proposal for a directive Article 13 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*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 the accuracy of their functioning as well as, when relevant, periodically report on the use of the works and other subject-matter.*

## **Amendment 11**

### **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.

*Amendment*

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

## **Amendment 12**

### **Proposal for a directive**

#### **Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**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.**

## **Amendment 13**

### **Proposal for a directive**

#### **Article 13 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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 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.

## **Amendment 14**

### **Proposal for a directive**

#### **Article 13 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***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.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Copyright in the Digital Single Market
<b>References</b>	COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 6.10.2016
<b>Opinion by</b> Date announced in plenary	LIBE 16.3.2017
<b>Rapporteur</b> Date appointed	Michał Boni 30.3.2017
<b>Discussed in committee</b>	29.5.2017                      20.11.2017
<b>Date adopted</b>	20.11.2017
<b>Result of final vote</b>	+:                      36 –:                      5 0:                      3
<b>Members present for the final vote</b>	Asim Ademov, Jan Philipp Albrecht, Monika Beňová, Malin Björk, Michał Boni, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Ana Gomes, Nathalie Griesbeck, Sophia in 't Veld, Eva Joly, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Monica Macovei, Barbara Matera, József Nagy, Péter Niedermüller, Soraya Post, Judith Sargentini, Birgit Sippel, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Bodil Valero, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský, Auke Zijlstra
<b>Substitutes present for the final vote</b>	Carlos Coelho, Pál Csáky, Maria Grapini, Anna Hedh, Jeroen Lenaers, Maite Pagazaurtundúa Ruiz
<b>Substitutes under Rule 200(2) present for the final vote</b>	André Elissen, Eugen Freund, Elisabetta Gardini, Susanne Melior, Virginie Rozière

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

36	+
ALDE	Nathalie Griesbeck, Sophia in 't Veld, Maite Pagazaurtundúa Ruiz
ECR	Monica Macovei, Helga Stevens
GUE/NGL	Malin Björk, Cornelia Ernst, Marie-Christine Vergiat
PPE	Asim Ahmedov Ademov, Michał Boni, Carlos Coelho, Pál Csáky, Agustín Díaz de Mera García Consuegra, Frank Engel, Barbara Kudrycka, Jeroen Lenaers, József Nagy, Traian Ungureanu, Tomáš Zdechovský
S&D	Monika Beňová, Eugen Freund, Ana Gomes, Maria Grapini, Anna Hedh, Cécile Kashetu Kyenge, Dietmar Köster, Susanne Melior, Péter Niedermüller, Soraya Post, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
VERTS/ALE	Jan Philipp Albrecht, Eva Joly, Judith Sargentini, Bodil Valero

5	-
ENF	André Elissen, Auke Zijlstra
NI	Udo Voigt
PPE	Elisabetta Gardini, Barbara Matera

3	0
EFDD	Kristina Winberg
S&D	Juan Fernando López Aguilar, Virginie Rozière

### Key to symbols:

+ : in favour

- : against

0 : abstention