

**Proposal for a Directive of the European Parliament and of the Council  
on copyright in the Digital Single Market**

COM (2016) 593 final - 2016/0280 (COD)

**PART 2: ARTICLES**

Cell in green: The text can be deemed as already agreed

Cell in yellow: The issue needs further discussion at technical level

Cell in red: The issue needs further discussion in depth at the trilogue meetings

**Note:**

*Differences between the EP's position and the Commission's proposal are highlighted in bold /italic. Deletions are marked with ~~strikethrough~~.*

*Differences between the Council's position and the Commission's proposal are highlighted in **bold/underlined**.*

*Deletions are marked with ~~strikethrough~~.*

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
105.		TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS
106.	Art.1, title	<i>Article 1</i> <i>Subject matter and scope</i>	<i>Article 1</i> <i>Subject matter and scope</i>	<i>Article 1</i> <i>Subject matter and scope</i>	<i>Article 1</i> <i>Subject matter and scope</i>
107.	Art. 1, para 1	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. 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.	<b>GREEN</b> 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. <i>[identical text]</i>

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108.	Art. 1, para 2	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.	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, <b>2000/31/EC</b> , 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.	2. Except in the cases referred to in Article <b>617</b> , 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, <b>2000/31/EC</b> , 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.	2. Except in the cases referred to in Article <b>617</b> , 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, <b>2000/31/EC</b> , 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.  <i>[identical text/consequential change of cross-reference, to be confirmed by trilogue]</i>
109.	Art. 2, title	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>
110.	Art. 2, introductory part	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	<b>GREEN</b> For the purposes of this Directive, the following definitions shall apply:
111.	Art. 2, para 1,	(1) ‘research organisation’ means a university, a research	(1) ‘research organisation’ means a university, <b>including its libraries</b> , a	(1) ‘research organisation’ means a <del>university, a research</del>	<b>GREEN</b> (1) ‘research organisation’ means a university,

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	introductory part	institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:	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:	<del>institute or any other organisation</del> <b>an entity</b> , the primary goal of which is to conduct scientific research or to <del>conduct scientific research and provide educational services:</del> <b><u>involving also the conduct of scientific research:</u></b>	<b><i>including its libraries</i></b> , a research institute or any other <b>entity</b> the primary goal of which is to conduct scientific research <b><i>or to carry out educational activities involving also the conduct of scientific research:</i></b>  <i>[provisionally agreed at Trilogue 25/10/2018]</i>
112.	Art. 2, para 1, point (a)	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or	<b>GREEN</b>  (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or  <i>[provisionally agreed at Trilogue 25/10/2018]</i>
113.	Art. 2, para 1, point (b)	(b) pursuant to a public interest mission recognised by a Member State;	(b) pursuant to a public interest mission recognised by a Member State;	(b) pursuant to a public interest mission recognised by a Member State;	<b>GREEN</b>  (b) pursuant to a public interest mission recognised by a Member State;  <i>[provisionally agreed at Trilogue 25/10/2018]</i>

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114.	Art. 2, para 1, closing phrase	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 <i>significant</i> 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 decisive influence upon such organisation;	<b>GREEN</b> 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 <i>significant</i> decisive influence upon such organisation;  <i>[provisionally agreed at Trilogue 25/10/2018]</i>
115.	Art. 2, para 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 <i>which analyses works and other subject matter</i> in digital form in order to generate information, <i>including, but not limited to</i> , patterns, trends and correlations.	(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;	<b>GREEN</b> (2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information, <i>including, but not limited to</i> , patterns, trends and correlations;  <i>[provisionally agreed at Trilogue 25/10/2018]</i>

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116.	Art. 2, para 3	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;	<b>GREEN</b> (3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;  <i>[provisionally agreed at Trilogue 25/10/2018]</i>
117.	Art. 2, para 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	(4) ‘press publication’ means a fixation <b>by publishers or news agencies</b> 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	(4) ‘press publication’ means a <del>fixation of a</del> collection <b>composed mainly</b> of literary works of a journalistic nature, which : <i>[remaining part of this paragraph was split up in points (a) to (d) - see following rows 118-121]</i>	<b>GREEN</b> (4) ‘press publication’ means a collection composed mainly of literary works of a journalistic nature which:  <i>[provisionally agreed at trilogue on 03/12/2018]</i>

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		under the initiative, editorial responsibility and control of a service provider.	topics and published in any media under the initiative, editorial responsibility and control of a service provider. <i>Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition;</i>		
118.	Art. 2, para 4, point (a)			<u>(a)</u> ___ may also <del>comprise</del> <b>include</b> other works or subject-matter <del>and;</del> <i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>	<b>GREEN</b> (a) may also include other works or subject matter; <i>[provisionally agreed at trilogue on 03/12/2018]</i>
119.	Art. 2, para 4, point (b)			<u>(b)</u> ___ 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; <del>;</del>	<b>GREEN</b> b) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or

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				<i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>	a general or special interest magazine; <i>[provisionally agreed at trilogue on 03/12/2018]</i>
120.	Art. 2, para 4, point (c)			<u>(c) has</u> having the purpose of providing <u>the general public with</u> information related to news or other topics; and <i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>	<b>GREEN</b> (c) has the purpose of providing the general public(*) with information related to news or other topics; and <i>[provisionally agreed at trilogue on 03/12/2018; (*) to be read in conjunction with the clarifications in recital (33), row 70]</i>
121.	Art. 2, para 4, point (d)			<u>(d) is</u> published in any media under the initiative, editorial responsibility and control of a service provider;;	<b>GREEN</b> (d) is published in any media under the initiative, editorial responsibility and control of a service provider.



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				<i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>	Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be considered as press publications for the purposes of this Directive.  <i>[provisionally agreed at trilogue on 03/12/2018]</i>
122.	Art. 2, para 4a, introductory part		<i>(4a) ‘out of commerce work’ means:</i>		
123.	Art. 2, para 4a, point (a)		<i>(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;</i>		

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124.	Art. 2, para 4a, point (b)		<i>(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;</i>		
125.	Art. 2, para 4b (EP)/para 5 (Council)		<i>(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</i>	<b><u>(5) ‘online content sharing service provider’ means a provider of an information society service whose main or one of the main purposes is to store and give the public access to a large amount of works or other subject-matter uploaded by its users which it organises and promotes for profit-making purposes.</u></b> <b><u>Providers of services such as non-for-profit</u></b>	5) ‘online content sharing service provider’ means a provider of an information society service whose main or one of the main purposes is to store and enable user to upload and share a large(*) amount of <i>copyright protected</i> works or other protected subject-matter which the service organises and promotes for profit-making purposes.

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			<p><i>for profit making purposes.</i></p> <p><i>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</i></p>	<p><b><u>online encyclopaedias, non-for-profit educational and scientific repositories, non-for-profit open source software developing platforms, as well as internet access service providers, online marketplaces and providers of cloud services which allow users, including businesses for their internal purposes, to upload content for their own use shall not be considered online content sharing service providers within the meaning of this Directive;</u></b></p>	<p><b>[EP: <i>Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC</i>] providers of services such as <i>not-for profit</i> online encyclopedias, [Council: <i>not-for profit</i>] educational and scientific repositories, open source software developing and sharing platforms, electronic communication service providers [as defined in the new Telecom Code], online marketplaces and business-to-business cloud services and cloud services which allow users to upload content for their own use shall not be considered online content sharing service providers</b></p>

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			<i>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;</i>		within the meaning of this Directive.  [(*) COM to provide recital on “large amount”; exclusion of Micro- and SMEs to be further discussed; non-for profit/acting in a non-commercial purpose open for educational and scientific repositories]
126.	Art. 2, para 4c (EP)/para 6 (Council)		<i>(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<sup>1a</sup>;</i>  _____	<b><u>(6) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535.</u></b>	{6) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 <sup>1a</sup> .  _____  <sup>1a</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9

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			<i>1<sup>st</sup> 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).</i>		<i>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).</i>
127.	Art. 2, para 4d		<i>(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.</i>		
128.		TITLE II MEASURES TO ADAPT	TITLE II MEASURES TO ADAPT	TITLE II MEASURES TO ADAPT	TITLE II MEASURES TO ADAPT

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		EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT	EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT	EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT	EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT
129.	Art. 3, title	<i>Article 3 Text and data mining</i>	<i>Article 3 Text and data mining</i>	<i>Article 3 Text and data mining <u>for the purposes of scientific research</u></i>	<b>GREEN</b> <i>Article 3 Text and data mining <u>for the purposes of scientific research</u></i> <i>[provisionally agreed at Trilogue 25/10/2018]</i>
130.	Art. 3, para 1	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	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 <del>made by research organisations in order to carry out text and data mining</del> of works or other subject-matter to	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 <u>and cultural heritage institutions</u> in order to carry out text and data	<b>GREEN</b> 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 <i>and cultural heritage institutions</i> in order

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		<p>which they have lawful access for the purposes of scientific research.</p>	<p>which <del>they have lawful access</del> <i>research organisations have lawful access and made in order to carry out text and data mining</i> for the purposes of scientific research <i>by such organisations.</i></p> <p><i>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</i></p>	<p>mining of works or other subject-matter to which they have lawful access, for the purposes of scientific research.</p>	<p>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.</p> <p><i>[provisionally agreed at Trilogue 25/10/2018]</i></p>

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			<i>exception provided for in this Article.</i>		
131.	Art. 3, para 1a		<i>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.</i>	<b><u>1a. Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and not be retained for longer than necessary for achieving the purposes of scientific research.</u></b>	<b>GREEN</b> <i>1a. Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.</i> <i>[provisionally agreed at Trilogue 25/10/2018]</i>
132.	Art. 3, para 2	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. <i>[See Council's Article 6(1) (row 155)]</i>	2. <i>[Moved to Article 6(1)]</i>	<b>GREEN</b> <i>[Moved to Article 6(1)]</i> <i>[provisionally agreed at Trilogue 25/10/2018]</i>
133.	Art. 3, para 3	3. Rightholders shall be allowed to apply	3. Rightholders shall be allowed to apply	3. Rightholders shall be allowed to apply	<b>GREEN</b>



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		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.	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.	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.  <i>[provisionally agreed at Trilogue 25/10/2018]</i>
134.	Art. 3, para 4	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 <del>shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.</del> <i>may continue to provide text and data mining exceptions in accordance with point (a) of Article</i>	4. Member States shall encourage rightholders <del>and</del> research organisations <u>and cultural heritage institutions</u> to define commonly-agreed best practices concerning the application of the <u>obligation and</u> measures referred to <u>respectively</u> in paragraphs <u>1a and 3</u> .	<b>GREEN</b> 4. Member States shall encourage rightholders and, research organisations and cultural heritage institutions to define commonly-agreed best practices concerning the application of the obligation and measures referred to respectively in paragraphs 1a and 3.

