

**AMENDMENTS 001-086**

by the Committee on Legal Affairs

**Report****Axel Voss****A8-0245/2018**

Copyright in the Digital Single Market

Proposal for a directive (COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))

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**Amendment 1****Proposal for a directive****Recital 2***Text proposed by the Commission*

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

*Amendment*

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

European Union requires the Union to take cultural aspects into account in its action.

## Amendment 2

### Proposal for a directive

#### Recital 3

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

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

##### *Amendment*

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

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

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

### **Amendment 3**

#### **Proposal for a directive**

##### **Recital 4**

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

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council<sup>27</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>28</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>29</sup>, Directive 2009/24/EC of the European Parliament and of the Council<sup>30</sup>, Directive 2012/28/EU of the European Parliament and of the Council<sup>31</sup> and Directive 2014/26/EU of the European Parliament and of the Council<sup>32</sup>.

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

<sup>28</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167,

###### *Amendment*

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council<sup>27</sup>, Directive **2000/31/EC of the European Parliament and of the Council** <sup>27a</sup>, **Directive** 2001/29/EC of the European Parliament and of the Council<sup>28</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>29</sup>, Directive 2009/24/EC of the European Parliament and of the Council<sup>30</sup>, Directive 2012/28/EU of the European Parliament and of the Council<sup>31</sup> and Directive 2014/26/EU of the European Parliament and of the Council<sup>32</sup>.

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

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

<sup>28</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167,

22.6.2001, p. 10–19).

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

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

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

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

22.6.2001, p. 10–19).

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

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

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

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

## Amendment 4

### Proposal for a directive

#### Recital 5

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

(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research,

##### *Amendment*

(5) In the fields of research, **innovation**, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for **innovation**,

teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted.

scientific research, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of *innovation and* scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. ***Therefore, existing well-functioning exceptions in those fields should be allowed to continue to be available in Member States, as long as they do not restrict the scope of the exceptions or limitations provided for in this Directive.*** Directives 96/9/EC and 2001/29/EC should be adapted.

## Amendment 5

### Proposal for a directive Recital 6

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 6

### Proposal for a directive Recital 8

*Text proposed by the Commission*

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

**Amendment 7**

**Proposal for a directive  
Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

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

***(8a) For text and data mining to occur, it is in most cases necessary first to access information and then to reproduce it. It is generally only after that information is normalised that it can be processed***

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

## Amendment 8

### Proposal for a directive

#### Recital 10

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

(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

##### *Amendment*

(10) This legal uncertainty should be addressed by providing for a mandatory exception **for research organisations** to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques

going beyond the scope of that exception.  
***Research organisations should also benefit from the exception when they engage into public-private partnerships.***

which do not involve the making of copies going beyond the scope of that exception.  
***Educational establishments and cultural heritage institutions that conduct scientific research should also be covered by the text and data mining exception, provided that the results of the research do not benefit an undertaking exercising a decisive influence upon such organisations in particular. In the event that the research is carried out in the framework of a public-private partnership, the undertaking participating in the public-private partnership should also have lawful access to the works and other subject matter. The reproductions and extractions made for text and data mining purposes should be stored in a secure manner and in a way that ensures that the copies are only used for the purpose of scientific research.***

## **Amendment 9**

### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 10**

### **Proposal for a directive Recital 15**

*Text proposed by the Commission*

*Amendment*

(15) While distance learning and cross-

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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.

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

***Where cultural heritage institutions pursue an educational objective and are involved in teaching activities, it should be possible for Member States to consider those institutions as an educational establishment under this exception in so far as their teaching activities are concerned.***

## Amendment 11

### Proposal for a directive

#### Recital 16

##### *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***

##### *Amendment*

(16) The exception or limitation should cover digital uses of works and other subject-matter to support, enrich or complement the teaching, including the related learning activities. ***The exception or limitation of use should be granted as long as the work or other subject-matter used indicates the source, including the authors' name, unless that turns out to be impossible for reasons of practicability.*** The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during

*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.

examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means *where the teaching activity is physically provided, including where it takes place outside the premises of the educational establishment, for example in libraries or cultural heritage institutions, as long as the use is made under the responsibility of the educational establishment*, and online uses through the educational establishment's secure electronic *environment*, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

