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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	WK 15629/2018, WK 421/2018, WK 422/2019
No. Cion doc.:	12254/16
Subject:	Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market - Update of negotiating mandate

I. INTRODUCTION

On 25 May 2018, COREPER granted the Presidency a mandate (9134/18) to start negotiations with the European Parliament (EP) on the above-mentioned proposal with a view to reaching a first reading agreement. The EP adopted its negotiating mandate on 12 September 2018 (11520/18).

Trilogue negotiations started on 2 October 2018. Four more trilogues (on 25 October, 26 November, 3 and 13 December 2018), as well as a number of technical meetings were held. The 6th political trilogue scheduled for 21 January 2019 is intended to be the final trilogue at which an overall compromise on the proposed Directive should be reached in order to allow for an adoption of the proposed Directive in the current legislative term.

In the negotiations held so far, provisional agreement has been achieved between the co-legislators on large parts of the proposed Directive (see green rows of the text set out in the 4th column of the 4-column table attached to this note). As always, this provisional agreement is based on the understanding that *"nothing is agreed until everything is agreed"*.

No final agreement could yet be reached on the following issues that will be the essential elements for a final compromise:

- remaining open issues in **Article 11** (non-substantial parts ("snippets") of press publications, term of protection, and authors' participation in the remuneration of press publishers);
- remaining open issues in **Article 13** (in particular the mitigation of liability, stay down, treatment of user generated content uploaded by users (UGC), and the treatment of micro and small and medium sized enterprises);
- **Article minus 14** (appropriate and proportionate remuneration),
- **Article 16a** of the EP text (revocation right);
- **Article 3a** (optional or mandatory nature).

Taking into account the discussions held with Copyright Attachés on 9 and 15 January 2019, the Presidency has prepared compromise proposals on all those matters (see part II of this note), which will be the core elements of a final compromise package. The Presidency asks COREPER to provide a mandate as flexible as possible on those issues so that an overall compromise can be achieved at the upcoming trilogue.

As the trilogue on 21 January 2019 is intended to be the final one, also other remaining issues (still in yellow in the 4-column table), and the text of the recitals need to be agreed. To prepare for the trilogue on those other issues and the recitals, a technical meeting was held with the EP on 17 January 2019 in the evening. The Presidency will report the results of this technical meeting to COREPER orally.

II. PRESIDENCY SUGGESTIONS

(a) Press publisher's rights (Article 11)

With a view to bridging the differences between the EP's and the Council's position on the highly controversial issue of the treatment of insubstantial parts ("snippets") of press publications, the Presidency asks COREPER whether it could accept, in a spirit of compromise, going into the direction of a moderate quantitative approach that would take a middle way between the Council mandate and the EP text and exclude from the protection of the press publishers' right "individual words and very short extracts of a press publication" (see the compromise wording in the second subparagraph of Article 11(1), row 219). Under the Presidency proposal, this compromise would be accompanied by recital language along the lines of the revised wording in recital (34a), row 72.

As to Article 11(4a) on the authors share of press publishers' remuneration, the compromise text as prepared at the 5th trilogue was not changed (see row 226), which is accompanied by recital (35), row 226).

As regards the term of protection, the Presidency asks COREPER to grant it with the flexibility for going up to two years (Article 11(4), row 225), if this is required to achieve an overall compromise with the EP.

(b) Value gap (Article 13)

The Presidency compromise proposal on Article 13 took as starting point the text prepared at the 5th trilogue (WK15629/18, row 237A).

Based on the Member States comments at the Attachés meetings on 9 and 15 January, the Presidency brought the provisions on the mitigation of liability (Article 13(4)) and stay down (previous Article 13(6)), closer to the Council mandate adopted by COREPER in May 2018. This revised text of Article 13(4a) and (4a) as set out in row 237A of the 4-column document annexed to this note, and highlighted in grey shade) was broadly supported by delegations. To address remaining concerns expressed by delegations on Attachés level, some adaptations were introduced in the recitals (38d) and (39a) (see the text changes highlighted in grey shade in rows 85 and 87). In particular, recital (38d) now explicitly clarifies that uploads by users are covered by the scope of the authorisations given to the online content sharing services. And, in order to clarify that no 'double licencing'/'double payment' is required, this recital also clarifies that any authorisation that users

obtained for sharing copyright protected content on such platforms also authorises the communication to the public by the platform.

To address the divergent views expressed on the UGC, the Presidency proposes as a compromise a closed list of exceptions based on the existing exceptions under the Infor-Soc Directive 29/2001/EC (see changes made to Article 13(5), row 237A, and the related recital (39a), row 87).

As to the treatment of SMEs, Member States had diverging views on the question as to whether there should be a carve-out in the definition of 'online content sharing service provider' in Article 2(5), or whether the size of the platform should only be taken into account in the proportionality criterion in the duty of care requirement of Article 13(4a). With a view to being able to go into direction of the EP on this point, the Presidency asks Member States for their utmost flexibility towards a carve out in Article 2(5). Taking up the suggestion of some Member States this could be combined with addressing this carve-out in the review clause (Article 22).

(c) Remuneration Chapter

As a result of the trilogue on 13 December 2018, proposals for compromise texts on Article minus 14 (principle of fair remuneration) and Article 16a (revocation right) emerged, which are very much in line with the texts that were presented to COREPER on 12 December 2018.

The Presidency is conscious of the fact that accepting these two provisions would be a very large step for the Council and, as Member States have emphasised at various occasions, can only be given to the EP as concession if, in return, concessions of equal importance are made by the EP, in particular on Articles 11 and 13.

(i) Article minus 14 (principle of fair remuneration)

For being able to go into the direction of the EP on this point in the context of an overall final compromise, the Presidency asks COREPER to confirm its acceptance for the wording of Article minus 14 as set it in rows 262 to 266 of the 4th column, including the term "proportionate" (in addition to the term "appropriate") remuneration, and to support the recitals in row 90 clarifying that the principle does not prevent licencing for free (see horizontal recital (43b)) or lump sum remuneration (recital (39y)). To address delegations' comments, adaptations have been made to that recital, in particular to further clarify the aspects that can/should be taken in account for considering a lump sum payment as a "proportionate" remuneration (see the text changes highlighted in grey shade in row 90).

(ii) Article 16a (revocation right)

For being able to go into the direction of the EP on this point in the context of an overall final compromise, the Presidency asks COREPER to confirm its acceptance for a revocation right in situations of absence of exploitation on the basis of the wording for Article 16a as set it in rows 284 and 288 of the 4th column, including the paragraphs 4 and 5 in row 288, and the related recital (43a), row 97. As is clear from the COREPER mandate given in December 2018, the Presidency will not accept a revocation right for lack of reporting.

On the basis of the discussions at Attachés level, recital (43a) was slightly adapted to clarify that the legitimate interests of licensees and transferees should also be taken into account when setting the procedures and possible time frames for the revocation mechanism (see text highlighted in grey shade in row 97).

(iii) Other changes

- On the basis of the discussions at Attachés level, a new horizontal recital (39x) relating to the whole remuneration Chapter was added to clarify that the Chapter applies only to exploitation contracts (see row 90).
- **Exclusion of software developers:** In the discussions at COREPER and Attachés level the suggestion was made to exclude software developers from the remuneration Chapter, arguing that software developers were typically subject to different contract models than artists and performers, had a stronger negotiation power for their remuneration and would consequently not require the special protection provided for by the remuneration Chapter. At the Attachés meeting on 15 January 2019, the wording proposed by the Presidency for such an exception was supported by several delegations. It is therefore suggested that this exception is included as a new paragraph 2 in Article 16a (Council text - 'Common provisions'), row 283.

(d) Optional exception or limitation for text and data mining (Article 3a)

It is recalled that both co-legislators have drafted the exception or limitation for text and data mining for purposes other than scientific research, which is an exception that was not contained in the initial Commission proposal, as an *optional* exception. In the trilogue negotiations the Commission requested to turn Article 3a into a mandatory provision with a view to avoiding fragmentation in the DSM. COREPER addressed this issue at its meeting on 23 November 2018.

This issue has not been finalised in the trilogue negotiations, as the EP required further internal reflections, and the decision was left to the final compromise package. With a view to providing the Presidency with an overall mandate for the trilogue on 21 January 2019, the Presidency invites COREPER to confirm whether in an overall compromise package the Presidency can show flexibility to making Article 3a a mandatory provision in case the EP requests such change.

III. CONCLUSION

In the light of the above, the Presidency invites COREPER

- to update the negotiating mandate as suggested in point II of this note and support the compromise texts along the lines of the wording set out in the 4th column of 4-column table attached to this note as negotiating basis for the Presidency at the trilogue on 21 January 2019, and
- to grant the Presidency with the necessary flexibility where minor concessions turn out to be necessary for achieving the overall final outcome in the negotiations.

Proposal for a directive of the European Parliament and of the Council

on copyright in the Digital Single Market

COM (2016) 593 final - 2016/0280 (COD)

PART 1: CITATIONS AND RECITALS

Cell in green: The text can be deemed as already agreed

Cell in yellow: The issue needs further discussion at technical level

Cell in red: The issue needs further discussion in depth at the trilogue meetings

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
1.	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance)
2.	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
3.	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article Articles 53(1), 62 and 114 thereof	Having regard to the Treaty on the Functioning of the European Union, and in particular Article Articles 53(1), 62 and 114 thereof,
4.	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,
5.	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,
6.	Having regard to the opinion of the European Economic and Social Committee ¹ ,	Having regard to the opinion of the European Economic and Social Committee ¹ ,	Having regard to the opinion of the European Economic and Social Committee ¹ ,	Having regard to the opinion of the European Economic and Social Committee ¹ ,
7.	Having regard to the opinion of	Having regard to the opinion of	Having regard to the opinion of	Having regard to the opinion of

¹ OJ C , , p. .

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	the Committee of the Regions ² ,	the Committee of the Regions ² ,	the Committee of the Regions ² ,	the Committee of the Regions ² ,
8.	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,
9.	Whereas:	Whereas:	Whereas:	Whereas:
10.	(1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives.	(1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives.	(1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives.	(1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives.
11.	(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	(2) The directives which have been adopted in the area of copyright and related rights contribute to the functioning of the internal market , provide for a high level of protection for rightholders, facilitate the	(2) The directives 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	(2) The directives which have been adopted in the area of copyright and related rights contribute to the functioning of the internal market , provide for a high level of protection for rightholders, facilitate the

² OJ C , , p. .

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	<p>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.</p>	<p><i>clearance of rights</i> 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 a truly integrated internal market; it stimulates innovation, creativity, investment and production of new content, also in the digital environment, with a view to avoiding fragmentation of the internal market. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.</p>	<p>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.</p>	<p><i>clearance of rights</i> 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, with a view to avoiding fragmentation of the internal market. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.</p>

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12.	<p>(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled ‘Towards a modern, more European copyright framework’³, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to</p>	<p>(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited, and relevant legislation needs to be future proof so as not to restrict technological development. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled ‘Towards a modern, more European copyright framework’³, in some</p>	<p>(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled ‘Towards a modern, more European copyright framework’³, in some areas it is necessary to adapt and supplement the current Union copyright framework- keeping a high level of protection of</p>	<p>(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. Relevant legislation needs to be future proof so as not to restrict technological development. 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’³, in some</p>

³ COM(2015) 626 final.

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	<p>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.</p>	<p>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 rights in publications, on the exercise and enforcement of the use of works and other subject-matter by on online service providers storing and giving access to user uploaded content providers' platforms and on the transparency of authors' and performers' contracts and of the</p>	<p><u>copyright and related rights.</u> 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.</p>	<p>areas it is necessary to adapt and supplement the current Union copyright framework keeping a high level of protection of copyright and related rights. 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 notably but not only 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. It also contains rules to facilitate the use of content in the public domain. In order to achieve a well-functioning and fair 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</p>

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		<i>accounting linked with the exploitation of protected works in accordance with those contracts.</i>		access to user uploaded content, on the transparency of authors' and performers' contracts, <i>on authors' and performers' remuneration, as well as a mechanism for the revocation of the rights that authors and performers have transferred on an exclusive basis.</i>
13.	(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council ⁴ , Directive 2001/29/EC of the European Parliament and of the Council ⁶ , Directive 2006/115/EC of the European Parliament and of the	(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council ⁴ , Directive <i>2000/31/EC of the European Parliament and of the Council⁵</i> , Directive 2001/29/EC of the European Parliament and of the Council ⁶ ,	(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council ⁴ , Directive <u>2000/31/EC of the European Parliament and of the Council⁵</u> , Directive 2001/29/EC of the European Parliament and of the	(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the European Parliament and of the Council ⁴ , Directive <i>2000/31/EC of the European Parliament and of the Council⁵</i> , Directive 2001/29/EC of the European Parliament and of the Council ⁶ ,

⁴ 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).

