



14.6.2017

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

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

Rapporteur (*): Catherine Stihler

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

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SHORT JUSTIFICATION

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

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

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

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

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

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

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

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

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

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

Out of commerce works

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

Protection of press publications concerning digital uses

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

Certain uses of protected content by online services

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

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

AMENDMENTS

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

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

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

Amendment

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

Amendment 2

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) Rapid technological developments continue to transform the way works and

Amendment

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

²⁶ COM(2015) 626 final.

Amendment 3

Proposal for a directive Recital 4

Text proposed by the Commission

other subject-matter are created, produced, distributed and exploited, **and relevant legislation needs to be future proof so as to not restrict technological development**. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'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 **and fair** marketplace for copyright, there should also be rules on the use of works and other subject-matter **on** online service providers and on the transparency of authors' and performers' contracts **and of the accounting deriving from the exploitation of protected works according to those** contracts.

²⁶ COM(2015) 626 final.

Amendment

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council²⁷, Directive 2001/29/EC of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹ and Directive 2014/26/EU of the European Parliament and of the Council³².

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

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19).

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

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

³¹ Directive 2012/28/EU of the European

(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council²⁷, Directive **2000/31/EC of the European Parliament and of the Council^{27a}**, **Directive 2001/29/EC** of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹ and Directive 2014/26/EU of the European Parliament and of the Council³².

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

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

²⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19).

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

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

³¹ Directive 2012/28/EU of the European

Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5–12).

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

Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012, p. 5–12).

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

Amendment 4

Proposal for a directive Recital 6

Text proposed by the Commission

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

Amendment

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

Amendment 5

Proposal for a directive Recital 8

Text proposed by the Commission

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies

Amendment

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or ***any other type of*** data, generally known as text and data mining.

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

Those technologies allow **the processing of** large amounts of **digitally stored** information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, **individuals, public and private entities who have legal access to content** are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. **No authorisation would be required in cases where text or data mining is** carried out in relation to mere facts or data which are not protected by copyright. **The right to read is in effect the same as the right to mine.**

Amendment 6

Proposal for a directive Recital 9

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

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 **text and data mining** technologies **which are relevant far beyond the area of** scientific research. Moreover, where access to content **has been lawfully obtained**, for example through subscriptions to

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.

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 ***and its action lines envisaged in the European Open Science Agenda*** will suffer unless steps are taken to address the legal uncertainty ***regarding text and data mining for all potential users. It is necessary that Union law acknowledge that text and data mining is increasingly used beyond formal research organisations and for purposes other than scientific research which nevertheless contribute to innovation, technology transfer and the public interest.***

Amendment 7

Proposal for a directive

Recital 10

Text proposed by the Commission

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

Amendment

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. ***An additional mandatory exception should give research organisations access to information in a format that enables it to be text and data mined. Research organisations should also benefit from the exception when they engage in public-private partnerships, provided that they reinvest their profits in research.*** The new ***exceptions*** 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.

Amendment 8

Proposal for a directive

Recital 11

Text proposed by the Commission

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

Amendment

(11) Research organisations across the Union encompass a wide variety of entities ***which carry out research, including the public sector and cultural heritage institutions***, the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.

Amendment 9

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) In view of a potentially high number of access requests to and

Amendment

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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.

downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security 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, **proportionate and effective** to pursue the objective of ensuring the security of the system and should not undermine the effective application of the exception **or impede the reproducibility of research results**.

Amendment 10

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The process of text and data mining includes downloading of protected works and other subject matter on a significant scale. Therefore the storage and copy of content should be strictly limited to what is necessary to verify results. Any copies stored should be deleted after a reasonable period of time, in order to avoid other uses not covered by the exception.

Amendment 11

Proposal for a directive Recital 14

Text proposed by the Commission

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

(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 12

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.

96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. In addition, 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 full legal certainty when using works or other subject-matter in ***all*** teaching activities, including online and across borders.

Amendment

(15) While distance learning, ***e-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 ***activities and*** establishments ***including those related to*** primary, secondary, vocational and higher education, ***as well as organisations involved in teaching activities, including in the context of non-formal or informal education recognised by a Member State,*** to the extent they pursue their educational activity for a non-commercial purpose. ***In line with the Council conclusions of 12 May 2009 on a***

strategic framework for European cooperation in education and training 'ET2020', the contribution of informal and non-formal education, alongside formal education, should be recognised and developed in order to deliver the Union's objectives. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.

