



Plenary sitting

A8-0245/2018

29.6.2018

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REPORT

on the proposal for a directive of the European Parliament and of the Council
on copyright in the Digital Single Market
(COM(2016)0593 – C80383/2016 – 2016/0280(COD))

Committee on Legal Affairs

Rapporteur: Axel Voss

Rapporteur for the opinion (*):
Catherine Stihler, Committee on the Internal Market and Consumer Protection

(*) Associated committee – Rule 54 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ~~█~~ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on
copyright in the Digital Single Market
(COM(2016)0593 – C80383/2016 – 2016/0280(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0593),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C80383/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 25 January 2017¹,
 - having regard to the opinion of the Committee of the Regions of 8 February 2017²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Industry, Research and Energy, the Committee on Culture and Education and the Committee on Civil Liberties, Justice and Home Affairs (A8-0245/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 2

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.

Text proposed by the Commission

(2) The directives which have been adopted in the area of copyright and related rights provide for a high level of protection for rightholders and create a framework wherein the exploitation of works and other protected subject-matter can take place. This harmonised legal framework contributes to the good functioning of *the* internal market; it stimulates innovation, creativity, investment and production of new content, also in the digital environment. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.

Amendment

(2) The directives which have been adopted in the area of copyright and related rights **contribute to the functioning of the internal market**, provide for a high level of protection for rightholders, **facilitate the clearance of rights** and create a framework wherein the exploitation of works and other protected subject-matter can take place. This harmonised legal framework contributes to the good functioning of **a truly integrated** internal market; it stimulates innovation, creativity, investment and production of new content, also in the digital environment, **with a view to avoiding fragmentation of the internal market**. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.

Amendment 2

Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on ***rights in publications, on*** the use of works and other subject-matter ***by*** online service providers ***storing and giving access to user uploaded content*** and on the transparency of authors' and performers' contracts.

²⁶ COM(2015) 626 final.

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited, ***and relevant legislation needs to be future proof so as not to restrict technological development.*** New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning ***and fair*** marketplace for copyright, there should also be rules on ***the exercise and enforcement of*** the use of works and other subject-matter ***on*** online service providers' platforms and on the transparency of authors' and performers' contracts ***and of the accounting linked with the exploitation of protected works in accordance with those contracts.***

²⁶ COM(2015) 626 final.

Amendment 3

Proposal for a directive Recital 4

Text proposed by the Commission

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council²⁷, Directive 2001/29/EC of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹ and Directive 2014/26/EU of the European Parliament and of the Council³².

Amendment

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council²⁷, Directive **2000/31/EC of the European Parliament and of the Council** ^{27a}, Directive 2001/29/EC of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹ and Directive 2014/26/EU of the European Parliament and of the Council³².

²⁷ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20–28).

²⁷ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20–28).

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19).

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19).

²⁹ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28–35).

²⁹ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28–35).

³⁰ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16–22).

³¹ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5–12).

³² Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72–98).

³⁰ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16–22).

³¹ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5–12).

³² Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72–98).

Amendment 4

Proposal for a directive

Recital 5

Text proposed by the Commission

Amendment

(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted.

(5) In the fields of research, ***innovation***, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for ***innovation***, scientific research, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of ***innovation and*** scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. ***Therefore, existing well-functioning exceptions in those fields should be allowed to continue to be available in Member States, as long as they do not restrict the scope of the exceptions or limitations provided for in this Directive.*** Directives 96/9/EC and 2001/29/EC should be adapted.

Amendment 5

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) The exceptions and the *limitation* set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders.

(6) The exceptions and the *limitations* set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders.

Amendment 6

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. ***Those technologies allow researchers to process*** large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the *sui generis* database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. ***Text and data mining allows the reading and analysis of*** large amounts of ***digitally stored*** information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the *sui generis* database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.

Amendment 7

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) For text and data mining to occur, it is in most cases necessary first to access information and then to reproduce it. It is generally only after that information is normalised that it can be processed through text and data mining. Once there is lawful access to information, it is when that information is being normalised that a copyright-protected use takes place, since this leads to a reproduction by changing the format of the information or by extracting it from a database into a format that can be subjected to text and data mining. The copyright-relevant processes in the use of text and data mining technology is consequently not the text and data mining process itself which consists of a reading and analysis of digitally stored, normalised information, but the process of accessing and the process by which information is normalised to enable its automated computational analysis, insofar as this process involves extraction from a database or reproductions. The exceptions for text and data mining purposes provided for in this Directive should be understood as referring to such copyright-relevant processes necessary to enable text and data mining. Where existing copyright law has been inapplicable to uses of text and data mining, such uses should remain unaffected by this Directive.

Amendment 8

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***Research organisations should also benefit from the exception when they engage into public-private partnerships.***

(10) This legal uncertainty should be addressed by providing for a mandatory exception ***for research organisations*** to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***Educational establishments and cultural heritage institutions that conduct scientific research should also be covered by the text and data mining exception provided that the results of the research do not benefit an undertaking exercising a decisive influence upon such organisations in particular. In the event that the research is carried out in the framework of a public private-partnership, the undertaking participating in the public private partnership should also have lawful access to the works and other subject matter. The reproductions and extractions made for text and data mining purposes should be stored in a secure manner and in a way that ensures that the copies are only used for the purpose of scientific research.***

Amendment 9

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) To encourage innovation also in the private sector, Member States should be able to provide for an exception going further than the mandatory exception provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by machine readable means.

Amendment 10

Proposal for a directive Recital 15

Text proposed by the Commission

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.

Amendment

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity. *Where cultural heritage institutions pursue an educational objective and are involved in teaching activities, it should be possible for Member States to consider those institutions as an educational establishment under this exception in so far as their teaching activities are concerned.*

Amendment 11

Proposal for a directive

Recital 16

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means in the classroom and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.</p>	<p>(16) The exception or limitation should cover digital uses of works and other subject-matter to support, enrich or complement the teaching, including the related learning activities. The exception or limitation of use should be granted as long as the work or other subject-matter used indicates the source, including the authors' name, unless that turns out to be impossible for reasons of practicability. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means where the teaching activity is physically provided, including where it takes place outside the premises of the educational establishment, for example in libraries or cultural heritage institutions, as long as the use is made under the responsibility of the educational establishment, and online uses through the educational establishment's secure electronic environment, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.</p>

Amendment 12

Proposal for a directive

Recital 16 a (new)

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Text proposed by the Commission

Amendment

(16a) A secure electronic environment should be understood as a digital teaching and learning environment, access to which is limited through an appropriate authentication procedure to the educational establishment's teaching staff and to the pupils or students enrolled in a study programme.

Amendment 13

Proposal for a directive

Recital 17

Text proposed by the Commission

Amendment

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, ***covering*** at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes.

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences. ***Such licences can take the form of collective licensing agreements, extended collective licensing agreements and licences that are negotiated collectively such as “blanket licences”, in order to avoid educational establishments having to negotiate individually with rightholders. Such licenses should be affordable and cover*** at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, ***or for teaching in educational establishments or sheet music.*** In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that ***such*** licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational

Amendment 14

Proposal for a directive

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17 a) In order to guarantee legal certainty when a Member State decides to subject the application of the exception to the availability of adequate licences, it is necessary to specify under which conditions an educational establishment may use protected works or other subject-matter under that exception and, conversely, when it should act under a licensing scheme.

Justification

The proposed amendment is needed in order to provide legal certainty in cases when a Member State decides to subject the application of the exception to the availability of adequate licences.

Amendment 15

Proposal for a directive

Recital 18

Text proposed by the Commission

Amendment

(18) An act of preservation **may** require a reproduction **of a work or other subject-matter in the collection of a cultural heritage institution** and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation.

(18) An act of preservation **of a work or other subject-matter in the collection of a cultural heritage institution may** require a reproduction and consequently **require** the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation **by such institutions.**

Amendment 16

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) Different approaches in the Member States for acts of preservation **by cultural heritage institutions** hamper cross-border cooperation **and** the sharing of means of preservation **by cultural heritage institutions in the internal market**, leading to an inefficient use of resources.

Amendment

(19) Different approaches in the Member States for acts of **reproduction for preservation** hamper cross-border cooperation, the sharing of means of preservation **and the establishment of cross-border preservation networks in the internal market** **organisations that are engaged in preservation**, leading to an inefficient use of resources. **This can have a negative impact on the preservation of cultural heritage.**

Amendment 17

Proposal for a directive

Recital 20

Text proposed by the Commission

Amendment

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, *for example* to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only.

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, to address technological obsolescence or the degradation of original supports *or to insure works*. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, *in any format or medium*, in the required number, at any point in the life of a work or other subject-matter *and* to the extent required in order to produce a copy for preservation purposes only. *The archives of research organisations or public-service broadcasting organisations should be considered cultural heritage institutions and therefore beneficiaries of this exception. Member States should, for the purpose of this exception, be able to maintain provisions to treat publicly accessible galleries as museums.*

Amendment 18

Proposal for a directive

Recital 21

Text proposed by the Commission

Amendment

(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies are owned or permanently held by ***the cultural heritage institution***, for example as a result of a transfer of ownership or licence agreements.

(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies ***of such works or other subject matter*** are owned or permanently held by ***those organisations***, for example as a result of a transfer of ownership, licence agreements, ***a legal deposit or a long-term loan. Works or other subject matter that cultural heritage institutions access temporarily via a third-party server are not considered as being permanently in their collections.***

Amendment 19

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) Technological developments have given rise to information society services enabling their users to upload content and make it available in diverse forms and for various purposes, including to illustrate an idea, criticism, parody or pastiche. Such content may include short extracts of pre-existing protected works or other subject-matter that such users might have altered, combined or otherwise transformed.

Amendment 20

Proposal for a directive Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) Despite some overlap with existing exceptions or limitations, such as the ones for quotation and parody, not all content that is uploaded or made available by a user that reasonably includes extracts of protected works or other subject-matter is covered by Article 5 of Directive 2001/29/EC. A situation of this type creates legal uncertainty for both users and rightholders. It is therefore necessary to provide a new specific exception to permit the legitimate uses of extracts of pre-existing protected works or other subject-matter in content that is uploaded or made available by users. Where content generated or made available by a user involves the short and proportionate use of a quotation or of an extract of a protected work or other subject-matter for a legitimate purpose, such use should be protected by the exception provided for in this Directive. This exception should only be applied in certain special cases which do not conflict with normal exploitation of the work or other subject-matter concerned and do not unreasonably prejudice the legitimate interests of the rightholder. For the purpose of assessing such prejudice, it is essential that the degree of originality of the content concerned, the length/extent of the quotation or extract used, the professional nature of the content concerned or the degree of economic harm be examined, where relevant, while not precluding the legitimate enjoyment of the exception. This exception should be without prejudice to the moral rights of the authors of the work or other subject-matter.

Amendment 21

Proposal for a directive Recital 21 c (new)

Text proposed by the Commission

Amendment

(21c) Information society service providers that fall within the scope of Article 13 of this Directive should not be able to invoke for their benefit the exception for the use of extracts from pre-existing works provided for in this Directive, for the use of quotations or extracts from protected works or other subject-matter in content that is uploaded or made available by users on those information society services, to reduce the scope of their obligations under Article 13 of this Directive.

Amendment 22

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use. It is therefore necessary to provide for measures to facilitate the **licensing of rights in** out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.

Amendment

(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use **or have never been in commerce**. It is therefore necessary to provide for measures to facilitate the **use of** out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.

Amendment 23

**Proposal for a directive
Recital 22 a (new)**

Text proposed by the Commission

Amendment

(22a) Several Member States have already adopted extended collective licensing regimes, legal mandates or legal presumptions facilitating the licensing of out-of-commerce works. However considering the variety of works and other subject-matter in the collections of cultural heritage institutions and the variance between collective management practices across Member States and sectors of cultural production, such measures may not provide a solution in all cases, for example, because there is no practice of collective management for a certain type of works or other subject matter. In such particular instances, it is therefore necessary to allow cultural heritage institutions to make out-of-commerce works held in their permanent collection available online under an exception to copyright and related rights. While it is essential to harmonise the scope of the new mandatory exception in order to allow cross-border uses of out-of-commerce works, Member States should nevertheless be allowed to use or continue to use extended collective licensing arrangements concluded with cultural heritage institutions at national level for categories of works that are permanently in the collections of cultural heritage institutions. The lack of agreement on the conditions of the licence should not be interpreted as a lack of availability of licensing-based solutions. Any uses under this exception should be subject to the same opt out and publicity requirements as uses authorised by a licensing mechanism. In order to ensure that the exception only applies when certain conditions are fulfilled and to provide legal certainty, Member States should determine, in consultation with rightholders, collective management organisations and cultural heritage organisations, and at appropriate intervals of time, for which sectors and which types of works appropriate licence-based solutions are not available, in which case

Amendment 24

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the collective management organisation, in accordance **to** their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.

Amendment

(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the **relevant** collective management organisation, in accordance **with** their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.

Amendment 25

Proposal for a directive

Recital 24

Text proposed by the Commission

Amendment

- (24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such mechanisms to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.
- (24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important **and should be encouraged by the Member States**. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such **licensing** mechanisms **or of such exceptions** to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.

Amendment 26

Proposal for a directive Recital 25

Text proposed by the Commission

Amendment

(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of ***those mechanisms***, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, ***users*** and collective management organisations when doing so.

(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of ***the solutions on the use of out-of-commerce works introduced by this Directive***, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, ***cultural heritage institutions*** and collective management organisations when doing so.

Amendment 27

Proposal for a directive Recital 26

Text proposed by the Commission

Amendment

- (26) For reasons of international comity, the licensing mechanisms for the digitisation and dissemination of out-of-commerce works provided for in this Directive should not apply to works or other subject-matter that are first published or, in the absence of publication, first broadcast in a third country or, in the case of cinematographic or audiovisual works, to works the producer of which has his headquarters or habitual residence in a third country. Those mechanisms should also not apply to works or other subject-matter of third country nationals except when they are first published or, in the absence of publication, first broadcast in the territory of a Member State or, in the case of cinematographic or audiovisual works, to works of which the producer's headquarters or habitual residence is in a Member State.
- (26) For reasons of international comity, the licensing mechanisms ***and the exception*** for the digitisation and dissemination of out-of-commerce works provided for in this Directive should not apply to works or other subject-matter that are first published or, in the absence of publication, first broadcast in a third country or, in the case of cinematographic or audiovisual works, to works the producer of which has his headquarters or habitual residence in a third country. Those mechanisms should also not apply to works or other subject-matter of third country nationals except when they are first published or, in the absence of publication, first broadcast in the territory of a Member State or, in the case of cinematographic or audiovisual works, to works of which the producer's headquarters or habitual residence is in a Member State.

Amendment 28

Proposal for a directive Recital 27

Text proposed by the Commission

- (27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them from ***generating reasonable revenues in order to cover*** the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.

Amendment

- (27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them from ***covering*** the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.

Amendment 29

Proposal for a directive Recital 28

Text proposed by the Commission

(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences to their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council , the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.

Amendment

(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms *or of the exception* provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences *or of the exception* to their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.

Amendment 30

**Proposal for a directive
Recital 28 a (new)**

Text proposed by the Commission

Amendment

(28a) In order to ensure that the licensing mechanisms established for out-of-commerce works are relevant and function properly, that rightholders are adequately protected under those mechanisms, that licences are properly publicised and that legal clarity is ensured with regard to the representativeness of collective management organisations and the categorisation of works, Member States should foster sector-specific stakeholder dialogue.

Amendment 31

Proposal for a directive

Recital 30

Text proposed by the Commission

Amendment

- (30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms, **this Directive requires** Member States **to** set up a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The body should meet with the parties and help with the negotiations by providing professional and external advice. Against that background, Member States should decide on the conditions of the functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the **bearing of the costs**. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.
- (30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms, Member States **should** set up a negotiation mechanism, **managed by an existing or newly established national body**, allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. **The participation in this negotiation mechanism and the subsequent conclusion of agreements should be voluntary. Where a negotiation involves parties from different Member States, those parties should agree beforehand on the competent Member State should they decide to rely on the negotiation mechanism.** The body should meet with the parties and help with the negotiations by providing professional, **impartial** and external advice. Against that background, Member States should decide on the conditions of the functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the **division of any costs arising, and the composition of such bodies**. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.

Amendment 32

Proposal for a directive Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) The preservation of the Union's heritage is of the utmost importance and should be strengthened for the benefit of future generations. This should be achieved notably through the protection of published heritage. To this end, a Union legal deposit should be created in order to ensure that publications concerning the Union, such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, and, thereby, the Union's intellectual record and future published heritage, are collected systematically. Not only should such heritage be preserved through the creation of a Union archive for publications dealing with Union-related matters, but it should also be made available to Union citizens and future generations. The European Parliament Library, as the Library of the only Union institution directly representing Union citizens, should be designated as the Union depository library. In order not to create an excessive burden on publishers, printers and importers, only electronic publications, such as e-books, e-journals and e-magazines should be deposited in the European Parliament Library, which should make available for readers publications covered by the Union legal deposit at the European Parliament Library for the purpose of research or study and under the control of the European Parliament Library. Such publications should not be made available online externally.

Amendment 33

Proposal for a directive Recital 31

Text proposed by the Commission

(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. In the transition from print to digital, publishers 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.

Amendment

(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.

Amendment 34

Proposal for a directive

Recital 32

Text proposed by the Commission

Amendment

(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. It is therefore necessary to provide at Union level **a harmonised** legal protection for press publications in **respect of** 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.

(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.**

Amendment 35

Proposal for a directive Recital 33

Text proposed by the Commission

Amendment

(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 ***which do not constitute communication to the public.***

(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.

Amendment 36

Proposal for a directive

Recital 34

Text proposed by the Commission

(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. ***They*** should ***also*** be subject 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.

Amendment

(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.

Amendment 37

Proposal for a directive

Recital 35

Text proposed by the Commission

Amendment

(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. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.

(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. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. *Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for licensing of their work to the press publisher, authors whose work is incorporated in a press publication should be entitled to an appropriate share of the new additional revenues press publishers receive for certain types of secondary use of their press publications by information society service providers in respect of the rights provided for in Article 11(1) of this Directive. The amount of the compensation attributed to the authors should take into account the specific industry licensing standards regarding works incorporated in a press publication which are accepted as appropriate in the respective Member State; and the compensation attributed to authors should not affect the licensing terms agreed between the author and the press publisher for the use of the author's article by the press publisher.*

Amendment 38

Proposal for a directive

Recital 36

Text proposed by the Commission

Amendment

(36) Publishers, including those of press publications, books or scientific publications, *often* operate on the basis of *the transfer of authors' rights by means of contractual agreements or statutory provisions*. In this context, publishers make an investment with a view to the exploitation of the works *contained in their publications* and may *in some instances be* deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should be allowed to *determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.*

(36) Publishers, including those of press publications, books or scientific publications *and music publications*, operate on the basis of contractual agreements *with authors*. In this context, publishers make an investment *and acquire rights, in some fields including rights to claim a share of compensation within joint collective management organisations of authors and publishers*, with a view to the exploitation of the works and may *therefore also find themselves being* deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a *large* number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and *to* improve legal certainty for all concerned parties, Member States should be allowed to *provide an equivalent compensation sharing system if such a system was in operation in that Member State before 12 November 2015. The share between authors and publishers of such compensation could be set in the internal distribution rules of the collective management organisation acting jointly on behalf of authors and publishers, or set by Members States in law or regulation, in accordance with the equivalent system that was in operation in that Member State before 12 November 2015. This provision is without prejudice to the arrangements in the Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.*

Amendment 39

Proposal for a directive

Recital 36 a (new)

Text proposed by the Commission

Amendment

(36 a) Cultural and creative industries (CCIs) play a key role in reindustrialising Europe, are a driver for growth and are in a strategic position to trigger innovative spill-overs in other industrial sectors. Furthermore CCIs are a driving force for innovation and development of ICT in Europe. Cultural and creative industries in Europe provide more than 12 million full-time jobs, which amounts to 7,5 % of the Union's work force, creating approximately EUR 509 billion in value added to GDP (5,3 % of the EU's total GVA). The protection of copyright and related rights are at the core of the CCI's revenue.