⁵ **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, 17.07.2000, p. 1–16).**

⁶ 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).

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	Council ⁷ , Directive 2009/24/EC of the European Parliament and of the Council ⁸ , Directive 2012/28/EU of the European Parliament and of the Council ⁹ and Directive 2014/26/EU of the European Parliament and of the Council ¹⁰ .	Directive 2006/115/EC of the European Parliament and of the Council ⁷ , Directive 2009/24/EC of the European Parliament and of the Council ⁸ , Directive 2012/28/EU of the European Parliament and of the Council ⁹ and Directive 2014/26/EU of the European Parliament and of the Council ¹⁰ .	Council ⁶ , Directive 2006/115/EC of the European Parliament and of the Council ⁷ , Directive 2009/24/EC of the European Parliament and of the Council ⁸ , Directive 2012/28/EU of the European Parliament and of the Council ⁹ and Directive 2014/26/EU of the European Parliament and of the Council ¹⁰ .	Directive 2006/115/EC of the European Parliament and of the Council ⁷ , Directive 2009/24/EC of the European Parliament and of the Council ⁸ , Directive 2012/28/EU of the European Parliament and of the Council ⁹ and Directive 2014/26/EU of the European Parliament and of the Council ¹⁰ .
14.	(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	(5) In the fields of research, innovation , education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and	(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	(5) In the fields of research, innovation , education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and

⁷ 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).

⁸ 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).

⁹ 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).

¹⁰ 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).

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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</p>	<p>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 <i>innovation</i>, 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 <i>innovation and</i> scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses</p>	<p>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</p>	<p>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 <i>innovation</i>, 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</p>

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	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.	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. <i>Therefore, existing well-functioning exceptions in those fields should be allowed to continue to be available in Member States, as long as they do not restrict the scope of the exceptions or limitations provided for in this Directive.</i> Directives 96/9/EC and 2001/29/EC should be adapted.	provided for in this Directive, <u>The</u> exceptions and limitations existing in Union law should continue to apply, <u>including to text and data mining, education and preservation activities, as long as they do not limit the scope of the mandatory exceptions laid down in this Directive and on condition that their application does not adversely affect nor circumvent the mandatory rules set out in this Directive.</u> Directives 96/9/EC and 2001/29/EC should be adapted.	by the exceptions or the limitation provided for in this Directive, <u>The</u> exceptions and limitations existing in Union law should continue to apply, <i>including to text and data mining, education and preservation activities, as long as they do not limit the scope of the mandatory exceptions laid down in this Directive, which need to be implemented by Member States in their national law, and on condition that their application does not adversely affect nor circumvent the mandatory rules set out in this Directive.</i> Directives 96/9/EC and 2001/29/EC should be adapted. <i>*[possibly to be adapted depending on the outcome on Article 3a]</i>
15.	(6) The exceptions and the limitation set out in this Directive seek to achieve a fair balance	(6) The exceptions and the limitation <i>limitations</i> set out in this Directive seek to achieve a	(6) The exceptions and the limitation set out <u>provided for</u> in this Directive seek to achieve a	(6) The exceptions and limitations set out <u>provided for</u> in this Directive seek to achieve a

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	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.	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.	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.	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.
16.	(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	(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	(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	(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 limitations established in this Directive; which are particularly relevant in

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	<p>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 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.</p>	<p>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 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.</p>	<p>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 provideappropriate 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.</p>	<p>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 provideappropriate means of enabling the beneficiaries of the exceptions and limitations 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.</p>
17.	(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images	(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or	(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images	(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds,

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	<p>or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the <i>sui generis</i> database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a</p>	<p>data, generally known as text and data mining. Those technologies allow researchers to process <i>Text and data mining allows the reading and analysis of</i> large amounts of <i>digitally stored</i> 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 <i>sui generis</i> database right, notably the reproduction of works</p>	<p>or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information <u>with a view to gaining</u> new knowledge and discover<u>discovering</u> 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<u>support</u> innovation. However, in the Union, <u>These technologies benefit</u> research organisations such as universities and <u>well as cultural heritage institutions, which may also carry out</u> research institutes<u>in the context of their main activities. However, in the Union, such organisations and institutions</u> are confronted with legal uncertainty as to the extent to which they can perform text</p>	<p>images or data, generally known as text and data mining. Text and data mining allows the processing of large amounts of information with a view to gaining new knowledge and 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 support innovation. These technologies benefit universities and other research organisations as well as cultural heritage institutions, which may also carry out research 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</p>

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	<p>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.</p>	<p>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.</p>	<p>and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the <i>sui generis</i> 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.</p> <p><i>[Last phrase of recital (8) of the COM proposal was moved to new recital (8a) Council's text -see following row 18]</i></p>	<p>protected by copyright and/or by the <i>sui generis</i> database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database, which for example happens when the data is normalised in the process of text and data mining. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders.</p>
18.			<p>(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 is required under copyright law. There may also be instances of text and data</p>	<p>(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 is required under copyright law. There may also be instances of text and data mining which do not</p>

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			<p><u>mining which do not involve acts of reproduction or where the reproductions made fall under the</u> The new exception should be without prejudice to the existing 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.</p> <p><i>[First phrase of new recital (8a) was taken from recital (8) (last phrase), second phrase of new recital (8a) was taken from recital (10) (second phrase)]</i></p>	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.
19.		<i>(8a) For text and data mining to occur, it is in most cases necessary first to access information and then to reproduce it. It is generally only after that information is</i>		<i>[deleted]</i>

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		<p><i>normalised that it can be processed through text and data mining. Once there is lawful access to information, it is when that information is being normalised that a copyright-protected use takes place, since this leads to a reproduction by changing the format of the information or by extracting it from a database into a format that can be subjected to text and data mining. The copyright-relevant processes in the use of text and data mining technology is, consequently, not the text and data mining process itself which consists of a reading and analysis of digitally stored, normalised information, but the process of accessing and the process by which information is normalised to enable its automated computational analysis, insofar as this process involves extraction from a database or reproductions. The</i></p>		

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		<i>exceptions for text and data mining purposes provided for in this Directive should be understood as referring to such copyright-relevant processes necessary to enable text and data mining. Where existing copyright law has been inapplicable to uses of text and data mining, such uses should remain unaffected by this Directive.</i>		
20.	(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	(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	(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	(9) Union law 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

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	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.	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.	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.	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.
21.	(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	(10) This legal uncertainty should be addressed by providing for a mandatory exception <i>for research organisations</i> 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	(10) This legal uncertainty should be addressed by providing for a mandatory exception to the <u>exclusive</u> 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	10) This legal uncertainty should be addressed by providing for a mandatory exception for universities and other research organisations, as well as cultural heritage institutions to the exclusive right of reproduction and also to the right to prevent extraction from a database. In line with the existing European research policy, which encourages universities and research institutes to develop

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	<p>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.</p>	<p>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. <i>Educational establishments and cultural heritage institutions that conduct scientific research should also be covered by the text and data mining exception, provided that the results of the research do not benefit an undertaking exercising a decisive influence upon such organisations in particular. In the event that the research is carried out in the framework of a public-private partnership, the undertaking participating in the public-private partnership should also have lawful access to the works and other subject matter. The reproductions and extractions made for text and</i></p>	<p>mining techniques which do not involve the making of copies going beyond the scope of that exception. <u>In line with the existing European research policy, which encourages universities and research institutes to develop collaborations with the private sector, Research 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 and cultural heritage institutions 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.</u></p> <p><i>[The second phrase of recital (10) of the COM proposal was moved</i></p>	<p>collaborations with the private sector, research organisations should also benefit from the exception when their research activities are carried out in the framework of public-private partnerships. While research organisations and cultural heritage institutions 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.</p> <p><i>[as to the last sentence of the EP text, see recitals 11(c), row 25]</i></p>

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		<i>data mining purposes should be stored in a secure manner and in a way that ensures that the copies are only used for the purpose of scientific research.</i>	<i>to new recital (8a) - see row 18]</i>	
22.	(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	(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	(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. <u>The term "scientific research" within the meaning of this Directive covers both the natural sciences and the human sciences.</u> Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the exception <u>research organisations. They should for example cover entities such as research institutes, hospitals carrying out research, universities, including university libraries, or other</u>	(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 research organisations. They should for example cover, besides universities or other higher education institutions and their libraries, also entities such as research institutes, hospitals carrying out research. Despite

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	<p>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.</p>	<p>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.</p>	<p><u>higher education institutions.</u> Despite different legal forms and structures, research organisations across <u>the</u> 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<u>Conversely,</u> 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.</p>	<p>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. 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.</p>

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23.			<u>(11a) Cultural heritage institutions should be understood as covering publicly accessible libraries, museums and archives regardless of the type of works and other subject matter which they hold in their permanent collections, as well as film or audio heritage institutions. They should include, among others, national libraries and national archives. They should also include educational establishments and public sector broadcasting organisations, as far as their archives and publicly accessible libraries are concerned.</u>	(11a) Cultural heritage institutions should be understood as covering publicly accessible libraries, museums and archives regardless of the type of works and other subject matter which they hold in their permanent collections, as well as film or audio heritage institutions. They should include, among others, national libraries and national archives. They should also include educational establishments and public sector broadcasting organisations, as far as their archives and publicly accessible libraries are concerned.
24.			<u>(11b) 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</u>	(11b) 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

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			<p><u>have lawful access. Lawful access should be understood as covering access to content based on open access policy or through contractual arrangements between rightholders and research organisations or cultural heritage institutions, such as subscriptions, or through other lawful means. For instance, in cases of subscriptions taken by research organisations or cultural heritage institutions, the persons attached thereto covered by these subscriptions would be deemed to have lawful access. Lawful access also covers access to content that is freely available online.</u></p>	<p>access to content based on open access policy or through contractual arrangements between rightholders and research organisations or cultural heritage institutions, such as subscriptions, or through other lawful means. For instance, in cases of subscriptions taken by research organisations or cultural heritage institutions, the persons attached thereto covered by these subscriptions would be deemed to have lawful access. Lawful access also covers access to content that is freely available online.</p>
25.			<p><u>(11c) Research organisations and cultural heritage institutions may in certain cases, for example for subsequent verification of scientific research results, need</u></p>	<p>(11c) Research organisations and cultural heritage institutions may in certain cases, for example for subsequent verification of scientific research results, need to retain the copies made under the</p>

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			<p><u>to retain the copies made under the exception for the purposes of carrying out text and data mining. In such cases, the copies should be stored in a secure environment and not be retained for longer than necessary for the scientific research activities. Member States may determine, at national level and after discussions with relevant stakeholders, further concrete modalities for retaining the copies, including the possibility to appoint trusted bodies for the purpose of storing such copies. In order not to unduly restrict the application of the exception, these modalities should be proportionate and limited to what is needed for retaining the copies in a safe manner and preventing unauthorised uses. Uses for the purpose of scientific research other than text and data</u></p>	<p>exception for the purposes of carrying out text and data mining. In such cases, the copies should be stored in a secure environment. Member States may determine, at national level and after discussions with relevant stakeholders, further concrete modalities for retaining the copies, including the possibility to appoint trusted bodies for the purpose of storing such copies. In order not to unduly restrict the application of the exception, these modalities should be proportionate and limited to what is needed for retaining the copies in a safe manner and preventing unauthorised uses. Uses for the purpose of scientific research other than text and data mining, such as scientific peer review and joint research, should remain covered, where applicable, by the exception or limitation provided for in Article 5(3)(a) of Directive</p>