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			<i>5(3) of Directive 2001/29/EC.</i>		<i>[provisionally agreed at Trilogue 26 November]</i>  <i>[the relation with existing exceptions under InfoSoc Directive under Article 17a (see row 306)]</i>
135.	Art. 3a, title		<u><i>Article 3a</i></u> <u><i>Optional exception or limitation for text and data mining</i></u>	<u><i>Article 3a</i></u> <u><i>Optional exception or limitation for text and data mining</i></u>	<u><i>Article 3a</i></u> <u><i>Optional exception or limitation for text and data mining</i></u>
136.	Art. 3a, para 1		<i>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</i>	<u><i>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 temporary reproductions and extractions of lawfully accessible works</i></u>	<i>1. Without prejudice to Article 3 of this Directive, Member States <b>may/shall</b> 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, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 11(1) of this Directive for</i>

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			<i>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.</i>	<b><u>and other subject-matter that form a part of the process of text and data mining.</u></b>	<i><del>temporary reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process for the purposes of text and data mining.</del></i>  <i>[COM suggestion to turn the optional exception into a mandatory one by replacing “may provide” by “shall provide” to be discussed further at political level.</i>  <i>Apart from 'may' or 'shall', text of Article 3a provisionally agreed at trilogue 26/11/2018 as set out in rows 136, 137, 138 and 139]</i>
137.	Art. 3a, para 2 (EP)		<b>2. Reproductions and extractions made pursuant to paragraph 1 shall not be used for</b>		<b>GREEN</b>  <b>2. Reproductions and extractions made pursuant to paragraph 1 may be</b>

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			<i>purposes other than text and data mining.</i>		<i>retained as long as necessary for the purposes of text and data mining.</i>  <i>[provisionally agreed at Trilogue 25/10/2018 / 26/11/2018]</i>
138.	Art. 3a, para 2 (Council)			<p><b><u>2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by technical means.</u></b></p> <p><i>[See para. 1 of EP text (row 136)]</i></p>	<p><b>GREEN</b></p> <p><i>2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders in an appropriate manner, such as machine readable means <u>for the content made publicly available online.</u></i></p> <p><i>[provisionally agreed at Trilogue 26/11/2018 in</i></p>

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					<i>conjunction with wording of recital (13a) (row 28)]</i>
139.	Art. 3a, para 3		<b>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.</b>		<b>GREEN</b> <b>3. <u>This Article shall not affect the application of Article 3 of this Directive.</u></b> <i>[This phrase replaces the 'Without prejudice'-clarification previously contained in paragraph 1. [provisionally agreed at Trilogue 26/11/2018] Agreed at Trilogue 25/10/2018 to introduce the relation with existing exceptions under InfoSoc Directive under Article 17a (see row 306)]</i>
140.	Art. 4, title	<i>Article 4 Use of works and other subject-matter in digital</i>	<i>Article 4 Use of works and other subject-matter in digital</i>	<i>Article 4 Use of works and other subject-matter in digital</i>	<i>Article 4 Use of works and other subject-matter in digital and</i>

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		<i>and cross-border teaching activities</i>	<i>and cross-border teaching activities</i>	<i>and cross-border teaching activities</i>	<i>cross-border teaching activities</i>
141.	Art. 4, para 1	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:	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), (b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Article 4(1)(a) and (b) 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 <del>the</del> <u>such</u> use:	<b>GREEN</b> 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), (b), (d) and (e) and 7(1) of Directive 96/9/EC, Article 4(1)(a), <del>and (b)</del> of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow 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 <i>such</i> use: <i>[provisionally agreed at Trilogue 26/11/2018; reference to Directive 2009/24/EC agreed provided</i>

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					<i>that it is clarified in a recital that distribution of software allowed under the exception is limited to digital transmission of software]</i>
142.	Art. 4, para 1, point (a)	(a) takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;	(a) takes place on the premises of an educational establishment, <i>or in any other venue in which the teaching activity takes place under the responsibility of the educational establishment</i> , or through a secure electronic <del>network</del> <i>environment</i> accessible only by the educational establishment's pupils or students and teaching staff;	(a) takes place <del>on</del> <u>under</u> the <del>premises</del> <u>responsibility</u> of an educational establishment, <u>on its premises or other venues</u> , or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff; <u>and</u>	<b>GREEN</b> (a) takes place <i>under the responsibility</i> of an educational establishment, <i>on its premises or other venues</i> , or through a secure electronic <i>environment</i> accessible only by the educational establishment's pupils or students and teaching staff; <i>and</i> <i>[provisionally agreed at Trilogue 26/11/2018 together with text on recital 16a, row 33]</i>
143.	Art. 4, para 1, point (b)	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	<b>GREEN</b> (b) is accompanied by the indication of the source, including the author's name,

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			<i>for reasons of practicability.</i>		unless this turns out to be impossible. <i>[provisionally agreed at Trilogue 25/10/2018]</i>
144.	Art. 4, para 2, sub-para 1	2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising the acts described in paragraph 1 are easily available in the market.	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, <i>such as material which is primarily intended for the educational market or sheet music</i> , to the extent that adequate <del>licences</del> <i>licencing agreements</i> authorising the acts described in paragraph 1 <i>and tailored to the needs and specificities of educational establishments</i> are easily available in the market.	2. <b><u>Notwithstanding Article 6(1)</u></b> , Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <b><u>uses or</u></b> types of works or other subject-matter, to the extent that adequate licences <b><u>covering the needs of educational establishments and</u></b> authorising the acts described in paragraph 1 are easily available in the market.	<b>GREEN</b> 2. <i>Notwithstanding Article 6(1)</i> , Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <i>uses or</i> types of works or other subject-matter, <i>such as material which is primarily intended for the educational market or sheet music</i> , to the extent that <i>suitable</i> licences authorising the acts described in paragraph 1 <i>covering the needs and specificities of educational establishments</i> are easily available in the market.  <i>[provisionally agreed at Trilogue 25/10/2018 /</i>



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					<i>26/11/2018 together with text on recitals (16) and (17), rows 32 and 35 tbc by trilogue]</i>
145.	Art. 4, para 2, sub-para 2	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.	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.	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure <del>appropriate availability and visibility</del> <b>of that rightholders make</b> the licences authorising the acts described in paragraph 1 <b>available and visible</b> for educational establishments.	<b>GREEN</b> 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. <i>[provisionally agreed at Trilogue 26/11/2018 together with text on recital (17) and (17a), rows 35 and 36]</i>
146.	Art. 4, para 3	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic <del>networks</del> <b>environments</b>	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in	<b>GREEN</b> 3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure

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		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.	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.	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.	electronic <i>environments</i> 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.  <i>[provisionally agreed at Trilogue 25/10/2018 / 26/11/2018 together with text on recital 16a, row 33]</i>
147.	Art. 4, para 4	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.	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.	4. Member States may provide for fair compensation <del>for the harm incurred by the</del> <u>to</u> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	<b>GREEN</b> 4. Member States may provide for fair compensation <del>for the harm incurred by the</del> <u>to</u> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.  <i>[provisionally agreed at Trilogue 25/10/2018 / 26/11/2018 together with text on recital (17a), row 36]</i>

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148.	Art. 4, para 4a		<p><b>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.</b></p> <p>[See Council's Article 6(1) (row 155)]</p>		<p>[provisionally agreed at trilogue 25/10/2018 to deal with contractual override under Article 6(1)]</p> <p>[Issue of royalty-free licences to be further discussed at trilogue in the context of the remuneration chapter and recital (40) of the Council]</p>
149.	Art. 5, title	Article 5 Preservation of cultural heritage	Article 5 Preservation of cultural heritage	Article 5 Preservation of cultural heritage	Article 5 Preservation of cultural heritage
150.	Art. 5, [para 1 (EP)]	Member States shall provide for an exception to the rights provided for in Article 2 of Directive	1. Member States shall provide for an exception to the rights provided for in Article 2 of	Member States shall provide for an exception to the rights provided for in Article 2 of Directive	<p><b>GREEN</b></p> <p>1. Member States shall provide for an exception to</p>

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		2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.	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 <b>purposes</b> of preservation of such works or other subject-matter and to the extent necessary for such preservation.	2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions; to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.	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 <b>purposes</b> of preservation of such works or other subject-matter and to the extent necessary for such preservation.  <i>[provisionally agreed at trilogue 25/10/2018]</i>
151.	Art. 5, para 1a		<b><i>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</i></b>		<i>[To be further discussed at trilogue on basis of COM drafting suggestion]</i>

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			<i>related rights, provided that such reproduction is a faithful reproduction for purposes of preservation of the original material.</i>		
152.	Art. 5, para 1b		<p>1b. <i>Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.</i></p> <p><i>[See Council's Article 6(1) (row 155)]</i></p>		<p><b>GREEN</b></p> <p><i>[provisionally agreed at trilogue 25/10/2018 to deal with contractual override under Article 6(1)]</i></p>
153.	Art. 6, title	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>
154.	Art. 6, para 1 (EP)		<i>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.</i>		<i>[To be discussed further at trilogue]</i>

