



**2016/0280(COD)**

20.2.2017

## **DRAFT OPINION**

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council  
on copyright in the Digital Single Market  
(COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))

Rapporteur (\*): Catherine Stihler

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



## SHORT JUSTIFICATION

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

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

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

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

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

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

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

Regarding the exception to preservation of cultural heritage covered in Article 5, the Rapporteur proposes an ambitious expansion of the scope of this Article, introducing several new elements. First, the draft opinion proposes a modification of the exception to permit cultural heritage institutions and educational establishments to reproduce works and other

subject-matter permanently in their collections for the purposes of carrying out their public interest mission in preservation, research, education, culture and teaching.

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

### **Out of commerce works**

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

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

The Rapporteur believes that the introduction of a press publishers right under Article 11 lacks sufficient justification. It is true that publishers may face challenges when enforcing licensed copyrights, but this issue should be addressed via an enforcement regulation. Simple changes made to Article 5 of the Enforcement Directive 2004/48/EC, making it also applicable to press publishers, will provide the necessary and appropriate means to solve this matter. The Rapporteur believes that there is no need to create a new right as publishers have the full right to opt-out of the ecosystem any time using simple technical means. The Rapporteur is also concerned as to what effect the creation of this new right could have on the market, it is very likely that the addition of this right will add another layer of complexity to licensing deals. There is also no guarantee provided that any rise in publisher remuneration would flow through to authors. There are potentially more effective ways of promoting high-quality journalism and publishing via tax incentives instead of adding an additional layer of copyright legislation.

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

Regarding Article 13 (and corresponding recitals 37, 38 and 39) the Rapporteur believes that the current wording is incompatible with the limited liability regime provided for in Directive 2000/31/EC (Electronic Commerce Directive), a piece of legislation that has proven to be enormously beneficial for the internal market in the digital sphere. The Rapporteur firmly supports the notion that the value gap has to be addressed and emphasises that creators and rights holders are to receive a fair and balanced compensation for the exploitation of their works from online service providers. However, this should be achieved without negative impacts on the digital economy or internet freedoms of consumers. The current wording of Article 13 fails to achieve this. Stringent requirements outlined in the Article could act as a barrier to market entry for new and emerging businesses. It is also technologically specific

and the market may react by simply changing technical processes or designing new business models that defy this outlined mode of categorisation. The use of filtering potentially harms the interests of users, as there are many legitimate uses of copyright content that filtering technologies are often not advanced enough to accommodate.

## AMENDMENTS

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

### Amendment 1

#### Proposal for a directive

##### Recital 10

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### Amendment 2

#### Proposal for a directive

##### Recital 11

*Text proposed by the Commission*

(11) ***Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational***

*Amendment*

*deleted*

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

Or. en

### Amendment 3

#### Proposal for a directive Recital 14

##### *Text proposed by the Commission*

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to

##### *Amendment*

(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. ***In addition to the uneven application across Member States***, the scope of those exceptions or limitations as they apply to

whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in *digital* teaching activities, including online and across borders.

digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in *all* teaching activities, including online and across borders.

Or. en

#### Amendment 4

##### Proposal for a directive Recital 15

###### *Text proposed by the Commission*

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

###### *Amendment*

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education, *as well as organisations such as libraries and other cultural heritage institutions providing non-formal or informal education*, to the extent they pursue their educational activity for a non-commercial purpose. *In line with the Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training 'ET2020', the contribution of informal and non-formal education,*

*alongside formal education, should be recognised and developed in order to deliver the Union's objectives.* The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.

Or. en

## Amendment 5

### Proposal for a directive Recital 16

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 6

### Proposal for a directive

#### Recital 17

##### *Text proposed by the Commission*

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

##### *Amendment*

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

aware of the existence of such licensing schemes.

allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes.