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			<u>mining, such as scientific peer review and joint research, should remain covered, where applicable, by the exception or limitation provided for in Article 5(3)(a) of Directive 2001/29/EC.</u>	2001/29/EC.
26.	(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.	(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.	(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where <u>when</u> there is <u>a</u> risk that the security and integrity of the system <u>their systems</u> or databases where the works or other subject-matter are hosted would <u>could</u> be jeopardised. Those <u>Such measures could for example be used to ensure that only persons having lawful access to their data can access it, including through IP address validation or user authentication. These</u> measures should not exceed what is	(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures when there is a risk that the security and integrity of their systems or databases could be jeopardised. Such measures could for example be used to ensure that only persons having lawful access to their data can access it, including through IP address validation or user authentication. These measures should however remain proportionate to the risks involved and should not prevent or make excessively difficult text and data mining carried out by

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			<p>necessary to pursue the objective of ensuring the security and integrity of the system <u>however remain proportionate to the risks involved</u> and should not undermine the effective application of the exception <u>prevent or make excessively difficult text and data mining carried out by researchers.</u></p>	<p>researchers.</p>
27.	<p>(13) There is no need to 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.</p>	<p>(13) There is no need to 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.</p>	<p>(13) There is no need to <u>In view of the nature and scope of the exception, which is limited to entities carrying out scientific research any potential harm to rightholders created through this exception should be minimal. Therefore, Member States should not</u> 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</p>	<p>(13) In view of the nature and scope of the exception, which is limited to entities carrying out scientific research 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 exceptions introduced by this Directive.</p>

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			minimal.	
28.			<p><u>(13a) In addition to their significance in the context of scientific research, text and data mining techniques are widely used both by private and public entities to analyse large amounts of data in different areas of life and for various purposes, including for government services, complex business decisions and the development of new applications or technologies. Rightholders should remain able to license the uses of their works and other subject-matter falling outside the scope of the mandatory exception provided for in this Directive and the existing exceptions and limitations provided for in Directive 2001/29/EC. At the same time, consideration should be given to the fact that users of text and data mining techniques</u></p>	<p>(13a) In addition to their significance in the context of scientific research, text and data mining techniques are widely used both by private and public entities to analyse large amounts of data in different areas of life and for various purposes, including for government services, complex business decisions and the development of new applications or technologies. Rightholders should remain able to license the uses of their works and other subject-matter falling outside the scope of the mandatory exception provided for in this Directive and the existing exceptions and limitations provided for in Directive 2001/29/EC. At the same time, consideration should be given to the fact that users of text and data</p>

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			<p><u>may be faced with legal uncertainty as to whether temporary reproductions and extractions which are a part of the process of text and data mining may be carried out on publicly available and lawfully accessed works and other subject-matter, in particular when the reproductions or extractions made for the purposes of the technical process may not fulfil all the conditions of the existing exception for temporary acts of reproduction in Article 5(1) of Directive 2001/29/EC. In order to provide for more legal certainty in such cases, this Directive should enable the Member States to provide under certain conditions for an exception or limitation for temporary reproductions and extractions of works and other subject-matter, insofar as these form a part of the text and data</u></p>	<p>mining techniques may be faced with legal uncertainty as to whether temporary reproductions and extractions which are a part of the process of made for the purposes of text and data mining may be carried out on publicly available and lawfully accessed works and other subject-matter, in particular when the reproductions or extractions made for the purposes of the technical process may not fulfil all the conditions of the existing exception for temporary acts of reproduction in Article 5(1) of Directive 2001/29/EC.</p> <p>In order to provide for more legal certainty in such cases and to encourage innovation also in the private sector, this Directive should [enable the Member States to] provide under certain conditions for an exception or</p>

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			<p><u>mining process and the copies made are not kept beyond that process. This optional exception or limitation should only apply when the work or other subject-matter is accessed lawfully by the beneficiary, including when it has been made available to the public online, and insofar as the rightholders have not reserved the right to make reproductions and extractions for text and data mining, for example by agreement, unilateral declaration, including through the use of machine readable metadata or by the use of technical means. Rightholders should be able to apply measures to ensure that their reservations in this regard are respected. This optional exception or limitation should leave intact the mandatory exception for text and data mining for research purposes</u></p>	<p>limitation for temporary reproductions and extractions of works and other subject-matter, insofar as these form a part of the for the purposes of text and data mining process and allow the copies made are not to be kept beyond that process as long as necessary for the text and data mining purposes. This optional exception or limitation should only apply when the work or other subject-matter is accessed lawfully by the beneficiary, including when it has been made available to the public online, and insofar as the rightholders have not reserved the rights to make reproductions and extractions for text and data mining ___ for ___ example ___ by agreement, unilateral declaration, including through the use of machine readable metadata or by the use of technical means. in an</p>

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			<u>laid down in this Directive.</u>	appropriate manner. In the case of content that has been made publicly available online, it should <u>only</u> be considered appropriate to reserve the rights by the use of machine readable metadata. In other cases, it may be appropriate to reserve the rights by other means, such as this may be expressed by contractual agreements or unilateral declaration, as appropriate. Rightholders should be able to apply measures to ensure that their reservations in this regard are respected. This optional exception or limitation should leave intact the mandatory exception for text and data mining for research purposes laid down in this Directive, as well as the existing exception for temporary acts of reproduction in Article 5(1) of Directive

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				2001/29/EC. <i>[wording to be adapted once decided whether Article 3a is optional or mandatory]</i>
29.		<i>(13a) To encourage innovation also in the private sector, Member States should be able to provide for an exception going further than the mandatory exception, provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by machine readable means.</i>		<i>[deleted]</i>
30.	(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	(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	(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 <u>of works and other subject matter in such a way that members of the public may</u>	(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 <u>of works and other subject matter in such a way that members of the public may</u>

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	<p>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</p>	<p>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</p>	<p><u>access them from a place and a time individually chosen by them ('making available to the public')</u>, 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</p>	<p>access them from a place and a time individually chosen by them ("making available to the public"), for the sole purpose of 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 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 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</p>

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	across borders.	across borders.	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.	that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.
31.	(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	(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	(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	(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments recognised by a Member State, including in primary, secondary, vocational and higher education. It should apply only to the extent that the uses are justified by the non-commercial purpose of the

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	funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.	funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity. <i>Where cultural heritage institutions pursue an educational objective and are involved in teaching activities, it should be possible for Member States to consider those institutions as an educational establishment under this exception in so far as their teaching activities are concerned.</i>	<u>uses are justified by the</u> non-commercial purpose <u>of the particular teaching activity.</u> The organisational structure and the means of funding of an educational establishment are <u>should</u> not <u>be</u> the decisive factors to determine the non-commercial nature of the activity.	particular teaching activity. The organisational structure and the means of funding of an educational establishment should not be the decisive factors to determine the non-commercial nature of the activity.
32.	(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	(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. <i>The exception or limitation of use should be granted as long as the work or other subject-matter used</i>	(16) The exception or limitation for the sole purpose of illustration for teaching provided for in this Directive should cover be understood as covering 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	GREEN (16) The exception or limitation for the sole purpose of illustration for teaching provided for in this Directive should cover be understood as covering digital uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or

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	<p>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.</p>	<p><i>indicates the source, including the authors' name, unless that turns out to be impossible for reasons of practicability.</i> 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 <i>where the teaching activity is physically provided, including where it takes place outside the premises of the educational establishment, for example in libraries or cultural heritage institutions, as long as the use is made under the responsibility of the educational establishment,</i> and online uses through the educational</p>	<p>activities. [...]*</p> <p>In most cases, the concept of illustration would therefore imply uses of parts or extracts of works only, which should not substitute the purchase of materials primarily intended for educational markets. When implementing the exception or limitation, Member States should remain free to specify, for the different categories of works or other subject-matter and in a balanced manner, the proportion of a work or other subject-matter that may be used for the sole purpose of illustration for teaching. The 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.</p>	<p>complement the teaching, including the related learning activities. [...]*</p> <p>In most cases, the concept of illustration would therefore imply uses of parts or extracts of works only, which should not substitute the purchase of materials primarily intended for educational markets. When implementing the exception or limitation, Member States should remain free to specify, for the different categories of works or other subject-matter and in a balanced manner, the proportion of a work or other subject-matter that may be used for the sole purpose of illustration for teaching. The Uses allowed under the exception or limitation should be understood to cover the specific accessibility needs of persons</p>

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		establishment's secure electronic network environment , the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.	* <i>[The second and third phrase of recital (16) of the COM proposal were moved to new recital (16a) Council's text - see row 33]</i>	with a disability in the context of illustration for teaching. * <i>[The second and third phrase of recital (16) of the COM proposal were moved to new recital (16a) Council's text - see row 33]</i> <i>[provisionally agreed at trilogue 26/11/2018/03/12/2018]</i>
33.			(16a) 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, for example in a museum, library or another cultural heritage institution , and be limited to what is necessary for the purpose of such activities. The exception	GREEN (16a) 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, for example in a museum, library or another cultural heritage institution , and be limited to

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			<p>or limitation should cover both uses through digital means of works and other subject matter made in the classroom and online uses or in other venues through digital means, for example electronic whiteboards or digital devices which may be connected to the Internet, as well as uses made at a distance through the educational establishment's secure electronic networks, such as online courses or access to teaching material complementing a given course. Secure electronic networks should be understood as digital teaching and learning environments the access to which should be protected is limited to the educational establishment's teaching staff and to the pupils or students enrolled in a study programme, notably through appropriate authentication procedures, including password based</p>	<p>what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means of works and other subject matter made in the classroom and online uses or in other venues through digital means, for example electronic whiteboards or digital devices which may be connected to the Internet, as well as uses made at a distance through the educational establishment's secure electronic networks environments, such as online courses or access to teaching material complementing a given course. Secure electronic networks environments should be understood as digital teaching and learning environments the access to which should be protected is limited to the educational establishment's teaching staff and to the pupils or students enrolled in a study</p>

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			<p>authentication.</p> <p><i>[Phrases of new recital (16a) were taken from recital (16) (second and third phrase) of the COM proposal – see row 32]</i></p>	<p>programme, notably through appropriate authentication procedures, including password based authentication.</p> <p><i>[provisionally agreed at Trilogue 26/11/2018]</i></p>
34.		<p><i>(16a) A secure electronic environment should be understood as a digital teaching and learning environment, access to which is limited through an appropriate authentication procedure to the educational establishment's teaching staff and to the pupils or students enrolled in a study programme.</i></p>		<p><i>[deleted]</i></p>
35.	<p>(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</p>	<p>(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</p>	<p>(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</p>	<p>GREEN</p> <p>(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering</p>

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	<p>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</p>	<p>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. <i>Such licences can take the form of</i></p>	<p>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. <u>Member States should for example remain free to require that the use of works and other subject matter should respect moral rights of authors and performers.</u> This should allow Member States to build on the existing arrangements concluded at national level. In particular,</p>	<p>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. <u>Member States should for example remain free to require that the use of works and other subject matter should respect moral rights of authors and performers.</u> This should allow Member States to build on the</p>

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	<p>allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes.</p>	<p><i>collective licensing agreements, extended collective licensing agreements and licences that are negotiated collectively such as “blanket licences”, in order to avoid educational establishments having to negotiate individually with rightholders. Such licenses should be affordable and cover at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, or for teaching in educational establishments or sheet music.</i> 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 <i>such</i> licensing schemes allowing digital uses of works or</p>	<p>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. <u>This Member States could notably use this</u> mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market <u>or for sheet music</u>. 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 <u>rightholders make the</u> licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational</p>	<p>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. <u>Member States should ensure that where licenses cover only partially the uses allowed under the exception, all the other uses remain subject to the exception. Member States could for example use this mechanism to give</u> precedence to licences for materials which are primarily intended for the educational market <u>or for sheet music</u>.</p> <p>In order to avoid that <u>the possibility to subject the application of the exception to the availability of licences</u> results in legal uncertainty or administrative burden for</p>

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		<p>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. <i>Member States should be able to provide for systems to ensure that there is fair compensation for rightholders for uses under those exceptions or limitations. Member States should be encouraged to use systems that do not create an administrative burden, such as systems that provide for one-off payments.</i></p> <p>[See Council's recital (17a) - row 36]</p>	<p>establishments are aware of the existence of such licensing schemes. <u>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.</u></p>	<p>educational establishments, Member States adopting this approach should take concrete measures to ensure that <u>right holders—make—the</u> 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. <u>Such licensing schemes measures may include the development of licensing schemes tailored to should meet the needs of educational establishments. and—the—development—of Information tools aiming at ensuring the visibility of the existing licensing schemes could also be developed.</u></p> <p><u>Such schemes could, for example, be based on collective licensing or on extended collective licensing in order to</u></p>