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155.	Art. 6, para 1 (Council)			<p>1. Any contractual provision contrary to the exceptions provided for in <b>Articles 3, 4(1) and 5</b> shall be unenforceable.</p> <p><i>[See Article 3(2) of the COM proposal and Parliament's Articles 3(2) and 4(4a) and 5(1b)]</i></p>	<p><b>GREEN</b></p> <p>1. Any contractual provision contrary to the exceptions provided for in <b>Articles 3, 4 and 5</b> shall be unenforceable.</p> <p><i>[provisionally agreed at trilogue 25/10/2018]</i></p>
156.	Art. 6, para 2	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.	2. Article 5(5) and the first, third, <i>fourth</i> and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.	<p><del>2. Article 5(5) and the of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions</del> <b>Articles 3, 4(1) and the limitation provided for under 5 of this Title Directive.</b></p>	<p>2. Article 5(5) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. <b>The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to Articles 3, 4 and 5 of this Directive.</b></p> <p><i>[EP agrees to drop reference to the fourth subparagraph of Article 6(4) of Directive 2001/29/EC;</i></p> <p><b>TM 07.12: general reference to exceptions to be made in</b></p>

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					<i>second sentence; to be finalised at technical level]</i>
157.		TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT
158.		CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works
159.	Art. 7, title	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>
160.	Art. 7, para 1, introductory part	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	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	1. Member States shall provide that when a collective management organisation, on behalf of <del>its members,</del> <b>in accordance with</b> its members, <del>concludes</del> <b>mandates, may conclude</b> a non-exclusive licence for non-commercial purposes with a cultural heritage	<b>GREEN</b> 1. Member States shall provide that a collective management organisation, in accordance with its mandates, may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the

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		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:	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:	institution for the <del>digitisation</del> <b>reproduction</b> , distribution, communication to the public or making available <b>to the public</b> of out-of-commerce works or other subject-matter permanently in the collection of the institution, <del>such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those</del> <b>irrespective of whether all rightholders</b> covered by the licence <del>who are not represented by</del> <b>have mandated</b> the collective management organisation, provided that:	reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject-matter permanently in the collection of the institution, irrespective of whether all rightholders covered by the licence have mandated the collective management organisation, provided that:  <i>[provisionally agreed at Trilogue 26/11/2018]</i>
161.	Art. 7, para 1, point (a)	(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the	(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the	(a) the collective management organisation is, on the basis of mandates from rightholders, <del>broadly</del> <b>sufficiently</b>	<b>GREEN</b> (a) the collective management organisation is, on the basis of mandates from rightholders, sufficiently representative of



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		category of works or other subject-matter and of the rights which are the subject of the licence;	category of works or other subject-matter and of the rights which are the subject of the licence;	representative of rightholders in the <del>category</del> <b>relevant type</b> of works or other subject-matter and of the rights which are the subject of the licence;	rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence; <i>[provisionally agreed at Trilogue 26/11/2018]</i>
162.	Art. 7, para 1, point (b)	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence.
163.	Art. 7, para 1, point (c)	(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.	(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.	(c) all rightholders may at any time <del>object to</del> <b>exclude the possibility for collective management organisations to license</b> their works or other subject-matter <del>being deemed to be out of commerce and</del> <b>in accordance with this Article, either in general or in specific cases, or</b> exclude the application of <del>the</del> <b>any licence granted in</b>	<b>GREEN</b> <i>[This point is moved to new paragraph 1b below – row 167]</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>

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				<u>accordance with this Article</u> to their works or other subject-matter.	
164.	Art. 7, para 1a		1a. <i>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:</i>		<b>GREEN</b> 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), (b), (d) and (e) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, in order to allow cultural heritage institutions to make available out-of-commerce works or other subject-matter that are permanently in their collections for non-commercial purposes, provided that:  <i>[Council provisionally agreed at trilogue, provided</i>

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					<i>that Council Article 9a is adopted]</i>
165.	Art. 7, para 1a, point (a)		(a) <i>the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;</i>		<b>GREEN</b> (a) <b>the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;</b> <i>[provisionally agreed at trilogue 03/12/2018; see also comment in row 164]</i>
166.	Art. 7, para 1a, point (b)		(b) <i>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.</i>		<b>GREEN</b> (b) <b>such works or other subject-matter are made available on non-commercial websites.</b> <i>[provisionally agreed at trilogue 03/12/2018]</i> <i>[Text of EP covered in new paragraph 1b below – row 167; see also comment in row 164]</i>

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167.	Art. 7, para 1b		<p><i>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.</i></p>		<p><b>GREEN</b></p> <p>1b. Member States shall provide that the exception or limitation referred to in the previous paragraph only applies to types of works or other subject-matter for which no collective management organisation exists that fulfils the conditions referred to in point (a) of paragraph 1.</p> <p>1c. Member States shall provide that all rightholders may at any time, easily and effectively, exclude their works or other subject-matter from the licensing mechanism referred to in paragraph 1 or from uses under the exception or limitation referred to in paragraph 1a, either in general or in specific cases, including after the conclusion of a licence or the</p>

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					beginning of the use concerned. <i>[provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]</i>
168.	Art. 7, para 2, sub-para 1	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.	<del>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.</del> <i>Member States may provide a cut-off date in relation to determining whether a work previously commercialised is deemed to be out of commerce.</i> <i>[See definition of out-of-commerce work in</i>	2. A work or other subject-matter shall be deemed to be out-of-commerce when <b><u>it can be presumed in good faith that</u></b> the whole work or other subject-matter, <del>in all its translations, versions and manifestations,</del> is not available to the public through customary channels of commerce <del>and cannot be reasonably expected to become so.</del> <b><u>after a reasonable effort is made to determine such availability.</u></b>	<b>GREEN</b> 2. A work or other subject-matter shall be deemed to be out-of-commerce when it can be presumed in good faith that the whole work or other subject-matter is not available to the public through customary channels of commerce after a reasonable effort is made to determine such availability. <i>[provisionally agreed at Trilogue 26/11/2018]</i>

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			<i>Parliament's Article 2(4a) (rows 122-126)]</i>		
169.	Art. 7, para 2, sub-para 2	Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.	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 <b><i>or used in accordance with paragraph 1a</i></b> do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.	Member States <del>shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the</del> <b><u>may provide for specific requirements</u></b> used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 <del>do</del> . <b><u>Such requirements shall</u></b> not extend beyond what is necessary and reasonable, and <del>do</del> <b><u>shall</u></b> not preclude the possibility to determine the out-of-commerce status of a <del>collection as a</del> <b><u>set of works or other subject-matter</u></b> as a whole, when it is reasonable to presume that all works or other subject-	<b>GREEN</b> Member States may provide for specific requirements, <b><i>such as a cut-off date</i></b> , to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 <b>or used under the exception or limitation referred to in paragraph 1a</b> . Such requirements shall not extend beyond what is necessary and reasonable, and shall not preclude the possibility to determine the out-of-commerce status of a set of works or other subject-matter as a whole, when it is reasonable to presume that all works or other subject-matter are out-of-commerce.

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				matter <del>in the collection</del> are out <del>of</del> commerce.	<i>[provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]</i>
170.	Art. 7, para 3, introductory part	3. Member States shall provide that appropriate publicity measures are taken regarding:	3. Member States shall provide that appropriate publicity measures are taken regarding:	3. <i>[Moved to new Article 8a(2)]</i>	3. <i>[Moved to new Article 8a(2)]</i>
171.	Art. 7, para 3, point (a)	(a) the deeming of works or other subject-matter as out of commerce;	(a) the deeming of works or other subject-matter as out of commerce;		
172.	Art. 7, para 3, point (b)	(b) the licence, and in particular its application to unrepresented rightholders;	(b) <del>the</del> <i>any</i> licence, and in particular its application to unrepresented rightholders;		
173.	Art. 7, para 3, point (c)	(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;	(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 <i>and point (b) of paragraph 1a;</i>		
174.	Art. 7, para 3, closing phrase	including during a reasonable period of time before the works or other subject-matter are digitised, distributed,	including during a <del>reasonable</del> period of <del>time</del> <i>at least six months</i> before the works or other subject-matter are digitised,		

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		communicated to the public or made available.	distributed, communicated to the public or made available.		
175.	Art. 7, para 4, introductory part / Art. 7, para 4 (Council)	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:	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:	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: <b><u>the cultural heritage institution is established.</u></b>	<b>GREEN</b> 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 the cultural heritage institution is established. <i>[provisionally agreed at Trilogue 26/11/2018]</i>
176.	Art. 7, para 5, introductory part (Council)			<b><u>5. This Article shall not apply to sets of out-of-commerce if, following the reasonable effort to determine commercial availability, there is evidence that such sets predominantly consist of:</u></b>	<b>GREEN</b> 5. This Article shall not apply to sets of out-of-commerce works if, on the basis of the reasonable effort referred to in paragraph 2, there is evidence that such sets predominantly consist of:



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					<i>[provisionally agreed at Trilogue 26/11/2018]</i>
177.	Art. 7, para 4, point (a) (EP)/ Art. 7, para 5, point (a) (Council)	(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;	(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;	(a) <del>the</del> works or <b>other subject-matter</b> <del>phonograms were first published or, in the absence of publication, where they were first broadcast</del> <b>in a third country</b> , except for cinematographic <del>and</del> <b>or</b> audiovisual works;	<b>GREEN</b> (a) works or other subject-matter first published or, in the absence of publication, first broadcast in a third country, except for cinematographic or audiovisual works; <i>[provisionally agreed at Trilogue 26/11/2018]</i>
178.	Art. 7, para 4, point (b) (EP)/ Art. 7, para 5, point (b) (Council)	(b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or	(b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or	(b) <b>cinematographic or audiovisual works</b> , the producers of <del>the</del> <b>works</b> <del>which</del> have their headquarters or habitual residence, <del>for</del> <del>cinematographic and audiovisual works</del> <b>in a third country</b> ; or	<b>GREEN</b> (b) cinematographic or audiovisual works, the producers of which have their headquarters or habitual residence in a third country; or <i>[provisionally agreed at Trilogue 26/11/2018]</i>
179.	Art. 7, para 4, point (c) (EP)	(c) the cultural heritage institution is established, when a Member State or a	(c) the cultural heritage institution is established, when a Member State or a	c) <del>the cultural heritage institution is established,</del> <b>works or other subject-</b>	<b>GREEN</b>

