WHO?

Article 2 par 5

'Online content sharing service provider' **within the meaning of this Directive is a provider of an information society service whose main or one of the main purposes is to store and give access to the public of a significant amount of copyright protected works or other protected subject- matter uploaded by its users who do not hold the rights in the content uploaded;**

(5a) 'Information society service' is a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council [1].

Directive 2015/1535: "'service' means any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. For the purposes of this definition:

(i) 'at a distance' means that the service is provided without the parties being simultaneously present;

(ii) 'by electronic means' means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

(iii) 'at the individual request of a recipient of services' means that the service is provided through the transmission of data on individual request.

An indicative list of services not covered by this definition is set out in Annex I[i];"

Criteria:

1. Information society service;
2. Main or one of the main purpose = store and give access (Recital 37);
3. to the public;
4. of a significant amount of copyright protected works or other protected subject- matter (see Recital 38e);
5. uploaded by its users; and,
6. who do not hold the rights in the content uploaded.

What is one of the 'main purposes': Is it logically even possible to have concurring main purposes?

How is this main purpose assessed and by whom: Do you look at the statements of the company, do you look at what they do? Is the rightholder the judge, and in that case can they be deemed an unbiased party?

'Give access' criteria: To "give access" is an overbroad term that is not used in EU copyright legislation. It's one of the criteria considered by the CJEU (e.g.in the Svensson case, the CJEU considered that posting a hyperlink amounts to giving access). Using this as a criteria means that a wide range of intermediaries involved in bringing the service to the user could be caught up in the definition of an online content sharing service provider (OCSSP).

Who do not hold the rights in the content uploaded: How could a platform know that? What if you come to a 'significant amount' made up of a mix of content users have the rights in and content users don't have the rights in (e.g. Vevo & all the YouTubers' channels on YouTube)? Should it not be "uploaded by its users and which infringes copyright"? I.e. there a piece of protected content, it does not belong to the user, the user does not have a licence, and no exception or limitation applies?

[1] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1–15).

Recital 37

(…) It is therefore necessary to clarify the copyright relevant obligations applicable to online **content sharing** services ~~storing and providing access to copyright protected content uploaded by their users,~~ without affecting other services, such as internet access, providers of cloud services, which allow users to upload content for their individual use**,** such as cyber lockers or online marketplaces **whose main activity is not giving access to copyright protected content but online retail. Nor should the clarification apply to providers of online services which store and provide access to content that is mainly uploaded by the rightholders themselves or is authorised by them, including scientific or educational repositories where the content uploaded is authorised. Nor should the clarification affect the use or works and other subject matter under an exception or limitation to copyright and related rights.** The clarification should be targeting the specific situation of online **content sharing** services**, defined for the purposes of this Directive as information society service providers** whose main or one of the main purposes is to provide access to copyright protected content uploaded by their users, without affecting the application of Article 3(1) and (2) of Directive 2001/29/EC **and Article 8 (2) of Directive 2006/115/EC** in other situations**.**

Services excluded (**but only in a Recital – exclusions should be in the Article itself or be part of an Annex referred to in the Article itself**):

- Services in Annex 1 of Directive 2015/1535 (incl. broadcasting);
- Internet access;
- Providers of cloud services, which allow users to upload content for their individual use, such as cyber lockers [**Note:** What about Dropbox/Google Drive files that are shared?];
- Online marketplaces whose main activity is not giving access to copyright protected content but online retail [**Note:** What if one of their main activities is to provide content seeing the text suggests multiple main concurring purposes?];
- Providers of online services which store and provide access to content that is mainly uploaded by the rightholders themselves or is authorised by them, including scientific or educational repositories where the content uploaded is authorised [**Note:** Problem is that users and rightholders can and are often the same thing. Users can have the rights to their content and rightholders are users of the platforms.]; and,
- Nor should the clarification affect the use or works and other subject matter under an exception or limitation to copyright and related rights. [Note: How does this get applied in practice when platforms must 'prevent the availability' (= block before it appears online), therefore this looks more like wishful thinking than reality).