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				<p><u>avoid educational establishments having to negotiate individually with rightholders. In order to guarantee legal certainty, Member States should specify under which conditions an educational establishment may use protected works or other subject-matter under that exception and, conversely, when it should act under a licensing scheme.</u></p> <p><i>[provisionally agreed at Trilogue 26/11/2018;</i></p> <p><i>]</i></p>
36.			<p><u>(17a) Member States should remain free to provide that rightholders receive fair compensation for the digital uses of their works or other subject-matter under the</u></p>	<p>GREEN</p> <p>(17a)Member States should remain free to provide that rightholders receive fair compensation for the digital uses of their works or other subject-</p>

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			<p><u>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 rightholders.</u></p>	<p>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 rightholders. Member States deciding to provide for fair compensation should encourage the use of systems, which do not create administrative burden for educational establishments.</p> <p><i>[provisionally agreed at Trilogue 26/11/2018]</i></p>
37.		<p><i>(17 a) In order to guarantee legal certainty when a Member State decides to subject the application of the exception to the availability of adequate licences, it is necessary to specify under which conditions an</i></p>		<p><i>[moved under recital 17 (row 35)]</i></p>

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		<i>educational establishment may use protected works or other subject-matter under that exception and, conversely, when it should act under a licensing scheme.</i>		
38.	(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	(18) An act of preservation of a work or other subject-matter in the collection of a cultural heritage institution may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently require the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a	(18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution may require a reproduction 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	[the order of first and second sentence was inverted] (18) Cultural heritage institutions are engaged in the preservation of their collections for future generations. An act of preservation of a work or other subject-matter in the collection of a cultural heritage institution may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently require the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital

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	those acts of preservation.	mandatory exception to the right of reproduction in order to allow those acts of preservation <i>by such institutions.</i>	those acts of preservation.	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 <i>by such institutions.</i>
39.	(19) Different approaches in the Member States for acts of preservation by cultural heritage institutions hamper cross-border cooperation and the sharing of means of preservation by cultural heritage institutions in the internal market, leading to an inefficient use of resources.	(19) Different approaches in the Member States for acts of reproduction for preservation by cultural heritage institutions hamper cross-border cooperation, and the sharing of means of preservation by cultural heritage institutions in the internal market, and the establishment of cross-border preservation networks in the internal market organisations that are engaged in preservation, leading to an inefficient use of resources. This can have a negative impact on	(19) Different approaches in the Member States for acts of preservation by cultural heritage institutions hamper cross-border cooperation and the sharing of means of preservation by cultural heritage such institutions in the internal market, leading to an inefficient use of resources.	(19) Different approaches in the Member States for acts of reproduction for preservation by cultural heritage institutions hamper cross-border cooperation, and the sharing of means of preservation by cultural heritage institutions in the internal market, and the establishment of cross-border preservation networks in the internal market by such institutions leading to an inefficient use of resources. This can have a negative impact on the preservation of cultural

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		<i>the preservation of cultural heritage.</i>		<i>heritage.</i>
40.	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only.	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports <i>or to insure works</i> . Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, <i>in any format or medium</i> , in the required number, at any point in the life of a work or other subject-matter <i>and</i> to the extent required in order to produce a copy for preservation purposes only. <i>The archives of research organisations or public-service broadcasting organisations should be considered cultural</i>	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only. <u>Acts of reproduction undertaken by cultural heritage institutions for purposes other than the preservation of works and other subject-matter in</u>	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports <i>or to insure works and other subject-matter</i> . Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, <i>in any format or medium</i> , in the required number and at any point in the life of a work or other subject-matter <i>and</i> to the extent required in order to produce a copy for preservation purposes only. <u>Acts of reproduction undertaken by cultural heritage institutions for purposes other</u>

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		<i>heritage institutions and therefore beneficiaries of this exception. Member States should, for the purpose of this exception, be able to maintain provisions to treat publicly accessible galleries as museums.</i>	<u>their permanent collections should remain subject to the authorisation of rightholders, unless permitted by other exceptions or limitations provided for by Union law.</u>	<u>than the preservation of works and other subject-matter in their permanent collections should remain subject to the authorisation of rightholders, unless permitted by other exceptions or limitations provided for by Union law.</u>
41.			<u>(20a) Cultural heritage institutions do not necessarily have the technical means or expertise to undertake the acts required to preserve their collections themselves, particularly in the digital environment, and may therefore have recourse to the assistance of other cultural institutions and other third parties for that purpose. Under this exception, cultural heritage institutions should therefore be allowed to rely on third parties acting on their behalf and under their responsibility, including those that are based</u>	<u>(20a) Cultural heritage institutions do not necessarily have the technical means or expertise to undertake the acts required to preserve their collections themselves, particularly in the digital environment, and may therefore have recourse to the assistance of other cultural institutions and other third parties for that purpose. Under this exception, cultural heritage institutions should therefore be allowed to rely on third parties acting on their behalf and under their responsibility, including those that are based</u>

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			<u>in other Member States, for the making of copies.</u>	<u>in other Member States, for the making of copies.</u>
42.	(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.	(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 <i>of such works or other subject matter</i> are owned or permanently held by the cultural heritage institution, <i>those organisations</i> , for example as a result of a transfer of ownership or, licence agreements, <i>a legal deposit or a long-term loan . Works or other subject matter that cultural heritage institutions access temporarily via a third-party server are not considered as being permanently in their collections.</i>	(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 institutions <u>such institutions</u> , for example as a result of a transfer of ownership or licence agreements <u>or permanent custody arrangements.</u>	(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies of such works or other subject-matter are owned or permanently held by <u>such institutions</u> , for example as a result of a transfer of ownership or licence agreements, legal deposit obligations or <u>permanent custody arrangements.</u> [tentatively agreed at TM, confirmed at trilogue 13/12/2018]
43.		<i>(21a) Technological developments have given rise to information society services</i>		<i>[deleted and if need be to be replaced by text related to paragraph 5bis of Article 13</i>

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		<i>enabling their users to upload content and make it available in diverse forms and for various purposes, including to illustrate an idea, criticism, parody or pastiche. Such content may include short extracts of pre-existing protected works or other subject-matter that such users might have altered, combined or otherwise transformed.</i>		<i>depending on final agreement]</i>
44.		<i>(21b) Despite some overlap with existing exceptions or limitations, such as the ones for quotation and parody, not all content that is uploaded or made available by a user that reasonably includes extracts of protected works or other subject-matter is covered by Article 5 of Directive 2001/29/EC. A situation of this type creates legal uncertainty for both users and rightholders. It is therefore necessary to provide a new specific exception to permit the</i>		<i>[deleted and if need be to be replaced by text related to paragraph 5bis of Article 13 depending on final agreement]</i>

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		<p><i>legitimate uses of extracts of pre-existing protected works or other subject-matter in content that is uploaded or made available by users. Where content generated or made available by a user involves the short and proportionate use of a quotation or of an extract of a protected work or other subject-matter for a legitimate purpose, such use should be protected by the exception provided for in this Directive. This exception should only be applied in certain special cases which do not conflict with normal exploitation of the work or other subject-matter concerned and do not unreasonably prejudice the legitimate interests of the rightholder. For the purpose of assessing such prejudice, it is essential that the degree of originality of the content concerned, the length/extent of the quotation or extract used, the</i></p>		

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		<i>professional nature of the content concerned or the degree of economic harm be examined, where relevant, while not precluding the legitimate enjoyment of the exception. This exception should be without prejudice to the moral rights of the authors of the work or other subject-matter.</i>		
45.		<i>(21c) Information society service providers that fall within the scope of Article 13 of this Directive should not be able to invoke for their benefit the exception for the use of extracts from pre-existing works provided for in this Directive, for the use of quotations or extracts from protected works or other subject-matter in content that is uploaded or made available by users on those information society services, to reduce the scope of their obligations under</i>		<i>[deleted and if need be to be replaced by text related to paragraph 5bis of Article 13 depending on final agreement]</i>

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		<i>Article 13 of this Directive.</i>		
45a.				<p>GREEN</p> <p>The expiry of the term of protection of a work entails the entry of that work in the public domain and the expiry of the rights that Union copyright law provides to that work. In the field of visual arts, the circulation of faithful reproductions of works in the public domain contributes to the access to and promotion of culture (or access to cultural heritage). In the digital environment, the protection of these reproductions through copyright or related rights is inconsistent with the expiry of the copyright protection of works. In addition, differences between the national copyright laws governing the protection of these reproductions give rise to legal uncertainty and affect the cross-border dissemination of works of</p>

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				<p>visual arts in the public domain. Therefore, it should be clarified that certain reproductions of works of visual arts in the public domain should not be protected by copyright or related rights. This should not prevent cultural heritage institutions from selling reproductions, such as postcards.</p> <p><i>[provisionally agreed at trilogue of 13/12/2016]</i></p>
46.	(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.	(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,	(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- <u>that are considered out of commerce for the purposes of this Directive.</u> However, the particular characteristics of the collections of out-of-commerce works,	(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of works or other subject-matter that are considered out of commerce for the purposes of this Directive. However, the particular characteristics of the collections of out-of-commerce works, together with the amount of

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	<p>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.</p>	<p>for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use or have never been in commerce. It is therefore necessary to provide for measures to facilitate the licensing of rights in use of out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.</p>	<p><u>together with the amount of works involved in mass digitisation projects</u>, 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 <u>collective</u> licensing of rights in out-of-commerce works that are <u>permanently</u> in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.</p>	<p>works and other subject-matter involved in mass digitisation projects, mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use or that they have never been exploited commercially. It is therefore necessary to provide for measures to facilitate certain uses of the collective licensing of rights in out-of-commerce works and other subject-matter that are permanently in the collections of cultural heritage institutions. and thereby to allow the conclusion of agreements with cross-border effect in the internal market.</p> <p><i>[tentatively agreed at TM; confirmed at trilogue of</i></p>

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47.		<p><i>(22a) Several Member States have already adopted extended collective licencing regimes, legal mandates or legal presumptions facilitating the licencing of out-of-commerce works. However considering the variety of works and other subject-matter in the collections of cultural heritage institutions and the variance between collective management practices across Member States and sectors of cultural production, such measures may not provide a solution in all cases, for example, because there is no practice of collective management for a certain type of work or other subject matter. In such particular instances, it is therefore necessary to allow cultural heritage institutions to make out-of-commerce works held in their permanent</i></p>		<p>(22a) Legal mechanisms should therefore exist in all Member States allowing for licences issued by relevant and sufficiently representative collective management organisations to cultural heritage institutions, for certain uses of out-of-commerce works and other subject matter, to also apply to the rights of rightholders that have not mandated a representative collective management organisation in that regard. It should be legally possible for those licences to cover all territories of the Union.</p> <p>(22b) An adapted legal framework applicable to collective licensing may not provide a solution for all the cases where cultural heritage institutions encounter</p>

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		<p><i>collection available online under an exception to copyright and related rights. While it is essential to harmonise the scope of the new mandatory exception in order to allow cross-border uses of out-of-commerce works, Member States should nevertheless be allowed to use or continue to use extended collective licencing arrangements concluded with cultural heritage institutions at national level for categories of works that are permanently in the collections of cultural heritage institutions The lack of agreement on the conditions of the licence should not be interpreted as a lack of availability of licensing-based solutions. Any uses under this exception should be subject to the same opt-out and publicity requirements as uses authorised by a licensing mechanism. In order to ensure that the</i></p>		<p>difficulties in obtaining all the necessary authorisations of right holders for the use of out-of-commerce works and other subject-matter, for example, because there is no practice of collective management for a certain type of works or other subject-matter or because the relevant collective management organisation is not broadly representative for the category of the right holders and of the rights concerned. In such particular instances, it should be possible for cultural heritage institutions to make out-of-commerce works and other subject-matter that are permanently in their collection available online in all territories of the Union under a harmonised exception or limitation to copyright and related rights. It is important that uses under that exception or limitation only take place</p>

