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Subject: Proposal for a Directive of the European Parliament and of the Council on
copyright in the Digital Single Market
- Presidency compromise proposal regarding Articles 2 to 9

Delegations will find in the Annex a first compromise proposal drawn up by the Presidency, to be discussed at the meeting of the Working Party on Intellectual property (Copyright) on 22/23 May.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on copyright in the Digital Single Market

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

- (7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the rights granted to authors and to other rightholders under Union law. This protection should be maintained while ensuring that the use of technological measures does not prevent the enjoyment of the exceptions and the limitation established in this Directive, ~~which are particularly relevant in the online environment.~~ Rightholders should have the opportunity to ensure this through voluntary measures. They should remain free to choose the ~~format and the modalities to provide~~ **appropriate means of enabling** the beneficiaries of the exceptions and the limitation established in this Directive ~~with the means to benefit from them provided that such means are appropriate.~~ In the absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC, **including where works and other subject-matter are made available through on-demand services.**
- (8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information **with a view to gaining** new knowledge and ~~discover~~ **discovering** 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~~ **support** innovation. ~~However, in the Union,~~ **These technologies benefit** research organisations ~~such as universities and~~ **well as cultural heritage institutions, which may also carry out** research ~~institutes~~ **in the context of their main activities.** **However, in the Union, such organisations and institutions** 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.

(8a) 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.~~ **is required under copyright law. There may also be instances of text and data mining which do not involve acts of reproduction or where the reproductions made fall under the mandatory exception for temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29/EC, which should continue to apply to text and data mining techniques which do not involve the making of copies beyond the scope of that exception.**

- (9) Union law ~~already provides~~ **for** certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining.
- (10) This legal uncertainty should be addressed by providing for a mandatory exception to the **exclusive** right of reproduction and also to the right to prevent extraction from a database. ~~The new exception should be without prejudice to~~ **In line with** the existing mandatory exception ~~on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29~~ **European research policy**, which ~~should continue to apply to text and data mining techniques which do not involve~~ **encourages universities and research institutes to develop collaborations with** the making of copies ~~going beyond the scope of that exception.~~ ~~Research~~ **private sector,** **research** organisations should also benefit from the exception when ~~they engage into~~ **their research activities are carried out in the framework of** public-private partnerships. **While research organisations should remain the beneficiaries of the exception, they should be able to rely on their private partners for carrying out text and data mining, including by using their technological tools.**

(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. **The term "scientific research" within the meaning of this Directive covers both the natural sciences and the human sciences.** Due to the diversity of such entities, it is important to have a common understanding of ~~the beneficiaries of the exception~~ **research organisations. They should for example cover entities such as research institutes, universities, including university libraries, or other higher education institutions.** Despite different legal forms and structures, research organisations across **the** 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~~ **Conversely**, 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.

(11a) Research organisations and cultural heritage institutions, including the persons attached thereto, should be covered by the text and data mining exception regarding content to which they have lawful access. Lawful access should be understood as covering access to content through contractual arrangements, such as subscriptions, or through other legal means, for example based on open access policy.

- (12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, right holders should be allowed to apply measures ~~where~~**when** there is **a** risk that the security and integrity of ~~the system~~**their systems** or databases ~~where the works or other subject-matter are hosted would~~**could** be jeopardised. Those **Such measures could for example be used to ensure that only authorised persons can access their data, including through IP address validation or user authentication, or to prevent piracy. These** measures should ~~not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system~~**however remain proportionate to the risks involved** and should not undermine the effective application of the exception **prevent or make excessively difficult text and data mining carried out by researchers in a legitimate manner.**
- (13) ~~There~~**In view of the nature and scope of the exception, which is no need limited to entities carrying out scientific research on a non-for-profit basis or pursuant to a public interest mission, any potential harm to rightholders created through this exception should be minimal. Therefore, Member States should not** provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive ~~given that in view of the nature and scope of the exception the harm should be minimal.~~

- (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 **legal** 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.
- (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~~ **recognised by a Member State, including** primary, secondary, vocational and higher education. **It should apply only** to the extent ~~they pursue their educational activity for a~~ **that the uses are justified by the** non-commercial purpose ~~of the particular teaching activity.~~ The organisational structure and the means of funding of an educational establishment ~~are~~ **should** not **be** the decisive factors to determine the non-commercial nature of the activity.