Note: the need to refine through negatives shows that the original definition is overly broad.

What about: email, MOOCs, software repositories (e.g. GitHub) and developer forums, blogs, cooking websites to share recipes, review sites, VR platforms, etc.?

Recital 38e The assessment of whether an information society service provider stores and gives access to a significant amount of content needs to be made on a case-by-case basis and take account of a combination of elements, such as the total number of files of copyright-protected content uploaded by the users of the services and the proportion of the protected content uploaded by the users in the overall amount of content available on the service.	**Who makes this assessment?** Who assesses the ratio of copyright protected vs. non-copyright protected and how do you even do that? Is not most of the content uploaded by users copyright protected [because when the user is the creator, he owns the copyright], and is the difference not between uploaded by the rightholder or with authorisation of the latter or not (a difference which does emerge in Recital 38f)?

WHAT?

Title CHAPTER 2 Certain uses of protected content by online services *Article 13* *Use of protected content by **online content sharing service providers** ~~information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users~~*	**Back to square one:** platforms are the ones using content, not users. This ignores the fact that it is the user who uploads the content. 'Protected content' still means nothing: protected by what?

Article 13 par 1 Member States shall provide that an **online content sharing service provider** ~~information society service providers that provider whose main or one of the main purposes is to store and provide give access to the public access to large amounts of copyright protected works or other protected subject matter uploaded by their its users shall,~~ is performing an act of communication to the public or an act making available to the public within the meaning of Article 3(1) and (2) of Directive 2001/29/EC **and Article 8 (2) of Directive 2006/115/EC** when it intervenes in full knowledge of the consequences of its action to give the public access to ~~those~~ **the** copyright protected works or other protected subject matter uploaded by their users by organising these works or other subject matter with the aim of obtaining profit from their use.	**This text redefines when online platforms engage in a communication to the public in a manner that does not fit CJEU case law**: 'when it intervenes in full knowledge of the consequences of its action to give the public access to ~~those~~ **the** copyright protected works' is **NOT** the criteria used by the CJEU to define actual knowledge of an infringement! This proposal continues to redefine the notion of a communication to the public without this actually being in the scope of the original proposals nor has it been subject in the meantime to a proper Impact Assessment. **Organising works:** Moreover, the text continues to punish service providers for organising content in a findable manner. **Article 8(2) of Directive 2006/115**: Suddenly, acts of communication to the public are also considered to fall within the meaning of Article 8(2) of the Rental and Lending Directive (2006/115/EC)[2]. This paragraphs only covers phonograms , as such setting up a special regime for music, **which could allow collecting societies to come and claim additional remuneration from OCSSP on top of music labels and publishers.** Moreover, as Article 8(2) covers the broadcasting of phonograms, its inclusion here means that labels and performers get paid twice: directly for the making available under Article 3 of Directive 2001/29/EC and through their collecting society for the exact same act. **Again a reference to 'give access' criteria:** To "give access" is an overbroad term that is not used in EU copyright legislation. It's one of the criteria considered by the CJEU (e.g.in the Svensson case, the CJEU considered that posting a hyperlink amounts to giving access). Using this as a criteria means that a wide range of intermediaries involved in bringing the service to the user could be caught up in the definition of OCSSP.

[2] Article 8 (2) : Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Member States may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

Recital 38 This directive clarifies, taking into account the case law of the Court of Justice of the European Union, under which conditions **the online content sharing services** ~~information society service providers whose main or one of the main purposes is to store and provide access to the public to copyright-protected works or other protected subject-matter uploaded by their users~~ are engaging in an act of communication to the public ~~and, as a consequence, are required to obtain an authorisation from the relevant rightholders for the use of the content~~. When assessing whether there is an act of communication to the public, two cumulative criteria need to be assessed, namely whether there is an act of communication of a copyright protected work or other subject matter and whether there is a public. In line with the case law of the Court of Justice of the European Union the concept of communication to the public needs to be assessed on an individual basis and taking into account complementary criteria which are not autonomous and are interdependent. The Court has for example indicated that there is an act of communication to the public when one intervenes, in full knowledge of the consequences of its action, to give access to a copyright-protected work. The Court has also underlined the relevance of the profit-making nature of the activity when assessing whether a person is engaging in an act of communication to the public.	**Blanket obligation:** How can something that needs to be **assessed on an individual basis** form the basis of a blanket obligation imposed on an unspecified number of services to put in place filters? The intervention by services in relevant cases such as GS Media relate to webmasters posting links themselves, not user uploaded content and intermediary liability.