Amendment 13

Proposal for a directive Recital 16

Text proposed by the Commission

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

Amendment

(16) The exception or limitation should cover **all** uses of works and other subject-matter, **digital or otherwise**, such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. **The notion of "illustration for teaching" is usually understood as the use of a work to give examples and to explain or support a course.** 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, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both **offline** uses **such as uses in the classroom or in organisations, such as libraries and other cultural heritage institutions involved in teaching activities** and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for

teaching.

Amendment 14

Proposal for a directive Recital 17

Text proposed by the Commission

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

Amendment

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on **extended collective** licensing agreements, are in place in a number of Member States in order to facilitate educational uses of **at least short parts or extracts** of works and other subject-matter. Such arrangements have usually been developed taking account of the **constraints set by the closed list of voluntary exceptions at Union level**, 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 **offline and online** uses and **particularly** cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. **Any other compensation mechanisms should be limited to cases where there is a risk of unreasonable prejudice to the legitimate interests of rightholders. In those cases Member States should be able to require compensation for the uses carried out under this exception.** This mechanism would, for example, allow giving precedence to licences for materials which

and that educational establishments are aware of the existence of such licensing schemes.

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 ***affordable, covering all uses allowed under the exception, and*** that educational establishments are aware of the existence of such licensing schemes.

Amendment 15

Proposal for a directive Recital 18

Text proposed by the Commission

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

Amendment

(18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of ***cultural heritage*** for future generations. Digital technologies offer new ways to preserve the heritage contained in ***the*** collections of ***cultural heritage institutions***, but they also create new challenges. ***One such challenge is the systematic collection and preservation of works which are not originally published by traditional analogue means, but originate in a digital form (so-called born-digital works). Whereas publishers in Member States are typically obliged to provide a reference copy of each published work to certain cultural heritage institutions for archiving purposes, such obligations often do not apply to born-digital works. In the absence of the provision of reference copies by the authors or publishers of born-digital works, cultural heritage***

institutions should be allowed to make reproductions of born-digital works at their own initiative whenever they are openly available on the internet, in order to add them to their permanent collections. Cultural heritage institutions also engage in making internal reproductions for many varying purposes including insurance, rights clearance, and loans. In view of these *possible* new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction.

Amendment 16

Proposal for a directive Recital 21

Text proposed by the Commission

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

Amendment

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

Amendment 17

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

Amendment

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

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.

have invested heavily in digitalizing their content and yet are facing problems in licensing the online use of their publications and recouping their investments. ***This is mainly as some news aggregators and search engines use press publisher's content without contracting licence agreements and without remunerating them fairly. Digital platforms such as new aggregators and search engines have developed their activities based on the investment by press publishers in the creation of content without contributing to its development. This poses a severe threat to the employment and fair remuneration of journalists and the future of media pluralism.*** 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 18

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

(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 ***print and*** digital uses.

Justification

As publishers invest in both print and digital forms of publications, their right should reflect this reality as it is already the case for other content producers under the current Directive 2001/29/EC.

Amendment 19

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

(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 ***a computation referencing or indexing system such as hyperlinking.***

Amendment 20

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***

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 ***and the rights of rental,***

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.

lending and distribution provided for in Directive 2006/115/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.

Amendment 21

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

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

Amendment 22

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) ***Evolution of digital technologies has led to the emergence of new business models and reinforced the role of the Internet as the main marketplace for the distribution of copyright protected content. Over the years, online services enabling their users to upload works and make them accessible to the public have flourished and have become important sources of access to content online, allowing for diversity and ease of access to content but also generating challenges when copyright protected content is uploaded without prior authorisation from rightholders.***

Amendment 23

Proposal for a directive Recital 37 a (new)

Text proposed by the Commission

Amendment

(37a) ***Today more creative content is being consumed than ever before. That is facilitated by online platforms and aggregation services. They are a means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. At the same time, artists and authors have struggled to see comparable increases in revenues from this increase in consumption. One of the reasons for this could be the lack of clarity regarding the status of these online services under e-commerce law. Consideration is to be made of how this process can function with more legal certainty and respect for all affected parties including artists and***

users and it is important to ensure transparency and a fair level playing field. The Commission should develop guidance on the implementation of the intermediary liability framework in order to allow online platforms to comply with their responsibilities and the rules on liability and in order to enhance legal certainty and increase user confidence.

