



7 February 2019

Priority issues that GESAC notes as still requiring indispensable improvement:

1. **Recital 38d last paragraph must be deleted:** This provision contradicts the very purpose of the directive by relieving concerned platforms from liability at the expense of the users of the service and the rightholders. It is exactly the opposite that this directive intends to ensure by clarifying the copyright liability of active platforms for the content uploaded by their users. Platforms like YouTube undertake act of communication to public based on their own exploitation and they should not be allowed to be exempted from the obligation to get a licence because of the relations of rightholders with the commercial users based on the latter's own exploitation. This provision would only provide another getaway for self-proclaimed platforms to avoid paying creators fairly.
2. **User generated content provision Art 15(5):** Despite the significant improvements on the wording, there is still need for certain important modifications to make this provision fit for its purpose.

Firstly, the text needs to specify that the referred purposes (i.e. quotation, criticism, review, caricature, parody or pastiche) are understood within the meaning of Art 5.3 of the 2001 InfoSoc Directive that provides such exceptions and do not go beyond them.

Secondly, although the clarification regarding the content generated/created by the users themselves relying on the referred exceptions makes sense for the scope of this provision, introducing a free use of this newly created/generated content "by other users" seem to be excessive. It would deprive creators of such new works from any protection without any justification.

Finally, although we note that the provision aims at providing a limited list of exceptions, we believe that this intention can be better reflected by adding the word "*for the **exclusive** purposes of (...)*".

3. **Reference to monitoring obligation in Art 13.7:** We note that the reference to Art 15 of the E-Commerce Directive is deleted from the text, which is a change in the positive direction; however the text would still need the following indispensable clarification to clarify its purpose and to ensure that the concerned platforms would not use this provision to avoid their obligations under Art 13(4):

*"Article 13(7): The application of the provisions in this article shall not lead to any general monitoring obligation **of content for which rightholders have not provided relevant information**".*

This proposed addition should also be reflected in the corresponding recital 38b, paragraph 3.

4. **Scope of pass-through licences:** The text usefully provides that the licence given to platforms covers the acts of the uploaders where such users act for non-commercial purposes. However, covering the cases where *“the revenue generated is not significant”* introduces a layer of complexity as to what would be covered and what not. Our understanding is that the last COREPER already considered deleting of this reference from Art 13.2, however the text of Rec 38d, paragraph 1 of the latest compromise text still includes it. Therefore, deletion of this would be in line with already agreed deletion from the article and also follow the deletions that are already made in this paragraph.