## Amendment 12

### Proposal for a directive Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 13

### Proposal for a directive Recital 17

*Text proposed by the Commission*

*Amendment*

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in

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

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

*uses under those exceptions or limitations. Member States should be encouraged to use systems that do not create an administrative burden, such as systems that provide for one-off payments.*

## **Amendment 14**

### **Proposal for a directive Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

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

*Justification*

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

## **Amendment 15**

### **Proposal for a directive Recital 18**

*Text proposed by the Commission*

*Amendment*

(18) An act of preservation may require a reproduction *of a work or other subject-matter in the collection of a cultural heritage institution* and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these

(18) An act of preservation *of a work or other subject-matter in the collection of a cultural heritage institution* may require a reproduction and consequently *require* the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these

new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation.

new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation *by such institutions*.

## Amendment 16

### Proposal for a directive Recital 19

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 17

### Proposal for a directive Recital 20

#### *Text proposed by the Commission*

(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 to reproduce works and other subject-matter permanently in their collections for preservation purposes, to address technological obsolescence or the degradation of original supports *or to insure works*. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, *in any format or medium*, in the required number, at any point in the life of a work or other subject-matter *and* to the extent required in order to produce a

copy for preservation purposes only. *The archives of research organisations or public-service broadcasting organisations should be considered cultural heritage institutions and therefore beneficiaries of this exception. Member States should, for the purpose of this exception, be able to maintain provisions to treat publicly accessible galleries as museums.*

## Amendment 18

### Proposal for a directive Recital 21

*Text proposed by the Commission*

(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 *of such works or other subject matter* are owned or permanently held by *those organisations*, for example as a result of a transfer of ownership, licence agreements, *a legal deposit or a long-term loan. Works or other subject matter that cultural heritage institutions access temporarily via a third-party server are not considered as being permanently in their collections.*

## Amendment 19

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

*Text proposed by the Commission*

*Amendment*

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

*subject-matter that such users might have altered, combined or otherwise transformed.*

## **Amendment 20**

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

*Text proposed by the Commission*

*Amendment*

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

*prejudice to the moral rights of the authors of the work or other subject-matter.*

## Amendment 21

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 22

### Proposal for a directive Recital 22

*Text proposed by the Commission*

*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. It is therefore necessary to provide for measures to facilitate the

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



*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.

provide for measures to facilitate the *use of* out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.

## Amendment 23

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

*Text proposed by the Commission*

*Amendment*

*(22a) Several Member States have already adopted extended collective licencing regimes, legal mandates or legal presumptions facilitating the licencing of out-of-commerce works. However considering the variety of works and other subject-matter in the collections of cultural heritage institutions and the variance between collective management practices across Member States and sectors of cultural production, such measures may not provide a solution in all cases, for example, because there is no practice of collective management for a certain type of work or other subject matter. In such particular instances, it is therefore necessary to allow cultural heritage institutions to make out-of-commerce works held in their permanent collection available online under an exception to copyright and related rights. While it is essential to harmonise the scope of the new mandatory exception in order to allow cross-border uses of out-of-commerce works, Member States should nevertheless be allowed to use or continue to use extended collective licencing arrangements concluded with cultural heritage institutions at national level for categories of works that are permanently in the collections of cultural heritage institutions The lack of agreement on the conditions of the licence should not be interpreted as a lack of availability of*

*licensing-based solutions. Any uses under this exception should be subject to the same opt-out and publicity requirements as uses authorised by a licensing mechanism. In order to ensure that the exception only applies when certain conditions are fulfilled and to provide legal certainty, Member States should determine, in consultation with rightholders, collective management organisations and cultural heritage organisations, and at appropriate intervals of time, for which sectors and which types of works appropriate licence-based solutions are not available, in which case the exception should apply.*

## Amendment 24

### Proposal for a directive Recital 23

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 25

### Proposal for a directive Recital 24

*Text proposed by the Commission*

(24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system

*Amendment*

(24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system

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

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

## Amendment 26

### Proposal for a directive

#### Recital 25

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

(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.

##### *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 ***the solutions on the use of out-of-commerce works introduced by this Directive***, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, ***cultural heritage institutions*** and collective management organisations when doing so.

## Amendment 27

### Proposal for a directive Recital 26

#### *Text proposed by the Commission*

(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.