Amendment 40

Proposal for a directive Recital 37

Text proposed by the Commission

Amendment

(37) Over the last years, the functioning of the online content marketplace 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 content online. 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 for it.

(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 for it, *since some user uploaded content services do not enter into licensing agreements on the basis that they claim to be covered by the “safe-harbor” exemption set out in Directive 2000/31/EC.*

Amendment 41

Proposal for a directive Recital 37 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 42

Proposal for a directive Recital 38

Text proposed by the Commission

Amendment

(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.

(38) ***Online content sharing service providers perform an act of communication to the public and therefore are responsible for their content. As a consequence, they should conclude fair and appropriate licensing agreements with rightholders. Therefore they cannot benefit from the liability exemption provided for in Article 14 of Directive 2000/31/EC.***

The rightholder should not be obliged to conclude licensing agreements.

In respect of Article 14 ***of Directive 2000/31/EC***, 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 therefore.

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 order to ensure the functioning of any licensing agreement, ***online content sharing*** service providers should take appropriate and proportionate measures to ensure ***the*** protection of works or other subject-matter ***uploaded by their users***, 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.

In the absence of agreements with the rightholders it is also reasonable to expect from online content sharing service providers that they take appropriate and proportionate measures leading to the non-availability on those services of copyright or related-right infringing works or other subject matter. Such service providers are important content distributors, thereby impacting on the exploitation of copyright-protected content. Such service providers should take appropriate and proportionate measures to ensure the non-availability of works or other subject matter as identified by rightholders. These measures should however not lead to the non-availability of non-infringing works or other subject matter uploaded by users.

Amendment 43

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(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.*

(39) **Cooperation** between *online content sharing* service providers and rightholders is essential for the functioning of *the measures*. In particular, rightholders should provide the *relevant information to online content sharing service providers* to allow *them* to identify their content *when applying the measures*. The service providers should be transparent towards rightholders with regard to the deployed *measures*, to allow the assessment of their appropriateness. When assessing the proportionality and effectiveness of the measures implemented, due consideration should be given to technological constraints and limitations as well as to the amount or the type of works or other subject matter uploaded by the users of the services. In accordance with Article 15 of Directive 2000/31/EC, where applicable, the implementation of measures by service providers should not consist in a general monitoring obligation and should be limited to ensuring the non-availability of unauthorised uses on their services of specific and duly notified copyright protected works or other subject-matter. When implementing such measures, the service providers should also strike a balance between the rights of users and those of the rightholders under the Charter of Fundamental Rights of the European Union. The measures applied should not require the identification of individual users that upload content and should not involve the processing of data relating to individual users, in accordance with Regulation (EU) 2016/679^{1a} and Directive 2002/58/EC^{1b}. Since the measures deployed by online content sharing service providers in application of this Directive could have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the content concerned is covered by an exception or limitation, online content sharing service providers should be required to offer a complaints mechanism

^{1a} Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

^{1b} Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

Amendment 44

Proposal for a directive Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) Member States should ensure that an intermediate mechanism exists enabling service providers and rightholders to find an amicable solution to any dispute arising from the terms of their cooperation agreements. To that end, Member States should appoint an impartial body with all the relevant competence and experience necessary to assist the parties in the resolution of their dispute.

Amendment 45

Proposal for a directive Recital 39 b (new)

Text proposed by the Commission

Amendment

(39b) The content recognition technologies market is well developed already and expected to grow in a data-based economy. The existence of technologies of this kind and competition among suppliers thereof should therefore create a market that is fair for all undertakings, irrespective of their size, ensuring that SME access thereto is affordable and simple. However, the absence of clear legal obligations to use these technologies enables dominant market operators in particular to refuse to use those tools which are appropriate for the purposes of licensing and management of rights.

Amendment 46

Proposal for a directive Recital 39 c (new)

Text proposed by the Commission

Amendment

(39c) As a principle rightholders should always receive fair and appropriate remuneration. Authors and performers who have concluded contracts with intermediaries, such as labels and producers, should receive fair and appropriate remuneration from them, either through individual agreements and/or collective bargaining agreements, collective management agreements or rules having a similar effect, for example joint remuneration rules. This remuneration should be mentioned explicitly in the contracts according to each mode of exploitation, including online exploitation. Members States should look into the specificities of each sector and should be allowed to provide that remuneration is deemed fair and appropriate if it is determined in accordance with the collective bargaining or joint remuneration agreement.

Amendment 47

Proposal for a directive Recital 40

Text proposed by the Commission

Amendment

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of **adequate** information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers.

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Amendment 48

Proposal for a directive Recital 42

Text proposed by the Commission

Amendment

(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case *as well as of* the specificities and practices of the different content sectors. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant *direct and indirect* revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case, the specificities and practices of the different content sectors *as well as of the nature and the contribution to the work of the author or performer. Such a contract adjustment request could also be made by the organisation representing the author or performer on his behalf, unless the request would be detrimental to the interests of the author or performer.* Where the parties do not agree on the adjustment of the remuneration, the author or performer *or a representative organisation appointed by them* should *on request by the author or performer* be entitled to bring a claim before a court or other competent authority.

Amendment 49

Proposal for a directive Recital 43

Text proposed by the Commission

Amendment

(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism.

(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism. *Representative organisations of authors and performers, including collective management organisations and trade unions, should be able to initiate such procedures at the request of authors and performers. Details about who initiated the procedure should remain undisclosed.*

Amendment 50

Proposal for a directive Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) When authors and performers license or transfer their rights, they expect their work or performance to be exploited.

However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In such a case, and after a reasonable time period has lapsed, authors and performers should have a right of revocation allowing them to transfer or license their right to another person.

Revocation should also be possible when the transferee or licensee has not complied with his or her reporting/transparency obligation provided for in Article 14 of this Directive. The revocation should only be considered after all the steps of alternative dispute resolution have been completed, particularly with regard to reporting. As exploitation of works can vary depending on the sectors, specific provisions could be taken at national level in order to take into account the specificities of the sectors - such as the audiovisual sector - or of the works and the anticipated exploitation periods, notably providing for time limits for the right of revocation. In order to prevent abuses and take into account that a certain amount of time is needed before a work is actually exploited, authors and performers should be able to exercise the right of revocation only after a certain period of time following the conclusion of the license or of the transfer agreement.

National law should regulate the exercise of the right of revocation in the case of works involving a plurality of authors or performers, taking into account the relative importance of the individual contributions.

Amendment 51

Proposal for a directive

Recital 43 b (new)

Text proposed by the Commission

Amendment

(43b) To support the effective application across Member States of the relevant provisions of this Directive, the Commission should, in cooperation with Member States, encourage the exchange of best practices and promote dialogue at Union level.

Amendment 52

Proposal for a directive

Recital 46

Text proposed by the Commission

Amendment

(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council³⁵ and Directive 2002/58/EC of the European Parliament and of the Council³⁶.

(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Regulation (EU) 2016/679 and Directive 2002/58/EC. ***The provisions of the General Data Protection Regulation, including the "right to be forgotten" should be respected.***

Amendment 53

Proposal for a directive

Recital 46 a (new)

Text proposed by the Commission

Amendment

(46 a) It is important to stress the importance of anonymity, when handling personal data for commercial purposes. Additionally, the "by default" not sharing option with regards to personal data while using online platform interfaces should be promoted.

Amendment 54

Proposal for a directive

Article 1

Text proposed by the Commission

Article 1

Subject matter and scope

1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.
2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

Amendment

Article 1

Subject matter and scope

1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.
2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, **2000/31/EC**, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

Amendment 55

Proposal for a directive

Article 2 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

Amendment

(1) ‘research organisation’ means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:

(1) ‘research organisation’ means a university, ***including its libraries***, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:

Amendment 56

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point a

Text proposed by the Commission

(a) on a ***non-for-profit*** basis or by reinvesting all the profits in its scientific research; or

Amendment

(a) on a ***not-for-profit*** basis or by reinvesting all the profits in its scientific research; or

Amendment 57

Proposal for a directive

Article 2 – paragraph 1 – point 1 – subparagraph 2

Text proposed by the Commission

in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a ***decisive*** influence upon such organisation;

Amendment

in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a ***significant*** influence upon such organisation;

Amendment 58

Proposal for a directive

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

- (2) 'text and data mining' means any automated analytical technique ***aiming to analyse text and data*** in digital form in order to generate information ***such as*** patterns, trends and correlations;
- (2) 'text and data mining' means any automated analytical technique ***which analyses works and other subject matter*** in digital form in order to generate information, ***including, but not limited to,*** patterns, trends and correlations.

Amendment 59

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) 'press publication' means a fixation of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider.

Amendment

(4) 'press publication' means a fixation ***by publishers or news agencies*** of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider. ***Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition;***

Amendment 60

Proposal for a directive

Article 2 – paragraph 1 – point 4 a(new)

Text proposed by the Commission

Amendment

(4a) 'out of commerce work' means:

- (a) an entire work or other subject matter in any version or manifestation that is no longer available to the public in a Member State through customary channels of commerce;*
- (b) a work or other subject matter that has never been in commerce in a Member State, unless, from the circumstances of that case, it is apparent that its author objected to making it available to the public;*

Amendment 61

Proposal for a directive

Article 2 – paragraph 1 – point 4 b (new)

Text proposed by the Commission

Amendment

(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;

Amendment 62

Proposal for a directive

Article 2 – paragraph 1 – point 4 c (new)

Text proposed by the Commission

Amendment

(4c) ‘information society service’ means a service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council^{1a};

^{1a} 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).

Amendment 63

Proposal for a directive

Article 2 – paragraph 1 – point 4 d (new)

Text proposed by the Commission

Amendment

(4d) ‘automated image referencing service’ means any online service which reproduces or makes available to the public for indexing and referencing purposes graphic or art works or photographic works collected by automated means via a third-party online service.

Amendment 64

Proposal for a directive

Article 3

Text proposed by the Commission

Article 3

Text and data mining

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions ***made by research organisations in order to carry out text and data mining*** of works or other subject-matter ***to which they have lawful access*** for the purposes of scientific research.

2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

Amendment

Article 3

Text and data mining

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions of works or other subject-matter ***to which research organisations have lawful access and made in order to carry out text and data mining*** for the purposes of scientific research ***by such organisations***.

Member States shall provide for educational establishments and cultural heritage institutions conducting scientific research within the meaning of point (1)(a) or (1)(b) of Article 2, in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisations, to also be able to benefit from the exception provided for in this Article.

1a. Reproductions and extractions made for text and data mining purposes shall be stored in a secure manner, for example by trusted bodies appointed for this purpose.

2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

4. Member States *shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.*

4 Member States *may continue to provide text and data mining exceptions in accordance with point (a) of Article 5(3) of Directive 2001/29/EC.*

Amendment 65

Proposal for a directive Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Optional exception or limitation for text and data mining

1. *Without prejudice to Article 3 of this Directive, Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining, provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders, including by machine readable means.*

2. *Reproductions and extractions made pursuant to paragraph 1 shall not be used for purposes other than text and data mining.*

3. *Member States may continue to provide text and data mining exceptions in accordance with Art. 5 (3) (a) of Directive 2001/29/EC.*

Amendment 66

Proposal for a directive Article 4

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Article 4	Article 4
Use of works and other subject-matter in digital and cross-border teaching activities	Use of works and other subject-matter in digital and cross-border teaching activities
1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:
(a) takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;	(a) takes place on the premises of an educational establishment, <i>or in any other venue in which the teaching activity takes place under the responsibility of the educational establishment</i> , or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff;
(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible <i>for reasons of practicability</i> .

2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate *licences* authorising the acts described in paragraph 1 are easily available in the market.

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic *networks* undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.

2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, *such as material which is primarily intended for the educational market or sheet music*, to the extent that adequate *licensing agreements* authorising the acts described in paragraph 1 *and tailored to the needs and specificities of educational establishments* are easily available in the market.

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic *environments* undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.

4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to paragraph 1 shall be unenforceable. Member States shall ensure that rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1, generally or as regards specific types of works or other subject-matter that they may choose.

Amendment 67

Proposal for a directive Article 5

Text proposed by the Commission

Article 5

Preservation of cultural heritage

Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the *sole* purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.

Amendment

Article 5

Preservation of cultural heritage

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the *purposes* of preservation of such works or other subject-matter and to the extent necessary for such preservation.

1a. *Member States shall ensure that any material resulting from an act of reproduction of material in the public domain shall not be subject to copyright or related rights, provided that such reproduction is a faithful reproduction for purposes of preservation of the original material.*

1b. *Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.*

Amendment 68

Proposal for a directive Article 6

Text proposed by the Commission

Article 6

Amendment

Article 6

Common provisions	Common provisions
Article 5(5) and the first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.	<p>1. Accessing content covered by an exception provided for in this Directive shall not confer on users any entitlement to use it pursuant to another exception.</p> <p>2. Article 5(5) and the first, third, fourth and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.</p>

Amendment 69

Proposal for a directive Article 7

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Article 7	Article 7
Use of out-of-commerce works by cultural heritage institutions	Use of out-of-commerce works by cultural heritage institutions
<p>1. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management organisation, provided that:</p>	<p>1. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management organisation, provided that:</p>

- (a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-matter and of the rights which are the subject of the licence;
 - (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;
 - (c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.
- (a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-matter and of the rights which are the subject of the licence;
 - (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;
 - (c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.

1a. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies available online of out-of-commerce works that are located permanently in their collections for not-for-profit purposes, provided that:

- (a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;*
- (b) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the exception to their works or other subject-matter.*

- 1b. Member States shall provide that the exception adopted pursuant to paragraph 1a does not apply in sectors or for types of works where appropriate licensing-based solutions, including but not limited to solutions provided for in paragraph 1, are available. Member States shall, in consultation with authors, other rightholders, collective management organisations and cultural heritage institutions, determine the availability of extended collective licensing-based solutions for specific sectors or types of works.*
- 2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so.**

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

3. Member States shall provide that appropriate publicity measures are taken regarding:

- (a) the deeming of works or other subject-matter as out of commerce;
- (b) *the* licence, and in particular its application to unrepresented rightholders;

2. Member States may provide a cut-off date in relation to determining whether a work previously commercialised is deemed to be out of commerce.

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 *or used in accordance with paragraph 1a* do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

3. Member States shall provide that appropriate publicity measures are taken regarding:

- (a) the deeming of works or other subject-matter as out of commerce;
- (b) *any* licence, and in particular its application to unrepresented rightholders;

(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1; **(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 and point (b) of paragraph 1a;**

including during a *reasonable* period of *time* before the works or other subject-matter are digitised, distributed, communicated to the public or made available.

4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:

- (a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and audiovisual works;
- (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or
- (c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b).

5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.

(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 and point (b) of paragraph 1a;

including during a period of *at least six months* before the works or other subject-matter are digitised, distributed, communicated to the public or made available.

4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:

- (a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and audiovisual works;
- (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or
- (c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b).

5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.

Amendment 70

Proposal for a directive Article 8

Text proposed by the Commission

Article 8

Cross-border uses

Amendment

Article 8

Cross-border uses

1. *Works* or other subject-matter covered by *a licence granted in accordance with* Article 7 may be used by the cultural heritage institution in accordance with *the terms of the licence* in all Member States.
2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by *a licence granted in accordance with* Article 7 and information about the possibility of rightholders to object referred to in Article 7(1)(c) are made *publicly* accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of the licence.
3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.
1. *Out-of-commerce works* or other subject-matter covered by Article 7 *may be* used by the cultural heritage institution in accordance with *that Article* in all Member States.
2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by Article 7 and information about the possibility of rightholders to object referred to in *point (c) of Article 7(1) and point (b) of Article 7(1a)* are made *permanently, easily and effectively* accessible in a *public* single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, *or in the cases covered by Art 7(1a) where the cultural heritage institution is established* and for the whole duration of the licence.
3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

Amendment 71

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1), ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) ***and the exception referred to in Article 7(1a)***, ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

Amendment 72

Proposal for a directive Article 10

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Article 10	Article 10
<p style="text-align: center;">Negotiation mechanism</p> <p>Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of rights, they may rely on the assistance of an impartial body with relevant experience. <i>That body</i> shall provide assistance with negotiation and help reach agreements.</p> <p>No later than [date mentioned in Article 21(1)] Member States shall <i>notify to</i> the Commission the body <i>referred to in</i> paragraph 1.</p>	<p style="text-align: center;">Negotiation mechanism</p> <p>Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of <i>audiovisual</i> rights, they may rely on the assistance of an impartial body with relevant experience. <i>The impartial body created or designated by the Member State for the purpose of this Article</i> shall provide assistance <i>to the parties</i> with negotiation and help <i>them to</i> reach agreement.</p> <p>No later than [date mentioned in Article 21(1)] Member States shall <i>inform</i> the Commission <i>of</i> the body <i>they create or designate pursuant to the first paragraph</i>.</p>

To encourage the availability of audiovisual works on video-on-demand platforms, Member States shall foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.

Amendment 73

Proposal for a directive

Title III – Chapter 2 a (new) – Article 10 a (new)

Text proposed by the Commission

Amendment

CHAPTER 2a

Access to Union publications

Article 10 a

Union Legal Deposit

1. *Any electronic publication dealing with Union-related matters such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, that is made available to the public in the Union shall be subject to a Union Legal Deposit.*
2. *The European Parliament Library shall be entitled to delivery, free of charge, of one copy of every publication referred to in paragraph 1.*
3. *The obligation set out in paragraph 1 shall apply to publishers, printers and importers of publications for the works they publish, print or import in the Union.*

4. From the day of the delivery to the European Parliament Library, the publications referred to in paragraph 1 shall become part of the European Parliament Library permanent collection. They shall be made available to users at the European Parliament Library's premises exclusively for the purpose of research or study by accredited researchers and under the control of the European Parliament Library.

5. The Commission shall adopt acts to specify the modalities relating to the delivery to the European Parliament Library of publications referred to in paragraph 1.

Amendment 74

Proposal for a directive Article 11

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Article 11	Article 11
Protection of press publications concerning digital uses	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 for the digital use of their press publications.	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 . <i>1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.</i>

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.

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 20 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.

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 acts of hyperlinking.

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 20 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.

Amendment 75

Proposal for a directive Article 12

Text proposed by the Commission

Article 12

Claims to fair compensation

Amendment

Article 12

Claims to fair compensation

Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.

Member States ***with compensation sharing systems between authors and publishers for exceptions and limitations*** may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right, ***provided that an equivalent compensation sharing system was in operation in that Member State before 12 November 2015.***

The first paragraph shall be without prejudice to the arrangements in Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.

Amendment 76

Proposal for a directive

Title IV – Chapter 1 a (new) – Article 12 a (new)

Text proposed by the Commission

Amendment

CHAPTER 1 a

Protection of sport event organizers

Article 12 a

Protection of sport event organizers

Member States shall provide sport event organizers with the rights provided for in Article 2 and Article 3 (2) of Directive 2001/29/EC and Article 7 of Directive 2006/115/EC.

Justification

Article 165(1) TFEU states that the Union is to contribute to the promotion of European sporting issues. The protection of intellectual property of sport event organisers has already
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been envisaged in recital 52 to Directive 2010/13/EU and was supported by the European Parliament in several reports on sport. The Court held in Joined cases C-403/08 and C-429/08, FAPL, EU:C:2011:631, that sporting events have a unique and original character worthy of protection comparable to the protection of works. To date five Member States have granted a neighbouring right to sport event organisers.