Amendment 24

Proposal for a directive Recital 38 – paragraph 1

Text proposed by the Commission

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

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

Where information society service providers *offer users content storage services* and provide the public *with access to content and where such activity constitutes an act of communication to the public and is not of a merely technical, automatic and passive nature*, they *should be* obliged to conclude licensing agreements with rightholders *as regards copyright protected works or other subject-matter*, unless they are eligible for the liability *exemptions* provided in Directive 2000/31/EC of the European Parliament and of the Council³⁴ .

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 25

Proposal for a directive Recital 38 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Amendment 26

Proposal for a directive Recital 38 – paragraph 3

Text proposed by the Commission

Amendment

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

In order to ensure the functioning of any licensing agreement, information society service providers ***actively and directly involved in allowing users to upload, making works available and promoting works to the public*** should take appropriate and proportionate measures to ensure protection of works or other subject-matter. ***Such measures should respect the Charter of Fundamental Rights of the European Union and should not impose a general obligation on information society service providers to monitor the information which they transmit or store as referred to in Article 15 of Directive 2000/31/EC.***

Amendment 27

Proposal for a directive Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) For the implementation of such measures, the cooperation between information society service providers and rightholders is essential. Rightholders should accurately identify to information society service providers the works or other subject-matter in respect of which

*they claim to have the copyright.
Rightholders should retain responsibility
for claims made by third parties over the
use of works which they would have
identified as being their own in the
implementation of any agreement reached
with the information society service
provider.*

Amendment 28

Proposal for a directive Recital 39

Text proposed by the Commission

Amendment

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

deleted

Amendment 29

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

(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 *are* in a weaker contractual position when they grant licences or transfer their rights, they need *accurate* 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 *regular* sharing of adequate information by their *direct* contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. *The reporting and transparency obligation should follow the work across all form of exploitation and across borders.*

Amendment 30

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

Amendment

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector, *as well as the significance of the contribution by authors and performers to the overall work or performance* should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements *and standard reporting statements and procedures*. Collective bargaining should be considered as an option to reach an

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.

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 to **the extent that fully equivalent** transparency obligations **exist** under Directive 2014/26/EU.

Amendment 31

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) **Most** contracts for the exploitation of rights harmonised at Union level are of long duration, offering **very** 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 **of unexpected success** where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant **net direct and indirect** revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. **When assessing the disproportionality, the appropriate circumstances of each case, including the nature and significance of the contribution of the author or performer to the overall work or performance, should be taken into account.** 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 32

Proposal for a directive

Recital 43

Text proposed by the Commission

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

Amendment

(43) Authors and performers are often reluctant ***or unable*** to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an ***efficient*** alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism. ***It should also be possible to agree upon the dispute settlement resolution in collective agreements.***

Amendment 33

Proposal for a directive

Article 1 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 34

Proposal for a directive

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

Text proposed by the Commission

Amendment

(1a) 'educational establishment' means a school, college, university, or any other organisation the primary goal of which is to provide educational services:

(a) on a not-for-profit basis or by reinvesting all the profits in such provision; or

(b) pursuant to a public interest mission recognised by a Member State.

Amendment 35

Proposal for a directive Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

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

(2) 'text and data mining' means any automated analytical **or computational** technique aiming to analyse text and data **or other subject matter** in digital form in order to generate information, **including but not limited to** patterns, trends and correlations;

Amendment 36

Proposal for a directive Article 2 – paragraph 1 – point 3

Text proposed by the Commission

Amendment

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

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

Amendment 37

Proposal for a directive
Article 2 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) ‘user generated content’ means an image, a set of moving images or without sound, a phonogram, text, software, data, or a combination of the above, which is uploaded to an online service by its users;

Amendment 38

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

Text proposed by the Commission

Amendment

(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.

deleted

Amendment 39

Proposal for a directive
Article 2 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

(4a) ‘out of commerce work’ means a work or other subject-matter that is not available to the public through customary channels of commerce. Out of commerce

works include both works that have previously been available commercially and works that have never been commercially available.

Amendment 40

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 41

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 42

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Rightholders shall be allowed to apply **targeted, proportionate, reasonable and non-discriminatory** measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall **be reasonable and efficient**, not go beyond what is necessary to achieve that objective, **or unnecessarily hamper text and data mining**.

