

ES, PT, FR demands	Council document
<p><b>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.</b></p> <p><b>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.</b></p>	<p>(1) The need to clarify the act of communication to the public for the services targeted by Article 13. If such a clarification is considered necessary, would you agree that the criteria to be used should be copyright specific and avoid confusion with the criteria to be used for assessing whether a hosting service provider can benefit from the limited liability regime provided for in Article 14 of the e-commerce directive? Possible criteria for consideration could be those used by the CJEU (e.g. indispensable role, knowledge of the consequences of one's acts).</p> <p>(2) If the communication to the public is to be clarified, should the interplay with Article 14 of ecommerce directive be clarified (liability question), notably:</p> <ul style="list-style-type: none"> <li>- should it be explicitly clarified how services that communicate to the public are to be considered under Article 14 of the e-commerce directive , or</li> <li>- should it be left open, while recalling that even if such services communicate to the public, the possibility for them to benefit from the limited liability regime under Article 14 ECD will continue to be assessed case by case, in accordance with the criteria set in Article 14 ECD (in essence making it clear that the concept of communication to the public and the assessment of the status of the services under Article 14 ECD are two different legal concepts and can be applied in parallel)?</li> </ul>
<p><b>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. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. This is without prejudice</b></p>	<p>(3) The need to provide for measures to prevent certain content:</p> <ul style="list-style-type: none"> <li>- either as an additional provision, i.e. combined with the clarification on communication to the public and limited to those services that may still be covered by Article 14 ECD, but who have a significant amount of protected content on their services, or</li> <li>- as a self-standing measure, as provided by the COM proposal</li> </ul>

**to the possibility for rightholders and information service providers of entering into voluntary agreements allowing for the use of the protected content.**

