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► Amendments adopted by the European Parliament on 12 September 2018 on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market ([COM\(2016\)0593](#) – C8-0383/2016 – [2016/0280\(COD\)](#)) (1) (Ordinary legislative procedure: first reading)

## Text proposed by the Commission

## Amendment

Amendment 1  
Proposal for a directive  
Recital 2

(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 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

(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'<sup>26</sup>, 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.

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<sup>26</sup> 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'<sup>26</sup>, 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 .

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<sup>26</sup> COM(2015) 0 626.

Proposal for a directive  
Recital 4

(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 Council<sup>27</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>28</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>29</sup>, Directive 2009/24/EC of the European Parliament and of the Council<sup>30</sup>, Directive 2012/28/EU of the European Parliament and of the Council<sup>31</sup> and Directive 2014/26/EU of the European Parliament and of the Council<sup>32</sup>.

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<sup>27</sup> 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).

<sup>28</sup> 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).

<sup>29</sup> Directive 2006/115/EC of the European Parliament and of the Council

(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 Council<sup>27</sup>, Directive 2000/31/EC of the European Parliament and of the Council<sup>27a</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>28</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>29</sup>, Directive 2009/24/EC of the European Parliament and of the Council<sup>30</sup>, Directive 2012/28/EU of the European Parliament and of the Council<sup>31</sup> and Directive 2014/26/EU of the European Parliament and of the Council<sup>32</sup>.

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<sup>27</sup> 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).

<sup>27a</sup> 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).

<sup>28</sup> 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).

<sup>29</sup> 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 ).

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).

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).

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).

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).

Amendment 4  
Proposal for a directive  
Recital 5

(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

(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 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.

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

(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

(8) New technologies enable the automated computational analysis of information in digital form, such as text,

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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.

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)

(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

(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)

(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

(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

(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.

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

(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 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.

Amendment 12  
Proposal for a directive  
Recital 16 a (new)

(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

(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

(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.

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 establishments are aware of the existence of such licensing schemes. Member States should be able to provide for systems to ensure that there is fair compensation for rightholders for uses under those exceptions or limitations. Member States should be encouraged to use systems that do not create an administrative burden, such as systems that provide for one-off payments.

Recital 17 a (new)

(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.

Amendment 15

Proposal for a directive

Recital 18

(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

(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

(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

resources.

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

(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

(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

(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

agreements.

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)

(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)

(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)

(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

(22) Cultural heritage institutions

(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.

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)

(22a) Several Member States have already adopted extended collective licencing regimes, legal mandates or legal presumptions facilitating the licencing 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 work 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 licencing 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 the exception should apply.

#### Amendment 24

#### Proposal for a directive

#### Recital 23

(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

(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

and presumptions of representation.

collective licensing and presumptions of representation.

Amendment 25  
Proposal for a directive  
Recital 24

(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

(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

(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.

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

(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

(27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences

(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.

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

(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.

(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)

(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

(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)

(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.

Amendments 33 and 137  
Proposal for a directive  
Recital 31

(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. 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. 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.

Amendments 34 and 138  
Proposal for a directive  
Recital 32

(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. 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

(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



Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses.

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 139  
Proposal for a directive  
Recital 33

(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking 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. The protection shall also not extend to factual information which is reported in journalistic articles from a press publication and will therefore not prevent anyone from reporting such factual information .

Amendments 36 and 140  
Proposal for a directive  
Recital 34

(34) The rights granted to the publishers of press publications under this 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, 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.

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

(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

(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

(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

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 .

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 Member 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)

(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.

#### Amendments 40 and 215 rev

Proposal for a directive

Recital 37

(37) Over the last years, the functioning of the online content marketplace has

(37) Over the last years, the functioning of the online content market has gained

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.

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-harbour” exemption set out in Directive 2000/31/EC.

