



2016/0280(COD)

4.9.2017

OPINION

of the Committee on Culture and Education

for the Committee on Legal Affairs

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

Rapporteur: Marc Joulaud

PA_Legam

SHORT JUSTIFICATION

Purpose and scope

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

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

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

Based on these observations, the Commission decided to preserve the existing rules, as they are still relevant, but to address the specific problems arising from the digital revolution, especially where there was a cross-border effect, by providing for mandatory exceptions designed to complement those in the InfoSoc Directive.

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

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

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

rightholders and set up proportional and adequate measures to protect the works concerned, in cooperation with rightholders.

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

Overall position of the Rapporteur

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

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

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

1. Provide legal certainty regarding the new exceptions and limitations

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

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

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

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

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

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

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

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

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

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

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

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

4. Allow authors and performers to effectively enforce their rights

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

AMENDMENTS

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

Amendment 1

Proposal for a directive Recital 3

Text proposed by the Commission

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

Amendment

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. ***It is essential that relevant legislation be future-proof so as not to restrict such technological developments.*** New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled ‘Towards a modern, more European copyright framework’²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. ***In this ever-changing digital environment, the Commission should investigate all possible measures to prevent the illegal use of copyright-protected visual and audiovisual content for commercial purposes, through embedding or framing techniques.*** ***In addition,*** this Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain

providers storing and giving access to user uploaded content and on the transparency of authors' and performers' contracts.

licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on rights in publications, on the use of works and other subject-matter by online service providers storing and giving access to user uploaded content and on the transparency of authors' and performers' contracts.

²⁶ COM(2015) 626 final.

²⁶ COM(2015) 626 final.

Amendment 2

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 3

Proposal for a directive

Recital 5

Text proposed by the Commission

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

Amendment 4

Proposal for a directive

Recital 9

Amendment

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

Text proposed by the Commission

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

Amendment 5

Proposal for a directive
Recital 10

Text proposed by the Commission

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

Amendment

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

Amendment

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***To prevent unjustified dissemination of the content necessary for text and data mining, research organisations should be allowed to store and preserve in a secure manner the reproductions of works or other subject matter obtained pursuant to the new exception, for the time needed to perform the research. Reproductions of***

works or other subject-matter made for the purpose of text and data mining should be deleted once all the activities necessary for the research have been carried out. Research organisations should also benefit from the exception when they *enter* into public-private partnerships, *provided that the text and data mining acts performed relate directly to the purpose of the research carried out in the partnership concerned. In the context of public-private partnerships, it is necessary that the copyright-protected works or other subject-matter used pursuant to the exception be lawfully acquired beforehand by the private sector partner.*

Amendment 6

Proposal for a directive Recital 12

Text proposed by the Commission

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

Amendment

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

Amendment 7

Proposal for a directive Recital 13

Text proposed by the Commission

(13) ***There is no need to provide for compensation for rightholders as regards***

Amendment

deleted

uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception the harm should be minimal.

Amendment 8

Proposal for a directive

Recital 14

Text proposed by the Commission

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

Amendment

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

Amendment 9

Proposal for a directive Recital 15

Text proposed by the Commission

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

Amendment

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

Amendment 10

Proposal for a directive Recital 16

Text proposed by the Commission

(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

Amendment

(16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works, ***with the exception of sheet music***, to support, enrich or complement the teaching, including the related learning activities. ***Member States should be allowed to set appropriate limits concerning the amount of certain categories of protected works or other subject-matter that can be used, as long as***

establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means *in the classroom* and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

such limits strike a fair balance between the needs and legitimate interests of users and rightholders. The use of the works or other subject-matter *or of extracts from them* under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments *or certified entities*, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means *in the setting in which the teaching and learning activities are carried out, including when outside the premises of the educational establishment or certified entity carrying them out*, and online uses through the educational establishment's *or certified entity's* secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

Amendment 11

Proposal for a directive Recital 17

Text proposed by the Commission

(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,

Amendment

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities,

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

the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, *for which licences are easily available*. In order to avoid *such a* mechanism *resulting* in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments *and entities certified to carry out a teaching activity* are aware of the existence of such licensing schemes. *In order to ensure the availability and accessibility of such licences for beneficiaries, Member States should use or develop appropriate tools, such as a single portal or database.*

Amendment 12

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) In order to guarantee legal certainty, in the event that a Member State decides to make the application of the exception subject to the availability of adequate licences, it is necessary to specify under which conditions an

educational establishment or an entity certified to carry out teaching activities may use protected works or other subject-matter under the exception and, conversely, when it should act under a licensing scheme. Therefore, when an educational establishment or a certified entity cannot find a licence covering the use of a given copyright-protected work or other subject-matter through the technical tool created by the Member State to ensure the visibility of licensing schemes covering use for teaching activities, it should be entitled to use such a work or other subject matter under the scope of the exception.