Recital 38a Taking into account the fact that certain online **content sharing** services have become main sources of access to protected content online and have developed their activity around such access, and the case law of the Court of Justice of the European Union, it is appropriate to clarify that online **content sharing** services~~, whose main or one of the main purposes is to provide access to copyright protected content uploaded by their users~~ are engaging into acts of communication to the public and making available to the public when they intervene in full knowledge of the consequences of their action to provide access to protected content**.** with the purpose of obtaining profit therefrom by organising it in such a manner that it is easily findable on their services. Organising content involves for example indexing the content, presenting it in a certain manner and categorizing it.	**Focus on 'the purpose of obtaining profit'**, however, this criteria has been interpreted very differently by national courts, and could therefore create legal uncertainty (as recently as a few weeks ago in a Greek court decision). Wikipedia has for example been deemed a commercial entity by Swedish courts.

LIABILITY OF OCSSP

Missing element when it is eligible for the limited liability provided for in Article 14 of Directive 2000/31/EC,	**Nothing specified in the proposal.** **Explanation by the Estonian Council Presidency:** *"At this stage we have chosen not to provide for an explicit clarification as to whether the online content sharing services are excluded from Article 14 ECD as a number of questions remain open and further analysis is needed as to whether and how we can reconcile the different wishes that the delegations have expressed."* **How can an entire provision be written with this left in the dark?** How can a legislator just ignore the most fundamental issue at stake here: what about the e-Commerce Directive (ECD)? The whole (lack of) logic of this provisions rests on its interaction with the ECD!

Recital 13 par 1a **Member States shall provide that an online content sharing service provider referred to in paragraph 1, when it is not eligible for the limited liability provided for in Article 14 of Directive 2000/31/EC, shall not be liable for unauthorised acts of communication to the public and acts of making available provided that it** **(a) takes effective measures to prevent the availability on its services of unauthorised works or other subject-matter identified by rightholders, and** **(b) upon notification by rightholders of a specific unauthorised work or other subject matter, acts expeditiously to remove or disable access to the specific unauthorised work or other subject matter and prevent its future availability through the measures referred to in sub-paragraph (a).**	**So a platform must fulfil the two following obligations cumulatively:** (1) Prevent the availability of anything flagged by a rightholder **=** block it before it appears online **= filter**/general monitoring or magic powers not yet defined (confirmed in Article 13 par 2 that talks about 'preliminarily blocked'). There is no analysis regarding the compatibility with Article 15 ECD; and, (2) **Apply take down and stay down**, the latter again through filters/general monitoring, and again no analysis regarding the compatibility with Article 15 ECD. Moreover, stay down ('prevent its future availability') is impossible just based on a notice. **Note regarding the use of filters**: considering sub-paragraph b clearly refers to notice and stay down, sub-paragraph a can hence only refer to something else, i.e. ex post filtering. Not stating specifically 'content recognition' or equivalent does not mean that it disappeared ! **Impact on Privacy (Article 22 of the General Data Protection Regulation [GDPR])**: The requested measures under point a and point b (stay down) constitute automated processing under the definition of the GDPR (see Recital 71). Article 22(1) of the GDPR states that 'The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her'. A possible exception under Article 22 (2) is however if the decision "is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests". It seems unlikely that this threshold is met in the proposed text, but at the very least Opinions should be asked, for example from the Article 29 Data Protection Working Group.