Or. en

## Amendment 7

### Proposal for a directive

#### Recital 18

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

## Amendment 8

### Proposal for a directive

#### Recital 19

*Text proposed by the Commission*

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

*Amendment*

(19) Different approaches in the Member States for acts of **reproduction** by cultural heritage institutions **and educational establishments** hamper cross-border cooperation. **The collections of cultural heritage institutions, if not unique, are likely to be replicated and sit in other institutions, including those in other Member States. It is possible that cultural heritage institutions would also wish to create preservation networks cross borders, to use resources efficiently.**

Or. en

## Amendment 9

### Proposal for a directive Recital 20

*Text proposed by the Commission*

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

*Amendment*

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions **and educational establishments** to reproduce works and other subject-matter permanently in their collections for **the purpose of carrying out their public interest mission in preservation, research, education, culture and teaching**, for example to address technological obsolescence or the degradation of original supports **or for the purpose of digitisation.** Such an exception should allow for the making of copies **in any format or medium** at any point in the life of a work or other subject-matter **and** to the extent required **for such reproduction, including via partnerships with other institutions or third parties.**

Or. en

## Amendment 10

### Proposal for a directive Recital 21

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 11

### Proposal for a directive Recital 21 a (new)

*Text proposed by the Commission*

*Amendment*

***(21a) Cultural heritage institutions, and educational establishments have long been involved in making reproductions for individual researchers in their collections, upon their request and on an ad hoc basis. This serves to support and enrich an individual's scientific research, as a researcher who cannot travel to where a work or related subject matter is held is able to request that a reproduction be made for them in compliance with current Union rules on exceptions and limitations. Research, education and learning is increasingly taking place in a cross border environment. There is however a lack of clarity as to whether the existing exceptions or limitations in Member States provide for a cross-border***

*effect. This situation hampers scientific research and the development of the European Research Area. This legal uncertainty should be addressed, and researchers provided with a clear framework that allows them to request a cultural heritage institution, or educational establishment to make and supply them with a reproduction of a work or other subject matter for the purposes of their research, including in a cross border context.*

Or. en

## **Amendment 12**

### **Proposal for a directive Recital 21 b (new)**

*Text proposed by the Commission*

*Amendment*

*(21b) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC, are in place in a number of Member States in order to facilitate cultural heritage institutions, and educational establishments to give on site access to works and other subject-matter on the premises. Such arrangements exist as educational establishments and cultural heritage institutions are involved in preserving and giving access to their digital collections on the premises. Digital technologies provide new ways of giving access to those collections on the premises, such as secure WiFi networks and the use of technological protection measures. At the same time, the maturity of digital preservation requires cultural heritage institutions to preserve and give access not just to digitised analogue works and other subject matter, but also to born-digital materials. Member States should therefore be required to provide for an exception to permit cultural heritage*

*institutions, and educational establishments to give access to all digitised and born-digital collections, as long as such access is limited to access on the premises. Such an exception should allow copies to be delivered on any technology to members of the public while on the premises of the establishment.*

Or. en

## Amendment 13

### Proposal for a directive Recital 21 c (new)

*Text proposed by the Commission*

*Amendment*

*(21c) In its ruling in Case C-174/15, Vereniging Openbare Bibliotheken v Stichting Leenrecht<sup>1a</sup>, the Court of Justice recognised that the lending of e-books can fall under the same rules as the lending of physical books. When Member States apply the limitation to copyright in Article 6 of Directive 2006/115/EC of the European Parliament and of the Council<sup>1b</sup>, libraries are able to buy any physical book on the market. Once purchased, they can lend it without restrictions linked to contract terms or other measures of protection which prevent the exercise of exceptions and limitations to copyright. That provision should also apply to e-books. Moreover, with the objective of ensuring that all citizens of the Union have access to a full selection of books and other resources, all Member States should ensure that the limitation to the exclusive public lending right in Article 6 of Directive 2006/115/EC is made mandatory.*