Amendment 77

Proposal for a directive

Article 13

<i>Text proposed by the Commission</i>	<i>Amendment</i>
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	Article 13 Use of protected content by <i>online content sharing service providers</i>
	-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 and shall conclude fair and appropriate licensing agreements with rightholders, unless the rightholder does not wish to grant a license or licenses are not available. Licensing agreements concluded by the online content sharing service providers with rightholders shall cover the liability for works uploaded by the users of their services in line with terms and conditions set out in the licensing agreement, provided that those users do not act for commercial purposes or are not the rightholder or his representative.

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.

1. Online content sharing service providers referred to in paragraph -1 shall, in cooperation with rightholders, take appropriate and proportionate measures to ensure the functioning of **licensing** agreements **where** concluded with rightholders for the use of their works or other subject-matter **on those services.**

In the absence of licensing agreements with rightholders online content sharing service providers shall take, in cooperation with rightholders, appropriate and proportionate measures leading to the non-availability on those services of works or other subject matter infringing copyright or related-rights, while non-infringing works and other subject matter shall remain available.

1a. Member States shall ensure that the online content sharing service providers referred to in paragraph -1 shall apply the measures referred to in paragraph 1 based on the relevant information provided by rightholders.

The online content sharing service providers shall be transparent towards rightholders and shall inform rightholders of the measures employed, their implementation, as well as when relevant, shall periodically report on the use of the works and other subject-matter.

1b. Member States shall ensure that the implementation of such measures shall be proportionate and strike a balance between the fundamental rights of users and rightholders and shall in accordance with Article 15 of Directive 2000/31/EC, where applicable, not impose a general obligation on online content sharing service providers to monitor the information which they transmit or store.

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.

2. To prevent misuses or limitations in the exercise of exceptions and limitations to copyright, Member States shall ensure that the service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. Any complaint filed under such mechanisms shall be processed without undue delay. The rightholders shall reasonably justify their decisions to avoid arbitrary dismissal of complaints.

Moreover, in accordance with Regulation (UE) 2016/679 and Directive 2002/58/EC, the measures referred to in paragraph 1 shall not require the identification of individual users and the processing of their personal data.

Member States shall also ensure that, in the context of the application of the measures referred to in paragraph 1, users have access to a court or other relevant judicial authority to assert the use of an exception or limitation to copyright.

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.
3. Member States shall facilitate, where appropriate, the cooperation between the **online content sharing** service providers, **users** and rightholders through stakeholder dialogues to define best practices **for the implementation of the measures referred to in paragraph 1 in a manner that is proportionate and efficient**, taking into account, among others, the nature of the services, the availability of technologies and their effectiveness in light of technological developments.

Amendment 78

Proposal for a directive Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Member States shall provide that disputes between successors in title and information society services regarding the application of Article 13(1) may be subject to an alternative dispute resolution system.

Member States shall establish or designate an impartial body with the necessary expertise, with the aim of helping the parties to settle their disputes under this system.

The Member States shall inform the Commission of the establishment of this body no later than (date mentioned in Article 21(1)).

Amendment 79

Proposal for a directive Article 13 b (new)

Text proposed by the Commission

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Amendment

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Article 13b

Use of protected content by information society services providing automated image referencing

Member States shall ensure that information society service providers that automatically reproduce or refer to significant amounts of copyright-protected visual works and make them available to the public for the purpose of indexing and referencing conclude fair and balanced licensing agreements with any requesting rightholders in order to ensure their fair remuneration. Such remuneration may be managed by the collective management organisation of the rightholders concerned.

Amendment 80

**Proposal for a directive
Chapter 3 –Article 13 c (new)**

Text proposed by the Commission

Amendment

Article 13c

Principle of fair and proportionate remuneration

1. *Member States shall ensure that authors and performers receive fair and proportionate remuneration for the exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and statutory remuneration mechanisms.*
2. *Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.*

3. *Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.*
4. *Contracts shall specify the remuneration applicable to each mode of exploitation.*

Amendment 81

Proposal for a directive

Article 14

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p style="text-align: center;">Article 14</p> <p style="text-align: center;">Transparency obligation</p> <p>1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, <i>adequate and sufficient</i> information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.</p>	<p style="text-align: center;">Article 14</p> <p style="text-align: center;">Transparency obligation</p> <p>1. Member States shall ensure that authors and performers receive on a regular basis, <i>not less than once a year</i>, and taking into account the specificities of each sector <i>and the relative importance of each individual contribution</i>, timely, <i>accurate, relevant and comprehensive</i> information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, <i>direct and indirect</i> revenues generated, and remuneration due.</p> <p><i>1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.</i></p>

The main licensee or transferee shall pass all the information referred to in the first subparagraph on to the author or performer. That information shall be unchanged, except in the case of commercially sensitive information as defined by Union or national law, which, without prejudice to Articles 15 and 16a, may be subject to a non-disclosure agreement, for the purpose of preserving fair competition. Where the main licensee or transferee does not provide the information as referred to in this subparagraph in a timely manner, the author or performer shall be entitled to request that information directly from the sub-licensee.

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure *an appropriate* level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures *an appropriate* level of transparency.

3. *Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.*

4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure *a high* level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures *a high* level of transparency.

4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU *or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2.*

Amendment 82

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

Member States shall ensure that authors and performers are entitled to *request* additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Amendment

Member States shall ensure, *in the absence of collective bargaining agreements providing for a comparable mechanism*, that authors and performers *or any representative organisation acting on their behalf* are entitled to *claim* additional, appropriate *and fair* remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant *direct or indirect* revenues and benefits derived from the exploitation of the works or performances.

Amendment 83

Proposal for a directive Article 16 – paragraph 1

Text proposed by the Commission

Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.

Amendment

Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. *Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers.*

Amendment 84

Proposal for a directive Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16 a

Right of revocation

1. *Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject-matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.*

2. *The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the rights. Where a work or other subject-matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.*

3. *Paragraphs 1 and 2 shall not apply if the non-exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.*

4. *Contractual or other arrangements derogating from the right of revocation shall be lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.*

Amendment 85

Proposal for a directive Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17 a

Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations existing in Union law, for uses covered by the exceptions or the limitation provided for in this Directive.

Amendment 86

Proposal for a directive

Article 18 – paragraph 2

Text proposed by the Commission

Amendment

*2. The provisions of Article 11 shall deleted
also apply to press publications published
before [the date mentioned in Article 21(1)].*

14.6.2017

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION (*)

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market
(COM(2016)0593 – C80383/2016 – 2016/0280(COD))

Rapporteur (*): Catherine Stihler

(*) Associated committee – Rule 54 of the Rules of Procedure

SHORT JUSTIFICATION

Although different directives and the existing EU legal framework in the area of copyright law have contributed to a better functioning of the internal market and stimulated innovation, creativity, investment and the production of new content in the past years, the ‘digital revolution’ and the fast technological developments which have resulted have created enormous challenges in this field.

Ongoing market evolutions have produced, in some cases, radical changes in the way that different copyright protected works are created, produced, distributed and exploited. The creation of different business models and emerging demands required the current copyright framework to adopt appropriate responses to these challenges, making it future proof and fit for new market realities as well as citizens’ needs.

In this sense, the Rapporteur welcomes the European Commission’s Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, which intends to provide new rules to address these needs, such as to adopt certain exceptions and limitations to digital and cross-border environments, simplify licensing practices, ensure wider access to content for consumers and safeguarding better transparency of authors’ and performers’ contracts and remuneration.

However, the Rapporteur believes the text of the proposal can be improved on a number of aspects and complimented with more specific or more ambitious suggestions on others. Therefore, her proposal for a draft opinion introduces a number of targeted amendments in an attempt to improve, clarify and expand the Commission’s proposed text.

Exceptions and limitations in the field of research, education and preservation of cultural heritage

The Rapporteur welcomes the Commission's intention to address new challenges in this area, but believes that a more ambitious approach should have been taken. Particularly, with regards to the exception on text and data mining (TDM) provided for in Article 3 of the Directive, the Rapporteur believes that limiting the proposed EU exception to a narrow definition of research organisations is counterproductive, and therefore introduces a simple rule, which does not discriminate between users or purposes and ensures a strictly limited and transparent usage of technological protection measures where appropriate.

Also, in the field of the use of works and other subject matter in teaching activities (Article 4), the Rapporteur believes that the exception should benefit not only all formal educational establishments in primary, secondary, vocational and higher education, but also other organisations such as libraries and other cultural heritage institutions, providing non-formal or informal education. The Rapporteur believes that the best solution is to have a single and mandatory exception for all types of teaching, both digital and non-digital, formal and informal.

Regarding the exception to preservation of cultural heritage covered in Article 5, the Rapporteur proposes an ambitious expansion of the scope of this Article, introducing several new elements. First, the draft opinion proposes a modification of the exception to permit cultural heritage institutions and educational establishments to reproduce works and other subject-matter permanently in their collections for the purposes of carrying out their public interest mission in preservation, research, education, culture and teaching.

Furthermore, three new exceptions are proposed with the purpose of favouring the development of the European Research Area and encouraging scientific research and the use and access to knowledge and cultural heritage. A new exception on document delivery by cultural heritage institutions or educational establishments and another on access for the purposes of research or private study on the premises of cultural heritage institutions or educational establishments are introduced with this objective. Furthermore, an exception on public lending of literary works is also introduced with the objective of ensuring that all citizens of the European Union have access to a full selection of books and other resources.

Out of commerce works

The Rapporteur introduces an exception under Article 7 which will allow cultural heritage institutions to distribute, communicate to the public or make available out-of-commerce works, or other subject-matter permanently in the collection of the institution for non-commercial purposes, taking due account of remuneration schemes to compensate for any unreasonable prejudice to the legitimate interests of rights holders. In all cases, creators and rights holders should have the right to object to such making available, and have their works taken offline.

Protection of press publications concerning digital uses

The Rapporteur believes that the introduction of a press publishers right under Article 11

lacks sufficient justification. It is true that publishers may face challenges when enforcing licensed copyrights, but this issue should be addressed via an enforcement regulation. Simple changes made to Article 5 of the Enforcement Directive 2004/48/EC, making it also applicable to press publishers, will provide the necessary and appropriate means to solve this matter. The Rapporteur believes that there is no need to create a new right as publishers have the full right to opt-out of the ecosystem any time using simple technical means. The Rapporteur is also concerned as to what effect the creation of this new right could have on the market, it is very likely that the addition of this right will add another layer of complexity to licensing deals. There is also no guarantee provided that any rise in publisher remuneration would flow through to authors. There are potentially more effective ways of promoting high-quality journalism and publishing via tax incentives instead of adding an additional layer of copyright legislation.

Certain uses of protected content by online services

Regarding Article 13 (and corresponding recitals 37, 38 and 39) the Rapporteur believes that the current wording is incompatible with the limited liability regime provided for in Directive 2000/31/EC (Electronic Commerce Directive), a piece of legislation that has proven to be enormously beneficial for the internal market in the digital sphere. The Rapporteur firmly supports the notion that the value gap has to be addressed and emphasises that creators and rights holders are to receive a fair and balanced compensation for the exploitation of their works from online service providers. However, this should be achieved without negative impacts on the digital economy or internet freedoms of consumers. The current wording of Article 13 fails to achieve this. Stringent requirements outlined in the Article could act as a barrier to market entry for new and emerging businesses. It is also technologically specific and the market may react by simply changing technical processes or designing new business models that defy this outlined mode of categorisation. The use of filtering potentially harms the interests of users, as there are many legitimate uses of copyright content that filtering technologies are often not advanced enough to accommodate.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

Amendment

(2) The directives which have been adopted in the area of copyright and related rights provide for a high level of protection for rightholders and create a framework wherein the exploitation of works and other protected subject-matter can take place. This harmonised legal framework contributes to the good functioning of the internal market; it stimulates innovation, creativity, investment and production of new content, also in the digital environment. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.

(2) The directives which have been adopted in the area of copyright and related rights provide for a high level of protection for rightholders and create a framework wherein the exploitation of works and other protected subject-matter can take place. This harmonised legal framework contributes to the good functioning of the *truly integrated* internal market; it stimulates innovation, creativity, investment and production of new content, also in the digital environment. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.

Amendment 2

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on **rights in publications**, on the use of works and other subject-matter **by** online service providers **storing and giving access to user uploaded content** and on the transparency of authors' and performers' contracts.

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited, **and relevant legislation needs to be future proof so as to not restrict technological development**. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning **and fair** marketplace for copyright, there should also be rules on the use of works and other subject-matter **on** online service providers and on the transparency of authors' and performers' contracts **and of the accounting deriving from the exploitation of protected works according to those contracts**.

²⁶ COM(2015) 626 final.

²⁶ COM(2015) 626 final.

Amendment 3

Proposal for a directive Recital 4

Text proposed by the Commission

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council²⁷, Directive 2001/29/EC of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹ and Directive 2014/26/EU of the European Parliament and of the Council³².

Amendment

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council²⁷, Directive **2000/31/EC of the European Parliament and of the Council^{27a}**, Directive 2001/29/EC of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹ and Directive 2014/26/EU of the European Parliament and of the Council³².

²⁷ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20–28).

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19).

²⁹ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28–35).

²⁷ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20–28).

^{27a} Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19).

²⁹ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28–35).

³⁰ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16–22).

³¹ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5–12).

³² Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72–98).

³⁰ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16–22).

³¹ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5–12).

³² Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72–98).

Amendment 4

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) The exceptions and ***the limitation*** set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders.

Amendment

(6) The exceptions and ***limitations*** set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders. ***They concern, in particular, access to education, knowledge and cultural heritage and, as such, are in the public interest.***

Amendment 5

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow **researchers to process** large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, **research organisations such as universities and research institutes** are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. **Text and** data mining **may also be** carried out in relation to mere facts or data which are not protected by copyright **and in such instances no authorisation would be required.**

Amendment

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or **any other type of** data, generally known as text and data mining. Those technologies allow **the processing of** large amounts of **digitally stored** information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, **individuals, public and private entities who have legal access to content** are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. **No authorisation would be required in cases where text or** data mining **is** carried out in relation to mere facts or data which are not protected by copyright . **The right to read is in effect the same as the right to mine.**

Amendment 6

Proposal for a directive

Recital 9

Text proposed by the Commission

Amendment

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies *in* scientific research.

Moreover, where *researchers have lawful* access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty *for* text and data mining.

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of *text and data mining* technologies *which are relevant far beyond the area of* scientific research.

Moreover, where access to content *has been lawfully obtained*, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area *and its action lines envisaged in the European Open Science Agenda* will suffer unless steps are taken to address the legal uncertainty *regarding text and data mining for all potential users. It is necessary that Union law acknowledge that* text and data mining *is increasingly used beyond formal research organisations and for purposes other than scientific research which nevertheless contribute to innovation, technology transfer and the public interest.*

Amendment 7

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new *exception* should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***Research organisations should also benefit from the exception when they engage into public-private partnerships.***

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. ***An additional mandatory exception should give research organisations access to information in a format that enables it to be text and data mined. Research organisations should also benefit from the exception when they engage in public-private partnerships, provided that they reinvest their profits in research.*** The new *exceptions* should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception.

Amendment 8

Proposal for a directive Recital 11

Text proposed by the Commission

Amendment

(11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.

(11) Research organisations across the Union encompass a wide variety of entities ***which carry out research, including the public sector and cultural heritage institutions***, the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.

Amendment 9

Proposal for a directive Recital 12

Text proposed by the Commission

Amendment

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security *and integrity* of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security *and integrity* of the system and should not undermine the effective application of the exception.

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary, *proportionate and effective* to pursue the objective of ensuring the security of the system and should not undermine the effective application of the exception *or impede the reproducibility of research results*.

Amendment 10

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The process of text and data mining includes downloading of protected works and other subject matter on a significant scale. Therefore the storage and copy of content should be strictly limited to what is necessary to verify results. Any copies stored should be deleted after a reasonable period of time, in order to avoid other uses not covered by the exception.

Amendment 11

Proposal for a directive Recital 14

Text proposed by the Commission

Amendment

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. *The scope of those exceptions or limitations as they apply to digital uses is unclear.* In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure *that educational establishments benefit from* full legal certainty when using works or other subject-matter in *digital* teaching activities, including online and across borders.

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure full legal certainty when using works or other subject-matter in *all* teaching activities, including online and across borders.

Amendment 12

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.

(15) While distance learning, **e-learning** and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational **activities and** establishments **including those related to** primary, secondary, vocational and higher education, **as well as organisations involved in teaching activities, including in the context of non-formal or informal education recognised by a Member State**, to the extent they pursue their educational activity for a non-commercial purpose. **In line with the Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training 'ET2020', the contribution of informal and non-formal education, alongside formal education, should be recognised and developed in order to deliver the Union's objectives.** The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.

Amendment 13

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

- (16) The exception or limitation should cover ***digital*** uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities ***carried out under the responsibility of educational establishments***, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses ***through digital means*** in the classroom and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.
- (16) The exception or limitation should cover ***all*** uses of works and other subject-matter, ***digital or otherwise***, such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. ***The notion of "illustration for teaching" is usually understood as the use of a work to give examples and to explain or support a course.*** The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both ***offline*** uses ***such as uses*** in the classroom ***or in organisations, such as libraries and other cultural heritage institutions involved in teaching activities*** and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

Amendment 14

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements ***covering further uses***, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in ***relation to digital*** uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes.

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on ***extended collective*** licensing agreements, are in place in a number of Member States in order to facilitate educational uses of ***at least short parts or extracts*** of works and other subject-matter. Such arrangements have usually been developed taking account of the ***constraints set by the closed list of voluntary exceptions at Union level, the*** needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in ***offline and online*** uses and ***particularly*** cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. ***Any other compensation mechanisms should be limited to cases where there is a risk of unreasonable prejudice to the legitimate interests of rightholders. In those cases Member States should be able to require compensation for the uses carried out under this exception.*** This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and ***affordable, covering***

Amendment 15

Proposal for a directive

Recital 18

Text proposed by the Commission

Amendment

- (18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of *their collections* for future generations. Digital technologies offer new ways to preserve the heritage contained in *those* collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction *in order to allow those acts of preservation.*
- (18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of *cultural heritage* for future generations. Digital technologies offer new ways to preserve the heritage contained in *the collections of cultural heritage institutions*, but they also create new challenges. *One such challenge is the systematic collection and preservation of works which are not originally published by traditional analogue means, but originate in a digital form (so-called born-digital works). Whereas publishers in Member States are typically obliged to provide a reference copy of each published work to certain cultural heritage institutions for archiving purposes, such obligations often do not apply to born-digital works. In the absence of the provision of reference copies by the authors or publishers of born-digital works, cultural heritage institutions should be allowed to make reproductions of born-digital works at their own initiative whenever they are openly available on the internet, in order to add them to their permanent collections. Cultural heritage institutions also engage in making internal reproductions for many varying purposes including insurance, rights clearance, and loans.* In view of these *possible* new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction.

Amendment 16

Proposal for a directive Recital 21

Text proposed by the Commission

(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies are owned or permanently held by the cultural heritage institution, for example as a result of a transfer of ownership or licence agreements.

Amendment

(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies are owned, ***held on long-term loan*** or ***are*** permanently held by the cultural heritage institution ***or educational establishment***, for example as a result of a transfer of ownership or licence agreements.

Amendment 17

Proposal for a directive

Recital 31

Text proposed by the Commission

Amendment

(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. In the transition from print to digital, publishers 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.

(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. In the transition from print to digital, publishers of press publications **have invested heavily in digitalizing their content and yet** are facing problems in licensing the online use of their publications and recouping their investments. **This is mainly as some news aggregators and search engines use press publisher's content without contracting licence agreements and without remunerating them fairly. Digital platforms such as new aggregators and search engines have developed their activities based on the investment by press publishers in the creation of content without contributing to its development.** **This poses a severe threat to the employment and fair remuneration of journalists and the future of media pluralism.** In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.