## Amendment 28

### Proposal for a directive Recital 27

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Amendment*

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

## Amendment 29

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

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

## Amendment 30

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

#### *Amendment*

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

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

### **Amendment 31**

#### **Proposal for a directive Recital 30**

(30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms, ***this Directive requires*** Member States ***to*** set up a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The body should meet with the parties and help with the negotiations by providing professional and external advice. Against that background, Member States should decide on the conditions of the functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the ***bearing of the*** costs. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.

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

administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.

## Amendment 32

### Proposal for a directive Recital 30 a (new)

*Text proposed by the Commission*

*Amendment*

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

*online externally.*

### **Amendment 33**

#### **Proposal for a directive Recital 31**

*Text proposed by the Commission*

(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.

*Amendment*

(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. ***The increasing imbalance between powerful platforms and press publishers, which can also be news agencies, has already led to a remarkable regression of the media landscape on a regional level.*** In the transition from print to digital, publishers ***and news agencies*** of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.

### **Amendment 34**

#### **Proposal for a directive Recital 32**

*Text proposed by the Commission*

(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

*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 ***and thereby to guarantee the availability of reliable information.*** It is therefore necessary ***for Member States*** to provide at Union level legal protection for press



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

publications in *the Union for* digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses *in order to obtain fair and proportionate remuneration for such uses. Private uses should be excluded from this reference. In addition, the listing in a search engine should not be considered as fair and proportionate remuneration.*

## Amendment 35

### Proposal for a directive Recital 33

#### *Text proposed by the Commission*

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

## Amendment 36

### Proposal for a directive Recital 34

#### *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.

*Text proposed by the Commission*

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

*Amendment*

(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. **Member States** should be **able to** subject **those rights** to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.

**Amendment 37**

**Proposal for a directive**

**Recital 35**

*Text proposed by the Commission*

(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.

*Amendment*

(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. ***Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for licensing of their work to the press publisher, authors whose work is***

*incorporated in a press publication should be entitled to an appropriate share of the new additional revenues press publishers receive for certain types of secondary use of their press publications by information society service providers in respect of the rights provided for in Article 11(1) of this Directive. The amount of the compensation attributed to the authors should take into account the specific industry licensing standards regarding works incorporated in a press publication which are accepted as appropriate in the respective Member State; and the compensation attributed to authors should not affect the licensing terms agreed between the author and the press publisher for the use of the author's article by the press publisher.*

## Amendment 38

### Proposal for a directive Recital 36

#### *Text proposed by the Commission*

(36) Publishers, including those of press publications, books or scientific publications, *often* operate on the basis of *the transfer of authors' rights by means of contractual agreements or statutory provisions*. In this context, publishers make an investment with a view to the exploitation of the works *contained in their publications* and may *in some instances be* deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should be allowed to *determine that, when an author has transferred or licensed his rights to a publisher or*

#### *Amendment*

(36) Publishers, including those of press publications, books or scientific publications *and music publications*, operate on the basis of contractual agreements *with authors*. In this context, publishers make an investment *and acquire rights, in some fields including rights to claim a share of compensation within joint collective management organisations of authors and publishers*, with a view to the exploitation of the works and may *therefore also find themselves being* deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a *large* number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and *to* improve legal certainty for all concerned

*otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.*

*parties, Member States should be allowed to provide an equivalent compensation-sharing system if such a system was in operation in that Member State before 12 November 2015. The share between authors and publishers of such compensation could be set in the internal distribution rules of the collective management organisation acting jointly on behalf of authors and publishers, or set by Member States in law or regulation, in accordance with the equivalent system that was in operation in that Member State before 12 November 2015. This provision is without prejudice to the arrangements in the Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.*

## **Amendment 39**

### **Proposal for a directive Recital 36 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## Amendment 40

### Proposal for a directive Recital 37

*Text proposed by the Commission*

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

*Amendment*

(37) Over the last years, the functioning of the online content market has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to **copyright protected** content online. ***Online services are means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. However, although they allow for diversity and ease of access to content, they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders.*** This affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it, ***since some user uploaded content services do not enter into licensing agreements on the basis that they claim to be covered by the “safe-harbour” exemption set out in Directive 2000/31/EC.***