#### Amendment 143

Proposal for a directive

Recital 37 a (new)

(37a) Certain information society services, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter uploaded by their users. The definition of an online content sharing service provider under this Directive shall cover information society service providers one of the main purposes of which is to store and give access to the public or to stream significant amounts of copyright protected content uploaded / made available by its users, and that optimise

content, and promote for profit making purposes, including amongst others displaying, tagging, curating, sequencing, the uploaded works or other subject-matter, irrespective of the means used therefor, and therefore act in an active way. As a consequence, they cannot benefit from the liability exemption provided for in Article 14 of Directive 2000/31/EC. The definition of online content sharing service providers under this Directive does not cover microenterprises and small sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and 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 right holders 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.

Amendments 144, 145 and 146  
Proposal for a directive  
Recital 38

(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

(38) Online content sharing service providers perform an act of communication to the public and therefore are responsible for their content and should therefore conclude fair and appropriate licensing agreements with rightholders. Where licensing agreements are concluded, they should also cover, to the same extent and scope, the liability of users when they

exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council 34 .

are acting in a non-commercial capacity. In accordance with Article 11(2a) the responsibility of online content sharing providers pursuant to Article 13 does not extend to acts of hyperlinking in respect of press publications. The dialogue between stakeholders is essential in the digital world. They should define best practices to ensure the functioning of licensing agreements and cooperation between online content sharing service providers and rightholders. Those best practices should take into account the extent of the copyright infringing content on the service .

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.

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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 147  
Proposal for a directive  
Recital 39

(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) Member States should provide that where right holders do not wish to conclude licensing agreements, online content sharing service providers and right holders should cooperate in good faith in order to ensure that unauthorised protected works or other subject matter, are not available on their services. Cooperation between online content service providers and right holders should not lead to preventing the availability of non-infringing works or other protected subject matter, including those covered by an exception or limitation to copyright .

Amendment 148  
Proposal for a directive  
Recital 39 a (new)

(39a) Members States should ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such



mechanisms should be processed without undue delay. Right holders should reasonably justify their decisions to avoid arbitrary dismissal of complaints. Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the cooperation should not lead to any identification of individual users nor the processing of their personal data. Member States should also ensure that users have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.

Amendment 149  
Proposal for a directive  
Recital 39 b (new)

(39b) As soon as possible after the entry into force of this Directive, the Commission and the Member States should organise dialogues between stakeholders to harmonise and to define best practices. They should issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this Directive. When defining best practices, special account should be taken of fundamental rights, the use of exceptions and limitations. Special focus should also be given to ensuring that the burden on SMEs remains appropriate and that automated blocking of content is avoided.

Amendments 44 and 219  
Proposal for a directive  
Recital 39 c (new)

(39c) 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 46  
Proposal for a directive  
Recital 39 d (new)

(39d) 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. Member 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

(40) Certain rightholders such as authors and performers need information to assess the economic value of their

(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.

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 comprehensive and relevant 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. The information that authors and performers are entitled to expect should be proportionate and cover all modes of exploitation, direct and indirect revenue generated, including revenues from merchandising, and the remuneration due. The information on the exploitation should also include information about the identity of any sub-licensee or sub-transferee. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned.

Amendment 48  
Proposal for a directive  
Recital 42

(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

(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.

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 or her 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

(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)

(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 period of time 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)

(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

(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 Council 35 and Directive 2002/58/EC of the European Parliament and of the Council 36 .

(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)

(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.

Amendments 54 and 238  
Proposal for a directive  
Article 1

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.

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

(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 57  
Proposal for a directive  
Article 2 – paragraph 1 – point 1 – subparagraph 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 organisation;

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

(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

(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.

(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)

(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 150

#### Proposal for a directive

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

(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 a significant amount of copyright protected works or other protected subject-matter uploaded by its users, which the service optimises and promotes for profit making purposes. Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and 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 right holders concerned, such as educational or scientific repositories, shall 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)

(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 ;

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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)

(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

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,

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.

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.

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.

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)

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 point (a) of Article 5 (3) of Directive 2001/29/EC.