Amendment 13

Proposal for a directive Recital 20

Text proposed by the Commission

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

Amendment 14

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

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

Amendment 15

Proposal for a directive Recital 21 b (new)

Text proposed by the Commission

Amendment

(21b) Despite some overlap with existing exceptions or limitations, content uploaded or made available by a user that comprises short extracts or short quotations from protected works or other subject-matter, is not properly covered by the existing list of exceptions or limitations, nor can the question of how such content is used be solely addressed through contractual arrangements. Such circumstances create legal uncertainty for both users and rightholders, leading to frustration and abuses. It is therefore

necessary to complement the existing exceptions provided for in Directive 2001/29/EC, in particular those related to quotation and parody, by providing for a new specific exception to authorise the short, proportionate and non-commercial uses of extracts or quotations from protected works or other subject-matter within content uploaded by a user.

Amendment 16

Proposal for a directive Recital 21 c (new)

Text proposed by the Commission

Amendment

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

Amendment 17

Proposal for a directive Recital 21 d (new)

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

Amendment 18

Proposal for a directive

Recital 22

Text proposed by the Commission

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

Amendment

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

Amendment 19

Proposal for a directive

Recital 23

Text proposed by the Commission

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

Amendment 20

Proposal for a directive

Recital 24

Text proposed by the Commission

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

Amendment 21

Proposal for a directive

Recital 28 a (new)

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

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

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

Amendment 22

Proposal for a directive Recital 30

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

(30) To facilitate the licensing of rights in audiovisual works, ***relevant rights are consolidated with the producer by law or by contract. In order to promote cultural diversity and the availability of works on*** video-on-demand platforms, this Directive requires Member States to set up a ***facilitation*** mechanism, ***managed by an existing or newly-established national body***, allowing ***relevant*** parties willing to conclude an agreement ***for the licensing of audiovisual works to video-on-demand platforms*** to rely on the assistance of an impartial body. ***Where a negotiation involves parties from different Member States, they should agree beforehand on which Member State is to be competent in the event that the facilitation mechanism is required.*** The body should meet with the parties and ***facilitate*** the negotiations by

providing professional and external advice. Against that background, Member States should decide on the conditions of the functioning of the *facilitation* mechanism, including the timing and duration of the assistance to negotiations and *the division of any costs arising*. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the *facilitation* forum. *In order to encourage the continuous exploitation of audiovisual works on video-on-demand platforms, Member States should foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.*

Amendment 23

Proposal for a directive Recital 31

Text proposed by the Commission

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

Amendment 24

Proposal for a directive Recital 32

Text proposed by the Commission

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

Amendment 25

Proposal for a directive Recital 33

Text proposed by the Commission

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

Amendment

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

Amendment

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

such acts do not constitute communication to the public *under Directive 2001/29/EC*.

Amendment 26

Proposal for a directive Recital 34

Text proposed by the Commission

(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. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive. *The rights granted under this Directive should be without prejudice to authors' rights and should not apply to legitimate uses of press publications by individual users acting in a private and non-commercial capacity. The protection granted to press publications under this Directive should apply to content automatically generated by an act of hyperlinking related to a press publication without prejudice to the legitimate use of quotations.*

Amendment 27

Proposal for a directive Recital 35

Text proposed by the Commission

(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

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.

exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.

Member States should be allowed to provide that a fair share of remuneration derived from uses of press publishers' rights is attributed to journalists.

Amendment 28

Proposal for a directive Recital 36

Text proposed by the Commission

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

Amendment

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

the publisher to substantiate his claim should not exceed what is required under the system in place.

publisher to substantiate his claim should not exceed what is required under the system in place.

Amendment 29

Proposal for a directive Recital 37

Text proposed by the Commission

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

Amendment 30

Proposal for a directive Recital 38

(38) Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of communication to the public, they **are** obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴.