## Amendment 41

### Proposal for a directive Recital 37 a (new)

*Text proposed by the Commission*

*Amendment*

***(37a) Certain information society services, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter***

*uploaded by their users. The definition of an online content sharing service provider under this Directive shall cover information society service providers one of the main purposes of which is to store and give access to the public or to stream copyright protected content uploaded / made available by its users and that optimise content, including, amongst others, promoting displaying, tagging, curating, sequencing the uploaded works or other subject-matter, irrespective of the means used therefor, and therefore act in an active way. The definition of online content sharing service providers under this Directive does not cover service providers that act in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all rightholders concerned, such as educational or scientific repositories. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive.*

## Amendment 42

### Proposal for a directive Recital 38

*Text proposed by the Commission*

(38) *Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of communication to the public, they are obliged to conclude*

*Amendment*

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

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>.

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

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

exemption provided ***for*** in Article 14 of Directive 2000/31/EC.

***The rightholder should not be obliged to conclude licensing agreements.***

In respect of Article 14 ***of Directive 2000/31/EC***, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefore.

***Where licensing agreements are concluded, they should also cover, to the same extent and scope, the liability of users when they are acting in a non-commercial capacity.***

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

***In the absence of agreements with the rightholders, it is also reasonable to expect from online content sharing service providers that they take appropriate and proportionate measures leading to the non-availability on those services of copyright or related-right infringing works or other subject matter. Such service providers are important content distributors, thereby impacting on the exploitation of copyright-protected content. Such service providers should take appropriate and proportionate***

*measures to ensure the non-availability of works or other subject matter as identified by rightholders. These measures should however not lead to the non-availability of non-infringing works or other subject matter uploaded by users.*

## Amendment 43

### Proposal for a directive Recital 39

*Text proposed by the Commission*

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

*Amendment*

(39) *Cooperation* between *online content sharing* service providers and rightholders is essential for the functioning of *the measures*. *In particular*, rightholders should provide the *relevant information to online content sharing service providers* to allow *them* to identify their content *when applying the measures*. *The service providers* should be transparent towards rightholders with regard to the deployed *measures*, to allow the assessment of their appropriateness. *When assessing the proportionality and effectiveness of the measures implemented, due consideration should be given to technological constraints and limitations as well as to the amount or the type of works or other subject matter uploaded by the users of the services*. *In accordance with Article 15 of Directive 2000/31/EC, where applicable, the implementation of measures by service providers should not consist in a general monitoring obligation and should be limited to ensuring the non-availability of unauthorised uses on their services of specific and duly notified copyright protected works or other subject-matter*. *When implementing such measures, the service providers should also strike a balance between the rights of users and those of the rightholders under the Charter of Fundamental Rights of the European Union. The measures applied*



*should not require the identification of individual users that upload content and should not involve the processing of data relating to individual users, in accordance with Regulation (EU) 2016/679<sup>1a</sup> and Directive 2002/58/EC<sup>1b</sup>. Since the measures deployed by online content sharing service providers in application of this Directive could have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the content concerned is covered by an exception or limitation, online content sharing service providers should be required to offer a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. It should prescribe minimum standards for complaints to ensure that rightholders are given sufficient information to assess and respond to complaints. Rightholders or a representative should reply to any complaints received within a reasonable amount of time. The platforms or a trusted third party responsible for the redress mechanism should take corrective action without undue delay where measures prove to be unjustified.*

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

<sup>1b</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of

*privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).*

#### **Amendment 44**

##### **Proposal for a directive Recital 39 a (new)**

*Text proposed by the Commission*

*Amendment*

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

#### **Amendment 45**

##### **Proposal for a directive Recital 39 b (new)**

*Text proposed by the Commission*

*Amendment*

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

## Amendment 46

### Proposal for a directive Recital 39 c (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 47

### Proposal for a directive Recital 40

*Text proposed by the Commission*

*Amendment*

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker

contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of *adequate* information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers.

contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of *comprehensive and relevant* information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. *The information that authors and performers are entitled to expect should be proportionate and cover all modes of exploitation, direct and indirect revenue generated, including revenues from merchandising, and the remuneration due. The information on the exploitation should also include information about the identity of any sub-licensee or sub-transferee. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned.*

## Amendment 48

### Proposal for a directive Recital 42

#### *Text proposed by the Commission*

(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits derived from the exploitation of the work

#### *Amendment*

(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant *direct and indirect* revenues and the benefits derived from the

or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case *as well as of* the specificities and practices of the different content sectors. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case, the specificities and practices of the different content sectors *as well as of the nature and the contribution to the work of the author or performer. Such a contract adjustment request could also be made by the organisation representing the author or performer on his or her behalf, unless the request would be detrimental to the interests of the author or performer.* Where the parties do not agree on the adjustment of the remuneration, the author or performer *or a representative organisation appointed by them* should *on request by the author or performer* be entitled to bring a claim before a court or other competent authority.