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		<i>exception only applies when certain conditions are fulfilled and to provide legal certainty, Member States should determine, in consultation with rightholders, collective management organisations and cultural heritage organisations, and at appropriate intervals of time, for which sectors and which types of works appropriate licence-based solutions are not available, in which case the exception should apply.</i>		<p>when certain conditions, notably as regards the availability of licensing solutions, are fulfilled. The lack of agreement on the conditions of the licence should not be interpreted as a lack of availability of licensing-based solutions.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
48.	(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the collective management organisation, in accordance to their legal traditions, practices or	(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the <i>relevant</i> collective management organisation, in accordance to <i>with</i> their legal traditions,	(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 have not represented by the mandated a representative collective	(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of licensing mechanism, such as extended collective licensing or presumptions of representation, that they put in place for the use of out-of-commerce works and other subject matter by cultural heritage institutions , in

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	<p>circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.</p>	<p>practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.</p>	<p>management organisation, in accordance towith their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation. <u>Member States should also have flexibility in determining the requirements for collective management organisations to be sufficiently representative, as long as this is based on a significant number of rightholders in the relevant type of works or other subject-matter who have given a mandate allowing the licensing of the relevant type of use. Member States should be free to establish specific rules applicable to cases where more than one collective management organisation is representative for the relevant works or other subject matter, requiring for example joint licences or an agreement between the relevant</u></p>	<p>accordance with their legal traditions, practices or circumstances. Member States should also have flexibility in determining the requirements for collective management organisations to be sufficiently representative, as long as this is based on a significant number of rightholders in the relevant type of works or other subject-matter who have given a mandate allowing the licensing of the relevant type of use. Member States should be free to establish specific rules applicable to cases where more than one collective management organisation is representative for the relevant works or other subject matter, requiring for example joint licences or an agreement between the relevant organisations.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>

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			<u>organisations.</u>	
49.	(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.	(24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important <i>and should be encouraged by the Member States</i> . 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 <i>licensing mechanisms or of such exceptions</i> to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage	(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 <u>in relation to all their works or other subject-matter or to all licences, or in relation to particular works or other subject-matter or to particular licences, at any time before or under the duration of the licence</u> . Conditions attached	(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. (24a) Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of these licensing mechanisms and the exception or limitation introduced by this Directive for the use of out-of-commerce works in relation to all their works or other subject-matter or in relation to all licences or all

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		institutions.	to those mechanisms should not affect their practical relevance for cultural heritage institutions. <u>It is important that when a rightholder excludes the application of such mechanisms to one or more of their works or other subject-matter, the informed collective management organisation does not continue to issue licences covering the relevant uses and any ongoing uses are terminated within a reasonable period. Such exclusion by the rightholder should not affect their claim to remuneration for the actual use of the work or other subject-matter.</u>	uses under the exception or limitation, or in relation to particular works or other subject-matter or in relation to particular licences or uses under the exception or limitation, at any time before or under the duration of the licence or the uses under the exception or limitation. Conditions attached to those licensing mechanisms should not affect their practical relevance for cultural heritage institutions. It is important that when a rightholder excludes the application of such mechanisms or of such exception or limitation to one or more of their works or other subject-matter, the informed collective management organisation does not continue to issue licences covering the relevant uses and any ongoing uses are terminated within a reasonable period, and, in the case they take place under a collective licence, that the informed collective

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				<p>management organisation does not continue to issue licences covering the relevant uses. Such exclusion by the rightholders should not affect their claims to remuneration for the actual use of the work or other subject-matter under the licence.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
50.			<p><u>(24a) This Directive does not affect the possibility for Member States to determine the allocation of legal responsibility for the compliance of the licensing and the use of out-of-commerce works with the conditions set out in this Directive and for the compliance of the parties with the terms of those licenses.</u></p>	<p>(24a) This Directive does not affect the possibility for Member States to determine the allocation of legal responsibility for the compliance of the licensing and the use of out-of-commerce works with the conditions set out in this Directive and for the compliance of the parties with the terms of those licenses.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
51.	(25) Considering the variety of	(25) Considering the variety of	(25) Considering the variety of	(25) Considering the variety of

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	<p>works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.</p>	<p>works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, <i>the solutions on the use of out-of-commerce works introduced by this Directive</i>, 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 <i>cultural heritage institutions</i> and collective management</p>	<p>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, <u>software, phonograms, sound recordings and audiovisual works</u>, <u>and unique works of art, irrespective of whether they have ever been commercially available. Never-in-commerce works may include posters, leaflets, trench journals or amateur audiovisual works, but also unpublished works or other subject-matter, without prejudice to other applicable legal constraints, such as national rules on moral rights. When a work is available in any of its different versions, such as subsequent editions of literary works and alternate cuts of</u></p>	<p>works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms and the exception or limitation introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, software, phonograms, audiovisual works and unique works of art, irrespective of whether they have ever been commercially available. Never-in-commerce works may include posters, leaflets, trench journals or amateur audiovisual works, but also unpublished works or other subject-matter, without prejudice to other applicable legal constraints, such as national rules on moral rights. When a work is available in any of its different versions, such as subsequent editions of literary works and alternate cuts of cinematographic works, or in any</p>

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		organisations when doing so.	<p><u>cinematographic works, or in any of its different manifestations, such as digital and printed formats of the same work, this work or other subject-matter should not be considered out of -commerce. Conversely, the commercial availability of adaptations, including other language versions or audiovisual adaptations of a literary work, should not preclude the determination of the out-of-commerce status of a work in a given language.</u> In order to reflect the specificities of different categories types 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, such as a</p>	<p>of its different manifestations, such as digital and printed formats of the same work, this work or other subject-matter should not be considered out of commerce. Conversely, the commercial availability of adaptations, including other language versions or audiovisual adaptations 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 types types 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 for the practical application of those licensing mechanisms, such as a time period which needs to have been elapsed since the first commercial availability of the</p>

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			<p><u>time period which needs to have been elapsed since the first commercial availability of the work.</u> It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.</p>	<p>work. It is appropriate that Member States consult rightholders, cultural heritage institutions users and collective management organisations when doing so.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
52.			<p><u>(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, taking into account the characteristics of the particular work or set of works. Member States should be free to determine the allocation of responsibilities for making the reasonable effort. The reasonable effort should not</u></p>	<p>(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, taking into account the characteristics of the particular work or set of works. Member States should be free to determine the allocation of responsibilities for making the reasonable effort. The reasonable effort should not have to be repeated over time but it should</p>

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			<p><u>have to be repeated over time but it should also take account of any easily accessible evidence of upcoming availability of works in the customary channels of commerce. A work-by-work assessment should only be required when this is considered reasonable in view of the availability of relevant information, the likelihood of commercial availability and the expected transaction cost. The verification of availability should normally take place in the Member State where the cultural heritage institution is established, unless verification across borders is considered reasonable, for example when there is easily available information that a literary work was first published in a given language version in another Member State. In many cases the out-of-commerce status of a set of</u></p>	<p>also take account of any easily accessible evidence of upcoming availability of works in the customary channels of commerce. A work-by-work assessment should only be required when this is considered reasonable in view of the availability of relevant information, the likelihood of commercial availability and the expected transaction cost. The verification of availability should normally take place in the Member State where the cultural heritage institution is established, unless verification across borders is considered reasonable, for example when there is easily available information that a literary work was first published in a given language version in another Member State. In many cases the out-of-commerce status of a set of works could be determined through a proportionate mechanism, such as sampling. The limited availability</p>

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			<p><u>works could be determined through a proportionate mechanism, such as sampling. The limited availability of a work, such as its availability in second-hand shops, or the theoretical possibility to obtain a licence to a work should not be considered as availability to the public in the customary channels of commerce.</u></p>	<p>of a work, such as its availability in second-hand shops, or the theoretical possibility to obtain a licence to a work should not be considered as availability to the public in the customary channels of commerce.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
53.	<p>(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</p>	<p>(26) For reasons of international comity, the licensing mechanisms and the exception for the digitisation and dissemination of out-of-commerce works provided for in this Directive should not apply to works or other subject-matter that are first published or, in the absence of publication, first broadcast in a third country or, in the case of cinematographic or audiovisual works, to works the producer of which has his headquarters or habitual residence in a third country. Those</p>	<p>(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.</p>	<p>(26) For reasons of international comity, the licensing mechanism and the exception or limitation provided for in this Directive for the digitisation and dissemination of out-of-commerce works provided for in this Directive should not apply to sets of out-of-commerce works or other subject-matter when there is available evidence to presume that they predominantly consist of works or other subject-matter of third countries, unless the concerned collective management</p>

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	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.	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.	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 <u>sets of out-of-commerce works or other subject-matter when there is available evidence to presume that they predominantly consist of works or other subject-matter of third countries, unless the concerned collective management organisation is sufficiently representative for that third country, for example via a representation agreement. This assessment can be based on the evidence available following the reasonable effort to determine the out-of-</u>	organisation is sufficiently representative for that third country, for example via a representation agreement. This assessment can be based on the evidence available following the reasonable effort to determine the out-of-commerce status of the works, without the need to search for further evidence. A work-by-work assessment of the origin of the out-of-commerce works should only be required insofar as it is also required for the reasonable effort to determine their commercial availability. <i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i>

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			<u>commerce status of the works, without the need to search for further evidence. A work-by-work assessment of the origin of the out-of-commerce works should only be required insofar as it is also required for the reasonable effort to determine their commercial availability.</u>	
54.	(27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them from generating reasonable revenues in order to cover the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.	(27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them from generating reasonable revenues in order to cover covering the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.	(27) As mass- <u>The contracting cultural heritage institutions and collective management organisations should remain free to agree on the territorial scope of the licence, the licence fee and the allowed uses. Uses covered by such licence should not be for profit making purpose, including when copies are distributed by the cultural heritage institution, such as in the case of promotional material about an exhibition. At the same time, as the digitisation projects of the collections of cultural heritage institutions</u>	(27) The contracting cultural heritage institutions and collective management organisations should remain free to agree on the territorial scope of the licence, <u>including the possibility to cover all Member States,</u> the licence fee and the allowed uses. Uses covered by such licence should not be for profit making purpose, including when copies are distributed by the cultural heritage institution, such as in the case of promotional material about an exhibition. At the same time, as the digitisation of the collections of cultural

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			<p>can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them <u>cultural heritage institutions</u> from generating reasonable revenues in order to cover <u>for the purposes of covering</u> the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.</p>	<p>heritage_institutions can entail significant investments, any licences granted under the mechanisms provided for in this Directive should not prevent cultural heritage institutions from generating reasonable revenues for the <u>exclusive</u> purposes of covering the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
55.	(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	(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 <i>or of the exception</i> provided for in this Directive and the arrangements in	(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	(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

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	<p>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 Council¹¹, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private</p>	<p>place for all rightholders to exclude the application of licences <i>or of the exception</i> 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 Council¹¹, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of</p>	<p>rightholders to exclude the application of licences to their works or other subject-matter should be adequately publicised- <u>both before a licence is granted and during the operation of the licence as appropriate.</u> 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. <u>This portal should facilitate the possibility for rightholders to exclude the application of licences to their works or other subject-matter.</u> Under Regulation (EU) No 386/2012 of the European Parliament and of the Council¹¹, the European</p>	<p>rightholders to exclude the application of licences or of the exception or limitation to their works or other subject-matter should be adequately publicised both before a licence is granted and during the operation of the licence the use under a licence or the exception or limitation, as appropriate. 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 use takes place. This portal should facilitate the possibility for rightholders to exclude the application of licences to their works or other subject-matter. Under Regulation (EU) No</p>

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	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.	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.	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. <u>In addition to making the information available through the portal, further appropriate publicity measures may need to be taken on a case-by-case basis in order to increase the awareness of affected</u>	386/2012 of the European Parliament and of the Council ¹¹ , the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary 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. In addition to making the information available through the portal, further appropriate publicity measures may need to be taken on a case-by-case basis in order to

¹¹ 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).

