



Vereniging voor Auteursrecht 14 oktober 2016

Recente ontwikkelingen: Sanoma/GS Media en het Value Gap voorstel

Op 8 september 2016 deed het Hof van Justitie uitspraak in [Sanoma v. GS Media](#). Hyperlinken naar een werk dat zonder toestemming ter beschikking is gesteld, kan aldus het Hof een mededeling aan het publiek zijn als de linkende partij kennis heeft of redelijkerwijs kan hebben van het illegale karakter. Bij hyperlinks die worden geplaatst met winstooymerk wordt kennis vermoed.

Op 14 september 2016 publiceerde de Europese Commissie haar voorstel voor een [ontwerprichtlijn over auteursrecht in de digitale eengemaakte markt](#). Artikel 13 (door de EC aangeduid als het Value Gap voorstel) bepaalt dat diensten voor opslag en toegang tot werken die door gebruikers worden geupload, geëigende en proportionele maatregelen moeten nemen om te zorgen dat overeenkomsten met rechthebbenden goed functioneren of om te voorkomen dat werken die door rechthebbenden door middel van samenwerking met de dienstverleners zijn geïdentificeerd, beschikbaar komen. Overweging 38 beoogt daarnaast meer duidelijkheid te scheppen over de verhouding tussen het auteursrecht en de hosting exceptie van artikel 14 van de E-Commerce richtlijn.

Wat betekenen deze ontwikkelingen voor Internet gebruikers, social media platforms, P2P netwerken, file sharing services, ISP's, auteurs en uitgevers? Hoe verhoudt de uitspraak van het Hof zich tot de internationale auteursrechtverdragen?

- Locatie:** Restaurant 1^e Klas, Stationsplein 15, Amsterdam
- Voorzitter:** Anja Kroeze (legal counsel Buma Stemra, secretaris VvA)
- Programma:**
- 13:30 - 14:00: Ontvangst en koffie**
- 14:00 - 14:20: *Sanoma v. GS Media* and the EC Value Gap Proposal – An Introduction**
- Jacqueline Seignette (Höcker advocaten, voorzitter VvA)
- 14:20 - 15:00: Perspectives**
- Burak Özgen (Senior Legal Advisor GESAC - European Grouping of Societies of Authors and Composers)
- Eleonora Rosati (docent Intellectuele Eigendom Universiteit van Southampton; IPKat blogger)
- 15:00 - 15:15: Q&A**
- 15:15 - 15:45: Theepauze**
- 15:45 - 17:00: Panel Discussie**
- Moderator: Jacqueline Seignette
- Panel:
Remy Chavannes (Brinkhof Advocaten)
Tim Kuik (Brein)
Burak Özgen (GESAC)
Eleonora Rosati (University van Southampton)
[andere panelleden nader bekend te maken]
- 17:00 - 18:00: Borrel**

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.