## Amendment 49

### Proposal for a directive Recital 43

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 50

### Proposal for a directive Recital 43 a (new)

*Text proposed by the Commission*

*Amendment*

*(43a) When authors and performers license or transfer their rights, they expect their work or performance to be exploited. However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In such a case, and after a reasonable period of time has lapsed, authors and performers should have a right of revocation allowing them to transfer or license their right to another person. Revocation should also be possible when the transferee or licensee has not complied with his or her reporting/transparency obligation provided for in Article 14 of this Directive. The revocation should only be considered after all the steps of alternative dispute resolution have been completed, particularly with regard to reporting. As exploitation of works can vary depending on the sectors, specific provisions could be taken at national level in order to take into account the specificities of the sectors, such as the audiovisual sector, or of the works and the anticipated exploitation periods, notably providing for time limits for the right of revocation. In order to prevent abuses and take into account that a certain amount of time is needed before a work is actually exploited, authors and performers should be able to exercise the right of revocation only after a certain period of time following the conclusion of the license or of the transfer agreement. National law should regulate the exercise of the right of revocation in the case of works involving a plurality of authors or performers, taking into*

*account the relative importance of the individual contributions.*

## **Amendment 51**

### **Proposal for a directive Recital 43 b (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 52**

### **Proposal for a directive Recital 46**

*Text proposed by the Commission*

*Amendment*

(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with ***Directive 95/46/EC of the European Parliament and of the Council***<sup>35</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>36</sup> .

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

## **Amendment 53**

### **Proposal for a directive Recital 46 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 54**

### **Proposal for a directive**

#### **Article 1**

*Text proposed by the Commission*

#### Article 1

##### Subject matter and scope

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

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

*Amendment*

#### Article 1

##### Subject matter and scope

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

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

## **Amendment 55**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 1 – introductory part**

*Text proposed by the Commission*

(1) ‘research organisation’ means a

*Amendment*

(1) ‘research organisation’ means a



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

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

## Amendment 56

### Proposal for a directive

#### Article 2 – paragraph 1 – point 1 – point a

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 57

### Proposal for a directive

#### Article 2 – paragraph 1 – point 1 – subparagraph 2

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 58

### Proposal for a directive

#### Article 2 – paragraph 1 – point 2

*Text proposed by the Commission*

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

*Amendment*

(2) ‘text and data mining’ means any automated analytical technique ***which analyses works and other subject matter*** in digital form in order to generate information, ***including, but not limited to,*** patterns, trends and correlations.

## Amendment 59

### Proposal for a directive

#### Article 2 – paragraph 1 – point 4

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

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

##### *Amendment*

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

## Amendment 60

### Proposal for a directive

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

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

##### *Amendment*

***(4a) ‘out of commerce work’ means:***

***(a) an entire work or other subject matter in any version or manifestation that is no longer available to the public in a Member State through customary channels of commerce;***

***(b) a work or other subject matter that has never been in commerce in a Member State, unless, from the circumstances of that case, it is apparent that its author objected to making it available to the public;***

## Amendment 61

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

*(4b) ‘online content sharing service provider’ means a provider of an information society service one of the main purposes of which is to store and give access to the public to copyright protected works or other protected subject-matter uploaded by its users, which the service optimises. Services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all rightholders concerned, such as educational or scientific repositories, should not be considered online content sharing service providers within the meaning of this Directive. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive;*

## Amendment 62

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

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

*<sup>1a</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).*

## Amendment 63

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 64

### Proposal for a directive

#### Article 3

*Text proposed by the Commission*

*Amendment*

Article 3

Article 3

Text and data mining

Text and data mining

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

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

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

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

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

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

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

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

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

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

## **Amendment 65**

### **Proposal for a directive Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 3a*

##### *Optional exception or limitation for text and data mining*

*1. Without prejudice to Article 3 of this Directive, Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive*

