

Proposal for adaptation of Article 13 - Alternative 1 (“Article 14 plus Art”)

Article 2 Definitions

For the purposes of this Directive, the following definitions shall apply:

[...]

“Information Sharing Platforms”: Information society service providers that consist of the storage of, and the means to give access to, information provided by a recipient of the service.

[...]

CHAPTER 2 – Certain uses of works and other subject-matter by users of Information Sharing Platforms

Article 13

Preventing unauthorized uploads of third-party unaltered works and other subject-matter by users of Information Sharing Platforms

1. Information Sharing Platforms shall, in cooperation with rightholders, take measures to prevent the availability on their services of third-party unaltered works or other subject-matter identified by rightholders through the cooperation with Information Sharing Platforms. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate and shall not hinder the benefit of copyright exceptions and limitations. Information Sharing Platforms shall provide rightholders with adequate information on the functioning and the deployment of the measures.

1(a). The cooperation referred to in paragraph 1 shall consist, for rightholders of copyright and other subject-matter, of a duty to accurately identify the works or other subject-matter in respect of which they control the copyright, following industry standards. Rightholders should be informed of the limitations and defects that might affect the measures in paragraph 1 in the event where the information is missing, incomplete or where standards are not met.

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, including creators, in case of disputes over the application of the measures referred to in paragraph 1.

3. Member States shall facilitate, where appropriate, the cooperation between Information Sharing Platforms, users and rightholders through stakeholder dialogues to define best practices, such as the population of databases, 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.

Abbreviated Justification - Alternative 1 (“Article 14 plus Art”)

- ❖ **SCOPE.** Article 13 seeks to regulate platforms where users share content. Sharing platforms are digital tools enabling millions of creators all over the world to find an audience and engage with their fans without the need to rely on industry gatekeepers. Content distribution has been democratized by sharing platforms in an unprecedented way and has been fuelling a cultural renaissance where all genres, including niche content, receive equal treatment. Thanks to these platforms, emerging artists all over Europe are benefiting from open, instant, and in many cases, free access to a critical mass of users.
- ❖ **PROBLEM** Sometimes, users use functionalities of sharing platforms to upload copies of unaltered third-party copyright protected content without seeking permission, such as existing music videos, cinematographic films, etc.
- ❖ **SOLUTION.** A new obligation to prevent the availability of unaltered third-party copyright-protected content (save where permission has been granted), through the implementation of ‘appropriate and proportionate measures’ that might include technologies and/or other measures (the “Measures”). This would only target uploads of unaltered third-party copyright-protected content and leave intact consumers and creator’s capacity to share new content through sharing platforms.
- ❖ **DUTY TO ACCURATELY IDENTIFY WORKS AND SUBJECT MATTERS.** The new obligation to take measures should be coupled with a duty for rightholders to provide accurate information about the works or other subject-matter in respect of which they have the copyright, in accordance with industry standards. Sharing platforms shall inform rightholders of the limitations and/or defects that might affect the Measures, if datasets are missing, incomplete or if the standards required are not met.

Proposal for adaptation of Article 13 - Alternative 2 (Art. 14 plus Measures)

CHAPTER 2

Certain uses of works and other subject-matter online

ARTICLE 13

Use of works and other subject-matter by information society service providers that consist of the storage of, and the means to give access to, information provided by a recipient of the service.

0. *Information society service providers that consist of the storage of, and the means to give access to, information provided by a recipient of the service shall provide to rightholders of copyright and other subject-matter the possibility to populate a database of the works or other subject-matter in respect of which they control the copyright, following industry standards. The information about the works shall be made available pursuant to industry standards. Rightholders should be informed of the limitations and defects that might affect the measures in paragraph 1 in the event where the information is missing, incomplete or where standards are not met.*

1. *In addition to the provisions of Article 14 of Directive 2000/31/EC of the European Parliament and of the Council¹; where an information society service provider that consists of the storage of, and the means to give access to information provided by a recipient, they shall take appropriate and proportionate measures to prevent the availability on their services of works or other subject-matter identified by rightholders through the population of the database. Those measures, such as the use of effective content recognition technologies, shall be appropriate, proportionate and always function of the quality of the data received pursuant to paragraph 0. The implementation of such measures 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.*