Amendment 18

Proposal for a directive Recital 32

Text proposed by the Commission

Amendment

(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. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of 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.

(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. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of 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 ***print and*** digital uses.

Justification

As publishers invest in both print and digital forms of publications, their right should reflect this reality as it is already the case for other content producers under the current Directive 2001/29/EC.

Amendment 19

**Proposal for a directive
Recital 33**

Text proposed by the Commission

Amendment

(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 which do not constitute communication to the public.***

(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 ***a computation referencing or indexing system such as hyperlinking.***

Amendment 20

Proposal for a directive Recital 34

Text proposed by the Commission

(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.*** They should also be subject 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.

Amendment

(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 ***and the rights of rental, lending and distribution provided for in Directive 2006/115/EC.*** They should also be subject 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.

Amendment 21

Proposal for a directive

Recital 36

Text proposed by the Commission

(36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should **be allowed to** determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.

Amendment

(36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.

Amendment 22

Proposal for a directive

Recital 37

Text proposed by the Commission

Amendment

(37) *Over the last years, the functioning of the **online content** marketplace 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 content online. *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 for it.*

(37) *Evolution of digital technologies has led to the emergence of new business models and reinforced the role of the Internet as the main marketplace for the distribution of copyright protected content.* Over the years, online services enabling their users to upload works and make them accessible to the public have flourished and have become **important** sources of access to content online, allowing for diversity and ease of access to content but also generating challenges when copyright protected content is uploaded without prior authorisation from rightholders.

Amendment 23

Proposal for a directive Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) Today more creative content is being consumed than ever before. That is facilitated by online platforms and aggregation services. They are a means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. At the same time, artists and authors have struggled to see comparable increases in revenues from this increase in consumption. One of the reasons for this could be the lack of clarity regarding the status of these online services under e-commerce law. Consideration is to be made of how this process can function with more legal certainty and respect for all affected parties including artists and users and it is important to ensure transparency and a fair level playing field. The Commission should develop guidance on the implementation of the intermediary liability framework in order to allow online platforms to comply with their responsibilities and the rules on liability and in order to enhance legal certainty and increase user confidence.

Amendment 24

Proposal for a directive Recital 38 – paragraph 1

Text proposed by the Commission

Amendment

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 Council*³⁴.

Where information society service providers *offer users content storage services* and provide the public *with access to content and where such activity constitutes an act of communication to the public and is not of a merely technical, automatic and passive nature*, they *should be* obliged to conclude licensing agreements with rightholders *as regards copyright protected works or other subject-matter*, unless they are eligible for the liability *exemptions* provided in Directive 2000/31/EC of the European Parliament and of the Council³⁴.

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

Amendment 25

Proposal for a directive Recital 38 – paragraph 2

Text proposed by the Commission

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.

Amendment

deleted

Amendment 26

Proposal for a directive Recital 38 – paragraph 3

Text proposed by the Commission

Amendment

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.

In order to ensure the functioning of any licensing agreement, information society service providers ***actively and directly involved in allowing users to upload, making works available and promoting works to the public*** should take appropriate and proportionate measures to ensure protection of works or other subject-matter. ***Such measures should respect the Charter of Fundamental Rights of the European Union and should not impose a general obligation on information society service providers to monitor the information which they transmit or store as referred to*** in Article 15 of Directive 2000/31/EC.

Amendment 27

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) For the implementation of such measures, the cooperation between information society service providers and rightholders is essential. Rightholders should accurately identify to information society service providers the works or other subject-matter in respect of which they claim to have the copyright. Rightholders should retain responsibility for claims made by third parties over the use of works which they would have identified as being their own in the implementation of any agreement reached with the information society service provider.

Amendment 28

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(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.*

Amendment 29

Proposal for a directive

Recital 40

Text proposed by the Commission

Amendment

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers *tend to be* in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers.

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers *are* in a weaker contractual position when they grant licences or transfer their rights, they need *accurate* information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the *regular* sharing of adequate information by their *direct* contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. *The reporting and transparency obligation should follow the work across all form of exploitation and across borders.*

Amendment 30

Proposal for a directive Recital 41

Text proposed by the Commission

Amendment

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as ***those are already subject*** to transparency obligations under Directive 2014/26/EU.

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector, ***as well as the significance of the contribution by authors and performers to the overall work or performance*** should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements ***and standard reporting statements and procedures***.

Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations to ***the extent that fully equivalent*** transparency obligations ***exist*** under Directive 2014/26/EU.

Amendment 31

Proposal for a directive

Recital 42

Text proposed by the Commission

Amendment

(42) **Certain** contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

(42) **Most** contracts for the exploitation of rights harmonised at Union level are of long duration, offering **very** few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases of **unexpected success** where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant **net direct and indirect** revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. *When assessing the disproportionality, the appropriate circumstances of each case, including the nature and significance of the contribution of the author or performer to the overall work or performance, should be taken into account.* Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

Amendment 32

Proposal for a directive Recital 43

Text proposed by the Commission

Amendment

(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism.

(43) Authors and performers are often reluctant **or unable** to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an **efficient** alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism. ***It should also be possible to agree upon the dispute settlement resolution in collective agreements.***

Amendment 33

Proposal for a directive Article 1 – paragraph 2

Text proposed by the Commission

2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

Amendment

2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, **2000/31/EC**, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

Amendment 34

Proposal for a directive Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) 'educational establishment' means a school, college, university, or any other organisation the primary goal of which is to provide educational services:

(a) on a not-for-profit basis or by reinvesting all the profits in such provision; or

(b) pursuant to a public interest mission recognised by a Member State.

Amendment 35

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations;

Amendment

(2) ‘text and data mining’ means any automated analytical ***or computational*** technique aiming to analyse text and data ***or other subject matter*** in digital form in order to generate information, ***including but not limited to*** patterns, trends and correlations;

Amendment 36

Proposal for a directive
Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;

Amendment

(3) ‘cultural heritage institution’ means a publicly accessible library or museum ***or gallery, an educational establishment***, an archive or a film or audio heritage institution, ***or a public service broadcaster***;

Amendment 37

Proposal for a directive
Article 2 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) ‘user generated content’ means an image, a set of moving images or without sound, a phonogram, text, software, data, or a combination of the above, which is uploaded to an online service by its users;

Amendment 38

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘press publication’ means a fixation of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider.

Amendment

Amendment 39

Proposal for a directive

Article 2 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

(4a) ‘out of commerce work’ means a work or other subject-matter that is not available to the public through customary channels of commerce. Out of commerce works include both works that have previously been available commercially and works that have never been commercially available.

Amendment 40

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have **lawful** access for the purposes of scientific research.

Amendment

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, **Article 4(1) of Directive 2009/24/EC** and Article 11(1) of this Directive for reproductions and extractions made by research organisations **and cultural heritage institutions** in order to carry out text and data mining of works or other subject-matter to which they **have acquired or lawfully obtained** access for the purposes of scientific research.

Amendment 41

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

Amendment

2. Any contractual provision **or technical protection** contrary to the exception provided for in paragraph 1 shall be unenforceable.

Amendment 42

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

Amendment

3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

3. Rightholders shall be allowed to apply **targeted, proportionate, reasonable and non-discriminatory** measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall **be reasonable and efficient**, not go beyond what is necessary to achieve that objective, **or unnecessarily hamper text and data mining**.

Amendment 43

Proposal for a directive Article 3 – paragraph 4

Text proposed by the Commission

4. Member States shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

Amendment

4. **The Commission, in cooperation with** Member States, shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

Amendment 44

Proposal for a directive Article 4 – title

Text proposed by the Commission

Use of works and other subject-matter in **digital and cross-border** teaching activities

Amendment

Use of works and other subject-matter in teaching **and educational** activities

Amendment 45

Proposal for a directive Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:

Amendment

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 and 4 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, ***educational purposes or scientific research***, to the extent justified by the non-commercial purpose to be achieved, provided that the use:

Amendment 46

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;

Amendment

(a) takes place on the premises of an educational establishment or ***other venues, such as cultural heritage institutions, involved in teaching activities, or*** through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff, ***or registered members of the cultural heritage institution involved in non-formal or informal education;***

Amendment 47

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Any contractual provision contrary to the exception set out in paragraph 1 shall be unenforceable.

Amendment 48

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that *adequate licences* authorising the acts described in paragraph 1 are easily available in the market.

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.

Amendment

2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that *equivalent extended collective licensing agreements* authorising the acts described in paragraph 1 are *affordable and* easily available in the market.

Member States availing themselves of *the* provision of the first subparagraph shall take the necessary measures to ensure appropriate availability, *accessibility* and visibility of the licences authorising the acts described in paragraph 1 for educational establishments *and cultural heritage institutions*.

No sooner than ... [three years after the date of entry into force of this Directive], and in consultation with all stakeholders, the Commission shall report on the availability of such licenses, with a view to proposing improvements if needed.

Amendment 49

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State from where the educational establishment is established *or from where the educational activity originates*.

Amendment 50

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

4. Member States may provide for fair compensation for ***the harm incurred by the*** rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.

Amendment

4. Member States may provide for fair compensation for ***any unreasonable actions contrary to the legitimate interests of*** rightholders ***in relation*** to the use of their works or other subject-matter pursuant to paragraph 1.

Amendment 51

Proposal for a directive Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that the rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1, generally or as regards specific types of works of other subject-matter that they may choose.

Amendment 52

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, ***for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.***

Amendment

Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions ***or educational establishments,*** to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, ***to the extent necessary for such reproduction, for the purpose of, individually or collaboratively with others, carrying out their public interest mission in preservation, research, culture, education and teaching.***

Amendment 53

Proposal for a directive
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall recognise that once a work is in the public domain, that is to say copyright and related rights in a work have expired or never existed, faithful reproductions in full or in part of that work, regardless of the mode of reproduction and including digitisation, shall equally not be subject to copyright or related rights.

Amendment 54

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

Freedom of panorama

Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC and point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, permitting the reproduction and use of works, such as works of architecture or sculpture, made to be located permanently in public places.

Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.

Amendment 55

**Proposal for a directive
Article 5 b (new)**

Text proposed by the Commission

Amendment

Article 5b

User-generated content exception

1. ***Member States shall provide for an exception or limitation to the rights provided for in Articles 2, 3 and 4 of Directive 2001/29/EC, point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, point (a) of Article 4(1) of Directive 2009/24/EC and Article 13 of this Directive in order to allow for the digital use of quotations or extracts of works and other subject-matter comprised within user-generated content for purposes such as criticism, review, entertainment, illustration, caricature, parody or pastiche provided that the quotations or extracts:***
 - (a) ***relate to works or other subject-matter that have already been lawfully made available to the public;***

(b) are accompanied by the indication of the source, including the author's name, unless this turns out to be impossible; and

(c) are used in accordance with fair practice and in a manner that does not extend beyond the specific purpose for which they are being used.

2. Any contractual provision contrary to the exception provided for in this paragraph 1 shall be unenforceable.

Amendment 56

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

Article 5(5) and the first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.

Amendment

Access to content permitted by an exception or limitation shall not give the beneficiary of the exception or limitation the right to use the content concerned in the context provided for by another exception or limitation.

Article 5(5) and the first, third, fourth and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and limitations provided for under this title.

Amendment 57

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management organisation, provided that:

Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow cultural heritage institutions to distribute, communicate to the public or make available out-of-commerce works or other subject-matter permanently in the collection of the institution for non-commercial purposes. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this paragraph before 22 December 2020. When applying the exception or limitation Member States shall take due account of remuneration schemes to compensate for any unreasonable actions contrary to the legitimate interests of rightholders, and ensure that all rightholders may at any time object to the use of any of their works or other subject-matter that are deemed to be out of commerce and be able to exclude the use of their works or other subject-matter. Acts which would otherwise be permitted under paragraph 1 shall not be permitted if valid extended collective licensing solutions are available authorising the acts in question and the cultural heritage institution responsible for those acts knew or ought to have been aware of that fact.

Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, *in all its translations, versions and manifestations*, is not available *to the public* through customary channels of commerce *and cannot be reasonably expected to become so.*

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter *can be licensed in accordance with paragraph 1* do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

Amendment

2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, is not available through customary channels *in any form suitable for the work permanently in the collection of a cultural heritage institution. Out of commerce works include both works that have previously been available commercially and works that have never been commercially available.*

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter *are out of commerce* do not extend beyond what is necessary and reasonable and *proportionate* do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

Amendment 59

Proposal for a directive
Article 7 – paragraph 3 – point b

Text proposed by the Commission

(b) *the* licence, and in particular its application to unrepresented rightholders;

Amendment

(b) *any* licence, and in particular its application to unrepresented rightholders;

Amendment 60

Proposal for a directive

Article 7 – paragraph 3 – point c

Text proposed by the Commission

- (c) the possibility of rightholders to object, referred to in point (c) of *paragraph 1*;

Amendment

- (c) the possibility of rightholders to object, referred to in *paragraph 2 and* point (c) of *paragraph 4*;

Amendment 61

Proposal for a directive

Article 7 – paragraph 4 – point a

Text proposed by the Commission

- (a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and audiovisual works;

Amendment

- (a) the **majority of** works or phonograms were first published or, in the absence of publication, where they were first **created or** broadcast, except for cinematographic and audiovisual works;

Amendment 62

Proposal for a directive

Article 7 – paragraph 4 – point c

Text proposed by the Commission

- (c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after **reasonable** efforts, according to points (a) and (b).

Amendment

- (c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after **proven** efforts, according to points (a) and (b).

Amendment 63

Proposal for a directive Article 7 – paragraph 5

Text proposed by the Commission

5. *Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.*

Amendment

deleted

Amendment 64

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

1. Works or other subject-matter *covered by a licence granted* in accordance with Article 7 may be used by the cultural heritage *institution in accordance with the terms of the licence* in all Member States.

Amendment

1. Works or other subject-matter *used* in accordance with Article 7 may be used by the cultural heritage *institutions* in all Member States.

Amendment 65

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that information that allows the identification of the works or other subject-matter ***covered by a licence granted*** in accordance with Article 7 and information about the possibility of rightholders to object referred to in Article 7(1)(c) are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States ***other than the one where the licence is granted, and for the whole duration of the licence.***
2. Member States shall ensure that information that allows the identification of the works or other subject-matter ***used*** in accordance with Article 7 and information about the possibility of rightholders to object referred to in Article 7(2) ***and (4)(c)*** are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in ***all*** Member States.

Amendment 66

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the ***licensing*** mechanisms referred to in Article 7(1), ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

Amendment

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the mechanisms referred to in Article 7, ***including resolving issues where cultural heritage institutions' activities in line with Articles 7 and 8 are not being reasonably enabled, to*** ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, ***to*** assist in the establishment of the requirements referred to in the second subparagraph of Article 7(6).

Amendment 67

Proposal for a directive

Title IV – Chapter 2 – title

Text proposed by the Commission

Certain uses of protected content *by* online
services

Amendment

Certain uses of protected content online

Amendment 68

Proposal for a directive

Article 13 – title

Text proposed by the Commission

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*

Amendment

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

Amendment 69

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

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.

1. *Where* information society service providers *offer users content storage services* and provide the public *with* access to *content and where such activity is not eligible for the liability exemptions provided for in Directive 2000/31/EC, they shall take appropriate and proportionate* measures to ensure the functioning of *licensing* agreements concluded with rightholders. *The implementation of such agreements shall respect the fundamental rights of users and shall not impose a general obligation on information society service providers to monitor the information which they transmit or store, in accordance with Article 15 of Directive 2000/31/EC.*

Amendment 70

Proposal for a directive Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purpose of ensuring the functioning of licensing agreements, as referred to in paragraph 1, information society service providers and rightholders shall cooperate with each other. Rightholders shall accurately identify to information society service providers the works or other subject-matter in respect of which they have the copyright. The information society service providers shall inform rightholders of the measures employed and the accuracy of their functioning as well as, when relevant, periodically report on the use of the works and other subject-matter.

Amendment 71

Proposal for a directive

Article 13 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States shall ensure that the service providers referred to in paragraph 1 ***in cooperation with rightholders*** put in place complaints mechanisms that are available to users in case of disputes over the ***implementation*** of the ***licensing agreements*** referred to in paragraph 1.

Amendment 72

Proposal for a directive

Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that users have access to a court or another competent authority for the purpose of asserting their right of use under an exception or limitation and to appeal any restrictive measures agreed upon pursuant to paragraph 3.

Amendment 73

Proposal for a directive

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

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.
3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers **referred to in paragraph 1, user representatives** and rightholders through stakeholder dialogues to define best practices **for the implementation of paragraph 1. The measures undertaken shall be** appropriate and proportionate **and shall take** into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

Amendment 74

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.

Amendment

1. Member States shall ensure that authors and performers receive on a regular basis and **no less than once a year and** taking into account the specificities of each sector, **in an open readable format, accurate**, timely, adequate and sufficient comprehensive information on the exploitation **and promotion** of their works and performances from those to whom they have licensed or transferred their rights, **including subsequent transferees or licensees**, notably as regards modes of **promotion**, exploitation, revenues generated and remuneration due.

Amendment 75

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure ***an appropriate*** level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.
2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure ***a high*** level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, ***on condition that the level of disproportionality is duly justified***, provided that the obligation remains effective and ensures an appropriate level of transparency. ***Member States shall ensure that sector-specific standard reporting statements and procedures are developed through stakeholder dialogues.***

Amendment 76

Proposal for a directive Article 14 – paragraph 3

Text proposed by the Commission

3. ***Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.***

Amendment

deleted

Amendment 77

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Member States shall ensure that authors and performers, *or the representatives they appoint*, are entitled to request additional, *equitable*, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights, *or from their successor in title*, when the remuneration originally agreed is disproportionately low compared to the *unanticipated* subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Amendment 78

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

2. The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)].

Amendment

deleted

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Copyright in the Digital Single Market
References	COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)
Committee responsible Date announced in plenary	JURI 6.10.2016
Opinion by Date announced in plenary	IMCO 6.10.2016
Associated committees - date announced in plenary	19.1.2017
Rapporteur Date appointed	Catherine Stihler 11.10.2016
Discussed in committee	13.3.2017 24.4.2017
Date adopted	8.6.2017
Result of final vote	+: -: 0: 19 7 6
Members present for the final vote	Dita Charanzová, Carlos Coelho, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Antonio López-Istúriz White, Morten Løkkegaard, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róża Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt
Substitutes present for the final vote	Lucy Anderson, Pascal Arimont, Lidia Joanna Geringer de Oedenberg, Kaja Kallas, Julia Reda, Marc Tarabella, Lambert van Nistelrooij, Sabine Verheyen
Substitutes under Rule 200(2) present for the final vote	Georges Bach, Peter Jahr, Markus Pieper

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
PPE	Pascal Arimont, Georges Bach, Carlos Coelho, Anna Maria Corazza Bildt, Peter Jahr, Antonio López-Istúriz White, Markus Pieper, Jiří Pospíšil, Róza Gräfin von Thun und Hohenstein, Lambert van Nistelrooij, Ivan Štefanec
S&D	Lucy Anderson, Nicola Danti, Lidia Joanna Geringer de Oedenberg, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Olga Sehnalová, Catherine Stihler, Marc Tarabella

7	-
ALDE	Dita Charanzová, Kaja Kallas
ECR	Daniel Dalton, Anneleen Van Bossuyt
ENF	Mylène Troszczynski
Verts/ALE	Julia Reda, Igor Šoltes

6	0
ALDE	Morten Løkkegaard
EFDD	Robert Jarosław Iwaszkiewicz
PPE	Sabine Verheyen
S&D	Evelyne Gebhardt, Virginie Rozière, Christel Schaldemose

Key to symbols:

+ : in favour

- : against

0 : abstention

01.8.2017

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market

(COM(2016)0593 – C80383/2016 – 2016/0280(COD))

Rapporteur: Zdzisław Krasnodębski

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital 8

Text proposed by the Commission

Amendment

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow **researchers to process** large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow **for processing of** large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation, **sustainable growth and jobs**. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.