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

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

(38) Where information society service providers store and/or provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing **both** an act of communication to the public **and an act of reproduction**, they **should be** obliged to conclude **fair and balanced** licensing agreements with rightholders **that request such an agreement, in order to ensure the protection of rightholders' legitimate interests and their fair remuneration**, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴.

In respect of Article 14 **of Directive 2000/31/EC and eligibility for the liability exemption provided therein**, it is necessary to verify **the extent of the role played by the information society service provider**. **Where** the provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter, promoting them **or commercially exploiting them**, irrespective of the nature of the means used therefor, **the provider should no longer be considered to be merely hosting such content and should therefore be considered ineligible for the liability exemption**.

In order to ensure the functioning of any licensing agreement, **or, in the absence of such an agreement, to prevent the unauthorised making available on their service of works or other-subject matter identified by their rightholders**, information society service providers storing and/or providing access to the public to **significant** amounts of copyright protected works or other subject-matter uploaded by their users should take, **in cooperation with rightholders**, appropriate

the liability exemption provided in Article 14 of Directive 2000/31/EC.

and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective technologies, **and facilitate effective and transparent reporting to rightholders**. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC. **This obligation should not apply to online marketplaces.**

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

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

Amendment 31

Proposal for a directive

Recital 39

Text proposed by the Commission

(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

Amendment

(39) Collaboration between information society service providers storing and providing access to the public to **significant** amounts of copyright protected works or other subject-matter uploaded by their users and rightholders is essential **to ensure the effective** functioning of technologies, such as content recognition technologies. In such cases, rightholders should provide the necessary data to allow the services to identify their content, **such as reference files and metadata. They should deliver data in a timely fashion and in an appropriate format and those data should be complete and accurate.** The services should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. The services should in particular provide rightholders with information on the type of technologies used, the way they are operated and their

service providers on the use of their content covered by an agreement.

success rate for the recognition of rightholders' content. Those technologies should also allow rightholders to get information from the information society service providers on the use of their content covered by an agreement. ***When assessing the proportionality and effectiveness of the measures implemented, technological constraints and limitations should be taken into due consideration. Those technologies should not require the identification of individual users that upload content and should not involve the processing of data relating to individual users, in accordance with Directive 95/46/EC and Directive 2002/58/EC. They should be limited to preventing the unauthorised making available of specifically identified and duly notified works based on the information provided by rightholders and therefore should not lead to a general monitoring obligation.***

Amendment 32

Proposal for a directive Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) Since the measures and technologies deployed by information society services providers in application of this Directive could have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the concerned content is covered by an exception or limitation, information society service providers should be required to offer a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. It should prescribe minimum

standards for complaints to ensure that rightholders are given sufficient information to assess and respond to complaints. Rightholders should process any complaints received within a reasonable amount of time and take corrective action where measures prove to be unjustified. User-uploaded content stored or provided on an information society service can generate revenue, including when such content is affected by measures deployed by an information society service provider. While a dispute over user-uploaded content is being processed and resolved, such revenues should not be attributed or distributed to the user or the rightholder concerned, until the dispute has been resolved through the complaints and redress mechanism.

Amendment 33

Proposal for a directive Recital 39 b (new)

Text proposed by the Commission

Amendment

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

Amendment 34

Proposal for a directive Recital 40

Text proposed by the Commission

(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.

Amendment 35

Proposal for a directive Recital 41

Text proposed by the Commission

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

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

Amendment

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should **undertake appropriate consultation with** all relevant stakeholders as that should help determine sector-specific requirements **and establish standard reporting requirements and procedures accordingly, including through automated processing and the use of international identifiers**. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting

those are already subject to transparency obligations under Directive 2014/26/EU.

practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU, **or where existing collective bargaining agreements provide an equivalent level of transparency.**

Amendment 36

Proposal for a directive Recital 42

Text proposed by the Commission

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

Amendment

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

parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

Amendment 37

Proposal for a directive Recital 42 a (new)

Text proposed by the Commission

Amendment

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

Amendment 38

Proposal for a directive Recital 43

Text proposed by the Commission

Amendment

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

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

mechanism. *Such a mechanism should cater for individual or collective claims, brought either directly by the authors and performers concerned or through an organisation acting on their behalf. The mechanism should also be affordable.*

Amendment 39

Proposal for a directive Recital 43 a (new)