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	/Art. 7, para 5, point (c) (Council)	third country could not be determined, after reasonable efforts, according to points (a) and (b).	third country could not be determined, after reasonable efforts, according to points (a) and (b).	<b><u>matter of third country nationals</u></b> when a Member State or a third country could not be determined, after <b><u>a</u></b> reasonable <del>efforts</del> <b><u>effort</u></b> , according to points (a) and (b); <b>;</b>	c) works or other subject-matter of third country nationals when a Member State or a third country could not be determined, after a reasonable effort, according to points (a) and (b);  <i>[provisionally agreed at Trilogue 26/11/2018]</i>
180.	Art. 7, para 5 (EP)/ Art. 7, para 5, closing phrase (Council)	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.	5. <del>Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter</del> <b><u>unless collective management organisation is sufficiently representative of rightholders of that third country nationals except where points in the meaning of point (a) and (b) of paragraph 4 apply</u></b> <b><u>1.</u></b>	<b>GREEN</b> unless the collective management organisation is sufficiently representative of rightholders of that third country in the meaning of point (a) of paragraph 1.  <i>[provisionally agreed at Trilogue 26/11/2018]</i>

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181.	Art. 8, title	<i>Article 8 Cross-border uses</i>	<i>Article 8 Cross-border uses</i>	<i>Article 8 Cross-border uses</i>	<i>Article 8 Cross-border uses</i>
182.	Art. 8, para 1	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.	1. <del>Works</del> <b><i>Out-of-commerce works</i></b> or other subject-matter covered by <del>a licence granted in accordance with Article 7</del> <b><i>may be</i></b> used by the cultural heritage institution in accordance with <del>the terms of the licence</del> <b><i>that Article</i></b> in all Member States.	1. <del>Works or other subject-matter covered by a</del> <b><i>A</i></b> licence granted in accordance with Article 7 may <del>be used</del> <b><i>allow the use of out-of-commerce works or other subject-matter</i></b> by the cultural heritage institution in accordance with <del>the terms of the licence in all</del> <b><i>any</i></b> Member States <b><i>State.</i></b>	<b>GREEN</b> 1. A licence granted in accordance with Article 7 may allow the use of out-of-commerce works or other subject-matter by the cultural heritage institution in any Member State.  <b><i>2. The uses of works and other subject-matter under the exception or limitation referred to in Article 7(1a) shall be deemed to occur solely in the Member State where the cultural heritage institution undertaking that use is established.</i></b>  [provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]
183.	Art. 8, para 2	2. Member States shall ensure that information that allows the	2. Member States shall ensure that information that allows the	2. [Moved to new Article 8a(1)]	<b>GREEN</b>

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		<p>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.</p>	<p>identification of the works or other subject-matter covered by a <del>licence</del> <del>granted in accordance with</del> Article 7 and information about the possibility of rightholders to object referred to in <i>point (c) of Article 7(1) and point (b) of Article 7(1a)</i> are made <del>publicly</del> <i>permanently, easily and effectively</i> accessible in a <i>public</i> 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, <i>or in the cases covered by Article 7(1a), where the cultural heritage institution is established</i> and for the whole duration of the licence.</p>		<p>2. <i>[Moved to new Article 8a(1)]</i></p> <p><i>[provisionally agreed at Trilogue 26/11/2018]</i></p>

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184.	Art. 8, para 3	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.	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.	3. <i>[Moved to new Article 8a(1) second subparagraph]</i>	<b>GREEN</b> 3. <i>[Moved to new Article 8a(1) second subparagraph]</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
185.	Art. 8a, title			<b><u>Article 8a</u></b> <b><u>Publicity measures</u></b>	<b>GREEN</b> <b><u>Article 8a</u></b> <b><u>Publicity measures</u></b> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
186.	Art. 8a, para 1, sub-para 1			<b><u>1.</u></b> Member States shall ensure that information <del>that allows for</del> <b><u>for the purposes of</u></b> the identification of the <b><u>out-of-commerce</u></b> works or other subject-matter covered by a licence granted in accordance with <del>Article 7 and</del> <b><u>as well as</u></b> information about the <del>possibility</del> <b><u>possibilities</u></b> of	<b>GREEN</b> 1. Member States shall ensure that information <b>from cultural heritage institutions, collective management organisations or relevant public authorities</b> for the purposes of the identification of the out-of-commerce works or other subject-matter <b>covered</b>

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				<p><del>rightholders to object referred to in Article 7(1)(c) are), and, as soon as it is available, information on the parties to the licence, the covered territories and the allowed uses is</del> made publicly accessible in a single online portal <del>for</del><b>from</b> at least six months before the works or other subject-matter are <del>digitised, distributed, communicated to the public or made available in Member States other than the one where the licensee is granted, and for the whole duration of</del><b>to the public in accordance with</b> the licence.</p> <p><i>[Article 8(2) of the COM proposal, amended]</i></p>	<p><b>by a licence granted in accordance with Article 7(1) or used under the exception or limitation referred to in Article 7(1a)</b> as well as information about the possibilities of rightholders referred to in Article <b>7(1c)</b>, and, as soon as it is available <b>and where relevant</b>, information on the parties to the licence, the covered territories and <del>the allowed uses is made permanently, easily and effectively</del> accessible in a <b>public</b> single online portal from at least six months before the works or other subject-matter are distributed, communicated to the public or made available to the public in accordance with the licence <b>or under the exception or limitation.</b></p> <p><i>[Article 8(2) of the COM proposal, amended]</i></p>

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					<i>[provisionally agreed at Trilogue 26/11/2018, including clarification in recital (27) that the licence may cover one, several or all Member States; see also comment in row 164]</i>
187.	Art. 8a, para 1, sub-para 2			<p>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.</p> <p><i>[Article 8(3) of the COM proposal, amended]</i></p>	<p><b>GREEN</b></p> <p>The portal shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.</p> <p><i>[Article 8(3) of the COM proposal, amended]</i></p> <p><i>[provisionally agreed at Trilogue 26/11/2018]</i></p>
188.	Art. 8a, para 2			<p>2. Member States shall provide that, <b><u>if necessary for the general awareness of rightholders, further</u></b> appropriate publicity</p>	<p><b>GREEN</b></p> <p>2. Member States shall provide that, if necessary for the general awareness of rightholders, further appropriate publicity</p>

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				<p>measures are taken regarding: <del>(a) the deeming of works or other subject-matter as out of commerce;</del> (b) the licence, and in particular its application to <del>unrepresented rightholders;</del> <b><u>the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the licences granted and</u></b> <del>(c) the possibilities to object of rightholders referred to in point (c) of paragraph 1 Article 7(1)(c).</del></p> <p><del>Including during a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.</del></p>	<p>measures are taken regarding the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the licences granted, <b>the uses under the exception or limitation referred to in Article 7(1a)</b> and the possibilities of rightholders referred to in Article 7(1c).</p> <p>The additional appropriate publicity measures shall be taken in the Member State where the licence is sought <b>in accordance to Article 7(1) or, for uses under the exception or limitation referred to in Article 7(1a), where the cultural heritage institution is established.</b> If there is evidence, such as the origin of the works or other subject-matter, to suggest that the awareness of rightholders could be more efficiently raised in other</p>



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				<p><b><u>The additional appropriate publicity measures shall be taken in the Member State where the licence is sought. If there is evidence, such as the origin of the works or other subject-matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.</u></b></p> <p><i>[Article 7(3) of the COM proposal, amended]</i></p>	<p>Member States or third countries, such publicity measures shall also cover those Member States and third countries.</p> <p><i>[Article 7(3) of the COM proposal, amended]</i></p> <p><i>[provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]</i></p>
189.	Art. 9, title	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>
190.	Art 9	Member States shall ensure a regular dialogue between representative users' and rightholders'	Member States shall ensure a regular dialogue between representative users' and rightholders'	Member States shall <del>ensure</del> <b><u>consult rightholders, collective management</u></b>	<b>GREEN</b> Member States shall consult rightholders, collective management organisations

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		<p>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).</p>	<p>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) <i>and the exception referred to in Article 7(1a)</i>, 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).</p>	<p><u>organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage</u> a regular dialogue between representative users' and rightholders' organisations, <u>including collective management organisations,</u> and any other relevant stakeholder organisations, <del>to,</del> on a sector-specific basis, <u>to</u> foster the relevance and usability of the licensing mechanisms referred to in Article 7(1);) <u>and to</u> ensure the effectiveness of the safeguards for rightholders referred to in this Chapter; <del>notably as regards publicity measures, and, where applicable, assist in the establishment of the</del></p>	<p>and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage a regular dialogue between representative users' and rightholders' organisations, including collective management organisations, and any other relevant stakeholder organisations, on a sector-specific basis, to foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) and to ensure the effectiveness of the safeguards for rightholders referred to in this Chapter.</p> <p><i>[provisionally agreed at Trilogue 26/11/2018]</i></p>

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				requirements referred to in the second subparagraph of Article 7(2).	
191.				<b><u>CHAPTER 1a</u></b> <b><u>Measures to facilitate collective licensing</u></b>	<b><u>CHAPTER 1a</u></b> <b><u>Measures to facilitate collective licensing</u></b>
192.	Art. 9a, title			<b><u>Article 9a</u></b> <b><u>Collective licensing with an extended effect</u></b>	<b><u>Article 9a</u></b> <b><u>Collective licensing with an extended effect</u></b>  <i>[Article 9a provisionally agreed at trilogue 03/12/2018; final wording as set out in rows 193 - 202 (i.e. with technical clarifications from COM and related recitals (28a)-(28h), as set out in rows 56 - 63, to be confirmed by trilogue]</i>
193.	Art. 9a, para 1			<b><u>1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for</u></b>	1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for in this Article, that when a

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				<p><u>in this Article, that when a collective management organisation, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised the organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.</u></p>	<p>collective management organisation, <del>to which is subject to the national rules implementing Article 2 of Directive 2014/26/EU, applies and which</del>, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised <del>the</del> <b>that collective management</b> organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.</p>