Amendment 2

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research.

Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining.

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research.

Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area **and a data economy leader** will suffer unless steps are taken to address the legal uncertainty for text and data mining.

Amendment 3

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) Union law should take into consideration that text and data mining has the huge potential to be used in both formal and informal research settings and should recognise the potential of text and data mining to stimulate significant innovation, growth and jobs.

Amendment 4

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***Research organisations should also benefit from the exception when they engage into public-private partnerships.***

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database, ***including raw data***. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***Most of the text and data mining carried out over the open internet does not involve permanent copies and thus differs largely from text and data mining on scientific publications.***

Amendment 5

Proposal for a directive Recital 11

Text proposed by the Commission

Amendment

(11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.

(11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive. ***Research organisations should cover universities, including start-up incubators attached to universities, and research institutes.***

Amendment 6

Proposal for a directive Recital 12

Text proposed by the Commission

Amendment

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception. *These measures should not prevent or exclude the ability to develop text and data mining tools different from those offered by the rightholder as long as the security and integrity of the networks and databases is protected.*

Amendment 7

Proposal for a directive Recital 13

Text proposed by the Commission

(13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that *in view of the nature and scope of the exception the harm should be minimal.*

Amendment

(13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that *there would be no unreasonable prejudice to the interests of rightholders. Use under the text and data mining exception would also not conflict with the normal exploitation of the works in a way that calls for separate compensation.*

Amendment 8

Proposal for a directive Recital 14

Text proposed by the Commission

Amendment

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, *among others*, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in *digital* teaching activities, including online and across borders.

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of illustration for teaching *or scientific research*. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. *Alongside uneven application in Member States*, the scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in *all* teaching activities, including online and across borders.

Amendment 9

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational, and higher education, *and certified educational programmes recognised by the Member State, as well cultural heritage institutions and research organisations*, to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.

Amendment 10

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(16) The exception or limitation should cover ***digital*** uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational ***establishments***, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means in the classroom and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

(16) The exception or limitation should cover ***all*** uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of ***establishments pursuing*** educational ***activities***, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means in the classroom and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

Amendment 11

Proposal for a directive

Recital 18

Text proposed by the Commission

Amendment

- (18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently the authorisation of the relevant rightholders.
- Cultural heritage** institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation.
- (18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution, **research organization and educational establishments** and consequently the authorisation of the relevant rightholders. **These** institutions, are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation.

Amendment 12

Proposal for a directive

Recital 19

- Text proposed by the Commission*
- (19) Different approaches in the Member States for acts of preservation by cultural heritage institutions hamper cross-border cooperation and the sharing of means of preservation **by cultural heritage institutions** in the internal market, leading to an inefficient use of resources.
- Amendment*
- (19) Different approaches in the Member States for acts of preservation by cultural heritage institutions, **research organisations and educational establishments** hamper cross-border cooperation and the sharing of means of preservation in the internal market, leading to an inefficient use of resources.
Member States should facilitate the cross-border sharing of best-practices, new technologies and preservation techniques.

Amendment 13

Proposal for a directive

Recital 20

- Text proposed by the Commission*
- Amendment*

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for ***preservation purposes only.***

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions, ***research organizations and educational establishments*** to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. ***These entities should be also allowed to make internal organizational reproductions for varying purposes including insurance, rights clearance, and loans.*** Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for ***such reproduction. The reproduction activities can be carried out in partnership with other institutions established in the Member States.***

Amendment 14

Proposal for a directive Recital 21

Text proposed by the Commission

(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies are owned ***or permanently held by the cultural heritage institution, for example as a result of a*** transfer of ownership or licence agreements.

Amendment

(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution, ***research organization and educational establishment*** when copies are owned, ***held on a long-term loan or permanently held by the entity, including*** transfer of ownership or licence agreements.

Amendment 15

Proposal for a directive

Recital 23

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are <i>not</i> represented by the collective management organisation, in accordance to their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.	(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are <i>either not represented or not adequately</i> represented by the collective management organisation, in accordance to their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.

Amendment 16

Proposal for a directive

Recital 25

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.	(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, <i>cultural institutions</i> , users and collective management organisations when doing so.

Amendment 17

Proposal for a directive

Recital 33

Text proposed by the Commission

(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 which do not constitute communication to the public.

Amendment

(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 **also** be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public.

Amendment 18

Proposal for a directive

Recital 33 a (new)

Text proposed by the Commission

Amendment

(33 a) The rights for press publishers should apply without prejudice to the rights of individuals for the reproduction, communication or providing links or extracts of a press publication to the public for private use or not-for-profit, non-commercial purposes.

Amendment 19

Proposal for a directive

Recital 34

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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, <i>insofar as digital uses are concerned</i>. They should also be subject 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.</p>	<p>(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. They should also be subject 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. <i>The protection granted to press publications under this Directive should also apply where the content is automatically generated by, for example, news aggregators.</i></p>

Amendment 20

Proposal for a directive Recital 35

<i>Text proposed by the Commission</i>	<i>Amendment</i>

(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. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.

(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. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. *Member States should ensure that a fair share of remuneration, derived from the use of the press publishers right, is attributed to journalists, authors and other rightholders.*

Amendment 21

Proposal for a directive Recital 36 a (new)

Text proposed by the Commission

Amendment

(36 a) Cultural and creative industries (CCIs) play a key role in reindustrialising Europe, are a driver for growth and are in a strategic position to trigger innovative spill-overs in other industrial sectors. Furthermore CCIs are a driving force for innovation and development of ICT in Europe. Cultural and creative industries in Europe provide more than 12 million full-time jobs, which amounts to 7.5 % of the EU's work force, creating approximately EUR 509 billion in value added to GDP (5.3 % of the EU's total GVA. The protection of copyright and related rights are at the core of the CCI's revenue.

Amendment 22

Proposal for a directive

Recital 37

Text proposed by the Commission

(37) Over the last years, the functioning of the online content marketplace 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 content online. 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 for it.

Amendment

(37) Over the last years, the functioning of the online content marketplace 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 content online. 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 for it.

Despite the fact that more creative content is being consumed today than ever before, on services such as user-uploaded content platforms and content aggregation services, the creative sectors have not seen a comparable increase in revenues from this increase in consumption. One of the main reasons is being referred to as a transfer of value that has emerged due to the lack of clarity regarding the status of these online services under copyright and e-commerce law. An unfair market has been created, threatening the development of the Digital Single Market and its main players: the cultural and creative industries.

Amendment 23

Proposal for a directive

Recital 37 a (new)

Text proposed by the Commission

Amendment

(37 a) Digital platforms 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. Therefore, consideration is to be made of how this process can function with more legal certainty and respect for right holders. It is therefore of utmost importance to ensure transparency and a fair level playing field. The protection of right holders within the copyright and intellectual property framework is necessary in order to ensure recognition of values and stimulation of innovation, creativity, investment and production of content.

Amendment 24

Proposal for a directive Recital 38 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 **and an act of reproduction**, 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.

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

Amendment 25

Proposal for a directive

Recital 38 – paragraph 2

Text proposed by the Commission

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*.

Amendment

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 *therefore. An information society service provider shall be obliged to acquire licenses for copyright protected content regardless of whether they have editorial responsibility for that content. The licenses acquired by information society service providers from rightsholders should be deemed to cover all user generated content by their users, including users that are acting for non-commercial purposes. This will provide legal certainty for individual users of such services whilst clarifying the liability of platforms.*

Amendment 26

Proposal for a directive

Recital 38 – paragraph 3

Text proposed by the Commission

Amendment

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.

In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to *significant* 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. 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.

Amendment 27

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(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.

(39) Collaboration between information society service providers storing and providing access to the public to *significant* amounts of copyright protected works or other subject-matter uploaded by their users and rightholders is essential for the *efficient implementation of these measures*. 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 *measures*, to allow the assessment of their appropriateness. The services should in particular provide rightholders with information on the type of *measures taken* used, the way they are operated and their success rate for the recognition of rightholders' content. Those *measures* technologies should also allow rightholders to get information from the information society service providers on the use of their content covered by an agreement. *Appropriate safeguards should however be put in place to ensure that measures applied do not infringe the fundamental rights of users, namely their right to protection of their personal data in accordance with Directive 95/46/EC, Directive 2001/58/EC and Regulation (EU) 2016/679, and their freedom to receive or impart information, in particular the possibility to benefit from an exception or limitation to copyright.*

Amendment 28

Proposal for a directive Recital 40

Text proposed by the Commission

Amendment

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers **tend to be** in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts **or** their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers.

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers **are** in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts **and subsequent transferees or licensees, as well as** their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. **The reporting and transparency obligation should follow the work across all forms of exploitation and across borders.**

Amendment 29

Proposal for a directive Recital 41

Text proposed by the Commission

Amendment

- (41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.
- (41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements, ***standard reporting statements and procedures***. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU, ***on the condition that Member States have transposed Directive 2014/26/EU and taken all necessary measures to ensure that the management of all collective management organisations is carried out in an effective and equitable manner. Member States should also ensure that collective management organisations act in the best interest of the rightsholders, ensuring the accurate and regular distribution of payment and production of an annual public transparency report, in compliance with Directive 2014/26/EU.***

Amendment 30

Proposal for a directive Recital 46

Text proposed by the Commission

Amendment

(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council³⁵ and Directive 2002/58/EC of the European Parliament and of the Council³⁶.

(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council³⁵ and Directive 2002/58/EC of the European Parliament and of the Council³⁶. *In the future, the provisions of the General Data Protection Regulation, including the "right to be forgotten" should be respected.*

³⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31–50). This Directive is repealed with effect from 25 May 2018 and shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

³⁶ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37–47), called, as amended by Directives 2006/24/EC and 2009/136/EC, the “e-Privacy Directive”.

³⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31–50). This Directive is repealed with effect from 25 May 2018 and shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

³⁶ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37–47), called, as amended by Directives 2006/24/EC and 2009/136/EC, the “e-Privacy Directive”.

Amendment 31

Proposal for a directive

Recital 46 a (new)

Text proposed by the Commission

Amendment

(46 a) It is important to stress out the importance of anonymity, when handling personal data for commercial purposes. Additionally, the "by default" not sharing option with regards to personal data while using online platform interfaces should be promoted.

Amendment 32

Proposal for a directive

Article 2 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

1. ‘research organisation’ means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:

Amendment

1. ‘research organisation’ means a university, ***including start-up incubators attached to universities***, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:

Amendment 33

Proposal for a directive

Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2 a) ‘start-up company’ means for the purpose of this Directive any company with fewer than 10 employees and an annual turnover or balance sheet below €2 million and which was established not earlier than three years before benefiting from the exception in Art. 3, paragraph 1.

Amendment 34

Proposal for a directive

Article 2 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

(4 a) "lawful access" means access to content acquired in a lawful manner

Amendment 35

Proposal for a directive

Article 3

Text proposed by the Commission

Amendment

Article 3

Article 3

Text and data mining

Text and data mining

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have lawful access for the purposes of scientific research.

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations, ***not-for-profit organisations and start-up companies*** in order to carry out text and data mining of works or other subject-matter to which they have lawful access ***acquired*** for the purposes of scientific research.

2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

3. Rightholders shall be allowed to apply measures to ensure the security and ***integrity*** of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective ***and should not prevent or unreasonably restrict beneficiaries from benefiting from the exception provided in paragraph 1 and their ability to develop text and data mining tools different from those offered by rightholders.***

4. Member States shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

4 a. Beneficiaries of the exception referred to in paragraph 1 conducting text and data mining shall apply measures ensuring data retrieved by the text and data mining process is kept in a secure way and is not being stored longer than necessary for the purposes of the research. The exception referred to in paragraph 1 does not affect acts of text and data mining carried out in relation to mere facts or data which are not protected by copyright or acts of text and data mining which do not involve any act of reproduction or extraction. Authorisation of rightholders or authors of databases is not required for temporary acts of reproduction covered by exceptions under Union law and for acts of extraction that are necessary for the purposes of access to and normal use of the contents of a database by the lawful user.

Amendment 36

Proposal for a directive Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:
1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching **or scientific research**, to the extent justified by the non-commercial purpose to be achieved, provided that the use:

Amendment 37

Proposal for a directive Article 4 – paragraph 1 – point a

Text proposed by the Commission

- (a) takes place **on the premises** of an educational establishment or through a secure electronic network accessible only by **the educational establishment's pupils or students** and teaching staff;

Amendment

- (a) takes place **at a learning space** of an educational establishment or **a certified educational programme recognised by the Member State, as well as cultural heritage institution or research organisation, or** through a secure electronic network accessible only by **their registered learners** and teaching staff;

Amendment 38

Proposal for a directive Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.

Amendment

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences, **through an easily accessible database**, authorising the acts described in paragraph 1 for educational establishments.

Amendment 39

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

Amendment

3. The use of works and other subject-matter for the sole purpose of illustration for teaching ***or scientific research*** through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment, ***certified educational programme, cultural heritage institution or research organisation*** is established.

Amendment 40

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.

Amendment

Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, ***research organizations and educational establishments*** to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation, ***as well as internal organizational reproductions for purposes related to the implementation of their public interest mission.***

Amendment 41

Proposal for a directive

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

Amendment

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce. ***In the event that a collective management organisation does not exist or adequately represent the rights of rightsholders, Member States should provide exceptions for cultural heritage institutions, research organisations and educational establishments, both formal and non-formal, to distribute, communicate to the public or make available out-of-commerce-works for non-commercial purposes. Member States should ensure appropriate remuneration for any unreasonable prejudice to the legitimate interests of the rightsholders and ensure that all rightsholders may at any time object to the use of their works.***

Amendment 42

Proposal for a directive

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1), ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1), ***including resolving issues where cultural heritage institutions activities in line with Article 7 and Article 8 are not being reasonably enabled, and*** ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

Amendment 43

Proposal for a directive

Article 11 – title

Text proposed by the Commission

Protection of press publications ***concerning digital uses***

Amendment

Protection of press publications

Justification

Print editions are worth as much protection as digital editions. For this reason it is essential to ensure that rights are granted for both digital and non-digital use and remove any wording that can exclude non-digital uses.

Amendment 44

Proposal for a directive

Article 11 – paragraph 1

Text proposed by the Commission

Amendment

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 for the *digital* use of their press publications.

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 for the use of their press publications.

Justification

Print editions are worth as much protection as digital editions. For this reason it is essential to ensure that rights are granted for both digital and non-digital use and remove any wording that can exclude non-digital uses.

Amendment 45

**Proposal for a directive
Article 11 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2 a. The rights referred in paragraph 1 shall not extend to acts of hyperlinking as they do not constitute communication to the public.

Amendment 46

**Proposal for a directive
Article 11 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4 a. Member States should ensure that a fair share of the revenue derived from the uses of the press publishers rights is attributed to journalists.

Amendment 47

**Proposal for a directive
Article 12 – paragraph 1**

Text proposed by the Commission

Amendment

Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.

Member States may provide that where an author has transferred or licensed a right to a publisher, *this publisher is right holder by virtue and to the extent of* such a transfer or a licence. *Therefore, this transfer of licence* constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception *or statutory collective licensing* or limitation to the transferred or licensed right.

Amendment 48

Proposal for a directive Article 13 – title

Text proposed by the Commission

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

Amendment

Use of protected content by information society service providers storing and giving access to *significant* amounts of works and other subject-matter uploaded by their users.

Amendment 49

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

Amendment

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.
1. Information society service providers that store and provide to the public access to **significant** amounts of **copyright -protected** works or other subject-matter, uploaded by their users, ***and where that storage and that provision of access constitutes an essential part of their activities,*** shall, in cooperation with rightholders, take ***appropriate and proportionate*** 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. ***At the request of rightholders,*** the service providers shall provide **them** 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.

Amendment 50

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

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.

Amendment

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 ***that*** paragraph. ***These mechanisms shall in particular ensure that where the removal of the content referred to in paragraph 1 is not justified, the content in question shall be reinstated online within a reasonable time.***

Amendment 51

Proposal for a directive

Article 13 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. ***The Commission together with*** Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices ***for the measures referred to in paragraph 1*** taking into account, *inter-alia*, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

Amendment 52

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

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.
1. Information society service providers that store and provide to the public access 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 initiated by their users uploading such works or other subject-matter, shall conclude licensing agreements with rightholders both for communication to the public and reproduction rights, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.**
2. **The liability exemption provided in Article 14 of Directive 2000/31/EC shall not apply to the activities of information society service providers which make protected works and other subject matter available to the public and play an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them.**
3. **The licensing agreements referred to in paragraph 1 shall be deemed to cover the acts carried out by the users of the information society service providers aforementioned, provided that the users are not acting on a professional basis.**
4. **Information society service providers that store and provide to the public access to significant amounts of copyright protected 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**

Amendment 53

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.

Amendment

1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, ***accurate***, timely, adequate and sufficient information on the exploitation ***and promotion*** of their ***works, including scientific*** works and performances from those to whom they have licensed or transferred their rights, ***including subsequent transferees or licensees***, notably as regards modes of exploitation, ***promotion***, revenues generated and remuneration due.

Amendment 54

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure ***an appropriate*** level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.

Amendment

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure ***a high*** level of transparency in every sector, ***as well as a right of the author and performer to audit***. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective, ***enforceable*** and ensures an appropriate level of transparency.

Amendment 55

Proposal for a directive Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States shall ensure that sector-specific standard reporting statements and procedures are developed through stakeholder dialogues.

Amendment 56

Proposal for a directive Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14 a

Unwaivable right to fair remuneration for authors and performers

- 1. Member States shall ensure that when authors and performers transfer or assign their right of making available to the public, they retain the right to obtain a fair remuneration derived from the exploitation of their work.***
- 2. The right of an author or performer to obtain a fair remuneration for the making available of their work is inalienable and cannot be waived.***
- 3. The administration of this right to fair remuneration for the making available of an authors or performers work shall be entrusted to their collective management organisations, unless other collective agreements, including voluntary collective management agreements, guarantee such remuneration to authors, audio-visual authors and performers for their making available right.***

4. Collective management organisations shall collect the fair remuneration from information society services making works available to the public.

Amendment 57

Proposal for a directive

Article 15 – paragraph 1

Text proposed by the Commission

Member States shall ensure that authors and performers are entitled to request additional, **appropriate** remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Amendment

Member States shall ensure that authors and performers, **or representatives they appoint**, are entitled to request additional, **fair** remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Amendment 58

Proposal for a directive

Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15 a

Rights reversion mechanism

Amendment 59

**Proposal for a directive
Article 16 – paragraph 1**

Text proposed by the Commission

Amendment

Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.

Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. ***Member States shall ensure that authors and performers can submit the dispute anonymously through an authorized person or organization.***

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Copyright in the Digital Single Market
References	COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)
Committee responsible Date announced in plenary	JURI 6.10.2016
Opinion by Date announced in plenary	ITRE 6.10.2016
Rapporteur Date appointed	Zdzisław Krasnodębski 1.12.2016
Discussed in committee	22.3.2017
Date adopted	11.7.2017
Result of final vote	+: 39 -: 18 0: 6
Members present for the final vote	Zigmantas Balčytis, Nicolas Bay, Bendt Bendtsen, Xabier Benito Ziluaga, José Blanco López, Cristian-Silviu Bușoi, Reinhard Bütkofer, Jerzy Buzek, Angelo Ciocca, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Christian Ehler, Fredrick Federley, Ashley Fox, Adam Gierek, Theresa Griffin, András Gyürk, Roger Helmer, Eva Kaili, Kaja Kallas, Barbara Kappel, Krišjānis Kariņš, Seán Kelly, Jeppe Kofod, Jaromír Kohlíček, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Nadine Morano, Dan Nica, Angelika Niebler, Morten Helveg Petersen, Miroslav Poche, Paul Rübig, Massimiliano Salini, Sven Schulze, Neoklis Sylkiotis, Dario Tamburrano, Patrizia Toia, Evžen Tošenovský, Claude Turmes, Vladimir Urutchev, Kathleen Van Brempt, Henna Virkkunen, Martina Werner, Lieve Wierinck, Hermann Winkler, Anna Záborská, Flavio Zanonato, Carlos Zorriño
Substitutes present for the final vote	Pascal Arimont, Pilar Ayuso, Pervenche Berès, Werner Langen, Florent Marcellesi, Marisa Matias, Maria Spyrova
Substitutes under Rule 200(2) present for the final vote	Czesław Hoc, Jan Huitema, Julia Reda, Yana Toom, Kazimierz Michał Ujazdowski, Julie Ward

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

39	+
ENF	Angelo Ciocca, Barbara Kappel
PPE	Pascal Arimont, Bendt Bendtsen, Cristian-Silviu Bușoi, Christian Ehler, András Gyürk, Krišjānis Kariņš, Seán Kelly, Werner Langen, Janusz Lewandowski, Nadine Morano, Angelika Niebler, Luděk Niedermayer, Paul Rübig, Massimiliano Salini, Sven Schulze, Vladimir Urutchev, Henna Virkkunen, Hermann Winkler, Anna Záboršká, Pilar del Castillo Vera
S&D	Zigmantas Balčytis, Pervenche Berès, José Blanco López, Adam Gierek, Theresa Griffin, Eva Kaili, Jeppe Kofod, Miapetra Kumpula-Natri, Edouard Martin, Dan Nica, Miroslav Poche, Patrizia Toia, Kathleen Van Brempt, Julie Ward, Martina Werner, Flavio Zanonato, Carlos Zorrinho

18	-
ALDE	Fredrick Federley, Jan Huitema, Kaja Kallas, Morten Helveg Petersen, Yana Toom, Lieve Wierinck
EFDD	Roger Helmer, Dario Tamburrano
ENF	Nicolas Bay
GUE/NGL	Jaromír Kohlíček, Paloma López Bermejo, Marisa Matias, Neoklis Sylikiotis
Verts/ALE	Reinhard Bütikofer, Jakop Dalunde, Florent Marcellesi, Julia Reda, Claude Turmes

6	0
ECR	Edward Czesak, Ashley Fox, Czesław Hoc, Zdzisław Krasnodębski, Evžen Tošenovský, Kazimierz Michał Ujazdowski

Key to symbols:

+ : in favour

- : against

0 : abstention

4.9.2017

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market

(COM(2016)0593 – C80383/2016 – 2016/0280(COD))

Rapporteur: Marc Joulaud

SHORT JUSTIFICATION

Purpose and scope

The Commission's proposal seeks to modernise and adapt the European copyright rules to the digital environment, thus enhancing the emergence of a Digital Single Market. Technological developments over the last two decades have transformed drastically both the scope of online services and consumer behaviour online, rendering necessary an update of at least parts of the existing rules, which date back to 2001.

The core principles of copyright, such as the need for a high level of protection and fair remuneration of creators and performers, are still very much relevant and must be preserved, as they have allowed the European Union to maintain a rich cultural diversity, which remains to this day one of its most prized advantages over the rest of the world. However, the development of digital services relying on copyright-protected work has created tremendous difficulties for rightholders to appropriately control the dissemination of, and get fair remuneration for, their works.

At the same time, to guarantee the protection of legitimate uses of copyright-protected works, a list of voluntary exceptions and limitations was established in the InfoSoc Directive (2001/29/EC), defining in which cases the prior consent of a rightholder was not needed for the use of his/her work. These exceptions were broadly defined, technologically neutral and optional, in order to allow Member States to adapt them to their national specificities and cultural policies. While optional, the exceptions were, for the most part, implemented in the Member States and proved to be effective, even if the application of some exceptions in the digital environment has raised some uncertainties.

Based on these observations, the Commission decided to preserve the existing rules, as they

are still relevant, but to address the specific problems arising from the digital revolution, especially where there was a cross-border effect, by providing for mandatory exceptions designed to complement those in the InfoSoc Directive.

The current proposal therefore centres on three pillars, each addressing the issues identified in a given area:

A first pillar aims to support public-interest activities, such as research, education and the preservation of cultural heritage, in which the use of copyright-protected works are required on an everyday basis. Mandatory exceptions are created to provide legal certainty to the beneficiaries regarding the digital uses of works.

A second pillar is designed to help the content production sector solve its considerable difficulties in negotiating licences, and possibly receiving fairly negotiated remuneration, for the use of their works by online services disseminating them on a massive scale. To this end, the Commission provides important clarifications on the liability regime of information society services as defined in the E-Commerce Directive (2000/31/EC), where such services store and provide access to large amounts of protected works uploaded by their users. In such circumstances, information society services should enter into licencing agreements with rightholders and set up proportional and adequate measures to protect the works concerned, in cooperation with rightholders.

The third and last pillar is intended to balance the relationship between authors and their contractual partners. The transfer or licencing of rights from authors and performers to their contractual partners is a standard and generally accepted practice that ensures the financing of creation. But authors and performers do not always get access to data regarding the way their works are later used, promoted and generate revenues, making it difficult for them to determine if their remuneration is in line with the actual success of the work concerned. Transparency obligations, the possibility to adjust remuneration and a dispute resolution mechanism were therefore put forward in the Commission proposal.

Overall position of the Rapporteur

The Rapporteur supports the direction and problem-driven approach of the Commission proposal and considers that, while the existing copyright rules remain valid for the most part, there is a need for specific complementary rules to address the specificities of digital uses of copyright-protected works.

The amendments aim to clarify and specify a number of provisions of the Commission's proposal, as well as to strengthen some of them where reasonable and possible. At the same time, the Rapporteur wishes to recognise the developments in consumer behaviour and provide guarantees regarding some of the new uses and practices that have emerged along with the digital revolution.

To this end, the Rapporteur has tabled amendments related to four key objectives:

- 1. Provide legal certainty regarding the new exceptions and limitations**

The Rapporteur supports the new mandatory exceptions and limitations provided in this Directive to support public-interest activities, such as education, research or preservation of cultural heritage. Indeed, the potential benefits for the whole of society and the development of cross-border practices justifies such a harmonisation and the scope is sufficiently precise to protect appropriately rightholders from disproportionate harm.

However, in the opinion of the Rapporteur, the current proposal does not provide full legal clarity on the burden of the parties involved in each exception, which would jeopardise their effectiveness and hamper their harmonised implementation. Therefore, the Rapporteur has specified the obligations of the relevant parties involved in the exceptions, in order to reduce the risk of harm for rightholders (Article 3), give certainty on recourse to licences or the exception (Article 4) and to secure common practices (Article 5).

2. Clarify the responsibilities of platforms and ensure a fair cooperation with rightholders

The Rapporteur fully supports the objectives and approach of the proposal in clarifying the status of certain categories of information society services in a way that is consistent with, and complementary to, the E-Commerce Directive.

However, it is the Rapporteur's opinion that the proposal does not define with enough precision the scope of services falling under the requirements of Article 13 of this Directive, creating legal uncertainty. In a similar manner, the scope, nature and basis of the mutual obligations between rightholders and those services is not clear enough in the view of the Rapporteur.

The opinion therefore clarifies the obligations of information society services under Article 13 of this Directive. Instead of focusing only on the technical characteristics of the service (ie the notion of storage), the opinion bases the obligations of the service on whether or not it performs an act of communication to the public.

Hence, information society services storing and/or providing access to the public to copyright-protected works or other subject-matter, thus going beyond the mere provision of physical facilities and performing an act of communication to the public, are required to conclude licensing agreements with requesting rightholders. In the absence of agreements or where services are eligible for the E-Commerce Directive liability exemption, they are nonetheless required to take measures to prevent the unlawful inclusion of copyright-protected content. This approach should provide the necessary legal certainty for the provision of this Directive to be effective.

To ensure better and fair cooperation between the relevant platforms and rightholders, the Rapporteur proposed an alternative dispute resolution mechanism to solve any difficulty that may arise, with the assistance of an impartial body designated by the Member States.

3. Create a new pillar to protect consumer's legitimate practices

It is the Rapporteur's view that the proposal does not acknowledge the position consumers, as service users, now occupy in the digital environment. No longer playing a mere passive role, they have become active contributors and are now both a source and recipient of content in the digital ecosystem. Indeed, information society services base the entire design, business model and optimisation of their services around the dual role of their users. From a legal standpoint, it is also the opinion of the Rapporteur that digital practices of users do not benefit from legal certainty under the current copyright rules, in particular the exceptions and limitations, and therefore require a specific approach.

The opinion therefore completes the existing quotation exception with a new exception governing the digital non-commercial, proportionate use of quotations and extracts of copyright-protected works or other subject-matter by individual users. Without prejudice to the provisions in Article 13, Member States may provide for an exception for content uploaded by users where the content is used for criticism, review, illustration, caricature, parody or pastiche.

Finally, the Rapporteur has reinforced the complaints and redress mechanism in Article 13 to provide a minimum level of legal certainty for users with regard to the procedures.

4. Allow authors and performers to effectively enforce their rights

The Rapporteur salutes the efforts made by the proposal to reinforce the rights of authors and performers. In order to prevent any chilling effect that might dissuade authors and performers from enforcing their rights, the Rapporteur has provided that disputes between authors, performers and their contractual partners may be initiated either on an individual or collective basis.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled ‘Towards a modern, more European copyright framework’²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. **This Directive** provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on rights in publications, on the use of works and other subject-matter by online service providers storing and giving access to user uploaded content and on the transparency of authors' and performers' contracts.

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. ***It is essential that relevant legislation be future-proof so as not to restrict such technological developments.*** New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled ‘Towards a modern, more European copyright framework’²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. ***In this ever-changing digital environment, the Commission should investigate all possible measures to prevent the illegal use of copyright-protected visual and audiovisual content for commercial purposes, through embedding or framing techniques. In addition,*** this Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on rights in publications, on the use of works and other subject-matter by online service providers storing and giving access to user uploaded content and on the transparency of authors' and performers' contracts.

²⁶ COM(2015) 626 final.

²⁶ COM(2015) 626 final.

Amendment 2

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Despite the fact that more creative content is being consumed today than ever before via services such as platforms for user-uploaded content and content aggregation services, the creative sectors have not seen a comparable rise in revenues. Consequently, a so-called 'value gap' has developed, whereby platform services retain the value of cultural and creative works, which is diverted from creators. The transfer of value has created an inefficient and unfair market, and threatens the long-term health of the Union's cultural and creative sectors and the success of the Digital Single Market. Thus, liability exemptions should only apply to genuinely neutral and passive online service providers, and not to services that play an active role in distributing, promoting and monetising content at the expense of creators.

Amendment 3

Proposal for a directive

Recital 5

Text proposed by the Commission

Amendment

(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted.

(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, teaching, ***distance and blended learning*** and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted accordingly. ***The term 'scientific research' used in this Directive is to be understood as referring both to the natural sciences and the human sciences.***

Amendment 4

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining.

Amendment 5

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. Research organisations should also benefit from the exception when they engage into public-private partnerships.

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. *To prevent unjustified dissemination of the content necessary for text and data mining, research organisations should be allowed to store and preserve in a secure manner the reproductions of works or other subject matter obtained pursuant to the new exception, for the time needed to perform the research. Reproductions of works or other subject-matter made for the purpose of text and data mining should be deleted once all the activities necessary for the research have been carried out.* Research organisations should also benefit from the exception when they *enter* into public-private partnerships, *provided that the text and data mining acts performed relate directly to the purpose of the research carried out in the partnership concerned. In the context of public-private partnerships, it is necessary that the copyright-protected works or other subject-matter used pursuant to the exception be lawfully acquired beforehand by the private sector partner.*

Amendment 6

Proposal for a directive

Recital 12

Text proposed by the Commission

Amendment

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted *would* be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures, *such as identification confirmation*, where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted *might* be jeopardised. Those measures should *be proportionate, should* not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.

Amendment 7

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception the harm should be minimal.

Amendment

deleted

Amendment 8

Proposal for a directive

Recital 14

Text proposed by the Commission

Amendment

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning *which may be carried out outside traditional, formal learning settings and involve a wider range of providers*. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments *and entities certified by the Member States to carry out a teaching activity* benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.

Amendment 9

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors **to determine** the non-commercial nature of the activity.

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments **recognised by the Member State in which they are established and involved** in primary, secondary, vocational and higher education, **as well as any entities that are certified by the Member State in which they are established to carry out specific teaching activities** to the extent **that** they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment **or of a certified entity** are not the decisive factors **in determining** the non-commercial nature of the activity.

Amendment 10

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

- (16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means ***in the classroom*** and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.
- (16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works, ***with the exception of sheet music***, to support, enrich or complement the teaching, including the related learning activities. ***Member States should be allowed to set appropriate limits concerning the amount of certain categories of protected works or other subject-matter that can be used, as long as such limits strike a fair balance between the needs and legitimate interests of users and rightholders.*** The use of the works or other subject-matter ***or of extracts from them*** under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments ***or certified entities***, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means ***in the setting in which the teaching and learning activities are carried out, including when outside the premises of the educational establishment or certified entity carrying them out***, and online uses through the educational establishment's ***or certified entity***'s secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

Amendment 11

Proposal for a directive

Recital 17

Text proposed by the Commission

Amendment

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid ***that such*** mechanism ***results*** in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes.

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, ***for which licences are easily available***. In order to avoid ***such a*** mechanism ***resulting*** in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments ***and entities certified to carry out a teaching activity*** are aware of the existence of such licensing schemes. ***In order to ensure the availability and accessibility of such licences for beneficiaries, Member States should use or develop appropriate tools, such as a single portal or database.***

Amendment 12

Proposal for a directive

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) In order to guarantee legal certainty, in the event that a Member State decides to make the application of the exception subject to the availability of adequate licences, it is necessary to specify under which conditions an educational establishment or an entity certified to carry out teaching activities may use protected works or other subject-matter under the exception and, conversely, when it should act under a licensing scheme. Therefore, when an educational establishment or a certified entity cannot find a licence covering the use of a given copyright-protected work or other subject-matter through the technical tool created by the Member State to ensure the visibility of licensing schemes covering use for teaching activities, it should be entitled to use such a work or other subject matter under the scope of the exception.

Amendment 13

Proposal for a directive

Recital 20

Text proposed by the Commission

Amendment

- (20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only.
- (20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports *or for the purpose of digitisation*. Such an exception should allow for the making of copies *in any format or medium* by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only. *Such an exception should cover both cultural heritage institutions holding the works or other subject-matter and third parties mandated by such cultural heritage institutions to reproduce the works or other subject-matter within the scope of the exception.*

Amendment 14

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) Following technological developments and evolving consumer behaviour, new information society services have emerged that allow their users to upload content in various forms. Such content uploaded by users sometimes comprises short extracts or short quotations from protected works or other subject-matter, which may be altered, combined or transformed. Such use of extracts or quotations from protected works or other subject-matter within content uploaded by users, for the purposes of illustration, caricature, parody, pastiche, criticism or review, is now widespread online and, provided that that use is proportionate and does not cause significant economic harm to the rightholders concerned, it can even serve to advertise the work used within the content concerned.

Amendment 15

Proposal for a directive Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) Despite some overlap with existing exceptions or limitations, content uploaded or made available by a user that comprises short extracts or short quotations from protected works or other subject-matter, is not properly covered by the existing list of exceptions or limitations, nor can the question of how such content is used be solely addressed through contractual arrangements. Such circumstances create legal uncertainty for both users and rightholders, leading to frustration and abuses. It is therefore necessary to complement the existing exceptions provided for in Directive 2001/29/EC, in particular those related to quotation and parody, by providing for a new specific exception to authorise the short, proportionate and non-commercial uses of extracts or quotations from protected works or other subject-matter within content uploaded by a user.

Amendment 16

Proposal for a directive Recital 21 c (new)

Text proposed by the Commission

Amendment

(21c) Where content uploaded by a natural person involves the short, proportionate and non-commercial use for a legitimate purpose of a short extract or short quotation from a work or other subject-matter, such use should be covered by the exception provided for in this Directive. This exception should only be applied in certain special cases which do not conflict with normal uses of the work or other subject-matter concerned and do not unreasonably prejudice the legitimate interests of the rightholder. For the purpose of assessing a prejudice, the degree of originality of the content concerned, the length and extent of the extract or quotation used, whether the extract or quotation is a subordinate part of the content concerned, the professional nature of the content concerned and the degree of economic harm should be examined, where relevant. This exception should be without prejudice to the moral rights of the authors of the work or other subject-matter concerned.

Amendment 17

Proposal for a directive Recital 21 d (new)

Text proposed by the Commission

Amendment

(21d) Information society services should not be able to invoke for their benefit the exception provided in this Directive for the use of short extracts or short quotations from protected works or other subject-matter in content uploaded by users, for the purpose of limiting their liability or the extent of their obligations under the agreements concluded with rightholders pursuant to Article 13 of this Directive.

Amendment 18

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use. It is therefore necessary to provide for measures to facilitate the licensing of rights in out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.

Amendment

(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult **or impossible**. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use **or have never been in commerce**. It is therefore necessary to provide for measures to facilitate the licensing of rights in out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.

Amendment 19

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the collective management organisation, in accordance **to** their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.

Amendment

(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the **relevant** collective management organisation, in accordance **with** their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.

Amendment 20

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such mechanisms to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.

Amendment

(24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important **and should be encouraged by the Member States**. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such mechanisms to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.

Amendment 21

Proposal for a directive

Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) In order to ensure that the licensing mechanisms established for out-of-commerce works are relevant and function properly, that rightholders are adequately protected under those mechanisms, that licences are properly publicised and that legal certainty is ensured with regard to the representativeness of collective management organisations and the categorisation of works, Member States should foster sector-specific stakeholder dialogue. They should also, where necessary, facilitate dialogue to help establish collective management organisations, in sectors where they do not already exist, covering the rights in each category of works.

Amendment 22

Proposal for a directive Recital 30

Text proposed by the Commission

Amendment

- (30) To facilitate the licensing of rights in audiovisual works **to** video-on-demand platforms, this Directive requires Member States to set up a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The body should meet with the parties and help with the negotiations by providing professional and external advice. Against that background, Member States should decide on the conditions of the functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.
- (30) To facilitate the licensing of rights in audiovisual works, ***relevant rights are consolidated with the producer by law or by contract. In order to promote cultural diversity and the availability of works on*** video-on-demand platforms, this Directive requires Member States to set up a ***facilitation*** mechanism, ***managed by an existing or newly-established national body,*** allowing ***relevant*** parties willing to conclude an agreement ***for the licensing of audiovisual works to video-on-demand platforms*** to rely on the assistance of an impartial body. ***Where a negotiation involves parties from different Member States, they should agree beforehand on which Member State is to be competent in the event that the facilitation mechanism is required.*** The body should meet with the parties and ***facilitate*** the negotiations by providing professional and external advice. Against that background, Member States should decide on the conditions of the functioning of the ***facilitation*** mechanism, including the timing and duration of the assistance to negotiations and ***the division of any costs arising.*** Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the ***facilitation*** forum. ***In order to encourage the continuous exploitation of audiovisual works on video-on-demand platforms, Member States should foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.***

Amendment 23

Proposal for a directive Recital 31

Text proposed by the Commission

Amendment

(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. In the transition from print to digital, publishers 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.

(31) A free and pluralist press is essential to ensure quality *and fairly remunerated* journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications and recouping their investments. *Online services, such as news aggregators and search engines, have increasingly developed their activities by making profits from the content of press publishers. Such profits are not shared fairly with journalists and publishers.* In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment *are* often complex and inefficient.