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			<p><u>rightholders, for example through the use of additional channels of communication to reach a wider public. The necessity, the nature and the geographic scope of the additional publicity measures should depend on the characteristics of the relevant out-of-commerce works or other subject-matter, the terms of the licences and the existing practices in Member States. Publicity measures should be effective without the need to inform each rightholder individually.</u></p>	<p>increase the awareness of affected rightholders, for example through the use of additional channels of communication to reach a wider public. The necessity, the nature and the geographic scope of the additional publicity measures should depend on the characteristics of the relevant out-of-commerce works or other subject-matter, the terms of the licences or the type of use under the exception or limitation, and the existing practices in Member States. Publicity measures should be effective without the need to inform each rightholder individually.</p> <p>(-28a) In order to ensure that the licensing mechanisms established by this Directive for out-of-commerce works are relevant and function properly, that rightholders are</p>

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				<p>adequately protected, that licences are properly publicised and that legal clarity is ensured with regard to the representativeness of collective management organisations and the categorisation of works, Member States should foster sector-specific stakeholder dialogue.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
56.			<p><u>(28a) The measures provided for in this Directive to facilitate the collective licensing of rights in out-of-commerce works or other subject-matter that are permanently in the collections of cultural heritage institutions should be without prejudice to the use of such works or other subject-matter under exceptions or limitations provided for in Union law or under other licences with an</u></p>	<p>(28a) The measures provided for in this Directive to facilitate the collective licensing of rights in out-of-commerce works or other subject-matter that are permanently in the collections of cultural heritage institutions should be without prejudice to the use of such works or other subject-matter under exceptions or limitations provided for in Union law or under other licences with an extended effect, where</p>

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			<p><u>extended effect, where such licensing is not based on the out-of-commerce status of the covered works or other subject matter. These measures should also be without prejudice to national mechanisms for the use of out of commerce works based on licences between collective management organisation and users other than cultural heritage institutions.</u></p>	<p>such licensing is not based on the out-of-commerce status of the covered works or other subject matter. These measures should also be without prejudice to national mechanisms for the use of out of commerce works based on licences between collective management organisation and users other than cultural heritage institutions.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
57.			<p><u>(28b) Mechanisms of collective licensing with an extended effect allow a collective management organisation to offer licences as a collective licensing body on behalf of rightholders irrespective of whether they have authorised the organisation to do so. Systems built on such mechanisms, such as extended collective licensing, legal</u></p>	<p>(28b) Mechanisms of collective licensing with an extended effect allow a collective management organisation to offer licences as a collective licensing body on behalf of rightholders irrespective of whether they have authorised the organisation to do so. Systems built on such mechanisms, such as extended collective licensing, legal mandates or presumptions of representation, are a well-</p>

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			<p><u>mandates or presumptions of representation, are a well-established practice in several Member States and may be used in different areas. A functioning copyright framework that works for all parties requires the availability of these proportionate, legal mechanisms for the licensing of works. Member States should therefore be able to rely on solutions, allowing relevant licensing organisations, which are owned or controlled by their rightholder members (or entities representing rightholders) or organised on a not for profit basis, to offer licences covering potentially large volumes of works or other subject-matter for certain types of use, and distribute the revenue received to rightholders.</u></p>	<p>established practice in several Member States and may be used in different areas. A functioning copyright framework that works for all parties requires the availability of these proportionate, legal mechanisms for the licensing of works. Member States should therefore be able to rely on solutions, allowing relevant <u>collective management</u> licensing organisations, which are owned or controlled by their rightholder members (or entities representing rightholders) or organised on a not for profit basis, to offer licences covering potentially large volumes of works or other subject-matter for certain types of use, and distribute the revenue received to rightholders, <u>in accordance with Directive 2014/26/EU</u>.</p> <p><i>[tentatively agreed at TM,</i></p>

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58.			<p><u>(28c) In the case of some uses, together with the usually large amount of works involved, the transaction cost of individual rights clearance with every concerned rightholder is prohibitively high and without effective collective licensing mechanisms all the required transactions in these areas to enable the use of these works or other subject matter are unlikely to take place. Extended collective licensing and similar mechanisms have made it possible to conclude agreements in areas affected by this market failure where traditional collective licensing does not provide an exhaustive solution for covering all works and other subject-matter to be used. These mechanisms serve as a complement to collective management based on</u></p>	<p>(28c) In the case of some uses, together with the usually large amount of works involved, the transaction cost of individual rights clearance with every concerned rightholder is prohibitively high and without effective collective licensing mechanisms all the required transactions in these areas to enable the use of these works or other subject matter are unlikely to take place. Extended collective licensing <u>by collective management organisations</u> and similar mechanisms have made it possible to conclude <u>may make it possible to conclude</u> agreements in <u>these</u> areas affected by this market failure where traditional collective licensing <u>based on an authorisation by rightholders</u> does not provide an exhaustive solution for covering all works and other subject-matter to be</p>

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			<p><u>individual mandates, by providing full legal certainty to users. At the same time, they provide a further opportunity to right holders to benefit from the legitimate use of their works.</u></p>	<p>used. These mechanisms serve as a complement to collective management based on individual mandates <u>authorisation by rightholders</u>, by providing full legal certainty to users <u>in certain cases</u>. At the same time, they provide <u>an</u> further opportunity to rights-holders to benefit from the legitimate use of their works.</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
59.			<p><u>(28d) Given the increasing importance of the ability to offer flexible licensing solutions in the digital age, and the increasing use of such schemes in Member States, it is beneficial to further clarify in Union law the status of licensing mechanisms allowing collective management organisations to conclude licences, on a voluntary basis, irrespective of whether all</u></p>	<p>(28d) Given the increasing importance of the ability to offer flexible licensing solutions in the digital age, and the increasing use of such schemes, in Member States, <u>should be able</u> to provide it is beneficial to further clarify in Union law the status of <u>for</u> licensing mechanisms <u>which</u> allowing <u>permit</u> collective management organisations to conclude licences, on a voluntary basis, irrespective of whether all</p>

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			<p><u>rightholders have authorised the organisation to do so. Member States should have the ability to maintain and introduce such schemes in accordance with their legal traditions, practices or circumstances, subject to the safeguards provided for in this Directive and in full respect of Union law and their international obligations related to copyright. These schemes would only have effect in the territory of the Member State concerned, unless otherwise provided for in Union law. Member States should have flexibility in choosing the specific type of mechanism allowing licences for works or other subject-matter to extend to the rights of rightholders that have not authorised the organisation that concludes the agreement, as long as it guarantees sufficient protection</u></p>	<p>rightholders have authorised the organisation to do so. Member States should have the ability to maintain and introduce such schemes in accordance with their national legal traditions, practices or circumstances, subject to the safeguards provided for in this Directive and in full respect of Union law and their international obligations of the Union. related to copyright. These schemes would only have effect in the territory of the Member State concerned, unless otherwise provided for in Union law. Member States should have flexibility in choosing the specific type of mechanism allowing licences for works or other subject-matter to extend to the rights of rightholders that have not authorised the organisation that concludes the agreement, <u>provided that this is in compliance with Union law, including the rules on collective</u></p>

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			<p><u>of the non-member rightholders. Such mechanisms may include extended collective licensing, legal mandate and presumptions of representation. The provisions of this Directive concerning collective licensing should not affect existing possibilities of Member States to apply mandatory collective management or other collective licensing mechanisms with an extended effect, such as the one included in Article 3 of Directive 93/83/EEC.</u></p>	<p><u>rights management provided in Directive 2014/26/EU. In particular, such schemes should also ensure and that as long as it guarantees sufficient protection of the Article 7 of Directive 2014/26/EU <u>applies to non-member rightholders that are not members of the organisation that concludes the agreement.</u></u></p> <p>Such mechanisms may include extended collective licensing, legal mandate and presumptions of representation. The provisions of this Directive concerning extended collective licensing should not affect existing possibilities of Member States to apply mandatory collective management or other collective licensing mechanisms with an extended effect, such as the one included in Article 3 of Directive 93/83/EEC.</p> <p><i>[tentatively agreed at TM,</i></p>

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				<i>confirmed at trilogue 13/12/2018]</i>
60.			<p><u>(28e) It is important that such mechanisms are only applied in well-defined areas of uses, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction, i.e. a licence that covers all the involved rightholders unlikely to occur due to the nature of the use or of the types of works concerned. It is equally important that the licensed use neither affects adversely the economic value of the relevant rights nor deprives rightholders of significant commercial benefits. Moreover, Member States should ensure that appropriate safeguards are in place to protect the legitimate interests of rightholders that are not represented by the</u></p>	<p><u>(28e)It is important that such mechanisms are only applied in well-defined areas of uses, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction, i.e. a licence that covers all the involved rightholders unlikely to occur due to the nature of the use or of the types of works concerned. Such mechanisms should be based on objective, transparent and non-discriminatory criteria as regards the treatment of rightholders including non-members. In particular the mere fact that the affected rightholders are not nationals or residents of or established in the Member State of the user who is seeking a licence, should not be on its own merits a</u></p>

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			<u>organisation offering the licence.</u>	<p><u>reason to consider make the clearance of rights so onerous and impractical to justify the use of such mechanisms.</u> It is equally important that the licensed use neither affects adversely the economic value of the relevant rights nor deprives rightholders of significant commercial benefits. Moreover, Member States should ensure that appropriate safeguards are in place to protect the legitimate interests of rightholders that are not represented by the organisation offering the licence <u>which that apply in a non-discriminatory manner.</u></p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
61.			<u>(28f) Specifically, to justify the extended effect of the mechanisms, the organisation should be, on the basis of authorisations from</u>	(28f) Specifically, to justify the extended effect of the mechanisms, the organisation should be, on the basis of authorisations from rightholders,

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			<p><u>rightholders, sufficiently representative of the types of works or other subject-matter and of the rights which are the subject of the licence. To ensure legal certainty and confidence in the mechanisms Member States may determine the allocation of legal responsibility for uses authorised by the licence agreement. Equal treatment should be guaranteed to all rightholders whose works are exploited under the licence as regards, notably, access to information on the licensing and the distribution of remuneration. Publicity measures should be effective throughout the duration of the licence without the need to inform each rightholder individually. In order to ensure that rightholders can easily retain control of their works, and prevent any uses of their works that would be prejudicial</u></p>	<p>sufficiently representative of the types of works or other subject-matter and of the rights which are the subject of the licence. <u>Member States should determine the requirements for those organisations to be sufficiently representative in accordance with Directive 2014/26/EU, taking into account the category of rights managed by the collective rights management organisation, the ability of the organisation to manage the rights effectively and the creative sector in which it operates and also whether the organisation covers a significant number of rightholders in the relevant type of works or other subject-matter who have given a mandate allowing the licensing of the relevant type of use, and in accordance with Directive 2014/26/EU.</u> To ensure legal certainty and confidence in the</p>

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			<p><u>to their interests, rightholders must be given an effective opportunity to exclude the application of such mechanisms to their works or other subject-matter for all uses and works or other subject-matter, or for specific uses and works or other subject-matter. In such cases, any ongoing uses should be terminated within a reasonable period. Member States may also decide that additional measures are appropriate to protect rightholders.</u></p>	<p>mechanisms Member States may determine the allocation of legal responsibility for uses authorised by the licence agreement. Equal treatment should be guaranteed to all rightholders whose works are exploited under the licence as regards, including in particular as regards notably, access to information on the licensing and the distribution of remuneration. Publicity measures should be effective throughout the duration of the licence without imposing disproportionate administrative burdens on users, collective management organisations and rightholders and without the need to inform each rightholder individually. In order to ensure that rightholders can easily retain regain control of their works, and prevent any uses of their works that would be prejudicial to their interests, rightholders must be given an effective opportunity to exclude the application of such</p>

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				<p>mechanisms to their works or other subject-matter for all uses and works or other subject-matter, or for specific uses and works or other subject-matter, at any time including before the conclusion of a licence and or under the duration <u>during the term of the licence</u>. In such cases, any ongoing uses should be terminated within a reasonable period. <u>Such exclusion by the rightholders should not affect their claims to receive remuneration for the actual use of the work or other subject-matter under the licence.</u> Member States may also decide that additional measures are appropriate to protect rightholders. <u>This could include, for example, encouraging the exchange of information among collective management organisations and other interested parties across the Union to raise awareness about</u></p>