Amendment 66  
Proposal for a directive  
Article 4

Article 4

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

Article 4

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:

(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;

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

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.

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 in any other venue in which the teaching activity takes place under the responsibility of the educational establishment, 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 for reasons of practicability .

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 licencing 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 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.

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

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

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

other subject-matter and to the extent necessary for such preservation.

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

Article 6

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.

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.

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.

Amendment 69  
Proposal for a directive  
Article 7

Article 7

Article 7

Use of out-of-commerce works by cultural heritage institutions

Use of out-of-commerce works by cultural heritage institutions

1. Member States shall provide that when a collective management

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:

(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.

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:

(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

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

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;

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

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).

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 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.

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

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.

Article 8

Cross-border uses

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 Article 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

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

Article 10

Negotiation mechanism

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.

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

Article 10

Negotiation mechanism

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 audiovisual rights, they may rely on the assistance of an impartial body with relevant experience. The impartial body created or designated by the Member State for the purpose of this Article shall provide assistance to the parties with negotiation and help them to reach agreement.

No later than [date mentioned in Article 21(1)] Member States shall inform the Commission of the body they create or designate pursuant to the first paragraph.

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)

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.

Amendments 151, 152, 153, 154 and 155  
Proposal for a directive  
Article 11

Article 11

Protection of press publications concerning digital uses

1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.

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

Article 11

Protection of press publications concerning digital uses

1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC so that they may obtain fair and proportionate remuneration for the digital use of their press publications by information society service providers .

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

2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication

in which they are incorporated.

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.

in which they are incorporated.

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

3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.

4. The rights referred to in paragraph 1 shall expire 5 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. The right referred to in paragraph 1 shall not apply with retroactive effect.

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

Amendment 75  
Proposal for a directive  
Article 12

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.

Article 12

Claims to fair compensation

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)

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.

Amendments 156, 157, 158, 159, 160 and 161  
Proposal for a directive  
Article 13

Article 13

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

1. Information society service providers that store and provide to the public access to large amounts of works or

Article 13

Use of protected content by online content sharing service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users

1. Without prejudice to Article 3(1) and (2) of Directive 2001/29/EC, online content sharing service providers



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

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

perform an act of communication to the public. They shall therefore conclude fair and appropriate licensing agreements with right holders .

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

2a. Member States shall provide that where right holders do not wish to conclude licensing agreements, online content sharing service providers and right holders shall cooperate in good faith in order to ensure that unauthorised protected works or other subject matter are not available on their services. Cooperation between online content service providers and right holders shall not lead to preventing the availability of non-infringing works or other protected subject matter, including those covered by an exception or limitation to

copyright.

2b. Member States shall ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such mechanisms shall be processed without undue delay and be subject to human review. Right holders shall reasonably justify their decisions to avoid arbitrary dismissal of complaints. Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the cooperation shall not lead to any identification of individual users nor the processing of their personal data. Member States shall also ensure that users have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.

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. As of [date of entry into force of this directive], the Commission and the Member States shall organise dialogues between stakeholders to harmonise and to define best practices and issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this Directive. When defining best practices, special account shall be taken of fundamental rights, the use of exceptions and limitations as well as ensuring that the burden on SMEs remains appropriate and that automated blocking of content

is avoided .

Amendments 78 and 252

Proposal for a directive

Article 13 a (new)

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)

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 -14 (new)

Article -14

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

Article 14

Transparency obligation

1. Member States shall ensure that

Article 14

Transparency obligation

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.

authors and performers receive on a regular basis, not less than once a year , and taking into account the specificities of each sector and the relative importance of each individual contribution , timely, accurate, relevant and comprehensive 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, direct and indirect revenues generated, and remuneration due.

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.

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

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

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.

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.

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.

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

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, 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

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 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)

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)

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

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

deleted



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(1) The matter was referred back for interinstitutional negotiations to the committee responsible, pursuant to Rule 59(4), fourth subparagraph ([A8-0245/2018](#)).

Last updated: 13 September 2018

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