Where rightholders have not provided the online content sharing service provider data on unauthorised works or other subject-matter to be prevented through the application of the measures referred to in sub-paragraph (a), an online content sharing service provider which have taken such measures shall not be liable for the unauthorised acts of communication to the public and acts of making available of these works and other subject matter.	**Data provided by the rightholders:** If no data given by rightholders regarding their 'catalogue', a platform is not liable regarding the filtering obligation. **Impact on startups:** Article 13 implies that one of the first investment of a startup needs to be into content recognition technologies, and that if rightholders deem that the platform is not important enough for them to provide data on unauthorised works, this heavy investment would remain unused, whilst that money could have been better spent on engineers, marketing, etc..
Recital 38ba **There may be situations where rightholders or online content sharing service providers choose not to conclude any agreements and the service provider decides to prevent the availability of the content to avoid potential copyright infringements. In some cases the online service provider may however be unable to prevent specific protected content even if it has relevant measures in place, notably when rightholders have not provided them the necessary data for the application of the measures to their specific content. It is therefore necessary to provide that in such specific cases online content sharing service providers should not be liable for copyright infringements, provided that they take appropriate and proportionate measures to prevent unauthorised**	**Comments on the explanation by the Estonian Council Presidency:** *"In practice, according to the proposed solution, such a scenario would mean that:* – *the service provider would not be liable for unauthorised acts of communication to the public and making available if they take effective measures with regard to the content that rightholders have identified*;" [**Note:** So 'effective' means 'successful in producing a desired or intended result', yet here if the effective measures are ineffective, it's ok? Is this an encouragement for cheap filters? Which actually have as down side for users that they lead to over blocking of legal content ('false positives'). – *"if no relevant data is provided by rightholders to allow the service providers to apply their measures , the services would not be liable for the specific unauthorised content uploaded by their users;* – *- with regard to unauthorised content that is already available, they remove it upon a notification by rightholders and avoid future uploads of this specific content."* [**Note:** Stay down was not at all part of the conducted Impact Assessment, yet is thrown in here.]

content and that they remove and prevent future uploads of already available unauthorised content upon a notification from rightholders.	*"This possibility for service providers to avoid liability for copyright infringements would only apply in cases where the services are not eligible for the limited liability regime under Article 14 ECD."* [**Note:** So does this mean you are liable as a platform in more cases when you are covered by the Article 14 ECD liability regime? This language is confusing.]

SAFEGUARDS

Article 13 par 1 ab **Member States shall ensure that the measures referred to in paragraph 1(a) shall be appropriate and proportionate, taking into account, among others, the nature of the services, the amount and the type of works or other protected subject-matter uploaded by the users of the services without the authorisation of rightholders, the availability and costs of relevant technologies and their effectiveness in light of technological developments. The service provider shall provide rightholders at their request with adequate information on the functioning and deployment of the measures.**	**Measures:** The measures applied are likely to be part of the Terms & Conditions / Acceptable Use Policy of the platform . **How will the proposed parameters be assessed:** do platforms have to submit statistics about the number of copyrighted works uploaded without authorisation? How will they know that without monitoring and tracking every user ? And even in that case, they can only match uploaded content against provided catalogues by rightholders ? Do platforms have to assess originality to see if copyright applies? Do they have to share their business secrets in terms of what their business model thrives on ? How do you judge the effectiveness of a blocking measure? On how much content it blocked in general, per user, per volume of uploaded content? What about false positives? **Reporting obligation:** This creates an obligation on the platform to provide on-demand report to the rightholders, on top of their forced investments into content recognition technologies. However, there is no obligation whatsoever for rightholders to report, not on the content that was submitted to the platforms, nor on the notices that have been addressed to them, and also not on rightholders' decisions under the redress mechanism foreseen in Recital 39c. If only one party in the equation is forced to produce reporting, then how can there ever be a clear assessment of how/if these mechanisms work.