(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.~~ **learning activities. Uses allowed under the exception or limitation should be understood to cover the specific accessibility needs of persons with a disability in the context of illustration for teaching. When implementing the exception or limitation, Member States should remain free to specify, for the different categories of works or other subject-matter, the proportion of a work or other subject-matter that may be used for the sole purpose of illustration for teaching.** 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 **or teaching activities taking place outside the premises of educational establishments**, 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.~~

(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~~ **rightholders make the licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes. Such measures may include the development of licensing schemes tailored to the needs of educational establishments and the development of information tools aimed at ensuring the visibility of the existing licensing schemes.**

(17a) Member States should remain free to provide that right holders receive fair compensation for the digital uses of their works or other subject-matter under the exception or limitation for illustration for teaching provided for in this Directive. For the purposes of determining the possible level of fair compensation, due account should be taken, inter alia, of Member States' educational objectives and of the harm to right holders.

- (18) An act of preservation ~~may require a reproduction~~ of a work or other subject-matter in the collection of a cultural heritage institution-, **educational establishment or public-service broadcasting organisation may require a reproduction** and consequently the authorisation of the relevant rightholders. ~~Cultural heritage institutions~~ **Such entities** 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.
- (19) Different approaches in the Member States for acts of preservation by cultural heritage institutions, **educational establishments or public-service broadcasting organisations** hamper cross-border cooperation and the sharing of means of preservation by ~~cultural heritage institutions~~ **such entities** in the internal market, leading to an inefficient use of resources.
- (20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions, **educational establishments or public-service broadcasting organisations** to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only.

(20a) The making of copies under this exception should be understood as including the making of copies by third parties acting on behalf of and under the responsibility of the beneficiaries.

- (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, **educational establishment or public-service broadcasting organisation** when copies are owned or permanently held by ~~the cultural heritage institutions~~ **such an entity**, for example as a result of a transfer of ownership or licence agreements.
- (22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use. It is therefore necessary to provide for measures to facilitate the licensing of rights in out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.
- (23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism, **such as extended collective licensing or presumption of representation**, allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the collective management organisation, in accordance ~~to~~ **with** their legal traditions, practices or circumstances. ~~Such mechanisms can include extended~~ **Member States should also have flexibility in determining the required representativeness of** collective licensing and presumptions of representation. **management organisations, as long as this is based on a significant number of rightholders in the relevant type of work or other subject-matter.**

- (24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such mechanisms to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.
- (25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, ~~sound recordings and audiovisual works,~~ **software, sound recordings and audio visual works, irrespective of whether they have ever been commercially available. When different versions or manifestations of a given work are available, such as subsequent editions of literary works, alternate cuts of cinematographic works or digital and printed formats of the same work, this work should not be considered out of commerce. Conversely, the commercial availability of other language versions of a literary work should not preclude the determination of the out-of-commerce status of a work in a given language.** In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.

(25a) When determining whether works and other subject-matter are out-of-commerce, a reasonable effort should be required to assess their availability to the public in the customary channels of commerce. Account should be taken not only of the immediate availability in the customary channels of commerce, but also of whether the work or other subject-matter can be reasonably expected to become available in the near future. A work-by-work assessment or a verification of availability across borders should only be required when this is considered reasonable.

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

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

(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences to their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council¹, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary ~~measures~~**means**, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.