Amendment 43

**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. **The Commission, in cooperation with** 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 44

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

Text proposed by the Commission

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

Amendment

Use of works and other subject-matter in teaching **and educational** activities

Amendment 45

**Proposal for a directive
Article 4 – paragraph 1 – introductory part**

Text proposed by the Commission

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

Amendment 46

**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 47

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

Text proposed by the Commission

Amendment

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

Amendment

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

1a. Any contractual provision contrary to the exception set out in paragraph 1

shall be unenforceable.

Amendment 48

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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

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

Amendment

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

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

No sooner than ... [three years after the date of entry into force of this Directive], and in consultation with all stakeholders, the Commission shall report on the availability of such licenses, with a view to proposing improvements if needed.

Amendment 49

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

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

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.

the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State from where the educational establishment is established *or from where the educational activity originates.*

Amendment 50

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 51

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

Text proposed by the Commission

Amendment

4a. Member States shall ensure that the rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1, generally or as regards specific types of works of other subject-matter that they may choose.

Amendment 52

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

Member States shall provide for an

Amendment

Member States shall provide for an

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

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

Amendment 53

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

Text proposed by the Commission

Amendment

Member States shall recognise that once a work is in the public domain, that is to say copyright and related rights in a work have expired or never existed, faithful reproductions in full or in part of that work, regardless of the mode of reproduction and including digitisation, shall equally not be subject to copyright or related rights.

Amendment 54

Proposal for a directive Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

Freedom of panorama

Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of

Directive 2001/29/EC and point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, permitting the reproduction and use of works, such as works of architecture or sculpture, made to be located permanently in public places.

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

Amendment 55

Proposal for a directive Article 5 b (new)

Text proposed by the Commission

Amendment

Article 5b

User-generated content exception

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2, 3 and 4 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 13 of this Directive in order to allow for the digital use of quotations or extracts of works and other subject-matter comprised within user-generated content for purposes such as criticism, review, entertainment, illustration, caricature, parody or pastiche provided that the quotations or extracts:

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

(b) are accompanied by the indication of the 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

paragraph 1 shall be unenforceable.

Amendment 56

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

Access to content permitted by an exception or limitation shall not give the beneficiary of the exception or limitation the right to use the content concerned in the context provided for by another exception or limitation.

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

Amendment 57

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

provided that:

comply with this paragraph before 22 December 2020. When applying the exception or limitation Member States shall take due account of remuneration schemes to compensate for any unreasonable actions contrary to the legitimate interests of rightholders, and ensure that all rightholders may at any time object to the use of any of their works or other subject-matter that are deemed to be out of commerce and be able to exclude the use of their works or other subject-matter. Acts which would otherwise be permitted under paragraph 1 shall not be permitted if valid extended collective licencing solutions are available authorising the acts in question and the cultural heritage institution responsible for those acts knew or ought to have been aware of that fact. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management organisation, provided that:

Amendment 58

**Proposal for a directive
Article 7 – paragraph 2**

Text proposed by the Commission

2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, ***in all its translations, versions and manifestations***, is not available ***to the***

Amendment

2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, is not available through customary channels ***in any form suitable for the work***

public through customary channels of commerce **and cannot be reasonably expected to become so.**

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

permanently in the collection of a cultural heritage institution. Out of commerce works include both works that have previously been available commercially and works that have never been commercially available.

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter **are out of commerce** do not extend beyond what is necessary and reasonable and **proportionate** 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 59

Proposal for a directive Article 7 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 60

Proposal for a directive Article 7 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 61

Proposal for a directive

Article 7 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 62

Proposal for a directive

Article 7 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

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

Amendment 63

Proposal for a directive

Article 7 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Amendment 64

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 65

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 66

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

Amendment

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a

sector-specific basis, foster the relevance and usability of the **licensing** mechanisms referred to in Article 7(1), 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).

sector-specific basis, foster the relevance and usability of the mechanisms referred to in Article 7, **including resolving issues where cultural heritage institutions' activities in line with Articles 7 and 8 are not being reasonably enabled**, to ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, **to** assist in the establishment of the requirements referred to in the second subparagraph of Article 7(6).