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					<i>[see comment in rows 192 and 164]</i>
194.	Art. 9a, para 2			<b><u>2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such mechanism safeguards the legitimate interests of rightholders.</u></b>	2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such <b>licensing</b> mechanism safeguards the legitimate interests of rightholders .  <i>[see comment in rows 192 and 164]</i>

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195.	Art. 9a, para 3			<b><u>3. The safeguards referred to in paragraph 1 must ensure that:</u></b>	3. The safeguards referred to in paragraph 1 <del>must ensure</del> <b><u>shall provide</u></b> that:  <i>[see comment in rows 192 and 164]</i>
196.	Art. 9a, para 3, point (a)			<b><u>(a) the organisation is, on the basis of mandates from rightholders, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State;</u></b>	(a) the <b><u>collective right management</u></b> organisation is, on the basis of mandates from rightholders, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State;  <i>[see comment in rows 192 and 164]</i>
197.	Art. 9a, para 3, point (b)			<b><u>(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;</u></b>	(b) equal treatment is guaranteed to all rightholders, <b><u>including</u></b> in relation to the terms of the licence;

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					<i>[see comment in rows 192 and 164]</i>
198.	Art. 9a, para 3, point (c)			<b><u>(c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;</u></b>	(c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article; <i>[see comment in rows 192 and 164]</i>
199.	Art. 9a, para 3, point (d)			<b><u>(d) appropriate publicity measures are taken to raise the awareness of rightholders regarding the possibility for organisations to license works or other subject-matter and the licensing taking place in accordance with this Article, and the</u></b>	(d) appropriate publicity measures are taken to <del>raise the awareness of</del> <b><u>inform</u></b> rightholders regarding the possibility for <b><u>the collective management</u></b> organisations to license works or other subject-matter and the licensing taking place in accordance with this Article, and the possibilities of rightholders referred to in

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				<u>possibilities of rightholders referred to in point (c) starting from a reasonable period before the works or other subject-matter are used under the licence. Publicity measures should be effective without the need to inform each rightholder individually.</u>	point (c) starting from a reasonable period before the works or other subject-matter are used under the licence. Publicity measures should be effective without the need to inform each rightholder individually. <i>[see comment in rows 192 and 164]</i>
200.	Art. 9a, para 4			<u>4. The rules provided for in this Article are without prejudice to the application of collective licensing mechanisms with an extended effect in conformity with other provisions of Union law, including those which allow exceptions or limitations, and shall not apply to mandatory collective management of rights.</u>	4. The rules provided for in this Article are without prejudice <del>to</del> <b>does not affect</b> the application of collective licensing mechanisms with an extended effect in conformity with other <del>existing</del> provisions of Union law, including <del>those</del> <b>provisions</b> which allow exceptions or limitations. <b>This article</b> shall not apply to mandatory collective management of rights.



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					<p><b><u>Article 7 of Directive 2014/26/EU shall apply to the licensing mechanism provided for in this Article.</u></b></p> <p><i>[see comment in row 192 and 164]</i></p>
201.	Art. 9a, para 5			<p><b><u>5. Where the law of a Member State provides for a licensing mechanism in accordance with this Article, the Member State concerned shall inform the Commission about the scope of that law, purposes and types of licences that may be introduced under that law as well as contact details for organisations issuing licences in accordance with the mechanism in paragraph 1. The Commission shall publish this information.</u></b></p>	<p>5. Where the law of a Member State provides for a licensing mechanism in accordance with this Article, the Member State concerned shall inform the Commission about the scope of that law, purposes and types of licences that may be introduced under that law as well as contact details for organisations issuing licences in accordance with the mechanism in paragraph 1, <b><u>and the way in which information on the licensing and the possibilities of rightholders referred to in point (c) of paragraph 3 can be obtained.</u></b> The Commission</p>

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					shall publish this information. <i>[see comment in row 192 and 164]</i>
202.	Art. 9a, para 6			<b><u>6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 31 December 2020, submit to the European Parliament and to the Council a report on the use of such mechanisms referred to in paragraph 1 in the EU and their impact on licensing and rightholders. The Commission's report shall be accompanied, if appropriate, by a</u></b>	6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by <b>10 April 2021</b> , submit to the European Parliament and to the Council a report on the use of such mechanisms referred to in paragraph 1 in the EU, <del>and</del> <b>and their impact on licensing and rightholders, including right-holders who are not members and/or who are nationals of, or resident in, another Member State, their effectiveness to facilitate</b>

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				<u>legislative proposal, including</u> as regards <del>publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).</del> <u>the cross-border effect of such national schemes.</u>	<u>the -dissemination of cultural content, -and the impact on the internal market, including the cross-border provision of services and competition.</u> The Commission's report shall be accompanied, if appropriate, by a legislative proposal, including as regards the cross-border effect of such national schemes.  [see comment in row 192 and 164]
203.		CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms
204.	Art. 10, title	<i>Article 10</i> <i>Negotiation mechanism</i>	<i>Article 10</i> <i>Negotiation mechanism</i>	<i>Article 10</i> <i>Negotiation mechanism</i>	<i>Article 10</i> <i>Negotiation mechanism</i>
205.	Art. 10, sub-para 1	Member States shall ensure that where parties wishing to conclude an	Member States shall ensure that where parties wishing to conclude an	Member States shall ensure that <del>where parties wishing</del> <u>facing difficulties</u>	<b>GREEN</b> Member States shall ensure that parties facing difficulties

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		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.	agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of <i>audiovisual</i> rights, they may rely on the assistance of an impartial body with relevant experience. <del>That body</del> <i>The impartial body created or designated by the Member State for the purpose of this Article</i> shall provide assistance <i>to the parties</i> with negotiation and help <i>them</i> to reach agreement.	<del>related to the licensing of rights when seeking 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</del> <u>related to the licensing of rights when seeking 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</u> <del>services, may rely on the assistance of an impartial body with relevant experience. That</del> <u>or of mediators. The</u> body <u>or mediators</u> shall provide assistance <u>to the parties</u> with <u>negotiation</u> <del>their</del> <u>negotiations</u> and help <u>them</u> reach agreements, <u>including, where appropriate, by submitting proposals to the parties.</u>	related to the licensing of rights when seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services, may rely on the assistance of an impartial body or of mediators. The <b>impartial body created or designated by the Member State for the purpose of this Article</b> or mediators shall provide assistance to the parties with their negotiations and help them reach agreements, including, where appropriate, by submitting proposals to the parties.  <i>[provisionally agreed at Trilogue 26/11/2018]</i>
206.	Art. 10, sub-para 2	No later than [date mentioned in Article 21(1)] Member States shall	No later than [date mentioned in Article 21(1)] Member States shall	<del>No later than [date mentioned in Article 21(1)]</del> Member States shall	<b>GREEN</b> Member States shall notify to the Commission the body

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		notify to the Commission the body referred to in paragraph 1.	<del>notify to</del> <i>inform</i> the Commission <del>of the body referred to in paragraph 1.</del> <i>they create or designate pursuant to the first paragraph.</i>	notify to the Commission the body <u>or mediators</u> referred to in paragraph 1 <u>no later than [date mentioned in Article 21(1)]. In cases where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found.</u>	or mediators referred to in paragraph 1 no later than [date mentioned in Article 21(1)]. In cases where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found.  <i>[provisionally agreed at Trilogue 26/11/2018]</i>
207.	Art. 10, sub-para 3		<i>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</i>		<b>GREEN</b>  <i>[provisionally agreed at Trilogue on 26/11/2018 to insert part of the EP mandate of this row into a recital (not in Article) along the following lines: Member States should encourage dialogue between representative organisations, without it being an</i>

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			<i>other relevant stakeholders.</i>		<i>obligation for Member States]</i>
208.			<b>CHAPTER 2a</b> <i>Access to Union publications</i>		
209.	Art. 10a, title		<b>Article 10 a</b> <i>Union Legal Deposit</i>		
210.	Art. 10a, para 1		<b>1.</b> <i>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.</i>		
211.	Art. 10a, para 2		<b>2.</b> <i>The European Parliament Library shall be entitled to delivery, free of charge, of one copy of</i>		

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			<i>every publication referred to in paragraph 1.</i>		
212.	Art. 10a, para 3		<b>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.</b>		
213.	Art. 10a, para 4		<b>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</b>		

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			<i>control of the European Parliament Library.</i>		
214.	Art. 10a, para 5		<b>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.</b>		
215.		TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT
216.		CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications
217.	Art. 11, title	<i>Article 11 Protection of press publications concerning digital uses</i>	<i>Article 11 Protection of press publications concerning digital uses</i>	<i>Article 11 Protection of press publications concerning <del>digital</del><u>online</u> uses</i>	<i>Article 11 Protection of press publications concerning [digital] [<u>online</u>] uses</i>



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218.	Art. 11, para 1	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC <i>so that they may obtain fair and proportionate remuneration</i> for the digital use of their press publications <i>by information society service providers.</i>	1. Member States shall provide publishers of press publications <b><u>established in a Member State</u></b> with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the <del>digital</del> <b>online</b> use of their press publications <b><u>by information society service providers.</u></b>	<b>GREEN</b> 1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service providers. These rights shall not apply to <b>private or non-commercial</b> uses of press publications carried out by individual users.  The protection granted under the first subparagraph shall not apply to acts of hyperlinking.  <i>[provisionally agreed at trilogue 03/12/2018;</i>  <i>Recital to clarify that individual users that</i>

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					<i>contribute to Wikipedia are not covered]</i>
219.	Art. 11, para 1, sub-para 2			<b><u>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</u></b>	<i>[To be further discussed at trilogue level]</i>
220.	Art. 11, para 1a		<i>1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press</i>		<b>GREEN</b> 1a. These rights shall not apply to private and non-commercial uses of press

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			<i>publications by individual users.</i>		publications carried out by individual user. <i>[provisionally agreed at trilogue 03/12/2018]</i>
221.	Art. 11, para 2	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.	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.	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. <del>Such</del> <u>The</u> rights <u>referred to in paragraph 1</u> 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	<b>GREEN</b> 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. The rights referred to in paragraph 1 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.

