



**Vereniging voor Auteursrecht
14 October 2016**

**Recent Developments:
Sanoma v. GS Media and The Value Gap Proposal**

On 8 September 2016 the ECJ rendered its decision in [Sanoma v. GS Media](#). According to the court the act of hyperlinking to illegal content may constitute a communication to the public depending on the hyperlinking party's knowledge of the illegal nature of the content. Knowledge is presumed when the hyperlinking is carried out for profit.

On 14 September 2016 the European Commission issued the [draft Directive on Copyright in the Digital Single Market](#). Article 13 (referred to by the EC as the Value Gap proposal) requires information society service providers storing and providing access to user uploaded content to take appropriate and proportionate measures to ensure the functioning of agreements concluded with rightholders or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Recital 38 furthermore seeks to clarify the interrelation between copyright law and the hosting provider exemption of Article 14 of the E-Commerce Directive.

How to understand these developments? What do they for mean for Internet users, social media platforms, P2P networks, file sharing services, ISP's, authors and publishers? How does the ECJ decision fit in with the international copyright treaties?

Location: Restaurant 1^e Klas, Stationsplein 15, Amsterdam

Chairman: Anja Kroeze (legal counsel Buma Stemra Netherlands, Secretary VvA)

Programme:

13:30 - 14:00: Reception and Coffee

14:00 - 14:20: *Sanoma v. GS Media* and the EC Value Gap Proposal – An Introduction

Jacqueline Seignette (Höcker advocaten, President VvA)

14:20 - 15:00: Perspectives

Burak Özgen (Senior Legal Advisor at GESAC - European Grouping of Societies of Authors and Composers)

Eleonora Rosati (Lecturer in Intellectual Property Law at University of Southampton; IPKat blogger)

15:00 - 15:15: Q&A

15:15 - 15:45: Tea Break

15:45 - 17:00: Panel Discussion

Moderator: Jacqueline Seignette

Panel:

Milica Antic (Senior Legal Counsel Google Netherlands)

Remy Chavannes (Brinkhof Advocaten)

Tim Kuik (Brein)

Burak Özgen (GESAC)

Eleonora Rosati (University of Southampton)

17:00 - 18:00: Drinks

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market, Brussels, 14.9.2016 COM(2016) 593 final 2016/0280 (COD)

(...)

(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 are 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 Council³⁴.

In respect of Article 14, it is necessary to verify whether 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.

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 providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.

(39) Collaboration between 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 and rightholders is essential for the 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 and 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 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.

(...)

Article 13 Use of protected content by information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users

1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.

2. Member States shall ensure that the service providers referred to in paragraph 1 put in place complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1.

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.