Text proposed by the Commission

Amendment

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

Amendment 40

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 41

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 42

Proposal for a directive

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

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

Amendment

(3) ‘cultural heritage institution’ means an ***entity whose main purpose is the protection and promotion of cultural heritage, specifically*** a publicly accessible library, museum, ***gallery***, an archive or a film or audio heritage institution;

Amendment 43

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

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

Amendment

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

(a) ***it occurs*** within a periodical or regularly-updated publication under a

single title, such as a newspaper or a general or special interest magazine;

(b) *its purpose is to provide* information related to news or other topics; and

(c) *it is* published in any media under the initiative, editorial responsibility and control of a service provider.

Amendment 44

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment 45

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment

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

Amendment 46

Proposal for a directive Article 3 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 47

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

Text proposed by the Commission

Amendment

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

Amendment 48

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

Text proposed by the Commission

Amendment

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

Amendment 49

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

Text proposed by the Commission

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

Amendment

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

Amendment 50

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

Text proposed by the Commission

Amendment

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

Amendment 51

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

Text proposed by the Commission

Amendment

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

Amendment 52

Proposal for a directive Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

1 are easily available *in* the market.

paragraph 1 are easily available *on* the market *and appropriate to the needs and specificities of educational establishments and entities certified to carry out teaching activities*.

Amendment 53

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

Text proposed by the Commission

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

Amendment

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

Amendment 54

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

Text proposed by the Commission

Amendment

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

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

available licences are listed and kept up-to-date on those tools.

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

Amendment 55

Proposal for a directive

Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

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

Amendment 56

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 57

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment 58

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

Text proposed by the Commission

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

Amendment 59

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

Text proposed by the Commission

Amendment

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

Amendment

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

Amendment

When a cultural heritage institution mandates a third party, including in another Member State, to perform, under its responsibility, an act of reproduction or digitisation for the purposes of the first subparagraph, the exception provided for in the first subparagraph shall be deemed to apply to that act of reproduction or digitisation, provided that all copies of the

works or other subject-matter are returned to the requesting cultural heritage institution or deleted.

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

Amendment 60

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

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

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

(a) relate to works or other subject-matter that have already been lawfully made available to the public;

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

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

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

3. *Information society service providers that store and/or provide to the public access to copyright-protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of communication to the public shall not be able to invoke for their benefit the exception provided for in paragraph 1 of this Article in order to limit their liability or the extent of their obligations under the agreements concluded with rightholders in application of Article 13 of this Directive.*

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

Amendment 61

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

Text proposed by the Commission

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

Amendment

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

Amendment 62

Proposal for a directive

Article 7 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 63

Proposal for a directive

Article 7 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 64

Proposal for a directive

Article 7 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 65

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 66

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

Text proposed by the Commission

Amendment

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

Amendment 67

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

Text proposed by the Commission

Amendment

In cooperation with the Member States, the Commission shall encourage the exchange of best practice across the

Union regarding any dialogue established pursuant to this Article.

Amendment 68

Proposal for a directive Article 10 – title

Text proposed by the Commission

Negotiation mechanism

Amendment

Support for the availability of audiovisual works

Amendment 69

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 70

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

Text proposed by the Commission

Amendment

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

relevant stakeholders.

Amendment 71

Proposal for a directive Article 11 – title

Text proposed by the Commission

Protection of press publications
concerning digital uses

Amendment

Protection of press publications

Amendment 72

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 73

Proposal for a directive Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 74

Proposal for a directive Article 11 – paragraph 4

Text proposed by the Commission

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

Amendment

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

the year following the date of publication.

publication.

Amendment 75

Proposal for a directive

Article 11 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Amendment 76

Proposal for a directive

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 77

Proposal for a directive

Article 13 – title

Text proposed by the Commission

Amendment

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

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

Amendment 78

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Information society service providers that store and/or provide to the public access to **copyright-protected** works or other subject-matter uploaded by their users, **thereby going beyond the mere provision of physical facilities and performing an act of communication to the public**, shall **conclude fair and balanced licensing agreements with any requesting rightholders. Under the terms of the agreements, such service providers shall**, in cooperation with rightholders, take measures to ensure the **effective and transparent** functioning of **the** agreements concluded with rightholders for the use of their works or other subject-matter.