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<sup>1a</sup> *Judgement of the Court of Justice of 10 November 2016, Vereniging Openbare Bibliotheken v Stichting Leenrecht,*

*ECLI:EU:C:2016:856.*

*<sup>1b</sup> Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28).*

Or. en

## Amendment 14

### Proposal for a directive Recital 22

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 15

### Proposal for a directive Recital 23

*Text proposed by the Commission*

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

*Amendment*

(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing ***cultural heritage institutions to disseminate their out-of-commerce collections***, in accordance to their legal traditions, practices or circumstances. ***However, it is essential that*** such mechanisms ***allow rightholders to exclude their works and*** can include extended collective licensing and presumptions of representation, ***and limitations and exceptions where no collective management organisations exist, collective management organisations are unable to achieve sufficient representativity or a collective management organisation is unable to offer adequate licenses to cultural heritage institutions for the types of works and other subject matter held in their collections.***

Or. en

## **Amendment 16**

### **Proposal for a directive Recital 25**

*Text proposed by the Commission*

(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and

*Amendment*

(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and

to facilitate the usability of those mechanisms, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.

to facilitate the usability of those mechanisms, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, *cultural heritage institutions*, users and collective management organisations when doing so.

Or. en

## Amendment 17

### Proposal for a directive Recital 26

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

## Amendment 18

### Proposal for a directive Recital 27

*Text proposed by the Commission*

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

*Amendment*

*deleted*

Or. en

## Amendment 19

### Proposal for a directive Recital 28

*Text proposed by the Commission*

(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions ***on the basis of the licensing mechanisms*** provided for in this Directive and the arrangements in place for all rightholders to exclude ***the application of licences to*** their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council<sup>33</sup>, the European Union

*Amendment*

(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions provided for in this Directive and the arrangements in place for all rightholders to exclude their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council<sup>33</sup>, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed

Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.

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<sup>33</sup> Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1–6).

by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.

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<sup>33</sup> Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1–6).

Or. en

## Amendment 20

### Proposal for a directive Recital 32

#### *Text proposed by the Commission*

(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. ***It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available***

#### *Amendment*

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

*to the public of press publications in respect of digital uses.*

Or. en

## **Amendment 21**

### **Proposal for a directive Recital 33**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

## **Amendment 22**

### **Proposal for a directive Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34)** *The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making*

*deleted*

*available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.*

Or. en

## **Amendment 23**

### **Proposal for a directive Recital 37**

*Text proposed by the Commission*

(37) Over the *last* years, *the functioning of the online content marketplace has gained in complexity*. Online services providing access to *copyright protected* content uploaded by their users without the involvement of *right holders* have flourished and have become *main* sources of access to content online. *This affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it.*

*Amendment*

(37) Over the years, online services providing access to content uploaded by their users without the involvement of *rightholders* have flourished and have become *important* sources of access to content online, *allowing for diversity and ease of access to content but also generating challenges when copyright protected content is uploaded without prior authorisation from rightholders.*

Or. en

## **Amendment 24**

### **Proposal for a directive Recital 38 – paragraph 1**

*Text proposed by the Commission*

Where information society service providers store and provide access to the

*Amendment*

Where information society service providers store and provide access to the

public to copyright protected works or other subject-matter uploaded by their users, *thereby going beyond the mere provision of physical facilities and performing an act of communication to the public, they are obliged to conclude licensing agreements with rightholders*, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council<sup>34</sup>.

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

public to copyright protected works or other subject-matter uploaded by their users, *they should conclude fair and balanced licensing agreements with rightholders in order to ensure fair and appropriate remuneration*, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council<sup>34</sup>.