Article 13 par 2 Member States shall **provide that** that the measures referred to in paragraph 1a **(a) and the action taken following a notification by rightholders referred to in paragraph 1a (b)** shall be implemented by an ~~information society~~ **online content sharing** service provider without prejudice to the freedom of expression and information of their users and the possibility for the users to benefit from an exception or limitation to copyright. For that purpose the service provider shall put in place a complaint and redress mechanism that is available to users of the service in case of disputes over the **application** of the measures. Complaints submitted under this mechanism shall be processed ~~by the relevant rightholders~~ **in collaboration with rightholders** within a reasonable period of time~~. and any prevention by the service provider will be subject to~~. ~~The rightholder shall duly justify its decision~~ **by rightholders. This mechanism shall allow the preliminarily blocked content to be made publicly available until the parties agree on the action to follow or the complaint is otherwise dealt with. Relevant rightholders shall be appropriately notified about these uploads to allow them to enforce their rights with regard to infringing works or other subject matter, as appropriate.**	**Redress mechanism:** Freedom of expression and information is not preserved by a redress mechanism which acts after the fact of blocking. **Why have those 2 fundamental rights been identified specifically and in an exhaustive manner when CJEU case law (notably in the SABAM/Netlog and SABAM/Scarlet cases) identifies conflicts between filtering and many more fundamental rights?** Why is the scope of redress limited to the application of the measure? How will the collaboration between platform and rightholder work? After all, the platform blocks what the rightholders tells them to. Is the proposed mechanism that: 1. Content gets blocked before being put online 2. User complains 3. Regardless of merits of complaint user, content is made available online until parties agree on action (who are the parties ? User, platform, rightholder ?) or the complaint is dealt with (so option a is outside the redress mechanism?). 4. Rightholders get notified about EVERY BLOCKED content? How can a user ever benefit from an exception or limitation to copyright, without being forced to use the redress mechanism, seeing that content recognition technology cannot cope with exceptions or limitations. This will result in a huge 'chilling effect' on freedom of expression, seeing that only a minority of users will actually go through the hassle of complaining that their content was wrongfully blocked. Moreover, even less users will be knowledgeable enough about their rights to defend the fact they relied on an exception. The obligation to resolve disputes in a 'reasonable period of time' has in this version been pushed onto the platform, instead of the rightholder in previous versions. However, this neglects the fact that the platform is only an intermediary, and thus subject to the willingness of the rightholder to act swiftly. Neither, the platform nor the user have any leverage or means of pressure to force the rightholders to swiftly proceed with handling complaints.

	Moreover, also the obligation on the rightholder to duly justify its decision has been removed. Whilst, the number of obligations and expectations on the side of platforms keep growing, rightholders are being excluded from any effort from their side.
Recital 38f The assessment of the appropriateness and proportionality of measures to be taken by the ~~information society~~ **online content sharing** service providers ~~should~~ among other things take account of the type of content uploaded by their users, **without the authorisation of the right holders,** the state of the art of existing technologies ~~per type of content~~ and the size of the service. Where different categories of content are uploaded, such as music, text and audiovisual content, different measures may be appropriate and proportionate per type of content, including content recognition technologies.	**Who assesses appropriateness and proportionality?** Looking at Recital 39b: the platforms, which are hence judge and jury. **Appropriateness to what objective:** maximal blocking or respect of freedoms and rights ? **The 'state of the art of existing technologies'?** Does this equate to constantly buying new software or the software providers being able to constantly claim there is a 'new and improved' version. Considering the few providers currently on the market, this is an open door to abuses. **'Content recognition technologies' resurface:** This Recital clearly does not take into account content types where no content recognition technologies exist (e.g. music sheets or architectural blueprints). Moreover, it neglects the fact that the costs for a platform, such as Wikipedia, increases exponentially if it has to implement content recognition technologies for multiple types of content (text, audio, video, etc.).
Recital 39 b In order to facilitate the assessment by the service providers of what could constitute appropriate and proportionate measures, collaboration between rightholders and service providers is to be encouraged by the Member States in view of defining best practices.	**So the whole assessment of appropriate and proportionate befalls on the platforms** 'in collaboration with rightholders'. Both parties to the issue at stake, one as it fears liability and the other as it prefers everything to be blocked/monetized to its benefit. **Note :** The recent recommendation of 56 academic already criticised the idea of promoting the rightholders to judge, jury, and executioner. Because **the rightholder is "a party with strong incentives to disallow use"** (p. 13). **'Best practices':** These efforts to define so-called 'best practices' could allow rightholders to push certain technological measures onto platforms, as for example the Belgian collecting society SABAM did, when it tried to force ISP Scarlet to implement Audible Magic. This case had to be brought to Court, up to the CJEU.