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				press publication in which they are incorporated.	<i>[provisionally agreed at trilogue 03/12/2018]</i>
222.	Art. 11, para 2, sub-para 2			<b><u>When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection has expired.</u></b>	<b>GREEN</b> When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject matter whose protection has expired. <i>[provisionally agreed at trilogue 03/12/2018]</i>
223.	Art. 11, para 2a		<b><i>2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are</i></b>		<b>GREEN</b> <i>[integrated into paragraph 1, row 218, as</i>

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			<i>accompanied by individual words.</i>		<i>provisionally agreed at trilogue 03/12/2018]</i>
224.	Art. 11, para 3	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	<b>GREEN</b> 3. Articles 5 to 8 of Directive 2001/29/EC and Directives 2012/28/EU and (EU) 2017/1564 shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1. <i>[identical text]</i>
225.	Art. 11, para 4	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.	4. The rights referred to in paragraph 1 shall expire <del>20</del> 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. <b><i>The right referred to in paragraph 1 shall not apply with retroactive effect.</i></b>	4. The rights referred to in paragraph 1 shall expire <del>20 years</del> <b>1 year</b> after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date o publication.	4. The rights referred to in paragraph 1 shall expire <del>20 years</del> <b>1 year</b> <b>[5 years]</b> after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date o publication. <i>[term of protection to be discussed at trilogue]</i>  Paragraph 1 shall not apply to press publications first

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					published before [entry into force of the Directive]. <i>[last sentence provisionally agreed at trilogue 03/12/2018]</i>
226.	Art. 11, para 4a		<i>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</i>		<i>[Remuneration of journalists (authors of the works contained in a press publication) to be discussed further at trilogue, possibly in context of the remuneration chapter]</i>
227.	Art. 11, para 5			<b>5. Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].</b>	<b>GREEN</b> <i>[integrated into paragraph 4; see last sentence in row 225 as provisionally agreed at trilogue 03/12/2018]</i>
228.	Art, 12, title	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>

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229.	Art. 12, sub-para 1 (EP)/ Art. 12, introductory part (Council)]	Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.	Member States <i>with compensation-sharing systems between authors and publishers for exceptions and limitations</i> 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, <i>provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015.</i>	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 <del>claim</del> <b>be entitled to</b> a share of:-  <i>[remaining part of this paragraph of the COM proposal was moved to new point (a) (see row 230)]</i>	<b>GREEN</b> 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 be entitled to a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.  <i>[provisionally agreed at trilogue 03/12/2018]</i>  <i>[to be read in conjunction with recital (36), as provisionally agreed at TM 04/12/2018, tbc at trilogue - see row 74]</i>
230.	Art. 12, point (a)			<b>(a)</b> the compensation for the uses of the work made under an exception or limitation to the	<b>GREEN</b> <i>[integrated into row 229]</i>

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				transferred or licensed right-; <b>and</b> <i>[See Parliament's subparagraph 1 of Article 12 (row 229)]</i>	<i>[provisionally agreed at trilogue 03/12/2018]</i>
231.	Art. 12, point (b)			<b><u>(b) the remuneration for public lending provided for in Article 6(1) of Directive 2006/115/EC.</u></b>	<b>GREEN</b> <i>Deleted</i> <i>[provisionally agreed at trilogue 03/12/2018]</i>
232.	Art. 12, sub-para 2		<i>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.</i>		<b>GREEN</b> The first paragraph shall be without prejudice to existing and future arrangements in Member States concerning public lending rights. <i>[provisionally agreed at trilogue 03/12/2018]</i> <i>[to be read in conjunction with recital (36), as provisionally agreed at TM 04/12/2018 to be confirmed at trilogue - see row 74]</i>



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233.			<i>CHAPTER 1a Protection of sport event organizers</i>		
234.	Art. 12a, title		<b>Article 12a</b> <i>Protection of sport event organizers</i>		
235.	Art. 12a		<i>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.</i>		
236.		CHAPTER 2 Certain uses of protected content by online services	CHAPTER 2 Certain uses of protected content by online services	CHAPTER 2 Certain uses of protected content by online services	CHAPTER 2 Certain uses of protected content by online services
237.	Art. 13, title	<i>Article 13 Use of protected content by information society service providers storing and giving access to large amounts of works and</i>	<i>Article 13 Use of protected content by <del>information society</del> <b>online content sharing</b> service providers storing and giving access to large amounts of works and</i>	<i>Article 13 Use of protected content by <del>information society</del> <b>online content sharing</b> service providers <del>storing</del></i>	<i>Article 13 Use of protected content by <b>online content sharing</b> service providers [storing and giving access to large amounts of works and other</i>

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		<i>other subject-matter uploaded by their users</i>	<i>other subject-matter uploaded by their users</i>		<i>subject-matter uploaded by their users]</i>  <i>[Article 13 to be further discussed at trilogue]</i>
238.	Art. 13, para 1	1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies,	1. <i>Without prejudice to Article 3(1) and (2) of Directive 2001/29/EC, online content sharing information society service providers that store and provide perform an act of communication to the public access to large amounts of works or other subject-matter uploaded by their users. They 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</i>	1. <b><u>Member States shall provide that an online content sharing service provider performs an act of communication to the public or an act of making available to the public when it gives the public access to copyright protected works or other protected subject matter uploaded by its users.</u></b>  <b><u>An online content sharing service provider shall obtain an authorisation from the rightholders referred to in Article 3(1) and giving access to large amounts of(2) of Directive 2001/29/EC in order to</u></b>	1. <b><u>Member States shall provide that an online content sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of this directive when it gives the public access to copyright protected works or other protected subject matter uploaded by its users.</u></b>  An online content sharing service provider shall therefore obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of Directive 2001/29/EC, [for instance by concluding a licencing agreement.] in

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		<p>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.</p>	<p><del>through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be</del> <i>therefore conclude fair 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. licensing agreements with right holders.</i></p>	<p><u>communicate or make available to the public works or other subject matter. Where no such authorisation has been obtained, the service provider shall prevent the availability on its service of those works and other subject-matter uploaded by matter, including through the application of measures referred to in paragraph 4. This subparagraph shall apply without prejudice to exceptions and limitations provided for in Union law.</u></p> <p><u>Member States shall provide that when an authorisation has been obtained, including via a licensing agreement, by an online content sharing service provider, this authorisation shall also cover acts of uploading</u></p>	<p>order to communicate or make available to the public works or other subject matter.</p> <p><i>[situation where no authorisation has been obtained, to be further discussed at trilogue]</i></p> <p>Member States shall provide that when an authorisation has been obtained, including via a licensing agreement, by an online content sharing service provider, this authorisation shall also cover acts carried out by users of</p>

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				<p><b><u>by the users of the service falling within Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis.</u></b></p> <p><i>[Last two sentences of COM proposal were moved to Council's paragraphs 5 and 6 respectively]</i></p>	<p>the services falling within Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis <b><u>or their activity does not generate significant revenues.</u></b></p> <p><i>[last sentence provisionally agreed at trilogue 03/12/2018;</i></p> <p><i>“significant revenues” to be clarified in a recital;</i></p> <p><i>Formulation on the relationships with Article 14 of ECD to be discussed including whether this issue should be dealt with in the Article or in a recital]</i></p>
239.	Art. 13, para 2 (EP)		<p>2. Member States shall ensure that the <b><i>Licensing agreements which are concluded by online content sharing</i></b> service providers <b><i>with right holders for the acts of communication</i></b> referred to</p>		<p><i>[Article 13 to be further discussed at trilogue]</i></p>

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			<p>in paragraph 1 <del>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.</del>, <i>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.</i></p> <p><i>[See Council's paragraph 1, subparagraph 3 (row 238)]</i></p>		
240.	Art. 13, para 2a (EP)		<p><i>2a. Member States shall provide that where right holders do not wish to conclude licensing agreements, online content sharing service providers and right</i></p>		<i>[Article 13 to be further discussed at trilogue]</i>

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			<i>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.</i>		
241.	Art. 13, para 2 / para 2b (EP)	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.	<b>2b.</b> <i>Members 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</i>	<i>[Paragraph 2 of the COM proposal was moved to new paragraph 7 of Council's text]</i>	<i>[Article 13 to be further discussed at trilogue]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><i>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</i></p>		

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			<p><i>of an exception or limitation to copyright rules.</i></p> <p><i>[See Council's Article 13(7) (row 252)]</i></p>		
242.	Art. 13, para 3 (EP)	<p>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.</p>	<p>3. <i>As of [date of entry into force of this directive], the Commission and the Member States shall facilitate where appropriate, the cooperation <b>organise dialogues</b> between the information society service providers and rightholders through stakeholder dialogues <b>stakeholders to harmonise and</b> 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</i></p>	<p><i>[See new paragraph 8 of Council's text]</i></p>	<p><i>[stakeholder dialogues were moved to row 253]</i></p>



	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><del>technological developments.</del> <i>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.</i></p>		
243.	Art. 13, para 3 (Council)			<p><b><u>3. When an online content sharing service provider performs an act of communication to the public or an act of</u></b></p>	<p><i>[Article 13 to be further discussed at trilogue]</i></p>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
				<b><u>making available to the public, it shall not be eligible for the exemption of liability provided for in Article 14 of Directive 2000/31/EC for unauthorised acts of communication to the public and making available to the public, without prejudice to the possible application of Article 14 of Directive 2000/31/EC to those services for purposes other than copyright relevant acts.</u></b>	
244.	Art. 13, para 4, introductory part			<b><u>4. In the absence of the authorisation referred to in the second subparagraph of paragraph 1, Member States shall provide that an online content sharing service provider shall not be liable for acts of communication to the</u></b>	<i>[Article 13 to be further discussed at trilogue]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
				<b><u>public or making available to the public within the meaning of this Article when:</u></b>	
245.	Art. 13, para 4, point (a)			<b><u>(a) it demonstrates that it has made best efforts to prevent the availability of specific works or other subject matter by implementing effective and proportionate measures, in accordance with paragraph 5, to prevent the availability on its services of the specific works or other subject matter identified by rightholders and for which the rightholders have provided the service with relevant and necessary information for the application of these measures; and</u></b>	<i>[Article 13 to be further discussed at trilogue]</i>