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

TITLE I
GENERAL PROVISIONS

Article 2
Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) ‘research organisation’ means ~~a university, a research institute or any other organisation~~ **an entity**, the primary goal of which is to conduct scientific research or to ~~conduct scientific research and provide educational services~~ **involving also the conduct of scientific research**:
- (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or
 - (b) pursuant to a public interest mission recognised by a Member State;

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

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

- (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.

TITLE II
MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND
CROSS-BORDER ENVIRONMENT

Article 3

Text and data mining

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations **and cultural heritage institutions** 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.
2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.
3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.
4. Member States shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

Article 4

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

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, ~~Articles~~ **Article 5(a)** and **Article 7(1)** of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:
 - (a) takes place ~~on~~ **under** the ~~premises~~ **responsibility** of an educational establishment ~~or~~ **and, for online uses**, through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;
 - (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

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~~ **that rightholders make** the licences authorising the acts described in paragraph 1 **available and visible** for educational establishments.

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

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

Article 5

Preservation of cultural heritage

- 1.** Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, **educational establishments or public-service broadcasting organisations** 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.
- 2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.**

Article 6

Common provisions

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

TITLE III
MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS
TO CONTENT

CHAPTER 1
Out-of-commerce works

Article 7

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

1. Member States shall provide that ~~when a collective management organisation, on behalf of its members, concludes~~ **may conclude** a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the ~~digitisation~~ **reproduction**, 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~~ **irrespective of whether the** rightholders of the same category as those covered by the licence who are ~~not~~ **are** represented by the collective management organisation, provided that:
 - (a) the collective management organisation is, on the basis of mandates from rightholders, ~~broadly~~ representative of rightholders in the category **relevant type** of works or other subject-matter and of the rights which are the subject of the licence;
 - (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;
 - (c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce ~~and/or~~ exclude the application of the licence to their works or other subject-matter.

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

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the **specific** 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~~. **Such requirements shall** not preclude the possibility to determine the out-of-commerce status of a ~~collection~~ **set of works or other subject-matter** as a whole, when it is reasonable to presume that all works or other subject-matter ~~in the collection~~ are out of commerce.

3. Member States shall provide that appropriate publicity measures are taken ~~regarding~~, **in addition to those referred to in Article 8(2), starting from a reasonable period before the works or other subject-matter are used and relate to:**
- (a) the deeming of works or other subject-matter as out of commerce;
 - (b) the licence, and in particular its application to unrepresented rightholders;
 - (c) the ~~possibility~~ **possibilities** of rightholders ~~to object~~, referred to in point (c) of paragraph 1;

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

The appropriate publicity measures shall be taken in the Member State where the licence is sought. If there is evidence to suggest that the awareness of rightholders could be more efficiently raised in other Member States, such publicity measures shall also cover those Member States.

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

5. **This Article shall not apply to:**

- (a) ~~the works or phonograms were~~**other subject-matter** first published or, in the absence of publication, ~~where they were first broadcast~~ **in a third country**, except for cinematographic ~~and/or~~ audiovisual works;
- (b) ~~the~~**cinematographic or audiovisual works, the** producers of ~~the works~~**which** have their headquarters or habitual residence, ~~for cinematographic and audiovisual works; or~~ **in a third country**;
- (c) ~~the cultural heritage institution is established,~~ **works or other subject-matter of third country nationals** when a Member State or a third country could not be determined, after ~~a~~ reasonable ~~efforts~~**effort**, according to points (a) and (b).

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

Article 8

Cross-border uses

1. Works or other subject-matter covered by a licence granted in accordance with Article 7 may be used by the cultural heritage institution in accordance with the terms of the licence in all Member States.
2. Member States shall ensure that information ~~that allows~~**for the purposes of** the identification of the works or other subject-matter covered by a licence granted in accordance with Article 7, **information on the parties to the licence and the allowed uses**, and information about the ~~possibility~~**possibilities** 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~~**reproduced**, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of the licence.

3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

Article 9

Stakeholder dialogue

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).