*2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining, provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders, including by machine readable means.*

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

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

## Amendment 66

### Proposal for a directive Article 4

#### *Text proposed by the Commission*

##### Article 4

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

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

(a) takes place on the premises of an educational establishment or through a secure electronic *network* accessible only

#### *Amendment*

##### Article 4

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

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

(a) takes place on the premises of an educational establishment, *or in any other venue in which the teaching activity takes*

by the educational establishment's pupils or students and teaching staff;

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

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

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

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

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

*place under the responsibility of the educational establishment*, or through a secure electronic *environment* accessible only by the educational establishment's pupils or students and teaching staff;

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

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

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

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

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

*4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to paragraph 1 shall be unenforceable. Member States shall ensure that rightholders have the right to grant royalty-free licences authorising the acts*

*described in paragraph 1, generally or as regards specific types of works or other subject-matter that they may choose.*

## **Amendment 67**

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

*Text proposed by the Commission*

#### Article 5

##### Preservation of cultural heritage

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

*Amendment*

#### Article 5

##### Preservation of cultural heritage

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

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

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

## **Amendment 68**

### **Proposal for a directive Article 6**

*Text proposed by the Commission*

*Amendment*



## Article 6

### Common provisions

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

## Article 6

### Common provisions

**1. Accessing content covered by an exception provided for in this Directive shall not confer on users any entitlement to use it pursuant to another exception.**

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

## Amendment 69

### Proposal for a directive

#### Article 7

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

#### Article 7

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

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

(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-matter and of the rights

##### *Amendment*

#### Article 7

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

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

(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-matter and of the rights

which are the subject of the licence;

(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;

(c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.

which are the subject of the licence;

(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;

(c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.

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

***(a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;***

***(b) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the exception to their works or other subject-matter.***

***1b. Member States shall provide that the exception adopted pursuant to paragraph 1a does not apply in sectors or for types of works where appropriate licensing-based solutions, including but not limited to solutions provided for in paragraph 1, are available. Member States shall, in consultation with authors, other rightholders, collective management organisations and cultural heritage institutions, determine the availability of extended collective licensing-based solutions for specific sectors or types of works.***

***2. A work or other subject-matter shall be deemed to be out of commerce when***

***2. Member States may provide a cut-off date in relation to determining***

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

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

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

- (a) the deeming of works or other subject-matter as out of commerce;
- (b) *the* licence, and in particular its application to unrepresented rightholders;
- (c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;

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

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

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

*whether a work previously commercialised is deemed to be out of commerce.*

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

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

- (a) the deeming of works or other subject-matter as out of commerce;
- (b) *any* licence, and in particular its application to unrepresented rightholders;
- (c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 *and point (b) of paragraph 1a*;

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

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

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

headquarters or habitual residence, for cinematographic and audiovisual works; or

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

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

## Amendment 70

### Proposal for a directive Article 8

#### *Text proposed by the Commission*

##### Article 8

##### Cross-border uses

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

headquarters or habitual residence, for cinematographic and audiovisual works; or

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

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

#### *Amendment*

##### Article 8

##### Cross-border uses

1. **Out-of-commerce works** or other subject-matter covered by Article 7 **may be** used by the cultural heritage institution in accordance with **that Article** in all Member States.
2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by Article 7 and information about the possibility of rightholders to object referred to in **point (c) of Article 7(1) and point (b) of Article 7(1a)** are made **permanently, easily and effectively** accessible in a **public** single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, **or in the cases covered by Article 7(1a), where the cultural heritage institution is established** and for the whole duration of the licence.
3. The portal referred to in paragraph 2

shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

## Amendment 71

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

#### *Text proposed by the Commission*

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 licensing mechanisms referred to in Article 7(1) **and the exception referred to in Article 7(1a)**, ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

## Amendment 72

### Proposal for a directive Article 10

#### *Text proposed by the Commission*

#### Article 10

#### Negotiation mechanism

Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of rights, they may rely on the assistance of an impartial body with

#### *Amendment*

#### Article 10

#### Negotiation mechanism

Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of **audiovisual** rights, they may rely on the assistance of an impartial body

relevant experience. *That body* shall provide assistance with negotiation and help reach agreements.

