



2016/0280(COD)

22.5.2017

DRAFT 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

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 – subparagraph 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.

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).

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 Council³⁴.

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

Justification

Changes introduced to clarify the information society service providers who would be covered by the Article and those providing a service of a mere technical, automatic and passive nature who would not be covered. The Article also underlines that service providers eligible for the liability exemptions under Directive 2000/31/EC shall also be excluded from the scope.

Amendment 2

Proposal for a directive Recital 38 – subparagraph 2

Text proposed by the Commission

In respect of Article 14, it is necessary to verify whether the service provider plays

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Amendment

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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.

Or. en

Justification

As in paragraph 1, explanation as to which service providers Article 13 shall apply is provided and the reference was made to the liability exemptions of Directive 2000/31/EC, reference exclusively to Article 14 of Directive 2000/31/EC is not appropriate.

Amendment 3

Proposal for a directive Recital 38 – subparagraph 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.**

Amendment

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.**

Or. en

Justification

The changes made indicate that in order to ensure the functioning of any licensing agreement, 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, 'Implementing effective technologies' was deleted, as 'appropriate and proportionate measures' is a broader term that might include technologies and/or other measures. The measures applied shall respect fundamental rights and Article 15 of Directive 2000/31/EC.

Amendment 4

Proposal for a directive Recital 38 – subparagraph 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.

Or. en

Justification

The recital was introduced to underline the necessity of cooperation between the service providers and rightholders in order to implement the agreements. Certain details of this cooperation were explained here.

Amendment 5

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

deleted

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.

Or. en

Justification

Certain parts of this recital were transferred to recital 38(3a new). Other changes were introduced to ensure technological neutrality and to avoid references to any particular technological solution.

Amendment 6

Proposal for a directive

Recital 46

Text proposed by the Commission

(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with **Directive 95/46/EC** of the European Parliament and of the Council³⁵ and Directive 2002/58/EC of the European Parliament and of the Council³⁶.

³⁵ **Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free**

Amendment

(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with **Regulation (EU) 2016/679** of the European Parliament and of the Council^{35a} and Directive 2002/58/EC of the European Parliament and of the Council³⁶.

movement of such data (OJ L 281, 23.11.1995, p. 31–50). This Directive is repealed with effect from 25 May 2018 and shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

^{35a} Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³⁶ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37–47), called, as amended by Directives 2006/24/EC and 2009/136/EC, the “e-Privacy Directive”.

³⁶ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37–47), called, as amended by Directives 2006/24/EC and 2009/136/EC, the “e-Privacy Directive”.

Or. en

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

Or. en

Justification

The changes introduced better reflect that the cooperation of service providers and rightholders is needed for implementation of the agreements.

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 large amounts of works and other subject-matter

Or. en

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 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***

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 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.***

use of the works and other subject-matter.

Or. en

Justification

Changes introduced to clarify which information society service providers would be covered by the Article, and that those that provide a service of a mere technical, automatic and passive nature will not be covered. The Article also underlines that service providers eligible for the liability exemptions under Directive 2000/31/EC shall also be excluded from the scope. Additionally, in order to protect users, any measures adopted for the implementation of the agreements shall respect fundamental rights and 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.

Or. en

Justification

The provision was introduced to underline the necessity of cooperation between service providers and rightholders in order to implement the licencing agreements. Certain details of this cooperation and obligations were established here.

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.

Or. en

Justification

The changes introduced aim to make sure that the complaints mechanisms put in place by service providers will be set in cooperation with the rightholders.

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.

Or. en

Justification

There is a need to ensure that users have a possibility to appeal any restrictive measures; therefore Member States have to provide for redress mechanisms.

Amendment 13

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.

Amendment

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.

Or. en