Amendment 24

Proposal for a directive Recital 32

Text proposed by the Commission

(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. It is therefore necessary to provide at Union level a harmonised legal protection for press publications *in respect of 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*.

Amendment

(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. It is therefore necessary to provide at Union level a harmonised legal protection for press publications. 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.

Amendment 25

Proposal for a directive

Recital 33

Text proposed by the Commission

(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 **which** do not constitute communication to the public.

Amendment

(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only **professional** journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining **and whose credibility in the eyes of the public relies to a certain extent on their specific brand name**. 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 **where such acts** do not constitute communication to the public **under Directive 2001/29/EC**.

Amendment 26

Proposal for a directive

Recital 34

Text proposed by the Commission

Amendment

(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.*** They should also be subject 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.

(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. They should also be subject 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. ***The rights granted under this Directive should be without prejudice to authors' rights and should not apply to legitimate uses of press publications by individual users acting in a private and non-commercial capacity. The protection granted to press publications under this Directive should apply to content automatically generated by an act of hyperlinking related to a press publication without prejudice to the legitimate use of quotations.***

Amendment 27

Proposal for a directive Recital 35

Text proposed by the Commission

Amendment

(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. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.

(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. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. ***Member States should be allowed to provide that a fair share of remuneration derived from uses of press publishers' rights is attributed to journalists.***

Amendment 28

Proposal for a directive Recital 36

Text proposed by the Commission

Amendment

(36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should **be allowed to** determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, **whereas** the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.

Amendment 29

Proposal for a directive Recital 37

Text proposed by the Commission

Amendment

(37) Over **the last** years, the functioning of the online content marketplace 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 content online. 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 for it.

(37) Over **recent** years, the functioning of the online content marketplace has gained in complexity. Online services providing access to copyright protected content uploaded by their users, without the involvement **or agreement of rightholders**, have flourished and have become **primary** sources of access to content online. *In so doing, such services unfairly compete with services whose content is licensed directly by rightholders, since they make profits from content that they do not create and do not always share those profits fairly with the creators concerned. Consequently, online services providing access to copyright-protected content uploaded by their users, without the involvement or agreement of right holders drive down the overall value of creative content online. While allowing easy access to diverse content, this affects rightholders' ability to determine whether, and under which conditions, their work and other subject-matter are **being** used, as well as their scope for obtaining appropriate remuneration for it, since some user-uploaded content services do not enter into licensing agreements on the basis that they are covered by the 'safe harbour' exemption of Directive 2000/31/EC.*

Amendment 30

Proposal for a directive Recital 38

Text proposed by the Commission

Amendment

(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 therefore.

(38) Where information society service providers store and/or 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 *both* an act of communication to the public *and an act of reproduction*, they *should be* obliged to conclude *fair and balanced* licensing agreements with rightholders *that request such an agreement, in order to ensure the protection of rightholders' legitimate interests and their fair remuneration*, 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 *of Directive 2000/31/EC and eligibility for the liability exemption provided therein*, it is necessary to verify *the extent of the role played by the information society service provider. Where* the provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter, promoting them *or commercially exploiting them*, irrespective of the nature of the means used therefor, *the provider should no longer be considered to be merely hosting such content and should therefore be considered ineligible for the liability exemption.*

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.

In order to ensure the functioning of any licensing agreement, *or, in the absence of such an agreement, to prevent the unauthorised making available on their service of works or other-subject matter identified by their rightholders*, information society service providers storing and/or providing access to the public to *significant* amounts of copyright protected works or other subject-matter uploaded by their users should take, *in cooperation with rightholders*, appropriate and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective technologies, *and facilitate effective and transparent reporting to rightholders*. 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. ***This obligation should not apply to online marketplaces.***

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

Amendment 31

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(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.

(39) Collaboration between information society service providers storing and providing access to the public to *significant* amounts of copyright protected works or other subject-matter uploaded by their users and rightholders is essential *to ensure the effective* 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, *such as reference files and metadata. They should deliver data in a timely fashion and in an appropriate format and those data should be complete and accurate.* 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. *When assessing the proportionality and effectiveness of the measures implemented, technological constraints and limitations should be taken into due consideration. Those technologies should not require the identification of individual users that upload content and should not involve the processing of data relating to individual users, in accordance with Directive 95/46/EC and Directive 2002/58/EC. They should be limited to preventing the unauthorised making available of specifically identified and duly notified works based on the information provided by rightholders and therefore should not lead to a general monitoring obligation.*

Amendment 32

Proposal for a directive Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) Since the measures and technologies deployed by information society services providers in application of this Directive could have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the concerned content is covered by an exception or limitation, information society service providers should be required to offer a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. It should prescribe minimum standards for complaints to ensure that rightholders are given sufficient information to assess and respond to complaints. Rightholders should process any complaints received within a reasonable amount of time and take corrective action where measures prove to be unjustified. User-uploaded content stored or provided on an information society service can generate revenue, including when such content is affected by measures deployed by an information society service provider. While a dispute over user-uploaded content is being processed and resolved, such revenues should not be attributed or distributed to the user or the rightholder concerned, until the dispute has been resolved through the complaints and redress mechanism.

Amendment 33

Proposal for a directive Recital 39 b (new)

Text proposed by the Commission

Amendment

(39b) In view of the requirements laid down in this Directive regarding agreements and cooperation between information society service providers and rightholders, and in order to avoid unnecessary, long and costly legal proceedings, it is necessary to provide for an intermediate procedure which can permit parties to seek an amicable solution to any dispute concerning the provisions of this Directive. Member States should support such a mechanism by designating an impartial body with relevant experience and competence to assist the parties in the resolution of their dispute.

Amendment 34

Proposal for a directive Recital 40

Text proposed by the Commission

Amendment

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker *contractual* position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, *but* they often face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts or their successors in title is *important* for *the* transparency and balance in the system that governs the remuneration of authors and performers.

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker *negotiating* position when they grant licences or transfer their rights *by contract*, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer. **However**, they often face a lack of transparency. Therefore, the *regular* sharing of adequate *and accurate* information by their *direct* contractual counterparts or their successors in title is *necessary* for transparency and balance in the system that governs the remuneration of authors and performers.

Amendment 35

Proposal for a directive Recital 41

Text proposed by the Commission

Amendment

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should **consult** all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should **undertake appropriate consultation with** all relevant stakeholders as that should help determine sector-specific requirements **and establish standard reporting requirements and procedures accordingly, including through automated processing and the use of international identifiers**. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU, **or where existing collective bargaining agreements provide an equivalent level of transparency**.

Amendment 36

Proposal for a directive Recital 42

Text proposed by the Commission

Amendment

(42) Certain contracts for the exploitation of rights harmonised at Union level are *of long duration*, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits derived from the exploitation of the work or the fixation of the performance, *including in light of* the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

(42) *Many* contracts for the exploitation of rights harmonised at Union level are *long-term in nature*, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where *an author or performer can demonstrate that* the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits, *such as subsidies or equity shares*, derived from the exploitation of the work or the fixation of the performance, *taking into account* the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case, *of any expenditure genuinely incurred in the production of the work or performance*, as well as of the specificities and practices of the different content sectors. *It should be possible for Member States to decide not to apply the adjustment mechanism when the contribution of the authors or performers is not significant, having regard to the overall work or performance.* Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

Amendment 37

Proposal for a directive Recital 42 a (new)

Text proposed by the Commission

Amendment

(42a) Member States should guarantee the right for authors and performers to fair, proportional and unwaivable remuneration for the making available of their work on on-demand services and for relevant reproduction acts involving their work on such services. Such a right to fair remuneration should be administered in accordance with national practices and legal requirements, without prejudice to existing mechanisms, such as voluntary collective management agreements or extended collective licences.

Amendment 38

Proposal for a directive Recital 43

Text proposed by the Commission

(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism.

Amendment

(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal *as bringing a legal action can entail significant costs and can have an adverse effect on their capacity to enter into contractual relationships in the future.* Member States should therefore provide for an alternative dispute resolution procedure that addresses claims *by authors, performers or their appointed representatives and* related to obligations of transparency, *the unwaivable right to remuneration* and the contract adjustment mechanism. *Such a mechanism should cater for individual or collective claims, brought either directly by the authors and performers concerned or through an organisation acting on their behalf. The mechanism should also be affordable.*

Amendment 39

Proposal for a directive Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) To support the effective application across Member States of the relevant provisions of this Directive, the Commission should, in cooperation with Member States, encourage the exchange of best practices and promote dialogue at Union level.

Amendment 40

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.

1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content **and the need for a high level of protection of intellectual property**. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.

Justification

To emphasise that protection of intellectual property, and its function as a revenue stream for creators, is a core principle that must be taken into account in any reform of the copyright regime.

Amendment 41

Proposal for a directive Article 2 – paragraph 1 – point 1 – point a

Text proposed by the Commission

- (a) on a **non-for-profit** basis or by reinvesting all the profits in its scientific research; or

Amendment 42

Proposal for a directive

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

- (3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;

Amendment

- (a) on a **not-for-profit** basis or by reinvesting all the profits in its scientific research; or

Amendment 43

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

- (4) ‘press publication’ means a fixation of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, **having the purpose of providing** information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider.

Amendment

- (4) ‘press publication’ means a **professional** fixation, **under a single title**, of a collection of literary works of a journalistic nature **produced by one or several authors**, which may also comprise other works or subject-matter and constitutes an individual item **where:**

- (a) **it occurs** within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine;

- (b) *its purpose is to provide* information related to news or other topics; and
- (c) *it is* published in any media under the initiative, editorial responsibility and control of a service provider.

Amendment 44

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have lawful access for the purposes of scientific research.

Amendment

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have *acquired* lawful access for the purposes of scientific research.

Amendment 45

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

Amendment

3. Rightholders shall be allowed to apply *proportionate* measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective *and shall not prevent or hinder research organisations from enjoying the exception provided for in paragraph 1.*

Amendment 46

Proposal for a directive Article 3 – paragraph 4

Text proposed by the Commission

4. Member States shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

Amendment

4. Member States shall encourage rightholders and research organisations ***to work together*** to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3 ***and any text and data mining protocols. In cooperation with Member States, the Commission shall encourage the exchange of best practice and experience across the Union.***

Amendment 47

Proposal for a directive Article 3 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States may provide for fair compensation to rightholders for the use of their works or other subject-matter pursuant to paragraph 1.

Amendment 48

Proposal for a directive Article 4 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) is made by an educational establishment recognised by the Member State in which it is established or by an entity certified by the Member State in which it is established to carry out teaching activities;

Amendment 49

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

- (a) takes place *on the premises* of an educational establishment or through a secure electronic network accessible only by the educational establishment's *pupils or* students and teaching staff;

Amendment

- (a) takes place *where the teaching activities take place* or through a secure electronic network accessible only by the educational establishment's *or the certified entity*'s students *or by* teaching staff *of the educational establishment or certified entity that are directly involved in the teaching activity concerned*;

Amendment 50

Proposal for a directive

Article 4 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

- (ba) is limited to the duration justified by the illustrative purpose.*

Amendment 51

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

- 1a. Member States may provide for proportionate restrictions on the amount of a work that can be used. Such restrictions shall take into account the needs and legitimate interests of both users and rightholders.*

Amendment 52

Proposal for a directive

Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising the acts described in paragraph 1 are easily available **in** the market.

Amendment

Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising **at least** the acts described in paragraph 1 are easily available **on** the market **and appropriate to the needs and specificities of educational establishments and entities certified to carry out teaching activities.**

Amendment 53

Proposal for a directive

Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.

Amendment

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability, **accessibility** and visibility of the licences authorising the acts described in paragraph 1 for educational establishments **and entities certified to carry out teaching activities.**

Amendment 54

Proposal for a directive

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. For the purposes of applying paragraph 2, Member States shall actively assist in ensuring the availability of the licences authorising at least the acts described in paragraph 1 or facilitate dialogue between rightholders, educational establishments and entities certified to carry out teaching activities with a view to establishing specific licences authorising the acts described in paragraph 1.

Member States shall ensure that the licences authorising the acts described in paragraph 1 are adequately publicised through appropriate tools, such as a single portal or database accessible to educational establishments and entities certified to carry out teaching activities. The Member States shall ensure that the available licences are listed and kept up-to-date on those tools.

Where a Member State has availed itself of the provision in paragraph 2 and a licence for the digital use of a work is not displayed on the tool referred to in the second subparagraph, an educational establishment or entity certified to carry out teaching activities established on its territory shall be covered by the exception provided for under paragraph 1.

Amendment 55

Proposal for a directive Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Without prejudice to paragraph 2, any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.

Amendment 56

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

Amendment

3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment or *entity certified to carry out teaching activities* is established.

Amendment 57

**Proposal for a directive
Article 4 – paragraph 4**

Text proposed by the Commission

4. Member States *may* provide for fair **compensation for the harm incurred by the** rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.

Amendment

4. *Without prejudice to paragraph 2,* Member States *shall* provide for fair **compensation to** rightholders *for* the use of their works or other subject-matter pursuant to paragraph 1.

Amendment 58

**Proposal for a directive
Article 5 – paragraph 1**

Text proposed by the Commission

Amendment

Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.

Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of *or digitise* any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter, to the extent necessary for such preservation and *without modifying the original works beyond the degree necessary for their preservation*.

Amendment 59

Proposal for a directive

Article 5 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

When a cultural heritage institution mandates a third party, including in another Member State, to perform, under its responsibility, an act of reproduction or digitisation for the purposes of the first subparagraph, the exception provided for in the first subparagraph shall be deemed to apply to that act of reproduction or digitisation, provided that all copies of the works or other subject-matter are returned to the requesting cultural heritage institution or deleted.

Any contractual provision contrary to the exception provided for in the first subparagraph shall be unenforceable.

Amendment 60

Proposal for a directive

Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Use of short extracts and quotations from copyright-protected works or other subject matter in content uploaded by users

1. Where a natural person makes digital, non-commercial and proportionate use of short extracts or short quotations from works and other subject-matter in the creation of a new work he or she has uploaded, for the purpose of criticism, review, illustration, caricature, parody or pastiche, Member States may provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, point (a) of Article 4(1) of Directive 2009/24/EC and Article 11 of this Directive provided that the extracts or quotations:

- (a) relate to works or other subject-matter that have already been lawfully made available to the public;*
- (b) are accompanied by an indication of their source, including the author's name, unless this turns out to be impossible; and*
- (c) are used in accordance with fair practice and in a manner that does not extend beyond the specific purpose for which they are being used.*

2. Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.

3. Information society service providers that store and/or provide to the public access 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 shall not be able invoke for their benefit the exception provided for in paragraph 1 of this Article in order to limit their liability or the extent of their obligations under the agreements concluded with rightholders in application of Article 13 of this Directive.

4. This exception is without prejudice to the provisions of Article 13 of this Directive.

Amendment 61

Proposal for a directive

Article 7 – paragraph 2 – subparagraph 1

Text proposed by the Commission

A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, in all its *translations*, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so.

Amendment

A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, in all its versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so *in the Member States where the competent collective management organisation and the cultural heritage institution are established. For the purposes of this Article, works that have never been, or were never intended to be, in commerce shall be treated as being out-of-commerce.*

Amendment 62

Proposal for a directive

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary **and** reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

Amendment

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter **are out-of-commerce and** can be licensed in accordance with paragraph 1 do not extend beyond what is necessary, **proportionate, reasonable, are tailored to the specific category of works or other subject-matter concerned** and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

Amendment 63

Proposal for a directive

Article 7 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall provide that appropriate publicity measures are taken regarding:

Amendment

3. Member States shall provide that appropriate **and effective** publicity measures are taken regarding:

Amendment 64

Proposal for a directive

Article 7 – paragraph 3 – subparagraph 2

Text proposed by the Commission

including **during** a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.

Amendment

including **for** a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.

Amendment 65

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, *on a sector-specific basis*, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1), ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

Amendment

Member States shall ensure a regular, *sector-specific* dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2), *in particular regarding the representativeness of collective management organisations and the categorisation of works.*

Amendment 66

Proposal for a directive Article 9 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where necessary, Member States shall facilitate dialogue between rightholders with a view to establishing collective management organisations responsible for the relevant rights in their category of works.

Amendment 67

Proposal for a directive Article 9 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

In cooperation with the Member States, the Commission shall encourage the exchange of best practice across the Union regarding any dialogue established pursuant to this Article.

Amendment 68

Proposal for a directive Article 10 – title

Text proposed by the Commission

Negotiation mechanism

Amendment

Support for the availability of audiovisual works

Amendment 69

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

Member States shall **ensure** that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of rights, they may rely on the assistance of an impartial body with relevant experience. **That body** shall provide assistance with negotiation **and help reach** agreements.

Amendment

1. Member States shall **facilitate the availability of audiovisual works on video-on-demand platforms by ensuring that**, where **relevant** parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of rights, they may, **by mutual agreement**, rely on the assistance of an impartial body with relevant experience **to be designated by Member States for the purposes of this Article**. **That body** shall provide **impartial** assistance with negotiation **with a view to the conclusion of mutually acceptable** agreements.

Amendment 70

Proposal for a directive Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.

Amendment 71

Proposal for a directive

Article 11 – title

Text proposed by the Commission

Protection of press publications ***concerning digital uses***

Amendment

Protection of press publications

Amendment 72

Proposal for a directive

Article 11 – paragraph 1

Text proposed by the Commission

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 for the ***digital*** use of their press publications.

Amendment

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 for the use of their press publications.

Amendment 73

Proposal for a directive

Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 74

Proposal for a directive

Article 11 – paragraph 4

Text proposed by the Commission

4. The rights referred to in paragraph 1 shall expire **20** 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.

Amendment

4. The rights referred to in paragraph 1 shall expire **eight** 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.

Amendment 75

Proposal for a directive

Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States may choose to ensure that a fair share of the revenue derived from uses of press publishers' rights is attributed to journalists.

Amendment 76

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Member States **may** provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence **constitutes** a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.

Amendment

Member States **shall** provide that where an author has transferred, **assigned** or licensed a right to a publisher, **that publisher is to be considered a rightholder by virtue and to the extent of** such a transfer, **assignment** or a licence. **Therefore, such transfer, assignment or licence shall constitute** a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred, **assigned** or licensed right.

Amendment

77

Proposal for a directive

Article 13 – title

Text proposed by the Commission

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

Amendment

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

Amendment 78

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Information society service providers that store and/or provide to the public access 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**, shall **conclude fair and balanced licensing agreements with any requesting rightholders. Under the terms of the agreements, such service providers shall**, in cooperation with rightholders, take measures to ensure the **effective and transparent** functioning of **the** agreements concluded with rightholders for the use of their works or other subject-matter.

Where, in the absence of a request from the rightholder, no licensing agreements are concluded pursuant to the first subparagraph, or where information society service providers that store significant amounts of copyright-protected works or other subject-matter and/or provide to the public access thereto are eligible for the liability exemption provided for in Article 14 of Directive 2000/31/EC, those providers shall take measures 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, proportionate ***and compliant with the relevant industry standards***. The service providers shall provide rightholders with adequate ***and timely*** information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the ***rightholders' works and other subject-matter***. ***Rightholders shall provide the information society service provider with the relevant and necessary data to allow the effective functioning of the measures deployed by the provider in accordance with this Article.***

Amendment 79

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

Amendment

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.
2. Member States shall ensure that the service providers referred to in paragraph 1 put in place ***effective mechanisms for rightholders to request licences and*** complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1, ***in particular regarding the possible application of an exception or limitation to any rights covering the content concerned. When such a mechanism is activated, any remuneration accruing from the disputed content during the course of the procedure shall not be distributed to either party until such time as the dispute has been resolved under the mechanism.***

Amendment 80

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The complaints and redress mechanism established pursuant to the first subparagraph shall ensure that users and rightholders have access to sufficient information on the relevant exceptions and limitations that may apply in relation to content affected by the measures referred to in paragraph 1.

