Recital 31

(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. The increasing imbalance between powerful platforms and press publishers, which can also be news agencies, has already led to a remarkable regression of the media landscape on a regional level. In the transition from print to digital, publishers and news agencies 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.

Recital 32

(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 and thereby to guarantee the availability of reliable information. It is therefore necessary for Member States to provide at Union level legal protection for press publications in the Union for digital uses. Such protection should be effectively 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 in order to obtain fair and proportionate remuneration for such uses. Private uses should be excluded from this reference. In addition, the listing in a search engine should not be considered as fair and proportionate remuneration.

Recital 33

(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. The protection shall also not extend to the factual information which is reported in the journalistic articles from a press publication and will therefore not prevent anyone from reporting such factual information.

Recital 34

(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. Member States should be able to subject those rights 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.

Recital 35

(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. Authors whose work is incorporated in a press publication shall be entitled to an appropriate share of the new additional revenues press publishers receive for the secondary use of their press publications by information society service providers in respect to the rights provided for in Article 11 paragraph 1.

Recital 37

(37) Over the last years, the functioning of the online content market 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 copyright protected content online. Online services are means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. However, although they allow for diversity and ease of access to content, they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders. 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.

Recital 37 a (new)

(37a) Certain information society services, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter uploaded by their users. The definition of an online content sharing service provider under this Directive shall cover information society service providers one of the main purposes of which is to store and give access to the public or to stream copyright protected content uploaded / made available by its users and that optimise content, including amongst others promoting displaying, tagging, curating, sequencing the uploaded works or other subject-matter, irrespective of the means used therefor, and therefore act in an active way. The definition of online content sharing service providers under this Directive does not cover service providers that act in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all rightholders concerned, such as educational or scientific repositories. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive.

Recital 38

(38) Online content sharing service providers perform an act of communication to the public and therefore are responsible for their content.

Where licensing agreements are concluded, they should also cover, to the same extent and scope, the liability of users when they are acting in a non-commercial capacity.

In accordance with Article 11(2a) the responsibility of online content sharing providers pursuant to Article 13 does not extend to acts of hyperlinking with respect to press publications.

The dialogue between stakeholders is essential in the digital world. They should define best practices to ensure the functioning of licensing agreements and cooperation between online content sharing service providers and rightholders. These best practices should take into account the extend of the copyright infringing content on the service.

(39) deleted

Article 2

(4b) ‘online content sharing service provider’ means a provider of an information society service one of the main purposes of which is to store and give access to the public to copyright protected works or other protected subject-matter uploaded by its users, which the service optimises. Services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all rightholders concerned, such as educational or scientific repositories, should not be considered online content sharing service providers within the meaning of this Directive. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive;

Article 11

Protection of press publications concerning digital uses

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 so that they may obtain fair and proportionate remuneration for the digital use of their press publications by information society service providers.

1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.

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.

2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks, which are accompanied by individual words.

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 5 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.

The right referred to in paragraph 1 shall not apply with retroactive effect.

4a. Member States shall ensure that authors, receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers.

Article 13

Use of protected content by information society service providers storing and/or giving access to works and other subject-matter uploaded by their users

1. Without prejudice to Article 3(1) and (2) of Directive 2001/29/EC, online content sharing service providers perform an act of communication to the public.

2. Licensing agreements which are concluded by online content sharing service providers with rightholders for the acts of communication referred to in paragraph 1, shall cover the liability for works uploaded by the users of such online content sharing services in line with the terms and conditions set out in the licensing agreement, provided that such users do not act for commercial purposes.

3. The Commission and the Members States shall encourage dialogues between stakeholders to harmonise and to define best practices to ensure the functioning of licensing agreements and on cooperationbetween online content sharing service providers and rightholders for the use of their works or other subject matter within the meaning of this Directive.