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

Or. en

## Amendment 25

### Proposal for a directive Recital 38 – paragraph 2

*Text proposed by the Commission*

*In respect of Article 14, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefor.*

*Amendment*

*deleted*

Or. en

## Amendment 26

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

*Text proposed by the Commission*

*Amendment*

***In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users should take appropriate and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective technologies. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.***

***deleted***

Or. en

## **Amendment 27**

### **Proposal for a directive Recital 39**

*Text proposed by the Commission*

*Amendment*

***(39) Collaboration between information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users and rightholders is essential for the functioning of technologies, such as content recognition technologies. In such cases, rightholders should provide the necessary data to allow the services to identify their content and the services should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. The services should in particular provide rightholders with information on the type of technologies used, the way they are operated and their success rate for the recognition of***

***deleted***

*rightholders' content. Those technologies should also allow rightholders to get information from the information society service providers on the use of their content covered by an agreement.*

Or. en

## **Amendment 28**

### **Proposal for a directive Article 1 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## **Amendment 29**

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

*Text proposed by the Commission*

*Amendment*

**(2a) 'beneficiary' means any individual or entity, public or private, with lawful access to mine content;**

Or. en

## **Amendment 30**

### **Proposal for a directive Article 2 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### **Amendment 31**

#### **Proposal for a directive Article 3 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### **Amendment 32**

#### **Proposal for a directive Article 3 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### Amendment 33

#### Proposal for a directive Article 3 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

3. Rightholders shall ***not*** be allowed to apply measures to ***prevent or to hinder beneficiaries from benefiting from the exception provided for in paragraph 1, unless such measures are to*** ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted.

Or. en

### Amendment 34

#### Proposal for a directive Article 3 – paragraph 4

*Text proposed by the Commission*

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

*Amendment*

4. Member States shall encourage rightholders and ***beneficiaries*** to define commonly-agreed best practices concerning ***text and data mining protocols. Such best practice text and data mining protocols may be harmonised at Union level.***

Or. en

### Amendment 35

#### Proposal for a directive Article 4 – title

*Text proposed by the Commission*

Use of works and other subject-matter in

*Amendment*

Use of works and other subject-matter in

### Amendment 36

#### Proposal for a directive

#### Article 4 – paragraph 1 – introductory part

*Text proposed by the Commission*

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

*Amendment*

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

### Amendment 37

#### Proposal for a directive

#### Article 4 – paragraph 1 – point a

*Text proposed by the Commission*

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

*Amendment*

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

### Amendment 38

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

### Amendment 39

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

### Amendment 40

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

*Text proposed by the Commission*

*Amendment*

***No sooner than ... [three years after the date of entry into force of this Directive], and in consultation with all stakeholders, the Commission shall report on the***

*availability of such licenses, with a view to proposing improvements if needed.*

Or. en

#### **Amendment 41**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

#### **Amendment 42**

##### **Proposal for a directive Article 5 – title**

*Text proposed by the Commission*

***Preservation*** of cultural heritage

*Amendment*

***Reproduction by*** cultural heritage ***institutions and educational establishments, including cross-border activities***

Or. en

#### **Amendment 43**

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

*Text proposed by the Commission*

Member States shall provide for an

*Amendment*

Member States shall provide for an

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

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

Or. en

#### **Amendment 44**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### **Amendment 45**

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

*Text proposed by the Commission*

*Amendment*

##### ***Article 5a***

***Document delivery by cultural heritage institutions and educational establishments***

***1. Member States shall provide an exception 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)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, or educational establishments to make reproductions in any format or medium upon request, for the sole purpose of a person's scientific research or private study, as long as the source, including the author's name is indicated, unless inclusion of the name is impractical.*

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

Or. en

## **Amendment 46**

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

*Text proposed by the Commission*

*Amendment*

#### *Article 5b*

*Access for the purposes of research or private study on the premises of cultural heritage institutions or educational establishments*

*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 for the communication or making available of works and other subject matter contained in the collections of cultural heritage institutions, or educational establishments, for the purpose of research or private study, to members of the public on the premises of those institutions, or establishments.*

