

## COMP Recitals related to Art 13 (Value gap)

**Compromise by Rapporteur on Recitals 37, 38, 39, 39a and 39b covering Am. 27 (Rapporteur), Am. 28 (Rapporteur), 29 (Rapporteur), Am. 30 (Rapporteur), 31 (Rapporteur), Am. 251 (Giorgos Grammatikakis, Mary Honeyball, Mary Honeyball, Luigi Morgano, Julie Ward, Silvia Costa, Theresa Griffin, Elena Gentile), Am. 252 (Sabine Verheyen, Jeroen Lenaers, Rapporteur), ~~Am. 253 (Yana Toom, Catherine Stihler, Dita Charanzová)~~, Am. 254 (Momchil Nekov), Am. 258 (Andrea Bocskor), Am. 259 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Herbert Reul), Am. 260 (Santiago Fisas Aixelà), Am. 261 (Robert Rochefort), Am. 262 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 263 (Silvia Costa, Luigi Morgano), Am. 264 (Giorgos Grammatikakis, Mary Honeyball, Theresa Griffin, Monika Smolková), Am. 265 (Zdzisław Krasnodębski), Am. 266 (Helga Trüpel), ~~Am. 267 (Yana Toom, Catherine Stihler, Dita Charanzová, Jasenko Selimovic)~~, Am. 272 (Dietmar Köster), Am. 273 (Helga Trüpel), Am. 278 (Robert Rochefort), Am. 279 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 280 (Dietmar Köster), Am. 281 (Emma McClarkin, Zdzisław Krasnodębski, John Procter, Angel Dzhabazki), Am. 282 (Giorgos Grammatikakis, Julie Ward), Am. 289 (Giorgos Grammatikakis, Sylvie Guillaume, Sylvie Guillaume, Julie Ward, Theresa Griffin, Monika Smolková), Am. 290 (Dietmar Köster), Am. 291 (Emma McClarkin, John Procter), Am. 292 (Robert Rochefort), Am. 295 (Emma McClarkin, John Procter), Am. 296 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière) and Am 297 (Robert Rochefort)**

Commission Proposal	Compromise amendment
<p>(37) Over the <b>last</b> 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 <b>right holders</b> have flourished and have become <b>main</b> 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.</p>	<p>(37) Over <b>recent (AM 27)</b> 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 <b>or agreement (AM 251) of rightholders</b> <del>(AM 253)</del> have flourished and have become <b>primary (AM 27)</b> sources of access to content online. <u>In so doing, thus they unfairly competing compete with services whose content is licensed directly by rightholders and increasing the value gap</u> by making profits from content that they do not create and do not always share fairly with the creators <u>concerned and by driving down the overall value of creative content online</u> <del>-(AM 27, 252,</del></p>

	<p><b>254, 251). While allowing easy access to diverse content, <del>(AM 253)</del></b> this affects rightholders' <b>ability (AM 27)</b> to determine whether, and under which conditions, their work and other subject-matter are <b>being used, (AM 27)</b> as well as their <b>scope for obtaining (AM 27)</b> appropriate remuneration for it, <b>since these user-uploaded content services refuse to enter into licensing agreements on the basis of that they are covered by the safe harbour exemption of Directive 2000/31/EC claim to be covered by the safe harbour exemption of Directive 2000/31/EC and therefore either refuse to enter into licensing agreements or underpay creators. (AM 251)</b></p>
<p>(38) 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 <b>are</b> 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>1</sup>.</p> <p>In respect of Article 14, it is necessary to verify <b>whether</b> 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.</p> <p>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</p>	<p>(38) Where information society service providers store and/or <b>(AM 264, 263)</b> provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere <b>technical, automatic and passive (AM 263)</b> provision of physical facilities and performing <b>both</b> an act of communication to the public <b>and an act of reproduction (AM 266, 259, 260, 261, 262)</b>, they <b>should be (AM 28, 258)</b> obliged to conclude <b>fair and balanced (AM 267)</b> licensing agreements with rightholders <b>that request such an agreement (AM 28, 258, 265, 261, 262)</b>, in order to ensure the protection of rightholders' legitimate interests and their fair <b>and appropriate remuneration (AM 267, 259)</b>, 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>2</sup>.</p> <p>In respect of Article 14 of <b>Directive 2000/31/EC and eligibility for the liability exemption provided therein (AM 28, 258, 272)</b>, it is necessary to verify <b>the extent of the role played by the information society service provider. Where (AM 28, 258)</b> the provider plays an active role, including by optimising the presentation of the</p>

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).