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

with relevant experience. *The impartial body created or designated by the Member State for the purpose of this Article* shall provide assistance *to the parties* with negotiation and help *them to* reach agreement.

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

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

## Amendment 73

### Proposal for a directive Title III – Chapter 2 a (new) – Article 10 a (new)

*Text proposed by the Commission*

*Amendment*

#### **CHAPTER 2a**

#### **Access to Union publications**

#### **Article 10a**

#### **Union Legal Deposit**

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

*they publish, print or import in the Union.*

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

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

## Amendment 74

### Proposal for a directive Article 11

*Text proposed by the Commission*

#### Article 11

Protection of press publications concerning digital uses

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

2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of

*Amendment*

#### Article 11

Protection of press publications concerning digital uses

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

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

2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of

the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.

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

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

of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.

***2a. The rights referred to in paragraph 1 shall not extend to acts of hyperlinking.***

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

4. The rights referred to in paragraph 1 shall expire **5** years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.

***The right referred to in paragraph 1 shall not apply with retroactive effect.***

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

## **Amendment 75**

### **Proposal for a directive Article 12**

#### *Text proposed by the Commission*

##### Article 12

##### Claims to fair compensation

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

#### *Amendment*

##### Article 12

##### Claims to fair compensation

Member States ***with compensation-sharing systems between authors and publishers for exceptions and limitations*** may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the



the transferred or licensed right.

publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right, *provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015.*

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

## **Amendment 76**

### **Proposal for a directive**

#### **Title IV - Chapter 1 a (new) – Article 12 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **CHAPTER 1 a**

##### **Protection of sport event organizers**

##### **Article 12 a**

##### **Protection of sport event organizers**

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

##### *Justification*

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

## Amendment 77

### Proposal for a directive Article 13

*Text proposed by the Commission*

#### Article 13

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

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

*Amendment*

#### Article 13

Use of protected content by ***online content sharing service providers***

***-1. Without prejudice to Article 3(1) and (2) of Directive 2001/29/EC, online content sharing service providers perform an act of communication to the public and shall conclude fair and appropriate licensing agreements with rightholders, unless the rightholder does not wish to grant a license or licenses are not available. Licensing agreements concluded by the online content sharing service providers with rightholders shall cover the liability for works uploaded by the users of their services in line with terms and conditions set out in the licensing agreement, provided that those users do not act for commercial purposes or are not the rightholder or his representative.***

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

*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.*

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

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

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

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

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

2. *To prevent misuses or limitations in the exercise of exceptions and limitations to copyright*, Member States shall ensure that the service providers referred to in paragraph 1 put in place *effective and expeditious* complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. *Any*

*complaint filed under such mechanisms shall be processed without undue delay. The rightholders shall reasonably justify their decisions to avoid arbitrary dismissal of complaints.*

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

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

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

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

## **Amendment 78**

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

*Text proposed by the Commission*

*Amendment*

#### *Article 13a*

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

*Member States shall establish or*

*designate an impartial body with the necessary expertise, with the aim of helping the parties to settle their disputes under this system.*

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

## **Amendment 79**

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

*Text proposed by the Commission*

*Amendment*

#### **Article 13b**

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

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

## **Amendment 80**

### **Proposal for a directive Chapter 3 – Article -14 (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article -14**

*Principle of fair and proportionate remuneration*

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

## Amendment 81

### Proposal for a directive Article 14

*Text proposed by the Commission*

#### Article 14

##### Transparency obligation

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

*Amendment*

#### Article 14

##### Transparency obligation

1. Member States shall ensure that authors and performers receive on a regular basis, ***not less than once a year***, and taking into account the specificities of each sector ***and the relative importance of each individual contribution***, timely, ***accurate, relevant and comprehensive*** information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, ***direct and indirect*** revenues generated, and remuneration due.

*1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.*

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

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

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

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

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

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

*requirements comparable to those referred to in paragraph 2.*

## Amendment 82

### Proposal for a directive Article 15 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 83

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

*Text proposed by the Commission*

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

*Amendment*

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



## **Amendment 84**

### **Proposal for a directive Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 16 a**

##### ***Right of revocation***

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

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

*importance of the individual contributions.*

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

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

## **Amendment 85**

### **Proposal for a directive Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 17a*

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

## **Amendment 86**

### **Proposal for a directive Article 18 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

*deleted*