Amendment 67

Proposal for a directive Title IV – Chapter 2 – title

Text proposed by the Commission

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

Amendment

Certain uses of protected content online

Amendment 68

Proposal for a directive Article 13 – title

Text proposed by the Commission

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

Amendment

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

Amendment 69

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. Information society service providers **that store** and provide **to** the

Amendment

1. **Where** information society service providers **offer users content storage**

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.*

services and provide the public with access to content and where such activity is not eligible for the liability exemptions provided for in Directive 2000/31/EC, they shall take appropriate and proportionate measures to ensure the functioning of *licensing* agreements concluded with rightholders. *The implementation of such agreements shall respect the fundamental rights of users and shall not impose a general obligation on information society service providers to monitor the information which they transmit or store, in accordance with Article 15 of Directive 2000/31/EC.*

Amendment 70

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

Text proposed by the Commission

Amendment

1a. For the purpose of ensuring the functioning of licensing agreements, as referred to in paragraph 1, information society service providers and rightholders shall cooperate with each other. Rightholders shall accurately identify to information society service providers the works or other subject-matter in respect of which they have the copyright. The information society service providers shall inform rightholders of the measures employed and the accuracy of their functioning as well as, when relevant, periodically report on the use of the works and other subject-matter.

Amendment 71

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 **in cooperation with rightholders** put in place complaints mechanisms that are available to users in case of disputes over the **implementation** of the **licensing agreements** referred to in paragraph 1.

Amendment 72

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

Text proposed by the Commission

Amendment

2a. Member States shall ensure that users have access to a court or another competent authority for the purpose of asserting their right of use under an exception or limitation and to appeal any restrictive measures agreed upon pursuant to paragraph 3.

Amendment 73

Proposal for a directive Article 13 – paragraph 3

Text proposed by the Commission

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, **such as** appropriate and proportionate **content recognition technologies, taking** into account, among

Amendment

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers **referred to in paragraph 1, user representatives** and rightholders through stakeholder dialogues to define best practices **for the implementation of paragraph 1. The measures undertaken**

others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

shall be appropriate and proportionate **and shall take** into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

Amendment 74

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that authors and performers receive on a regular basis and **no less than once a year and** taking into account the specificities of each sector, **in an open readable format, accurate,** timely, adequate and sufficient comprehensive information on the exploitation **and promotion** of their works and performances from those to whom they have licensed or transferred their rights, **including subsequent transferees or licensees,** notably as regards modes of **promotion,** exploitation, revenues generated and remuneration due.

Amendment 75

Proposal for a directive Article 14 – paragraph 2

Text proposed by the Commission

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

Amendment

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

transparency.

remains effective and ensures an appropriate level of transparency. **Member States shall ensure that sector-specific standard reporting statements and procedures are developed through stakeholder dialogues.**

Amendment 76

Proposal for a directive Article 14 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 77

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 78

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

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	IMCO 6.10.2016
Associated committees - date announced in plenary	19.1.2017
Rapporteur Date appointed	Catherine Stihler 11.10.2016
Discussed in committee	13.3.2017 24.4.2017
Date adopted	8.6.2017
Result of final vote	+: 19 -: 7 0: 6
Members present for the final vote	Dita Charanzová, Carlos Coelho, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Antonio López-Istúriz White, Morten Løkkegaard, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt
Substitutes present for the final vote	Lucy Anderson, Pascal Arimont, Lidia Joanna Geringer de Oedenberg, Kaja Kallas, Julia Reda, Marc Tarabella, Lambert van Nistelrooij, Sabine Verheyen
Substitutes under Rule 200(2) present for the final vote	Georges Bach, Peter Jahr, Markus Pieper

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
PPE	Pascal Arimont, Georges Bach, Carlos Coelho, Anna Maria Corazza Bildt, Peter Jahr, Antonio López-Istúriz White, Markus Pieper, Jiří Pospíšil, Róza Gräfin von Thun und Hohenstein, Lambert van Nistelrooij, Ivan Štefanec
S&D	Lucy Anderson, Nicola Danti, Lidia Joanna Geringer de Oedenberg, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Olga Sehnalová, Catherine Stihler, Marc Tarabella

7	-
ALDE	Dita Charanzová, Kaja Kallas
ECR	Daniel Dalton, Anneleen Van Bossuyt
ENF	Mylène Troszczynski
Verts/ALE	Julia Reda, Igor Šoltes

6	0
ALDE	Morten Løkkegaard
EFDD	Robert Jarosław Iwaszkiewicz
PPE	Sabine Verheyen
S&D	Evelyne Gebhardt, Virginie Rozière, Christel Schaldemose

Key to symbols:

+ : in favour

- : against

0 : abstention