<p>providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.</p>	<p>uploaded works or subject-matter, promoting them <b>or commercially exploiting them (AM 273)</b>, irrespective of the nature of the means used therefor, <b>the provider should no longer be considered to be merely hosting such content and therefore ineligible for the liability exemption (AM 28, 258, 264, 272, 273)</b>.</p> <p>In order to ensure the functioning of any licensing agreement, <b>or, in the absence of such an agreement, to prevent the unauthorised availability on their service of works or other-subject matter identified by their rightholders (AM 282, 279, 278)</b>, information society service providers storing and/or providing access to the public to <b>significant (AM 282)</b> amounts of copyright protected works or other subject-matter uploaded by their users should take, <b>in cooperation with rightholders (AM 281)</b>, appropriate and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective technologies, <b>and facilitate effective and transparent reporting to rightholders (AM 281)</b>. 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. <b><u>This obligation should not apply to online marketplaces.</u></b></p>
<p>(39) Collaboration between information society service providers storing and providing access to the public to <b>large</b> amounts of copyright protected works or other subject-matter uploaded by their users and rightholders is essential <b>for the</b> 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 <b>and</b> the services 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</p>	<p>(39) Collaboration between information society service providers storing and providing access to the public to <b>significant (AM 289, 290, 292)</b> amounts of copyright protected works or other subject-matter uploaded by their users and rightholders is essential <b>to ensure the effective (AM 291)</b> 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, <b>such as reference files and metadata. They should deliver <del>reference files</del> data in a timely fashion and in an appropriate file format. <del>Metadata</del> Data should be complete and accurate <del>for each reference file</del>. (AM 290)</b> The services</p>

<p>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.</p>	<p>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. <b>When assessing the proportionality and effectiveness of the measures implemented, technological constraints and limitations should be taken into due consideration (AM 29). Those technologies should not require the <del>identity</del>-identification of individual users uploading content and should not process data relating to individual users, in accordance with Directive 95/46/EC, Directive 2002/58/EC and Regulation (EU) 2016/679. They should be limited to preventing the <u>unauthorised</u> availability of specifically identified and duly notified works based on the information provided by rightholders and therefore not lead to a general monitoring obligation. (AM 289, 280)</b></p>
	<p><b>(39a) Since the measures and technologies deployed by information society services providers in application of this Directive may have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the concerned content is covered by an exception or limitation, platform providers should be required to offer a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. It should prescribe minimum standards for complaints to ensure that rightholders are given sufficient information to assess and</b></p>

	<p>respond to complaints. Rightholders should process any complaints received within a reasonable amount of time and take corrective action where measures prove to be unjustified. User-uploaded content stored or provided on an <u>information society service</u> may generate revenue, including when content is affected by measures deployed by an <u>information society service provider</u>. While a dispute over this content is being processed and resolved, such revenues should not be attributed or distributed to the user or the rightholder concerned until the dispute has been resolved through the <u>complaints and redress mechanism</u>. (AM 30, 295)</p>
	<p>(39b) In view of the requirements imposed by this Directive regarding agreements and cooperation between information society service providers and rightholders, <u>and in order to avoid unnecessary long and costly legal proceedings</u>, it is necessary to provide for an intermediate procedure which will permit the parties to seek an amicable solution to any dispute concerning the relevant provisions of this Directive. Member States should support such a mechanism by designating an impartial body with relevant experience and competence to assist the parties in the resolution of their dispute. (AM 31, 296, 297)</p>