**2. Any contractual provision contrary to the exception set out in paragraph (1) shall be unenforceable.**

Or. en

## **Amendment 47**

### **Proposal for a directive Article 5 c (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 5c**

##### **Public lending of literary works**

- 1. Member States shall provide for a limitation to the rights provided in Article 1 of Directive 2006/115/EC in order to allow the lending of literary works in any format to the public, where such works have been legitimately acquired. This is without prejudice to the provisions of Articles 6(2) and 6(3) of Directive 2006/115/EC .**
- 2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.**
- 3. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, and Article 11(1) of this Directive, permitting libraries to make reproductions of literary works in order to facilitate public lending where the literary works have been legitimately acquired, but are not available in the format or medium required as part of the lending service.**
- 4. Member States, libraries, authors and publishers shall work together to ensure that libraries can acquire and lend on reasonable terms, including remotely, all commercially available literary works in any format, including digital, that have legally entered their collections or to which they have legal access. The**

*Commission shall report on progress towards this goal no later than two years after ... [date of entry into force of this Directive].*

Or. en

## **Amendment 48**

### **Proposal for a directive Article 7 – paragraph - 1 (new)**

*Text proposed by the Commission*

*Amendment*

**- 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow cultural heritage institutions to distribute, communicate to the public or make available out-of-commerce works or other subject-matter permanently in the collection of the institution for non-commercial purposes. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this paragraph before 22 December 2020.**

Or. en

## **Amendment 49**

### **Proposal for a directive Article 7 – paragraph - 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**- 1 a. When applying the exception or limitation Member States shall take due account of remuneration schemes to compensate for any unreasonable actions**

*contrary to the legitimate interests of rightholders, and ensure that all rightholders may at any time object to the use of any of their works or other subject-matter that are deemed to be out of commerce and be able to exclude the use of their works or other subject-matter.*

Or. en

## Amendment 50

### Proposal for a directive Article 7 – paragraph - 1 b (new)

*Text proposed by the Commission*

*Amendment*

*- 1 b. Acts which would otherwise be permitted under paragraph 1 shall not be permitted if valid licences from collective management organisations are available authorising the acts in question and the cultural heritage institution responsible for those acts knew or ought to have been aware of that fact.*

Or. en

## Amendment 51

### Proposal for a directive Article 7 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

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

A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter *is not available through customary channels in any form substitutable for the work permanently in the collection of a cultural heritage institution. Out of commerce works include both works that have previously been available commercially*

*and works that have never been commercially available.*

Or. en

## Amendment 52

### Proposal for a directive

#### Article 7 – paragraph 2 – subparagraph 2

##### *Text proposed by the Commission*

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

##### *Amendment*

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter *are out of commerce* do not extend beyond what is necessary and reasonable *and proportionate* 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.

Or. en

## Amendment 53

### Proposal for a directive

#### Article 7 – paragraph 3 – point b

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

## Amendment 54

### Proposal for a directive

#### Article 7 – paragraph 3 – point c

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 55

### Proposal for a directive

#### Article 7 – paragraph 4 – introductory part

*Text proposed by the Commission*

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:

*Amendment*

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

Or. en

## Amendment 56

### Proposal for a directive

#### Article 7 – paragraph 4 – point a

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 57

### Proposal for a directive Article 7 – paragraph 5

*Text proposed by the Commission*

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

*Amendment*

*deleted*

Or. en

## Amendment 58

### Proposal for a directive Article 8 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 59

### Proposal for a directive Article 8 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

2. Member States shall ensure that information that allows the identification of the works or other subject-matter **used** in accordance with Article 7 and information about the possibility of rightholders to object referred to in Article 7(2) **and (4)(c)** are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the

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.*

public or made available in *all* Member States.