COOPERATION

Article 13 par 3 Member States shall facilitate, where appropriate, the cooperation between the ~~information society~~ **online content sharing** service providers and rightholders through stakeholder dialogues to define best practices, such as the use of appropriate and proportionate ~~content recognition technologies~~ **measures**~~, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments~~.	**Outside the scope of law:** Member States step in as ‚facilitators, i.e. without any teeth. This provision clearly confirms that everything happening under Article 13 falls outside the scope of law, except for the weak bit about freedom of expression. **'Measures':** Talking about 'measures' does not remove the fact that platforms have to implement content recognition technologies, as these are the only types of measures that allow to prevent the availability of certain content.
Recital 39 Collaboration between ~~information society~~ **online content sharing** service providers and rightholders is essential for the functioning of the measures**.**~~, such as content recognition technologies. These measures should be applied with regard to works and other subject-matter identified by rightholders at the request of such rightholders and in cooperation with them.~~ In particular, ~~the~~ rightholders **who wish to prevent the availability of their content on online content sharing services,** should provide **the service providers** the necessary data on **specific** works and other subject-matter **to be prevented**. ~~The data should be provided by rightholders in a format allowing the service providers to apply the measures in an effective manner to the specific works or other subject-matter identified by rightholders~~	

Recital 39a **Online content sharing s**~~S~~ervice providers should be transparent towards rightholders with regard to the deployed measures, to allow the assessment of their appropriateness. As different measures may be used by service providers, they should provide rightholders with appropriate information on the type of measures used ~~–~~and the way they are operated~~, Where relevant, notably where agreements have been concluded with rightholders for the use of the protected content, the service providers should also provide information on the success rates for the recognition of rightholders' content~~ without prejudice to their business secrets. The level of information given by the service providers should as a minimum be sufficient to allow rightholders to assess the effectiveness of the measures used without requiring the service providers to provide them with detailed and individualised information for each content identified. This is without prejudice to contractual arrangements, which may contain more specific provisions on the information to be provided.	**Business secrets:** suddenly the idea that this could be in conflict with business secrets pops up…but in a Recital. **Privacy:** Privacy of users is of course nowhere to be found.

USER PROTECTION

Article 13 par 5 Member **S**~~s~~tates shall provide that **licencing** agreements concluded between ~~information society~~ **online content sharing** service providers ~~which store and give access to works and other protected subject-matter uploaded by their users referred in paragraphs 1 and 1a above,~~ and relevant rightholders, shall cover the **acts of the users of the services falling~~, for acts falling~~ within Article 3(1) and (2) ~~Article 3~~of Directive 2001/29/EC and Article 8 (2) of Directive 2006/115/EC**, when **the users** are not acting in a professional capacity~~., for acts falling within Article 3 of Directive 2001/29/EC~~.	**This is the only part where 'licensing' is specifically mentioned:** This implies that everything under Article 13 can happen without any licensing agreements in place, and that this provision would only apply to a subset of measures. **'Not acting in a professional capacity':** What is a user 'not acting in a professional capacity' and how does a platform assess that? Should it start asking all their users to provide their VAT or company number if they have one in order to define who's 'acting in a professional capacity'? And what if the user doesn't comply? Which acts of the user fall under this and which do not? How can a licensing agreement between two parties cover the acts of a third party, if the latter infringes the law? **'Cover':** What does 'cover' mean?
Recital 38b Where authorisations are granted by rightholders to ~~information society services~~ **online content sharing services** for the use of their content uploaded by the~~ir~~ users of the services, these authorisations should also cover the liability of the users for copyright relevant acts but only in cases where the users do not act in their professional capacity.	**'Authorisations':** Suddenly it's 'authorisations'. See previous remarks.