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				<p><u>these mechanisms and the rightholders' possibility to exclude their works or other subject-matter from them.</u></p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
62.			<p><u>(28g) Member States should ensure that the purpose and scope of any licence granted as a result of these mechanisms, as well as the possible users, should always be carefully and clearly defined in national legislation or, if the underlying legislation is a general provision, in the licensing practices applied as a result of such general provisions, or in the licences granted. The ability to operate a licence under these mechanisms should also be limited to organisations which are either owned or controlled by their right holder members or which operate on a not for</u></p>	<p>(28g) Member States should ensure that the purpose and scope of any licence granted as a result of these mechanisms, as well as the possible users, should always be carefully and clearly defined in national legislation or, if the underlying legislation is a general provision, in the licensing practices applied as a result of such general provisions, or in the licences granted. The ability to operate a licence under these mechanisms should also be limited to <u>collective rights management</u> organisations which are either owned or controlled by their right holder members or which operate on a</p>

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			<u>profit basis, regulated by national law implementing Directive 2014/26/EU.</u>	not for profit basis, regulated by national law implementing <u>which are subject to national law implementing</u> Directive 2014/26/EU. <i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i>
63.			<u>(28h) Given the different traditions and experiences with extended collective licensing across Member States and their applicability to rightholders irrespective of their nationality or their Member State of residence, it is important to ensure transparency and dialogue at Union level about the practical functioning of these mechanisms, including as regards the effectiveness of safeguards for rightholders, their usability and the potential need to lay down rules to give such schemes cross-border effect within the internal</u>	(28h) Given the different traditions and experiences with extended collective licensing across Member States and their applicability to rightholders irrespective of their nationality or their Member State of residence, it is important to ensure transparency and dialogue at Union level about the practical functioning of these mechanisms, including as regards the effectiveness of safeguards for rightholders, their usability, <u>the effect on rightholders who are not members and/or who are nationals of, or resident in, another Member State, the</u>

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			<p><u>market. To ensure transparency, information about the use of such mechanisms under this Directive should be regularly published by the Commission. Member States that have introduced such mechanisms should therefore inform the Commission about relevant national legislation and its application in practice, including scopes and types of licensing introduced on the basis of general legislation, the scale of licensing and the collective management organisations involved. Such information should be discussed with Member States in the contact committee referred to in Article 12(3) of Directive 2001/29) — On/EC. The Commission should publish a report by 31 December 2020 on the use of such mechanisms in the Union</u></p>	<p><u>impact on the cross border provision of services, and including</u> the potential need to lay down rules to give such schemes cross-border effect within the internal market. To ensure transparency, information about the use of such mechanisms under this Directive should be regularly published by the Commission. Member States that have introduced such mechanisms should therefore inform the Commission about relevant national legislation and its application in practice, including scopes and types of licensing introduced on the basis of general legislation, the scale of licensing and the collective management organisations involved. Such information should be discussed with Member States in the contact committee referred to in Article 12(3) of Directive 2001/29) — On/EC. The Commission should publish a report by 31</p>

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			<u>and their impact on licensing and rightholders.</u>	December 2020 <u>10 April 2021</u> on the use of such mechanisms in the Union and their impact on licensing and rightholders, <u>on the dissemination of cultural content and on the cross-border provision of services in the area of collective management of copyright and related rights, and competition.</u> [tentatively agreed at TM, confirmed at trilogue 13/12/2018]
64.		<i>(28a) In order to ensure that the licensing mechanisms established for out-of-commerce works are relevant and function properly, that rightholders are adequately protected under those mechanisms, that licences are properly publicised and that legal clarity is ensured with regard to the representativeness of collective management organisations and the categorisation of works, Member</i>		[EP proposal covered as recital - 28a in line 55] [tentatively agreed at TM, confirmed at trilogue 13/12/2018]

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		<i>States should foster sector-specific stakeholder dialogue.</i>		
65.	(29) On-demand services have the potential to play a decisive role in the dissemination of European works across the European Union. However, agreements on the online exploitation of such works may face difficulties related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the online exploitation of the work or where there are issues linked to the windows of exploitation.	(29) On-demand services have the potential to play a decisive role in the dissemination of European works across the European Union. However, agreements on the online exploitation of such works may face difficulties related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the online exploitation of the work or where there are issues linked to the windows of exploitation.	(29) Video -on-demand services have the potential to play a decisive role in the dissemination of European audiovisual works across the-European Union. However, agreements <u>the availability of those works, in particular European works, on video-on-demand services remains limited. Agreements</u> on the online exploitation of such works may <u>be difficult to conclude due to issues</u> face difficulties related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the <u>has low economic incentive to exploit a work</u> online exploitation of the work or where there are issues <u>and does not license or holds back the online rights, which can lead to the unavailability of</u>	(29) Video-on-demand services have the potential to play a decisive role in the dissemination of audiovisual works across the European Union. However, the availability of those works, in particular European works, on video-on-demand services remains limited. Agreements on the online exploitation of such works may be difficult to conclude due to issues related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory has low economic incentive to exploit a work online and does not license or holds back the online rights, which can lead to the unavailability of audiovisual works on video-on-demand services. Other issues may be linked to the windows of

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			<u>audiovisual works on video-on-demand services. Other issues may be</u> linked to the windows of exploitation.	exploitation. <i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i>
66.	(30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms, this Directive requires Member States to set up a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The body should meet with the parties and help with the negotiations by providing professional and external advice. Against that background, Member States should decide on the conditions of the functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial burdens remain proportionate to	(30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms, this Directive requires Member States to <i>should</i> set up a negotiation mechanism, <i>managed by an existing or newly established national body</i> , allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. <i>The participation in this negotiation mechanism and the subsequent conclusion of agreements should be voluntary. Where a negotiation involves parties from different Member States, those parties should agree beforehand on the competent Member State, should they decide to rely on the negotiation mechanism.</i> The body should meet with the parties	(30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms services , this Directive requires Member States to set up <u>provide for</u> a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The body <u>or of one or more mediators. For that purpose, Member States may either create a new body or rely on an existing one that fulfils the conditions established by this Directive. Member States may designate one or more competent bodies or mediators. The body or the mediators</u> should meet with the parties and help with the negotiations by providing professional and	(30) To facilitate the licensing of rights in audiovisual works to video-on-demand services, this Directive requires Member States to provide for a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body or of one or more mediators. For that purpose, Member States may either create a new body or rely on an existing one that fulfils the conditions established by this Directive. Member States may designate one or more competent bodies or mediators. The body or the mediators should meet with the parties and help with the negotiations by providing professional, impartial and external advice. Where a

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	guarantee the efficiency of the negotiation forum.	and help with the negotiations by providing professional, <i>impartial</i> and external advice. Against that background, Member States should decide on the conditions of the functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing <i>division of the any costs arising, and the composition of such bodies</i> . Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.	external advice. <u>The body or the mediators could meet with the parties to facilitate the start of negotiations or in the course of the negotiations to facilitate the conclusion of an agreement.</u> <u>The use of and the participation in the negotiation mechanism should remain voluntary and should not affect the parties' contractual freedom.</u> Against that background, Member States should <u>be free to</u> decide on the conditions of the <u>concrete</u> functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum <u>mechanism</u> .	negotiation involves parties from different Member States, those parties should agree beforehand on the competent Member State, should they decide to rely on the negotiation mechanism. The body or the mediators could meet with the parties to facilitate the start of negotiations or in the course of the negotiations to facilitate the conclusion of an agreement. The participation in this negotiation mechanism and the subsequent conclusion of agreements should be voluntary and should not affect the parties' contractual freedom. Against that background, Member States should be free to decide on the concrete functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial

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				burdens remain proportionate to guarantee the efficiency of the negotiation mechanism. <i>[tentatively agreed at TM, confirmed at trilogue 13/122018]</i>
67.		<i>(30a) The preservation of the Union's heritage is of the utmost importance and should be strengthened for the benefit of future generations. This should be achieved notably through the protection of published heritage. To this end, a Union legal deposit should be created in order to ensure that publications concerning the Union, such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, and, thereby, the Union's intellectual record and future published heritage, are</i>		<i>[deleted]</i>

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		<p><i>collected systematically. Not only should such heritage be preserved through the creation of a Union archive for publications dealing with Union-related matters, but it should also be made available to Union citizens and future generations. The European Parliament Library, as the Library of the only Union institution directly representing Union citizens, should be designated as the Union depository library. In order not to create an excessive burden on publishers, printers and importers, only electronic publications, such as e-books, e-journals and e-magazines should be deposited in the European Parliament Library, which should make available for readers publications covered by the Union legal deposit at the European Parliament Library for the purpose of research or study and under the control of</i></p>		

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		<i>the European Parliament Library. Such publications should not be made available online externally.</i>		
68.	(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.	(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. <i>The increasing imbalance between powerful platforms and press publishers, which can also be news agencies, has already led to a remarkable regression of the media landscape on a regional level.</i> In the transition from print to digital, publishers <i>and news agencies</i> of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as	(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 <u>The wide availability of press publications online has given rise to the emergence of new online services, such as news aggregators or media monitoring services, for which the reuse of press publications constitutes an important part of their business models and a source of revenues. Publishers</u> of press publications are facing problems in licensing the online use of their publications and	(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. <i>The wide availability of press publications online has given rise to the emergence of new online services, such as news aggregators or media monitoring services, for which the reuse of press publications constitutes an important part of their business models and a source of revenues. Publishers</i> of press publications are facing problems in licensing the online use of their publications <i>to the providers of these kind of services, making it more difficult</i>

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		rightholders, licensing and enforcement in the digital environment is often complex and inefficient.	recouping <u>to the providers of these kind of services, making it more difficult for them to recoup</u> their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement <u>of rights in press publications regarding online uses by information society service providers</u> in the digital environment is <u>are</u> often complex and inefficient.	<i>for them to recoup</i> their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement <i>of rights in press publications regarding online uses by information society service providers</i> in the digital environment <i>are</i> often complex and inefficient.
69.	(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	(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 <i>and thereby to guarantee the availability of reliable information</i> . It is therefore necessary <i>for Member States</i> to provide at Union level a harmonised legal protection for	1. (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 legal protection for press publications in respect of digital digital <u>online uses by information society service</u>	(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 <i>and thereby to foster the availability of reliable information</i> . It is therefore necessary to provide at Union level a harmonised legal protection for press publications

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	<p>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.</p>	<p>press publications in respect of <i>the Union</i> for digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses <i>in order to obtain fair and proportionate remuneration for such uses. Private uses should be excluded from this reference. In addition, the listing in a search engine should not be considered as fair and proportionate remuneration.</i></p>	<p><u>providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other users, including individual users.</u> 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 <u>published by publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council¹². The legal protection for press publications provided for by this directive should only benefit publishers established</u></p>	<p>in respect of <i>online</i> uses <i>by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by individual users, including when they share press publications online.</i> 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 <i>published by publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council¹². The legal protection for press publications provided for by this</i></p>

¹² Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1–15).

