

Proposed AMENDMENTS for Article 13, 28 August 2018

The following representatives of the library and research communities support these amendments: COAR, EBLIDA, EIFL, EUA, IFLA, LIBER, and SPARC Europe and urge for literal inclusion unless otherwise indicated.

Amendments 69-73, Article 13, IMCO COM(2016)0593 Opinion – C8-0383/2016 – 2016/0280(COD)). Additions are in bold.

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<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 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>Where information society service providers offer users content storage services and provide the public with access to content and where such activity is not 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. Educational establishments, research organisations and cultural heritage institutions shall be excluded from the definition of information society service providers under this Article.</i></p>
<p>No text proposed by the Commission, new</p>	<p>(1a) <i>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.</i></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.

No text proposed by the Commission, new

(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.

Amendment 22, Recital 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.

(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.

(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.

(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.

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 enabling their users to upload works and make them accessible to the public 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.

Amendment 23, Recital 37 a (new)

No text proposed by the Commission, new

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 develop guidance on the implementation of the intermediary liability framework in order to allow online platforms to comply with their responsibilities and the rules on liability and in order to enhance legal certainty and increase user confidence

Amendment 26, 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 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, 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 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 27, Recital 38a (new)

No text proposed by the Commission, new

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

JUSTIFICATIONS

- ***On taking appropriate and proportionate measures:*** Measures need to be reasonable, appropriate and proportionate for the organisation that manages the content service. This legislation is intended for the activities of large online platforms such as FaceBook, You Tube and not the activities of universities, schools, libraries etc who at a small scale also host uploaded content, for example in the context of an institutional repository or virtual learning environment (VLE). No undue resource burden must be imposed on public interest organisations like libraries, universities and schools in particular which are making best efforts to provide legitimate and lawful services, and whose work is contributing to widely accepted policy goals such as improving education and promoting research and innovation. Furthermore, relevant monitoring measures will change over time; hence, the term “content recognition technologies” may quickly become obsolete.
- ***On respecting the fundamental rights of users,*** it is crucial to respect the fundamental rights of the individual to be able to confidentially share content without being intercepted or surveilled in accordance with Article 15 of Directive 2000/31/EC. Monitoring furthermore impinges on freedom of expression and restricts academic freedom to share the research to help solve health, economic, industrial and societal problems. In effect, it treats users as guilty until proven innocent.
- ***On the monitoring of user generated content (UGC),*** sharing user-generated content is a huge content asset to the Internet. It generates unique knowledge efficiently and can help save costs when solving health, economic, industrial or societal problems. UGC is key to citizen science. It is therefore important not to jeopardise and inhibit the sharing of knowledge by restricting the vehicles used to share UGC by asking them to monitor every upload they transmit and store.
- ***In case of disputes,*** in the interest of democracy, Member States have the responsibility to provide for fair and accessible mechanisms to allow for complaints and to make those transparent to users. Furthermore, users need to be able to fairly assert their rights in a court of law or other competent authority and have the right to appeal.

- ***On excluding this from educational establishments, research organisations and cultural heritage institutions***, all Member States have responsibilities to share their publicly funded research by 2020 as agreed by Europe’s ministers of science, innovation, trade and industry at the Competitiveness Council in 2016. The European Commission has also been instrumental with its Open Access and Open Science policies as part of FP7 and Horizon 2020 seeking to “optimise the impact of publicly-funded scientific research”. Sharing research results via online platforms is essential to meet these goals thereby ensuring faster access to information for researchers, industry and citizens. This sharing of research results spurs innovation, helps grow new and emerging businesses, and above all helps solve problems of financial, health, industrial, and societal significance more rapidly while also informing citizens. Over 1250 non-commercial repositories are supporting this work. We do not want to jeopardize the Open Access and Open Science leadership and progress that Europe has shown in recent years and therefore appeal to exclude educational establishments, research organisations and cultural heritage institutions from this Article. This will help implement European Union goals more rapidly and increase the visibility and impact of our research results.

Meanwhile, UNESCO has underlined the strong potential of Open Educational Resources to complement existing resources, allowing for the creation and sharing of materials tailored to the needs of students. OER rely heavily on repositories of such materials, which are not equipped to implement onerous and costly monitoring requirements, especially given their public service objectives. Cultural heritage institutions also work to encourage creative writing and other forms of creativity. In hosting the results, they too would otherwise risk falling foul of these provisions.

Undersigned by

COAR, EBLIDA, EIFL, EUA, IFLA, LIBER, and SPARC Europe