Recital 38c The measures taken by the service providers should respect the freedom of expression and freedom to information of their users and be without prejudice to the application of the exceptions and limitations to copyright. For that purpose the service providers should put in place mechanisms allowing users to complain about the blocking or removal of uploaded content that could benefit from an exception or limitation to copyright. Replies to the users' complaints should be provided in a timely manner. To make these mechanisms function, cooperation from rightholders is needed, in particular with regard to the assessment of the complaints submitted **and justifications for the prevention**. **Protected content uploaded by the users which has been blocked preliminarily by the services, should be made available on the service following a complaint by the user. The content should remain available until the parties find an agreement or until the complaint is dealt with**. **Member States should remain free to put in place independent authorities for assessing the complaints submitted by users and taking decisions on their validity. The redress mechanism will be without prejudice to the right of the parties to take action before a court.**	**Explanation by the Estonian Council Presidency:** *"With regard to the redress mechanism for users whose content may be blocked in an unjustified manner, we have added a clarification that the contested content should remain available until the dispute is ongoing between users and rightholders."* **What does 'until the dispute is ongoing' mean?** Is the proposed mechanism that: 1. Content gets blocked before being put online; 2. User complains; 3. Complaint goes to platform that 'collaborates with' rightholder OR Member State sets in place independent authority (paid by?); 4. Regardless of merits of complaint user, content is made available online until parties agree on action (who are the parties ? User, platform, rightholder ?) or the complaint is dealt with (so option A is outside the redress mechanism?); and, 5. Parties can still go to court if not happy. **No mechanisms are foreseen to review the general performance and effectiveness of the complaint-handling by rightholders:** Platforms' users are directly impacted by rightholders' treatment of their complaints, as it impacts their perception of the platform, therefore slow and bad handling of such complaints by rightholders could negatively reflect on the platform. Rightholders could thus treat users badly, in the hope to push them to their own platforms or to platforms wherein they are a shareholder.

WHAT DISAPPEARED?

Article 13 par 2a	**No references anymore to services in third countries:** This makes it official: only bona fide EU services are targeted.
~~Member States shall ensure that the obligations set out in this Article apply to information society service providers established in their territory in accordance with Directive 2000/31/EC and to information society service providers of third countries who offer their services of storing and providing access to works or other protected subject-matter uploaded by their users who do not hold relevant rights in the content in the European Union.~~	

[i] **ANNEX I – Indicative list of services not covered by the second subparagraph of point (b) of Article 1(1)**

1. ***Services not provided 'at a distance'***

Services provided in the physical presence of the provider and the recipient, even if they involve the use of electronic devices:

(a) medical examinations or treatment at a doctor's surgery using electronic equipment where the patient is physically present;

(b) consultation of an electronic catalogue in a shop with the customer on site;

(c) plane ticket reservation at a travel agency in the physical presence of the customer by means of a network of computers;

(d) electronic games made available in a video arcade where the customer is physically present.

2. ***Services not provided 'by electronic means'***

— services having material content even though provided via electronic devices:

(a) automatic cash or ticket dispensing machines (banknotes, rail tickets);

(b) access to road networks, car parks, etc., charging for use, even if there are electronic devices at the entrance/exit controlling access and/or ensuring correct payment is made,

— offline services: distribution of CD-ROMs or software on diskettes,

— services which are not provided via electronic processing/inventory systems:

(a) voice telephony services;

(b) telefax/telex services;

(c) services provided via voice telephony or fax;

(d) telephone/telefax consultation of a doctor;

(e) telephone/telefax consultation of a lawyer;

(f) telephone/telefax direct marketing.

3. ***Services not supplied 'at the individual request of a recipient of services'***

Services provided by transmitting data without individual demand for simultaneous reception by an unlimited number of individual receivers (point to multipoint transmission):

(a) television broadcasting services (including near-video on-demand services), covered by point (e) of Article 1(1) of Directive 2010/13/EU;

(b) radio broadcasting services;

(c) (televised) teletext.