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Proposal for a Directive of the European parliament and of the Council

on copyright in the Digital Single Market

Réf. : 2016/0280(COD)

Amendment from ES, FR, PT to the recitals 37, 38, 39 and Article 13 on the value gap

**Directive proposal
Recitals 37, 38 et 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 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 some have become main sources of access to content online. In addition to giving access to content, these services have in place functionalities such as categorization, recommendations, playlists, in order to attract and retain users to their websites.</p> <p>Legal uncertainty exists as regards the conditions under which the provision of access by information society service providers allowing users to upload content can be considered as an act of communication to the public. This affects rightholders' possibilities to determine whether, and under which conditions, their works and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it. The present directive clarifies the conditions under which such information society service providers can be considered to perform an act of communication to the public and therefore do not fall in the scope of Article 14 of the Directive 2000/31/EC.</p>

<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 Council¹. 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. 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.</p>	<p>(38) It is also reasonable to expect a duty of care from information society service providers which, without necessarily being engaged into an act of communication to the public, nonetheless store and give access to significant amounts of protected works uploaded by their users, thereby impacting on the exploitation of copyright-protected contents. Such services should take appropriate and proportionate measures, with regard to their audience and revenues, to ensure protection of works or other subject-matter. Such obligation should also apply when the information society service providers are eligible for the liability exemption set out in Article 14 of Directive 2000/31 EC, as provided for in recital 48 of the same Directive.</p>
<p>(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</p>	<p>(39) a) Collaboration between information society service providers referred to in recital 38 and rightholders is essential for the functioning of measures aimed at recognizing content owned by rightholders amid the user uploaded content referred to in the previous recital. Rightholders should provide the necessary data to allow the services to identify their content and the services should be transparent towards</p>

1 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

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.

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. **They should ensure effective stay down of content infringing copyright and related rights which have been previously taken down due to a successful notification provided by rightholders.**

b) Measures should respect the fundamental rights and observe the principles recognized in particular by the Charter of Fundamental Rights of the European Union. They should not require the revelation of the identity of uploaders. Furthermore, except where agreements exist, they should be limited to preventing the availability of specifically identified content and should not go against the prohibition of a general obligation to monitor set forth in Article 15 of Directive 2000/31/EC, when applicable.

c) In order to promote collaboration between rightholders and information service providers on the deployment and the functioning of the measures, Member States, with the involvement of the Commission, should encourage industry agreements between the latter.

Directive proposal
Article 13

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p style="text-align: center;">Article 13</p> <p>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</p> <p>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</p>	<p style="text-align: center;">Article 13</p> <p>Use of protected content by information society service providers storing and giving access to works and other subject-matter uploaded by their users</p> <p>1. Member States shall provide that information service providers that store works or other subject-matter uploaded by their users and are actively involved in providing access to the public to such contents, including by optimizing the presentation of the uploaded works or subject-matter or promoting them, perform an act of communication to the public within the meaning of Article 3 of Directive 2001/29/EC and are deemed not to fall under Article 14 of Directive 2000/31/EC.</p> <p>They should negotiate with rightholders and conclude licensing agreements. These agreements might cover the liability of the uploaders when they are not acting in a professional capacity, for such acts falling within Articles 2 and 3 of Directive 2001/29/EC.</p> <p>2. Without prejudice to paragraph 1, Member States shall ensure that all information society service providers that store and give access to significant amounts of copyright protected works or other subject-matter uploaded by their users, upon request from rightholders and subject to supply of the necessary data to allow the identification of their content by service providers, take measures to prevent the availability on their services of works or other subject-matter identified by rightholders.</p> <p>Those measures, such as the use of effective content recognition</p>

<p>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>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>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.</p>	<p>technologies, shall be appropriate and proportionate. This is without prejudice to the possibility for rightholders and information service providers of entering into voluntary agreements allowing for the use of the protected content.</p> <p>3. Member States shall ensure that information society service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures referred to in paragraph 2.</p> <p>4. Member States shall ensure that the information service providers referred to in paragraph 1 and paragraph 2 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 2. Any complaint filed by a user under the mechanism shall be processed by the relevant rightholder within a reasonable period of time. The rightholder shall duly justify his/her decision.</p> <p>5. Member States shall facilitate, where appropriate, the cooperation between the service providers and rightholders through stakeholder dialogues to define best practices, such as the use of appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability and costs of the technologies and their effectiveness in light of technological developments.</p>