1(a). *The service providers referred to in paragraph 0 may offer to make use of the measures in paragraph 1 when concluding licensing agreements with rightholders.*

2. *Member States shall ensure that the service providers referred to in paragraph 0 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.*

2(a). *In addition, Member States shall ensure that users have access to court or to the impartial body referred to in paragraph 3 (a) for the purpose of asserting their right of use, as rightholders, or under an exception or limitation to copyright; and to appeal the effect of the measures implemented pursuant to paragraph 1*

3. *Member States shall facilitate, where appropriate, the cooperation between the service providers referred to in paragraph 0, user representatives and rightholders through stakeholder dialogues to define best practices for the implementation of paragraph 0 and 1. The measures undertaken shall be appropriate, proportionate, and shall take into account, among others, the nature and size of the services, the quality of the data received pursuant to paragraph 0, the availability of the technologies, and their effectiveness in light of technological developments.*

ARTICLE 13(a)

Impartial Body

1. *Member States shall ensure that an impartial body shall be created to monitor, provide assistance and resolve disputes regarding:*

- the appropriateness and effectiveness of the measures referred to in article 13 paragraph 1,*
- the redress and complaints mechanism available to users,*
- the negotiations of licences between service providers referred to in article 13, paragraph 0 and rightholders.*

2. *No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in Article 13 (a).*

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).

Abbreviated Justification - Alternative 2 (“Art 14 plus Measures”)

- ❖ **SCOPE AND DEFINITION.** Article 13 seeks to regulate User Generated Content (“UGC”) platforms. UGC platforms are information society service providers (“ISSPs”) *hosting* and giving access to content uploaded by their users.
- ❖ A legal definition already exists in EU law for ‘*hosts*’ (in article 14 of the E-commerce Directive). For the sake of clarity, the legal definition of UGC platforms should be using the existing definition of a ‘host’ as its main building block.
- ❖ The quantity (whether large or small) of copyright-protected content present on a UGC platform should not be part of the legal definition of UGC platforms, but only come into play when looking at the appropriateness of measures that might be taken (see below).
- ❖ **BENEFITING FROM THE LIABILITY EXEMPTION.** UGC platforms are eligible for the liability exemption under Art. 14 of the E-commerce Directive, except where they gain either *knowledge or control* over information stored. These notions are central to the existing liability system and should not be modified.
- ❖ The notion of “active role” is flawed and technologically irrelevant. Algorithms are capable of automatically optimising the presentation of information and of promoting it based on its popularity, without ever gaining any knowledge or control over said information.
- ❖ **NEW CONTENT RECOGNITION OBLIGATION FOR UGC PLATFORMS.** A new obligation to prevent the availability of copyright-protected content shall be created, through the implementation of ‘appropriate and proportionate measures’ that might include technologies and/or other measures (the “Measures”). UGC Platforms shall inform rightholders of the Measures they choose to implement, including general information about the accuracy of their functioning.
- ❖ **WHERE THE MEASURES IMPLEMENTED AND DEEMED APPROPRIATE ARE CONTENT RECOGNITION TECHNOLOGIES.** The owners of content recognition technologies (“CRTech”) shall provide general information about the type of technology they use, the datasets required to enable their functioning, and the accuracy of their functioning. Unless they own or control CRTech themselves, UGC Platforms shall have no obligation in that respect.
- ❖ **CONCORDANT OBLIGATION TO POPULATE A DATABASE.** The new obligation to take measures should be coupled with the possibility for rightholders to populate a database of the works or other subject-matter in respect of which they have the copyright, in accordance with industry standards. UGC platforms shall inform rightholders of the limitations and/or defects that might affect the Measures, if datasets are missing, incomplete or if the standards required are not met.
- ❖ **DISPUTE RESOLUTION / IMPARTIAL BODY.** An impartial body shall be appointed to monitor, provide assistance and resolve disputes regarding i) the appropriateness and effectiveness of Measures, ii) the redress and complaints mechanism available to users, ii) the negotiations of licences between UGC platforms and rightholders.