Where, in the absence of a request from the rightholder, no licensing agreements are concluded pursuant to the first subparagraph, or where information society service providers that store significant amounts of copyright-protected works or other subject-matter and/or provide to the public access thereto are eligible for the liability exemption provided for in Article 14 of Directive 2000/31/EC, those providers shall take measures to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers.

Those measures, such as the use of effective content recognition technologies, shall be appropriate, proportionate **and compliant with the relevant industry**

standards. The service providers shall provide rightholders with adequate **and timely** information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the **rightholders'** works and other subject-matter.

Rightholders shall provide the information society service provider with the relevant and necessary data to allow the effective functioning of the measures deployed by the provider in accordance with this Article.

Amendment 79

Proposal for a directive Article 13 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 80

Proposal for a directive Article 13 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The complaints and redress mechanism established pursuant to the first subparagraph shall ensure that users and

rightholders have access to sufficient information on the relevant exceptions and limitations that may apply in relation to content affected by the measures referred to in paragraph 1.

Amendment 81

Proposal for a directive Article 13 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

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

Amendment 82

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

Text proposed by the Commission

Amendment

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

Amendment 83

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall facilitate,

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.

where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, *inter alia*, the nature of the services, the availability *and affordability* of the technologies and their effectiveness *in respect of the range of types of content and* in light of technological developments. *In cooperation with the Member States, the Commission shall encourage the exchange of best practice across the Union regarding the results of any cooperation established pursuant to paragraph 1 of this Article.*

Amendment 84

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 85

Proposal for a directive

Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Member States shall create or designate

an impartial body with relevant expertise to assist the parties in the resolution of their dispute under the mechanism provided for in the first subparagraph.

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

Amendment 86

Proposal for a directive Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

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

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

Amendment 87

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that authors and performers receive *on a regular basis* and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and

1. Member States shall ensure that authors and performers receive *at least once a year* and taking into account the specificities of each sector, timely, adequate, *accurate* and sufficient information on the exploitation *and*

performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.

promotion of their works and performances from those to whom they have *directly* licensed, *assigned* or transferred their rights, notably as regards modes of exploitation, *promotional activities undertaken*, revenues generated and remuneration due.

Amendment 88

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 89

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Amendment 90

Proposal for a directive

Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Amendment 91

Proposal for a directive

Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Amendment 92

Proposal for a directive

Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Unwaivable right to fair remuneration for authors and performers

1. *Member States shall ensure that where authors and performers transfer or assign the right of making available to the public their works or other subject-matter for their use on information society services that make available works or other subject-matter through a licensed catalogue, those authors and performers retain the right to obtain fair remuneration from such use.*

2. *Member States shall proscribe the waiving of the right of an author or performer to obtain fair remuneration for*

the making available of his or her work as described in paragraph 1. Paragraph 1 shall not apply where an author or performer grants a free non-exclusive right for the benefit of all users for the use of his or her work.

3. The administration of the right to fair remuneration for the making available of an author's or performer's work shall be entrusted to the respective collective management organisation. That collective management organisation shall collect the fair remuneration from information society services making works available to the public.

4. Where the right to fair remuneration has been already provided for in agreements relating to audiovisual works or in collective agreements, including voluntary collective management agreements, between the author or the performer and his or her contractual counterparty, the provisions in this Article shall be deemed to have been complied with.

Amendment 93

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 94

Proposal for a directive

Article 15 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may decide that the obligation in paragraph 1 is not to be applied when the contribution of the author or performer is not significant having regard to the overall nature of the work or performance.

Amendment 95

Proposal for a directive

Article 16 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 96

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

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

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

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

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

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

EPC
EBLIDA
IFLA
IFRRO
Communia
International Association of STM Publishers
SAA
ENPA
EMMA
CMS - Axel Springer
GESAC
CEPIC
Sacem
Audible Magic
IFPI
Avisa - Springer-Nature
IMPALA
FEP
SNE
Kreab - Soundcloud
Représentation permanente de la France auprès de l'Union européenne
NotaBene (YouTuber)
Dave Sheik (YouTuber)
La Tronche en Biais (YouTuber)
DanyCaligula (YouTuber)
Cabinet DN - RELX Group
News Media Europe
France Télévisions
IFJ

PROCEDURE – COMMITTEE ASKED FOR OPINION

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

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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

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

1	0
ENF	Dominique Bilde

Key to symbols:

+ : in favour

- : against

0 : abstention