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246.	Art. 13, para 4, point (b)			<b><u>(b) upon notification by rightholders of works or other subject matter, it has acted expeditiously to remove or disable access to these works or other subject matter and it demonstrates that it has made its best efforts to prevent their users' future availability through the measures referred to in point (a).</u></b>	<i>[Article 13 to be further discussed at trilogue]</i>
247.	Art. 13, para 5, introductory part			<b><u>5. The measures referred to in point (a) of paragraph 4 shall be effective and proportionate, taking into account, among other factors:</u></b>	<i>[Article 13 to be further discussed at trilogue]</i>
248.	Art. 13, para 5, point (a)			<b><u>(a) the nature and size of the services, in particular whether they are provided by a microenterprise or a</u></b>	<i>[Article 13 to be further discussed at trilogue]</i>

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				<b><u>small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC, and their audience;</u></b>	
249.	Art. 13, para 5, point (b)			<b><u>(b) the amount and the type of works or other subject matter uploaded by the users of the services;</u></b>	<i>[Article 13 to be further discussed at trilogue]</i>
250.	Art. 13, para 5, point (c)			<b><u>(c) the availability and costs of the measures as well as their effectiveness in light of technological developments in line with the industry best practice referred to in paragraph 8.</u></b>	<i>[Article 13 to be further discussed at trilogue]</i>
251.	Art. 13, para 6			<b><u>6. Member States shall ensure that online content sharing service providers and rightholders cooperate</u></b>	

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				<p><b><u>with each other in a diligent manner to ensure the effective functioning of the measures referred to in point (a) of paragraph 4 over time. Online content sharing service providers shall provide rightholders, at their request, with adequate information on the deployment and functioning of these measures to allow the assessment of their effectiveness, in particular information on the type of measures used and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.</u></b></p>	<p>Member States shall provide that online content sharing service providers shall provide rightholders, at their request, with adequate information on the functioning of their practices with regard to <i>[reference to what will be decided on a possible mitigation mechanism]</i> and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.</p> <p><i>[transparency/reporting obligations provisionally agreed at trilogue 03/12/2018; other parts to</i></p>

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					<i>be further discussed at trilogue]</i>
252.	Art. 13, para 7			<p><b>7. ___ Member States shall ensure that <u>the measures referred to in paragraph 4 are implemented by the online content sharing service provider without prejudice to the possibility for their users to benefit from exceptions or limitations to copyright. For that purpose,</u> the service providers referred to in <del>paragraph 1</del> shall put in place <u>a</u> complaints and redress mechanisms that <del>are</del> <u>is</u> available to users of the service in case of disputes over the application of the measures referred to in <del>paragraph 1</del> <u>to their content. Complaints</u></b></p>	<i>[Article 13 to be further discussed at trilogue]</i>

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				<p><b><u>submitted under this mechanism shall be processed by the online content sharing service provider in cooperation with relevant rightholders within a reasonable period of time. Rightholders shall duly justify the reasons for their requests to remove or block access to their specific works or other subject matter. Member States shall endeavour to put in place independent bodies to assess complaints related to the application of the measures.</u></b></p> <p><i>[Paragraph 2 of the COM proposal, amended]</i></p>	
253.	Art. 13, para 8			<p><b><u>8. The Commission and the Member States shall encourage</u></b> stakeholder dialogues to define best practices <b><u>for</u></b></p>	[8.] As of [date of entry into force of this directive] the Commission in cooperation with the Member States shall organise stakeholder



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				<p><b><u>the measures referred to in point (a) of paragraph 4. Member States shall also endeavour to establish mechanisms to facilitate the assessment of the effectiveness and proportionality of these measures and provide the Commission regularly with information on those mechanisms. The Commission shall, in consultation with online content sharing service providers, rightholders and other relevant stakeholders and taking into account the results of the stakeholder dialogues and the national mechanisms, issue guidance on the application of the measures referred to in point (a) of paragraph 4.</u></b></p>	<p>dialogues to discuss best practices for the cooperation between the online content sharing service providers and rightholders. The Commission shall, in consultation with online content sharing service providers, rightholders, users associations and other relevant stakeholders and taking into account the results of the stakeholder dialogues, issue guidance on the application of Article 13 in particular regarding cooperation <i>[ref to exact para]</i>. When discussing the best practices, the need to balance the fundamental rights shall be taken into account. For the purpose of this stakeholders dialogue, users associations shall have access to adequate information from online content sharing service providers on the functioning</p>

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				<i>[Paragraph 3 of the COM proposal, reworded]</i>	of their practices with regard to paragraph <i>[ref. para on cooperation]</i> .  <i>[provisionally agreed at trilogue 03/12/2018; with exact wording provisionally agreed at TM tbc by trilogue]</i>
254.	Art. 13a, title		<i>Article 13a</i>		
255.	Art. 13a, sub-para 1		<i>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.</i>		
256.	Art. 13a, sub-para 2		<i>Member States shall establish or designate an impartial body with the necessary expertise, with the aim of helping the</i>		

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			<i>parties to settle their disputes under this system.</i>		
257.	Art. 13a, sub-para 3		<i>The Member States shall inform the Commission of the establishment of this body no later than (date mentioned in Article 21(1)).</i>		
258.	Art. 13b, title		<i>Article 13b Use of protected content by information society services providing automated image referencing</i>		
259.	Art. 13b		<i>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</i>		

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			<i>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.</i>		
260.				<b><u>TITLE IV</u></b> <b><u>MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT</u></b>	
261.		CHAPTER 3 Fair remuneration in contracts of authors and performers	CHAPTER 3 Fair remuneration in contracts of authors and performers	CHAPTER 3 Fair remuneration in <b><u>exploitation</u></b> contracts of authors and performers	<i>[to be discussed at political level]</i>
262.	Art. -14, title		<b><i>Article -14</i></b>		<i>[Article -14 to be further discussed at trilogue]</i>

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			<i>Principle of fair and proportionate remuneration</i>		
263.	Art. -14, para 1		<b>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.</b>		
264.	Art. -14, para 2		<b>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.</b>		

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265.	Art. -14, para 3		<b>3. Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.</b>		
266.	Art. -14, para 4		<b>4. Contracts shall specify the remuneration applicable to each mode of exploitation.</b>		
267.	Art. 14, title	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>
268.	Art. 14, para 1	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	1. Member States shall ensure that authors and performers receive on a regular basis, <b>not less than once a year</b> , and taking into account the specificities of each sector <b>and the relative importance of each individual contribution</b> , timely adequate and	1. Member States shall ensure that authors and performers receive on a regular basis, <b>at least once a year</b> , and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances	1. Member States shall ensure that authors and performers receive on a regular basis, <b>at least once a year</b> , and taking into account the specificities of each sector <b>[and the relative importance of each individual contribution]</b> , timely, [adequate and sufficient/ <b>up to date</b> ,

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		have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.	<del>sufficient</del> , <i>accurate, relevant and comprehensive</i> information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, <i>direct and indirect</i> revenues generated, and remuneration due.	from those to whom they have licensed or transferred their rights <u>or their successors in title</u> , notably as regards modes of exploitation, revenues generated and remuneration due.	<i>relevant and comprehensive</i> information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights <i>or their successors in title</i> , notably as regards modes of exploitation, <i>direct and indirect all(*)</i> revenues generated and remuneration due.  <i>[(*) subject to explicit reference to 'merchandising' as example of a possible form of covered revenues in the recitals (see recital (40a), row 92, and recital (42), row 95]</i>  <i>[yellow part depending on solution in Article 14(3)]</i>
269.	Art. 14, para 1a		<i>1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently</i>	<b><u>1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been</u></b>	1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed, authors and

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			<p><i>licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.</i></p>	<p><b><u>licensed to another party, authors and performers may, at their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart of the author or the performer.</u></b></p>	<p>performers <i>or their representatives shall</i>, at their request, receive <i>from sub-licensees</i> additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of paragraph 1.</p> <p><i>Where this information is requested, the first contractual counterpart of authors and performers shall provide information on the identity of those sub-licensees.</i></p> <p>Member States may provide that <i>any</i> such request to those <i>sub-licensees</i> is made directly or indirectly through the contractual counterpart of the author or the performer.</p> <p><i>[provisionally agreed at TM to be confirmed at trilogue]</i></p>



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270.	Art. 14, para 1a, sub-para 2		<i>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</i>		<b>Deleted</b> <i>[integrated into row 219, provisionally agreed at TM, to be confirmed at Trilogue]</i>

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			<p><i>information directly from the sub-licensee.</i></p> <p><i>[See Council's Article 14(1a) (row 269)]</i></p>		
271.	Art. 14, para 2	<p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.</p>	<p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate <b>a high</b> level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate <b>a high</b> level of transparency.</p>	<p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. <del>However, in those</del> <b>Member States may provide that in duly justified</b> cases where the administrative burden resulting from the obligation <b>in paragraph 1</b> would <del>become</del> disproportionate in view of the revenues generated by the exploitation of the work or performance, <del>Member States may adjust the obligation in paragraph 1, provided that</del> <b>is limited to</b> the obligation remains effective <del>types</del> and ensures</p>	<p><b>GREEN</b></p> <p>2. The obligation in paragraph 1 shall be proportionate and effective and shall <b>to</b> ensure an appropriate <b>a high</b> level of transparency in every sector. <b>Member States may provide that in duly justified</b> cases where the administrative burden resulting from the obligation <b>in paragraph 1</b> would <del>become</del> disproportionate in view of the revenues generated by the exploitation of the work or performance, the obligation <b>is limited to</b> the <b>types</b> and level of <b>information that can reasonably be expected in such cases.</b></p>

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				an appropriate level of transparency. <b><u>information that can reasonably be expected in such cases.</u></b>	[provisionally agreed at Trilogue 26/11/2018]
272.	Art. 14, para 3	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.	<i>Deleted</i>	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.	3. [Council: 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.]  [EP compromise proposal: <i>Member States may decide that in the case of authors and performers whose contribution is not significant having regard to the overall work or performance the obligation in paragraph 1 apply only on request of the author or performer.</i> ]  [to be discussed at trilogue]