Amendment 81

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Any complaint filed by a user under the mechanism referred to in the first subparagraph shall be processed by the relevant rightholder within a reasonable period of time. The rightholder shall duly justify his or her decision with regard to the complaint.

Amendment 82

Proposal for a directive

Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where information society providers take the measures referred to in paragraph 1, such measures shall be in full compliance with Directive 95/46/EC and Directive 2002/58/EC. Measures to prevent the unauthorised making available of copyright-protected works or other subject-matter shall be limited to specifically identified and duly notified works and shall not involve active monitoring of the entire data of each user of the service.

Amendment 83

Proposal for a directive

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

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.
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, *inter alia*, the nature of the services, the availability **and affordability** of the technologies and their effectiveness *in respect of the range of types of content and* in light of technological developments. *In cooperation with the Member States, the Commission shall encourage the exchange of best practice across the Union regarding the results of any cooperation established pursuant to paragraph 1 of this Article.*

Amendment 84

Proposal for a directive

Article 13 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall encourage industry-led solutions to address sector-specific issues and the effective enforcement of existing measures to tackle piracy, including raising awareness of legal means of accessing copyright-protected works or other subject-matter.

Amendment 85

Proposal for a directive

Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall provide that disputes between rightholders and information society providers concerning the application of paragraph 1 of this Article may be submitted to an alternative dispute resolution mechanism.

Member States shall create or designate an impartial body with relevant expertise to assist the parties in the resolution of their dispute under the mechanism provided for in the first subparagraph.

No later than ... [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in subparagraph 2.

Amendment 86

Proposal for a directive Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Use of protected content by information society services providing automated image referencing

Member States shall ensure that information society service providers that automatically reproduce or refer to significant amounts of copyright-protected visual works and make them available to the public for the purpose of indexing and referencing conclude fair and balanced licensing agreements with any requesting rightholders in order to ensure their fair remuneration. Such remuneration may be managed by the collective management organisation of the rightholders concerned.

Amendment 87

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that authors and performers receive ***on a regular basis*** and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.
1. Member States shall ensure that authors and performers receive ***at least once a year*** and taking into account the specificities of each sector, timely, adequate, ***accurate*** and sufficient information on the exploitation ***and promotion*** of their works and performances from those to whom they have ***directly*** licensed, ***assigned*** or transferred their rights, notably as regards modes of exploitation, ***promotional activities undertaken***, revenues generated and remuneration due.

Amendment 88

Proposal for a directive

Article 14 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

For the purposes of this paragraph, any relevant successor in title shall provide the beneficiary of a licence or transfer of rights with the necessary and relevant information to allow that beneficiary to fulfil the obligations provided for under the first subparagraph.

Amendment 89

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure *an appropriate* level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.

The obligation in paragraph 1 shall be proportionate and effective and shall ensure *a high* level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency *and the disproportionate nature of the burden is duly justified*.

Amendment 90

Proposal for a directive Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall facilitate the development of sector-specific standard procedures through stakeholder dialogue, and foster automated processing that makes use of international identifiers of works.

Amendment 91

Proposal for a directive Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where existing collective bargaining agreements provide for comparable requirements resulting in a level of transparency that is equivalent to that referred to in paragraph 2, the obligation in paragraph 1 shall be deemed to have been fulfilled.

Amendment 92

Proposal for a directive Article 14 a (new)

Article 14a

Unwaivable right to fair remuneration for authors and performers

- 1. Member States shall ensure that where authors and performers transfer or assign the right of making available to the public their works or other subject-matter for their use on information society services that make available works or other subject-matter through a licensed catalogue, those authors and performers retain the right to obtain fair remuneration from such use.***
- 2. Member States shall proscribe the waiving of the right of an author or performer to obtain fair remuneration for the making available of his or her work as described in paragraph 1. Paragraph 1 shall not apply where an author or performer grants a free non-exclusive right for the benefit of all users for the use of his or her work.***
- 3. The administration of the right to fair remuneration for the making available of an author's or performer's work shall be entrusted to the respective collective management organisation. That collective management organisation shall collect the fair remuneration from information society services making works available to the public.***
- 4. Where the right to fair remuneration has been already provided for in agreements relating to audiovisual works or in collective agreements, including voluntary collective management agreements, between the author or the performer and his or her contractual counterparty, the provisions in this Article shall be deemed to have been complied with.***

Amendment 93

Proposal for a directive Article 15 – paragraph 1

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.	Member States shall ensure that authors and performers, <i>or their appointed representatives</i> , are entitled to request additional, <i>fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights when <i>due justification is given to demonstrate that</i> the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

Amendment 94

Proposal for a directive Article 15 – paragraph 1 – subparagraph 1 a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>Member States may decide that the obligation in paragraph 1 is not to be applied when the contribution of the author or performer is not significant having regard to the overall nature of the work or performance.</i>

Amendment 95

Proposal for a directive Article 16 – paragraph 1

<i>Text proposed by the Commission</i>	<i>Amendment</i>

Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.

Without prejudice to other judicial remedies, Member States shall provide that disputes concerning the transparency obligation under Article 14, the contract adjustment mechanism under Article 15 ***and the unwaivable right to remuneration under Article 14a*** may be submitted to a voluntary, alternative dispute resolution procedure.

Amendment 96

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The procedure referred to in paragraph 1 may be initiated by any of the parties to the dispute or through collective action by several authors or performers with the same contractual partner and similar claims, or be initiated on their behalf by a collective organisation representing them. The costs directly linked to the procedure should be affordable.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR FOR THE OPINION HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur for the opinion. The rapporteur has received input from the following entities or persons in the preparation of the draft opinion, until the adoption thereof in committee.

Methodology : The following document aims to list all stakeholders that provided an input on the Directive that was the subject of the Rapporteur's draft opinion. The list covers stakeholders who provided their input during a face-to-face meeting or phone call, either following a meeting request or during a chance discussion (provided that the exchange was long enough to be equivalent to a meeting and concerned the substance of the Directive).

Where public affairs companies organised a meeting, the client concerned is indicated. The list is provided in a chronological order, from the first meeting to the most recent. The current list covers meetings which occurred between the date where the Rapporteur was officially designated (26 October 2016) and the date where the draft opinion was sent to the CULT Secretariat (3 February 2017).

Entity and/or person
PRS For Music
Syndicat de la Presse Quotidienne Nationale
Association de la Presse d'information Politique et Générale
LERU
Science Europe
Représentation permanente de la France auprès de l'Union européenne
EDRi
BEUC
Google
Edima
SNEP

SCAM
SACD
Europeana
Authors' Group
IFJ
FERA
EWC
EPC
EBLIDA
IFLA
IFRRO
Communia
International Association of STM Publishers
SAA
ENPA
EMMA
CMS - Axel Springer
GESAC
CEPIC
Sacem
Audible Magic
IFPI
Avisa - Springer-Nature
IMPALA
FEP
SNE
Kreab - Soundcloud
Représentation permanente de la France auprès de l'Union européenne
NotaBene (YouTuber)
Dave Sheik (YouTuber)

La Tronche en Biais (YouTuber)
DanyCaligula (YouTuber)
Cabinet DN - RELX Group
News Media Europe
France Télévisions
IFJ

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Copyright in the Digital Single Market
References	COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)
Committee responsible Date announced in plenary	JURI 6.10.2016
Opinion by Date announced in plenary	CULT 6.10.2016
Rapporteur Date appointed	Marc Joulaud 7.11.2016
Discussed in committee	28.2.2017
Date adopted	11.7.2017
Result of final vote	+: 20 -: 8 0: 1
Members present for the final vote	Isabella Adinolfi, Dominique Bilde, Nikolaos Chountis, Silvia Costa, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerervert, Svetoslav Hristov Malinov, Stefano Maullu, Morten Messerschmidt, Luigi Morgan, Momchil Nekov, John Procter, Michaela Šojdrová, Yana Toom, Helga Trüpel, Sabine Verheyen, Julie Ward, Bogdan Brunon Wenta, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka
Substitutes present for the final vote	Mary Honeyball, Marc Joulaud, Morten Løkkegaard, Emma McClarkin, Martina Michels
Substitutes under Rule 200(2) present for the final vote	Lefteris Christoforou, Maria Heubuch

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

20	+
ALDE	María Teresa Giménez Barbat, Morten Løkkegaard
PPE	Lefteris Christoforou, Marc Joulaud, Svetoslav Hristov Malinov, Stefano Maullu, Sabine Verheyen, Bogdan Brunon Wenta, Bogdan Andrzej Zdrojewski, Milan Zver, Michaela Šojdrová
S&D	Silvia Costa, Giorgos Grammatikakis, Mary Honeyball, Luigi Morgano, Momchil Nekov, Julie Ward, Krystyna Łybacka
Verts/ALE	Maria Heubuch, Helga Trüpel

8	-
ALDE	Yana Toom
ECR	Emma McClarkin, Morten Messerschmidt, John Procter
EFDD	Isabella Adinolfi
GUE/NGL	Nikolaos Chountis, Martina Michels
S&D	Petra Kammerevert

1	0
ENF	Dominique Bilde

Key to symbols:

+ : in favour

- : against

0 : abstention

22.11.2017

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market
(COM(2016)0593 – C80383/2016 – 2016/0280(COD))

Rapporteur: Michał Boni

SHORT JUSTIFICATION

The draft opinion of the LIBE Committee focuses on Article 13 of the Directive and respective recitals.

As the LIBE Committee is responsible for the protection of fundamental rights and freedoms and legislation regarding the protection of personal data recognised by the Charter of the European Union this draft opinion reflects the objective to make sure that any solutions adopted in this legal instrument will be respecting the Charter of Fundamental Rights.

The draft opinion provides clarifications on which information society service providers are covered by the Article. The information society services providers that perform an act of communication to the public and are actively and directly involved in allowing users to upload, making works available and promoting works to the public, shall conclude licensing agreements with rightholders Those that provide a service of mere technical, automatic and passive nature will be out of scope of these provisions. Article 13 also underlines that service providers eligible for the liability exemptions under Directive 2000/31/EC shall also be excluded from the scope.

In order to implement the licensing agreements, service providers shall take appropriate and proportionate measures. For the sake of technological neutrality and taking into account the technological capabilities of SMEs and startups, the draft opinion talks about 'appropriate and proportionate measures' as this is a broader term that might include technologies and/or other measures. Such approach ensures as well technological neutrality. Any measures applied shall respect fundamental rights and Article 15 of Directive 2000/31/EC.

In order to implement the licensing agreements, the draft opinion emphasises the necessity of

cooperation between the service providers and rightholders. Certain details of this cooperation were explained in the draft opinion. The rightholders shall accurately identify to information society service providers the works or other subject-matter in respect of which they have copyrights. The information society service providers shall inform rightholders of the measures employed and about the accuracy of their functioning.

Member States shall ensure that the service providers in cooperation with the rightholders establish a complaint mechanism for users who claim to have right or exemption to use protected works. Member States shall also ensure for the redress mechanism for users.

In order to make sure that the voice of users is taken into account when establishing best practices for implementation of the agreements, users' representatives shall be allowed to take part in the dialogue with all involved stakeholders.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 38 – paragraph 1

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Where information society service providers <i>store</i> and provide <i>access to</i> the public <i>to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing</i> an act of communication to the public, <i>they are</i> obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability <i>exemption</i> provided in <i>Article 14 of Directive 2000/31/EC of the European Parliament and of the Council</i> ³⁴ .	Where information society service providers <i>offer users content storage services</i> and provide the public <i>with access to content and where such activity constitutes</i> an act of communication to the public <i>and is not of a merely technical, automatic and passive nature, they should be</i> obliged to conclude licensing agreements with rightholders <i>as regards copyright protected works or other subject-matter</i> , unless they are eligible for the liability <i>exemptions</i> provided in Directive 2000/31/EC of the European Parliament and of the Council ³⁴ .

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

Amendment 2

Proposal for a directive Recital 38 – paragraph 2

Text proposed by the Commission

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.

Amendment

deleted

Amendment 3

Proposal for a directive Recital 38 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

In order to be eligible for the liability exemption provided for in Article 14 of Directive 2000/31/EC, information society service providers are, upon receiving notification or on becoming aware that a work which is subject to copyright and related rights is used in an unauthorised manner, obliged to act expeditiously to remove the content in question or conclude a licensing agreement with the relevant rightholders on fair and reasonable terms. To prevent misuses or abuses of notifications and of limitations and to prevent the exercise of exceptions to copyright law, and in order to protect freedom of information and expression, users of the information society services should have access to effective and expeditious redress and complaint mechanisms.

Justification

The addition intends to add a clear, positive definition of what measures internet society service providers are expected to take when receiving notification of copyright infringements.

Amendment 4

**Proposal for a directive
Recital 38 – paragraph 3**

Text proposed by the Commission

Amendment

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.

In order to ensure the functioning of any licensing agreement, information society service providers ***actively and directly involved in allowing users to upload, making works available and promoting works*** to the public should take appropriate and proportionate measures to ensure protection of works or other subject-matter. ***Such measures should respect the Charter of Fundamental Rights of the European Union and should not impose a general obligation on*** information society service providers ***to monitor the information which they transmit or store as referred to*** in Article 15 of Directive 2000/31/EC.

Amendment 5

Proposal for a directive Recital 38 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

For the implementation of such measures, the cooperation between information society service providers and rightholders is essential. Rightholders should accurately identify to information society service providers the works or other subject-matter in respect of which they claim to have the copyright. Rightholders should retain responsibility for claims made by third parties over the use of works which they would have identified as being their own in the implementation of any agreement reached with the information society service provider.

Amendment 6

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

(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.*

Amendment 7

Proposal for a directive

Title IV – Chapter 2 – title

Text proposed by the Commission

Amendment

Certain uses of protected content **by** online services

Certain uses of protected content online

Amendment 8

Proposal for a directive

Article 13 – title

Text proposed by the Commission

Amendment

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***

Use of protected content by information society service providers storing and giving access to works and other subject-matter

Amendment 9

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. ***Where*** information society service providers ***offer users content storage services*** and provide the public ***with*** access to ***content and where such activity is not eligible for the liability exemptions provided for in Directive 2000/31/EC***, they shall take appropriate and proportionate measures to ensure the functioning of licensing agreements concluded with rightholders. ***The implementation of such agreements shall respect the fundamental rights of users and shall not impose a general obligation on information society service providers to monitor the information which they transmit or store, in accordance with Article 15 of Directive 2000/31/EC.***

Amendment 10

Proposal for a directive

Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purpose of ensuring the functioning of licensing agreements, as referred to in paragraph 1, information society service providers and rightholders shall cooperate with each other. Rightholders shall accurately identify to information society service providers the works or other subject-matter in respect of which they have the copyright. The information society service providers shall inform rightholders of the measures employed and the accuracy of their functioning as well as, when relevant, periodically report on the use of the works and other subject-matter.

Amendment 11

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States shall ensure that the service providers referred to in paragraph 1 **in cooperation with rightholders** put in place complaints mechanisms that are available to users in case of disputes over the **implementation** of the **licensing agreements** referred to in paragraph 1.

Amendment 12

Proposal for a directive Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that users have access to a court or another competent authority for the purpose of asserting their right of use under an exception or limitation and to appeal any restrictive measures agreed upon pursuant to paragraph 3.

Amendment 13

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers **referred to in paragraph 1, user representatives** and rightholders through stakeholder dialogues to define best practices **for the implementation of paragraph 1. The measures undertaken shall be** appropriate and proportionate **and shall take** into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

Amendment 14

Proposal for a directive Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Hyperlinking to already publicly available content shall not constitute communication to the public of the source of that content, where the hyperlink only contains information necessary to find or request the source's contents.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Copyright in the Digital Single Market
References	COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)
Committee responsible Date announced in plenary	JURI 6.10.2016
Opinion by Date announced in plenary	LIBE 16.3.2017
Rapporteur Date appointed	Michał Boni 30.3.2017
Discussed in committee	29.5.2017 20.11.2017
Date adopted	20.11.2017
Result of final vote	+: -: 0: 36 5 3
Members present for the final vote	Asim Ademov, Jan Philipp Albrecht, Monika Beňová, Malin Björk, Michał Boni, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Ana Gomes, Nathalie Griesbeck, Sophia in 't Veld, Eva Joly, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Monica Macovei, Barbara Matera, József Nagy, Péter Niedermüller, Soraya Post, Judith Sargentini, Birgit Sippel, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Bodil Valero, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský, Auke Zijlstra
Substitutes present for the final vote	Carlos Coelho, Pál Csáky, Maria Grapini, Anna Hedh, Jeroen Lenaers, Maite Pagazaurtundúa Ruiz
Substitutes under Rule 200(2) present for the final vote	André Elissen, Eugen Freund, Elisabetta Gardini, Susanne Melior, Virginie Rozière

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

36	+
ALDE	Nathalie Griesbeck, Sophia in 't Veld, Maite Pagazaurtundúa Ruiz
ECR	Monica Macovei, Helga Stevens
GUE/NGL	Malin Björk, Cornelia Ernst, Marie-Christine Vergiat
PPE	Asim Ahmedov Ademov, Michał Boni, Carlos Coelho, Pál Csáky, Agustín Díaz de Mera García Consuegra, Frank Engel, Barbara Kudrycka, Jeroen Lenaers, József Nagy, Traian Ungureanu, Tomáš Zdechovský
S&D	Monika Beňová, Eugen Freund, Ana Gomes, Maria Grapini, Anna Hedh, Cécile Kashetu Kyenge, Dietmar Köster, Susanne Melior, Péter Niedermüller, Soraya Post, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
VERTS/ALE	Jan Philipp Albrecht, Eva Joly, Judith Sargentini, Bodil Valero

5	-
ENF	André Elissen, Auke Zijlstra
NI	Udo Voigt
PPE	Elisabetta Gardini, Barbara Matera

3	0
EFDD	Kristina Winberg
S&D	Juan Fernando López Aguilar, Virginie Rozière

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Copyright in the Digital Single Market			
References	COM(2016)0593 – C8-0383/2016 – 2016/0280(COD)			
Date submitted to Parliament	14.9.2016			
Committee responsible Date announced in plenary	JURI 6.10.2016			
Committees asked for opinions Date announced in plenary	INTA 6.10.2016	ITRE 6.10.2016	IMCO 6.10.2016	CULT 6.10.2016
	LIBE 16.3.2017			
Not delivering opinions Date of decision	INTA 12.10.2016			
Associated committees Date announced in plenary	IMCO 19.1.2017			
Rapporteurs Date appointed	Axel Voss 12.10.2016			
Discussed in committee	12.1.2017	22.3.2017	13.7.2017	
Date adopted	20.6.2018			
Result of final vote	+: -: 0:	14 9 2		
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Mady Delvaux, Rosa Estaràs Ferragut, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Heidi Hautala, Mary Honeyball, Sajjad Karim, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka			
Substitutes present for the final vote	Isabella Adinolfi, Sergio Gaetano Cofferati, Luis de Grandes Pascual, Geoffroy Didier, Angel Dzhambazki, Angelika Niebler, Jens Rohde			
Substitutes under Rule 200(2) present for the final vote	Luke Ming Flanagan			
Date tabled	29.6.2018			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

14	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
EFDD	Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
PPE	Geoffroy Didier, Rosa Estaràs Ferragut, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Enrico Gasbarra, Mary Honeyball

9	-
EFDD	Isabella Adinolfi
GUE/NGL	Luke Ming Flanagan
S&D	Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Evelyn Regner
VERTS/ALE	Max Andersson, Heidi Hautala, Julia Reda

2	0
ECR	Angel Dzhambazki, Sajjad Karim

Key to symbols:

+ : in favour

- : against

0 : abstention