Or. en

## Amendment 60

### Proposal for a directive Article 9 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 61

### Proposal for a directive Article 11

*Text proposed by the Commission*

*Article 11*

*Protection of press publications  
concerning digital uses*

*Amendment*

*deleted*

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

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

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

**4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.**

Or. en

#### *Justification*

*1) The introduction of a press publishers right is unnecessary as publishers are already protected by copyright law - based on transfers or licenses of the author's rights from the respective authors (journalists). It is true that publishers may face challenges when enforcing licensed copyrights. This issue should be addressed by an enforcement regulation. Changes made to the Enforcement Directive 2004/48/EC will provide the necessary and appropriate means to solve this matter 2) Publishers have the full right to opt-out of the engines' ecosystem any time using simple technical means 3) Potentially more effective ways of promoting high-quality journalism and publishing can be achieved via tax incentives instead of adding an additional layer of copyright legislation.*

#### **Amendment 62**

#### **Proposal for a directive Article 13 – title**

*Text proposed by the Commission*

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

*Amendment*

Use of ***copyright*** protected content ***uploaded by users of*** information society service providers

Or. en

**Amendment 63**

**Proposal for a directive  
Article 13 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Information society service providers that store and provide ***access*** to the public ***to copyright protected*** works or other subject-matter uploaded by their users shall ***achieve fair and balanced*** agreements ***in cooperation*** with rightholders ***governing such content in order to ensure fair and appropriate compensation for the stakeholders concerned, unless they are eligible for the liability exemption provided for in Article 14 of Directive 2000/31/EC. The implementation of such agreements shall respect the users' fundamental rights and shall comply with Article 15 of Directive 2000/31/EC.*** The service providers shall ***cooperate and work together with rightholders to ensure that the functioning and implementation of such agreements are full and transparent.***

Or. en

## Amendment 64

### Proposal for a directive Article 13 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 65

### Proposal for a directive Article 13 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers, **user representatives** and rightholders through stakeholder dialogues to define best practices **for the implementation of paragraph 1 in a manner that is proportionate and efficient.**

Or. en

## Amendment 66

### Proposal for a directive Article 13 a (new)

**Article 13 a**

***User Generated Content***

***Member States shall provide for an exception to the rights provided for in Articles 2, 3 and 4 of Directive 2001/29/EC, Article 5 and Article 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, Articles 7(1) and 8(1) of Directive 2006/115/EC and Article 11(1) of this Directive in order to allow natural persons to use an existing work or other subject matter in the creation of a new work or other subject-matter, and use the new work or other subject matter, provided that:***

- (a) the work or other subject-matter has already been lawfully made available to the public;***
- (b) the use of the new work is done solely for non-commercial purposes;***
- (c) the source - including, if available, the name of the author, performer, producer, or broadcaster - is indicated;***
- (d) there is a certain level of creativity in the new work which substantially differentiates it from the original work.***

Or. en

**Amendment 67**

**Proposal for a directive**

**Article 17 – paragraph 2 – point b a (new)**

Directive 2001/29/EC

Article 5 – paragraph 3 – point n

*Present text*

*Amendment*

“(n) use by communication or making

***(ba) In Article 5(3), point (n) is replaced by the following:***

“(n) use by communication or making

available, for the purpose of research or private study, to individual members of the public **by dedicated terminals** on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in **their** collections;”

available, for the purpose of research or private study, to individual members of the public on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in **such establishments’** collections;”

Or. en

## Amendment 68

### Proposal for a directive

#### Article 17 – paragraph 2 a (new)

Directive 2006/115/EC

Article 6 – paragraph 1

#### *Present text*

“1. Member States **may** derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain **a** remuneration for such lending. Member States shall be free to determine **this** remuneration taking account of their cultural promotion objectives.”

#### *Amendment*

**2a. Directive 2006/115/EC is amended as follows:**

**In Article 6, paragraph 1 is replaced by the following:**

“1. Member States **shall** derogate from the exclusive right provided for in Article 1 in respect of public lending, **in any format**, provided that authors obtain remuneration for such lending. Member States shall be free to determine **that** remuneration taking account of their cultural promotion objectives.”

Or. en