



7.6.2017

# **COMPROMISE AMENDMENTS 24 - 47**

**Draft opinion**  
**Catherine Stihler**  
(PE599.682v01-00)

Copyright in the Digital Single Market

Proposal for a directive  
(COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))



**Amendment 24**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 170, 171, 172

**Proposal for a directive**  
**Recital 31**

*Text proposed by the Commission*

*Amendment*

**(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.**

**Deleted**

Or. en

**Amendment 25**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 20, 177, 178,179, 180, 181

**Proposal for a directive**  
**Recital 32**

*Text proposed by the Commission*

*Amendment*

**(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses. Such protection should be effectively**

**Deleted**

*guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses.*

Or. en

**Amendment 26**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 21, 184, 185, 186, 187,

**Proposal for a directive**  
**Recital 33**

*Text proposed by the Commission*

*Amendment*

*(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public.*

*Deleted*

Or. en

**Amendment 27**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 22, 194, 195, 196, 197, 198, 199, 200,

**Proposal for a directive**  
**Recital 34**

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*Text proposed by the Commission*

*Amendment*

**(34) *The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.***

***Deleted***

Or. en

**Amendment 28**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 205, 206, 207, 208

**Proposal for a directive**  
**Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) *The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other***

***Deleted***

*rightholders, on the other side.*

Or. en

**Amendment 29**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 23, 213, 214, 215, 216, 217

**Proposal for a directive**  
**Recital 37**

*Text proposed by the Commission*

*Amendment*

(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.*

(37) *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.*

Or. en

**Amendment 30**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 220, 223, 224

**Proposal for a directive**  
**Recital 37 a (new)**

*Text proposed by the Commission*

*Amendment*

(37 a) *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.*

Or. en

**Amendment 31**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 24, 230, 231, 233, 235, 238, 239, 241, 242, 243, 244, 245

**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>.

*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

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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).

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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).

Or. en

### **Amendment 32** **Catherine Stihler**

Compromise amendment replacing Amendments: 25, 246, 247, 248, 249, 250

### **Proposal for a directive** **Recital 38 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*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.*

*Deleted*

Or. en

### **Amendment 33** **Catherine Stihler**

Compromise amendment replacing Amendments: 26, 257, 259, 260, 263, 264

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

*Text proposed by the Commission*

*Amendment*

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**

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**

*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.

*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.

*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

#### **Amendment 34** **Catherine Stihler**

Compromise amendment replacing Amendments: 27, 272, 273, 275, 276, 278,

#### **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

### **Amendment 35** **Catherine Stihler**

Compromise amendment replacing Amendments: 284, 285, 286, 287, 288

### **Proposal for a directive** **Recital 40**

#### *Text proposed by the Commission*

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers *tend to be* in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers.

#### *Amendment*

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers *are* in a weaker contractual position when they grant licences or transfer their rights, they need *accurate* information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the *regular* sharing of adequate information by their *direct* contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. *The reporting and transparency obligation should follow the work across all form of exploitation and*

*across borders.*

Or. en

**Amendment 36**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 290, 291, 292, 294

**Proposal for a directive**  
**Recital 41**

*Text proposed by the Commission*

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.

*Amendment*

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector, *as well as the significance of the contribution by authors and performers to the overall work or performance* should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements *and standard reporting statements and procedures*. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations *to the extent that fully equivalent* transparency obligations *exist* under Directive 2014/26/EU.

Or. en

**Amendment 37**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 295, 296, 297, 298, 299

**Proposal for a directive**  
**Recital 42**

*Text proposed by the Commission*

(42) *Certain* contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

*Amendment*

(42) *Most* contracts for the exploitation of rights harmonised at Union level are of long duration, offering *very* few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases *of unexpected success* where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant *net direct and indirect* revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. *When assessing the disproportionality, the appropriate circumstances of each case, including the nature and significance of the contribution of the author or performer to the overall work or performance, should be taken into account.* Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

Or. en

**Amendment 38**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 300, 301

**Proposal for a directive**  
**Recital 43**

*Text proposed by the Commission*

*Amendment*

(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism.

(43) Authors and performers are often reluctant ***or unable*** to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an ***efficient*** alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism. ***The dispute settlement resolution can also be agreed upon in collective agreements.***

Or. en

**Amendment 39**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 61, 419, 420, 421, 422, 423, 424, 425

**Proposal for a directive**  
**Article 11**

*Text proposed by the Commission*

*Amendment*

***Protection of press publications  
concerning digital uses***

***Deleted***

***1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.***

***2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.***

3. *Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.*

4. *The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.*

Or. en

#### **Amendment 40** **Catherine Stihler**

Compromise amendment replacing Amendments: 62, 63, 448, 449, 455, 456, 459, 462, 463, 464, 465, 466, 468, 471, 473, 474, 480, 481, 483, 484, 485

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

*Text proposed by the Commission*

*Amendment*

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

Certain uses of protected content online

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*

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

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*

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*

*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.*

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

*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

## **Amendment 41 Catherine Stihler**

Compromise amendment replacing Amendments: 64, 488, 490, 491, 493, 495, 497

### **Proposal for a directive**

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

##### *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.

**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

**Amendment 42**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 65, 500, 501, 502, 503

**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

**Amendment 43**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 515, 517, 518, 520, 521, 522, 523

**Proposal for a directive**

**Article 14 – paragraph 1**

*Text proposed by the Commission*

*Transparency obligation*

1. Member States shall ensure that

*Amendment*

*Transparency obligation*

1. Member States shall ensure that

authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.

authors and performers receive on a regular basis and ***no less than once a year and*** taking into account the specificities of each sector, ***in an open readable format, accurate,*** timely, adequate and sufficient comprehensive information on the exploitation ***and promotion*** of their works and performances from those to whom they have licensed or transferred their rights, ***including subsequent transferees or licensees,*** notably as regards modes of ***promotion,*** exploitation, revenues generated and remuneration due.

Or. en

#### **Amendment 44** **Catherine Stihler**

Compromise amendment replacing Amendments: 527, 529, 530, 531

#### **Proposal for a directive** **Article 14 – paragraph 2**

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure ***an appropriate*** level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States ***may*** adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure ***a high*** level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States ***may*** adjust the obligation in paragraph 1, ***under the condition that the level of disproportionality is duly justified,*** provided that the obligation remains effective and ensures an appropriate level of transparency. ***Member States shall ensure that sector-specific standard reporting statements and procedures are developed through stakeholder dialogues.***

Or. en

**Amendment 45**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 532, 533, 534

**Proposal for a directive**  
**Article 14 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. *Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.*

*Deletion*

Or. en

**Amendment 46**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 511, 512, 543, 544, 545, 549, 550, 551, 553, 554

**Proposal for a directive**  
**Article 15**

*Text proposed by the Commission*

*Amendment*

*Contract adjustment mechanism*

*Contract adjustment mechanism*

Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Member States shall ensure that authors and performers, ***or representatives they appoint***, are entitled to request additional, ***equitable***, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights, ***or from their successor in title***, when the remuneration originally agreed is disproportionately low compared to the ***unanticipated*** subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Or. en

**Amendment 47**  
**Catherine Stihler**

Compromise amendment replacing Amendments: 572, 573, 574,

**Proposal for a directive**  
**Article 18**

*Text proposed by the Commission*

*Application in time*

1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].

**2. *The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)].***

3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].

*Amendment*

*Application in time*

1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].

3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].

Or. en