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273.	Art. 14, para 3a			<b><u>3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.</u></b>	<b>GREEN</b> <i>3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they are comparable to the obligations /meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.</i>  <i>[provisionally agreed at rilogue 26/11/2018]</i>
274.	Art. 14, para 4	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 <b><i>or to collective bargaining agreements, where those</i></b>	4. Paragraph 1 shall not be applicable to <b><u>agreements concluded by</u></b> entities <del>subject to the transparency obligations established by</del> <b><u>defined in Article 3(a) and (b) of</u></b>	<b>GREEN</b> <i>4. When Article 18 of Directive 2014/26/EU is applicable, the obligation laid down in paragraph 1 shall not apply in respect of agreements concluded by</i>

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			<i>obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2.</i>	Directive 2014/26/EU: <u>or by other entities subject to the national rules implementing Directive 2014/26/EU.</u>	<i>entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/EU.</i>  <i>[provisionally agreed at Trilogue 03/12/2018, together with related wording of recital (41), row 94]</i>
275.	Art. 15, title	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>
276.	Art. 15, [para 1 (Council)]	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	Member States shall ensure, <i>in the absence of collective bargaining agreements providing for a comparable mechanism</i> , that authors and performers <i>or any representative organisation acting on their behalf</i> are entitled to request <i>claim</i> additional, appropriate <i>and fair</i>	<u>1.</u> 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 <u>or their successors in title</u> , when the remuneration originally agreed is <u>turns out to be</u>	<b>GREEN</b> 1. Member States shall ensure, <i>in the absence of an applicable collective bargaining agreement providing for a comparable mechanism</i> , that authors and performers <i>or their representatives</i> are entitled to <i>claim</i> additional, appropriate <i>and fair</i> remuneration from the party

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		compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.	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 <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances.  <i>[See Council's Article 15(1a) (row277)]</i>	disproportionately low compared to the subsequent relevant revenues and benefits derived from the <u>actual</u> exploitation of the works or performances.	with whom they entered into a contract for the exploitation of the rights or their successors in title, when the remuneration originally agreed turns out to be disproportionately low compared to <i>all</i> the subsequent relevant revenues and derived from the exploitation of the works or performances.  <i>[provisionally agreed at Trilogue 03/12/2018; as to revenues, see comment on Article 14(1), row 268]</i>
277.	Art. 15, para 1a			<b><u>1a. Members States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the</u></b>	<i>[Article 15(1a) Council's text deleted/incorporated into paragraph 1]</i>  <i>[provisionally agreed at trilogue 03/12/2018]</i>

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				<u>national provisions implementing the contract adjustment mechanism.</u>	
278.	Art. 15, para 2			<u>2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/EU.</u>	2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities <i>which are already</i> subject to the national rules implementing Directive 2014/26/EU. <i>[provisionally agreed at TM to be confirmed at trilogue]</i>
279.	Art. 16, title	<i>Article 16 Dispute resolution mechanism</i>	<i>Article 16 Dispute resolution mechanism</i>	<i>Article 16 Dispute resolution mechanism</i> <u>procedure</u>	<b>GREEN</b> <i>Article 16 Dispute resolution procedure</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>

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280.	Art. 16, [para 1 (Council)]	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. <i>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.</i>  [See Council's Article 16(2) (row 281)]	<u>1.</u> _____ 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.	<b>GREEN</b>  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. <i>Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors and performers.</i>  [provisionally agreed at Trilogue 26/11/2018]
281.	Art. 16, para 2		[See Parliament's Article 16 last phrase (row 280)]	<u>2.</u> _____ <b>Member States shall ensure that representative organisations of authors and performers,</b>	[Article 16(2) Council's text deleted/incorporated into paragraph 1]



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				<b><u>including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.</u></b>	<i>[provisionally agreed at Trilogue 26/11/2018]</i>
282.	Art. 16a (Council), title			<b><u>Article 16a</u></b> <b><u>Contractual provisions</u></b>	<b>GREEN</b> <b><u>Article 16a</u></b> <b><u><del>Contractual</del> Common provisions</u></b> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
283.	Art. 16a (Council)			<b><u>Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.</u></b>	<b>GREEN</b> <b><u>Member States shall ensure that any contractual provision which prevents the compliance with the provisions in <del>Articles 14 and 15</del> of this <del>Chapter(*)</del> Directive shall be unenforceable in relation to authors and performers.</u></b>

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					[(*) 'Chapter' refers to Articles 14,15 and 16, ie the provisions of the initial Commission proposal; see also recital (43a), row 99] [provisionally agreed at Trilogue 26/11/2018]
284.	Art. 16a (EP), title		<b>Article 16 a</b> <b>Right of revocation</b>		[Article 16a to be further discussed at trilogue]
285.	Art. 16a (EP), para 1		1. <b>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</b>		

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			<i>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.</i>		
286.	Art. 16a (EP), para 2		<i>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</i>		

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			<i>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.</i>		
287.	Art. 16a (EP), para 3		<i>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.</i>		

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288.	Art. 16a (EP), para 4		<b>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.</b>		
289.		TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS
290.	Art. 17, title	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>
291.	Art. 17, para 1	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:
292.	Art. 17, para 1, point (a)	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:
293.	Art. 17, para 1, point (a)	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as	"(b) where there is use for the sole purpose of illustration for teaching or scientific	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as	<b>GREEN</b> "(b) where there is use for the sole purpose of illustration for teaching or

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		long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];"	scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];"  <i>[ provisionally agreed at technical meeting of 13.11.2018]</i>
294.	Art. 17, para 1, point (b)	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:
295.	Art. 17, para 1, point (b)	"(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the	"(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial	"(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the	<b>GREEN</b> "(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without

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		non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4</b> of Directive [this Directive];"	prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4</b> of Directive [this Directive];"  <i>[provisionally agreed at technical meeting of 13.11.2018]</i>
296.	Art. 17, para 2	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:
297.	Art. 17, para 2, point (a)	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:
298.	Art. 17, para 2, point (a)	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and the	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the	<b>GREEN</b>  "(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the

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		limitation provided for in Directive [this Directive];"	exceptions and the limitation provided for in Directive [this Directive];"	<del>exceptions and the limitation</del> <u>exception</u> provided for in <u>Article 5 of</u> Directive [this Directive];"	<del>exception and the limitations</del> provided for in <del>Article 5 of</del> Directive [this Directive];" <i>[provisionally agreed at technical meeting of 13.11.2018]</i>
299.	Art. 17, para 2, point (b)	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:
300.	Art. 17, para 2, point (b)	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <u>Articles 3 and 4 of</u>	<b>GREEN</b> "(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <i>Articles 3 and 4 of</i>



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		Directive [this Directive];"		Directive [this Directive];"	Directive [this Directive];" <i>[provisionally agreed at technical meeting of 13.11.2018]</i>
301.	Art. 17, para 2, point (c)	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:
302.	Art. 17, para 2, point (c)	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;
303.	Art. 17, para 2, point (c)	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];

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		implement Directive [this Directive];	implement Directive [this Directive];	implement Directive [this Directive];	
304.	Art. 17, para 2, point (c)	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."
305.	Art. 17a, title		<i>Article 17 a</i>		<b>GREEN</b> <i>Article 17 a</i>
306.	Art. 17a		<i>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.</i>		<b>GREEN</b> <i>Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations set out in Directives 96/9/EC and 2001/29/EC, for uses or fields covered by the exceptions or limitations provided for in this Directive and on condition that their application does not adversely affect nor circumvent the mandatory rules set out in this Directive.</i>

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					<i>[provisional agreement at trilogue 25/10/2018 /26/11/2018; a recital should clarify that Article 17a does not allow MS to not implement the mandatory exceptions under this Directive]</i>
307.	Art. 18	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>
308.	Art. 18, para 1	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].
309.	Art. 18, para 2	2. The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)].	<i>Deleted</i>	2. <i>[Deleted]</i>	<i>(Deleted)</i>

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310.	Art. 18, para 3	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].
311.	Art. 19, title	<i>Article 19 Transitional provision</i>	<i>Article 19 Transitional provision</i>	<i>Article 19 Transitional provision</i>	<i>Article 19 Transitional provision</i>
312.	Art. 19	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].
313.	Art. 20, title	<i>Article 20 Protection of personal data</i>	<i>Article 20 Protection of personal data</i>	<i>Article 20 Protection of personal data</i>	<i>Article 20 Protection of personal data</i>
314.	Art. 20	The processing of personal data carried out within the framework of this Directive shall be carried	The processing of personal data carried out within the framework of this Directive shall be carried	The processing of personal data carried out within the framework of this Directive shall be carried	The processing of personal data carried out within the framework of this Directive shall be carried out in

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		out in compliance with Directives 95/46/EC and 2002/58/EC.	out in compliance with Directives 95/46/EC and 2002/58/EC.	out in compliance with Directives 95/46/EC and 2002/58/EC.	compliance with Directives 95/46/EC and 2002/58/EC.
315.	Art. 21, title	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>
316.	Art. 21, para 1	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ <del>12</del> 24 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ <b>12</b> ] <b>[24]</b> months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
317.	Art. 21, para 1, sub-para 2	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States

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		such reference is to be made.	such reference is to be made.	such reference is to be made.	shall determine how such reference is to be made.
318.	Art. 21, para 2	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
319.	Art. 22, title	<i>Article 22 Review</i>	<i>Article 22 Review</i>	<i>Article 22 Review</i>	<i>Article 22 Review</i>
320.	Art. 22, para 1	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

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321.	Art. 22, para 2	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.
322.	Art. 23, title	<i>Article 23 Entry into force</i>	<i>Article 23 Entry into force</i>	<i>Article 23 Entry into force</i>	<i>Article 23 Entry into force</i>
323.	Art. 23	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .
324.	Art. 24, title	<i>Article 24 Addressees</i>	<i>Article 24 Addressees</i>	<i>Article 24 Addressees</i>	<i>Article 24 Addressees</i>
325.	Art. 24	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.