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			<p><u>in a Member State in the meaning of the Treaty of the functioning of the European Union, i.e. when they have their registered office, central administration or principal place of business within the Union.</u></p>	<p><i>Directive should only benefit publishers established in a Member State and having their registered office, central administration or principal place of business within the Union.</i></p> <p><i>[following addition was provisionally agreed at trilogue 03/12/2018]</i></p> <p><i>The concept of publisher of press publications should be understood as covering service providers, such as news publishers or news agencies, when they publish press publications within the meaning of this Directive.</i></p>
70.	(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	(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	(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	(33) For the purposes of this Directive, it is necessary to define the concept of press publications <i>so that it only covers</i> journalistic publications, published in any media, including on paper, in the context of an economic activity

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	<p>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.</p>	<p>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. <i>The protection shall also not extend to factual information which is reported in journalistic articles from a press publication and will therefore not prevent anyone from reporting such factual information.</i></p>	<p>in any media, for the purpose of informing or entertaining. <u>in any media, including on paper, in the context of an economic activity which constitutes a provision of services under Union law. The press publications to be covered are those whose purpose is to inform the general public and which are periodically or regularly updated.</u> Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. <u>Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably photographs and videos.</u> Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted</p>	<p>which constitutes a provision of services under Union law. The press publications to be covered would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest, <u>including subscription based magazines,</u> and news websites. Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably photographs and videos. Periodical publications published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. <u>Neither should this protection apply to websites, such as blogs, that provide information as part of an activity which is not carried out under the initiative, editorial responsibility and control of service provider, such</u></p>

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			to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public.	<u><i>as a news publisher.</i></u> [provisionally agreed at TM on 04/12/2018, confirmed at trilogue 13/12/2018]
71.	(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.	(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They <i>Member States</i> should also be <i>able to</i> subject <i>those rights</i> 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.	(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 <u><i>online</i></u> uses are concerned. <u><i>by information society service providers are concerned. They should not extend to acts of hyperlinking when they do not constitute communication to the public.</i></u> 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,	(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 <i>online</i> uses <i>by information society service providers</i> are concerned. <i>The rights granted to the publishers of press publications</i> should not extend to acts of hyperlinking. <u><i>They should also not extend to the mere facts reported in the press publications.</i></u> They should also be subject to the same provisions on exceptions and limitations as those applicable to

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			including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.	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.
72.			<u>(34a) Uses of press publications by information society service providers can consist of the use of entire publications or articles but also of parts of press publications. Such uses of parts of press publications have also gained economic relevance. At the same time, where such parts are insubstantial, the use thereof by information society service providers may not undermine the investments made by publishers of press publications in the production of content. Furthermore, insubstantial parts of press publications are not usually the expression of the intellectual creation of their authors, in</u>	<u>(34a) Uses of press publications by information society service providers can consist of the use of entire publications or articles but also of parts of press publications. Such uses of parts of press publications have also gained economic relevance. At the same time, the use of individual words or very short extracts of press publications by information society service providers may not undermine the investments made by publishers of press publications in the production of content. Therefore, it is appropriate to provide that the use of individual words or very short</u>

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			<p><u>accordance with the case law of the Court of Justice of the European Union. Therefore, it is appropriate to provide that the use of insubstantial parts of press publications should not fall within the scope of the rights provided for in this Directive. To determine the insubstantial nature of parts of press publications for the purposes of this Directive, Member States may take into account whether these parts are the expression of the intellectual creation of their authors or whether these parts are limited to individual words or very short excerpts, without independent economic significance, or both criteria.</u></p>	<p><u>extracts of press publications should not fall within the scope of the rights provided for in this Directive.</u></p>
73.	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works

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	<p>and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.</p>	<p>and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. <i>Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for licensing of their work to the press publisher, authors whose work is incorporated in a</i></p>	<p>works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders: <u>or against other authorised users of the same works and other subject-matter.</u> This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.</p>	<p>and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders or against other authorised users of the same works and other subject-matter. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. <i>Authors whose works are incorporated in a press publication should be entitled to an appropriate share of the revenues press publishers receive for the uses of their press</i></p>

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

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74.	<p>(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. 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</p>	<p>(36) Publishers, including those of press publications, books or scientific publications, often and music publications, operate on the basis of the transfer of authors' rights by means of contractual agreements with authors. In this context, publishers make an investment and acquire rights, in some fields including rights to claim a share of compensation within joint collective management organisations of authors and publishers, with a view to the exploitation of the works contained in their publications and may in some instances be therefore also find themselves being deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a large number of Member States compensation for uses under those exceptions is</p>	<p>(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, <u>including the corresponding existing national schemes for reprography in the Member States, or under public lending schemes.</u> In a number of Member States <u>the compensation or remuneration</u> for <u>such</u> uses under those exceptions is shared between authors and publishers. In order to take account of this</p>	<p>(36) Publishers, including those of press publications, books or scientific publications and music 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, including the corresponding existing national schemes for reprography in the Member States, or under public lending schemes. i) In several Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and to improve legal</p>

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	<p>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.</p>	<p>shared between authors and publishers. In order to take account of this situation and <i>to</i> 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 <i>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. provide an equivalent compensation-sharing system if such a system was in operation in that Member State before 12 November 2015. The share between authors and publishers of such compensation could be set in the internal</i></p>	<p>situation and improve legal certainty for all concerned parties, Member States should be allowed <u>but not obliged</u> to determine that, when an author has transferred or licensed his rights to a publisher <u>or a collective management organisation that jointly represents authors and publishers</u> 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, <u>The same possibility should exist for remuneration for public lending, while Member States should remain free to decide not to provide publishers with such remuneration. Member States should remain free to determine</u> the burden on the publisher to substantiate his claim should not exceed what is required under <u>for</u></p>	<p>certainty for all concerned parties, this Directive allows Member States that have in place existing schemes for the sharing of compensation between authors and publishers to maintain them. ii) iii) This is particularly important to those Member States that had such compensation-sharing mechanisms before 12 November 2015 <i>although in other Member States, compensation is not shared and solely due to authors in accordance with national cultural policies. While this Directive should apply in a non-discriminatory way to all Member States, it should respect the traditions in this area and not oblige those Member States that do not currently have such compensation-sharing schemes to introduce them. It should not</i></p>

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		<p><i>distribution rules of the collective management organisation acting jointly on behalf of authors and publishers, or set by Members States in law or regulation, in accordance with the equivalent system that was in operation in that Member State before 12 November 2015. This provision is without prejudice to the arrangements in the Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.</i></p>	<p>the system <u>compensation or remuneration and to lay down the conditions as to the sharing of this compensation or remuneration between authors and publishers</u> in place <u>accordance with their national systems.</u></p>	<p><i>affect existing and future arrangements in Member States regarding remuneration in the context of public lending. It should also leave untouched national arrangements related to the management of rights and to remuneration rights, provided that they comply with Union law.</i></p> <p>All Member States should be allowed but not obliged 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 to them by an exception or limitation, including through collective management organisations that jointly represent authors and publishers, publishers are entitled to a share of such compensation.</p> <p>Member States should remain free to determine the burden on</p>

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				<p>the publisher to substantiate his claim for the compensation or remuneration and to lay down the conditions as to the sharing of this compensation or remuneration between authors and publishers in accordance with their national systems.</p> <p><i>[provisionally agreed at TM 04/12/2018 and confirmed at trilogue 13/12/2018]</i></p>
75.		<p><i>(36 a) Cultural and creative industries (CCIs) play a key role in reindustrialising Europe, are a driver for growth and are in a strategic position to trigger innovative spill-overs in other industrial sectors. Furthermore CCIs are a driving force for innovation and development of ICT in Europe. Cultural and creative industries in Europe provide more than 12 million full-time jobs, which amounts to</i></p>		<p><i>[To be checked the background – most likely to be deleted]</i></p>

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		<p><i>7,5 % of the Union's work force, creating approximately EUR 509 billion in value added to GDP (5,3 % of the EU's total GVA). The protection of copyright and related rights are at the core of the CCI's revenue.</i></p>		
76.	<p>(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.</p>	<p>(37) Over the last years, the functioning of the online content marketplace market market has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to copyright protected content online. Online services are means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. However, although they allow for diversity and ease of access to content,</p>	<p>(37) Over the last years, the functioning of the online content marketplace has gained in complexity. Online content sharing services providing access to a large amount of copyright-protected content uploaded by their users without the involvement of right holders have flourished developed and have become main sources of access to content online. <u>This Legal uncertainty exists as to whether such services engage in copyright relevant acts and need to obtain authorisations from rightholders for the content uploaded by their users who do not hold the relevant</u></p>	<p>(37) Over the last years, the functioning of the online content market has gained in complexity. Online content sharing services providing access to a large amount of copyright protected content uploaded by their users have become main sources of access to content online. Online services are means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. However, although they allow for diversity and ease of access to content,</p>

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		<p><i>they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders.</i></p> <p>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, <i>since some user uploaded content services do not enter into licensing agreements on the basis that they claim to be covered by the “safe-harbour” exemption set out in Directive 2000/31/EC.</i></p>	<p><u>rights in the uploaded content, without prejudice to the application of exceptions and limitations provided for in Union Law. This situation</u> affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are <u>content is</u> used as well as their possibilities to get an appropriate remuneration for it. <u>It is therefore important to foster the development of the licensing market between rightholders and online content sharing service providers. These licensing agreements should be fair and keep a reasonable balance for both parties. Rightholders should receive an appropriate reward for the use of their works or other subject matter.</u></p>	<p><i>they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders.</i></p> <p>Legal uncertainty exists as to whether such services engage in copyright relevant acts and need to obtain authorisations from rightholders for the content uploaded by their users who do not hold the relevant rights in the uploaded content, without prejudice to the application of exceptions and limitations provided for in Union Law. This uncertainty affects rightholders' possibilities to determine whether, and under which conditions, their works and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it.</p>

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				It is therefore important to foster the development of the licensing market between rightholders and online content sharing service providers. These licensing agreements should be fair and keep a reasonable balance for both parties. Rightholders should receive an appropriate reward for the use of their works or other subject matter.
77.		<i>(37a) Certain information society services, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter uploaded by their users. The definition of an online content sharing service provider under this Directive shall cover information society service providers one of the main purposes of which is to store and give access to the public or to</i>	<u>(37a) The definition of an online content sharing service provider under this Directive targets only online services which play an important role on the online content market by competing with other online content services, such as online audio and video streaming services, for the same audiences. The services covered by this intervention are those the main or one of the main</u>	<i>[if recital (38a) as proposed by the Commission during the trilogue on 13/12/2018 (see row 82) is retained, the following sentence from recital (37a) EP would have to be deleted:</i> <i>"The definition of an online content sharing service provider under this Directive shall cover</i>

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		<p><i>stream significant amounts of copyright protected content uploaded / made available by its users, and that optimise content, and promote for profit making purposes, including amongst others displaying, tagging, curating, sequencing, the uploaded works or other subject-matter, irrespective of the means used therefor, and therefore act in an active way. As a consequence, they cannot benefit from the liability exemption provided for in Article 14 of Directive 2000/31/EC. The definition of online content sharing service providers under this Directive does not cover microenterprises and small sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and service providers that act in a non-commercial purpose capacity such as online encyclopaedia,</i></p>	<p><u>purposes of which is to provide access to a large amount of copyright-protected content uploaded by their users with the purpose of obtaining profit therefrom, either directly or indirectly, by organising it and promoting it in order to attract more audiences. Organising and promoting content involves for example indexing the content, presenting it in a certain manner and categorising it, as well as using targeted promotion on it. The definition does not include services whose main purpose is not to provide access to copyright protected content with the purpose of obtaining profit from this activity. These include, for instance, electronic communication services within the meaning of Regulation 2015/2120/EU, including internet access providers, as well as providers of cloud</u></p>	<p>information society service providers (...) and therefore act in an active way. As a consequence, they cannot benefit from the liability exemption provided for in Article 14 of Directive 2000/31/EC."</p> <p>(37a) Certain information society services, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter uploaded by their user. The definition of an online content sharing service under this Directive should target only online services which play an important role on the online content market by competing with other online content services, such as online audio and video</p>

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		<p><i>and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive.</i></p>	<p><u>services which allow users, to upload content for their own use, such as cyberlockers, or online marketplaces whose main activity is online retail and not giving access to copyright protected content. Nor does this definition cover websites which store and provide access to content for non-for-profit purposes, such as online encyclopaedias, scientific or educational repositories or open source software developing platforms which do not store and give access to content for profit making purposes. In order to ensure the high level of copyright protection and to avoid the possible application of the liability exemption mechanism provided for in this Directive, this Directive should not apply to services the main purpose of which is to engage in or to</u></p>	<p>streaming services, for the same audiences. The services covered by this Directive are those services, the main or one of the main purposes of which is to store and enable users to upload and share a large amount of copyright protected content with the purpose of obtaining profit therefrom, either directly or indirectly, by organising it and promoting it in order to attract a larger audience, including by categorising it and using targeted promotion within it. The definition does not include services which have another main purpose than enabling users to upload and share a large amount of copyright protected content with the purpose of obtaining profit from this activity. These include, for instance, electronic</p>

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			<u>facilitate copyright piracy.</u>	communication services within the meaning of Directive 2018/1972 establishing the European Electronic Communications Code, as well as providers of business to-business cloud services and cloud services, which allow users to upload content for their own use, such as cyberlockers, or online marketplaces whose main activity is online retail and not giving access to copyright protected content. Providers of services such as open source software development and sharing platforms, not for profit scientific or educational repositories as well as not-for-profit online encyclopedias are also excluded from this definition.

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				<p>[IF SMES ARE EXCLUDED Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC should also be excluded from this definition since they are not considered as significantly affecting the online content market and do not compete with major licence-based online services. These enterprises remain subject to the possible application of the existing rules on copyright, in particular to Articles 3(1) and 3(2) of Directive 2019/29/EC as well as to of the provisions of Diretive 2000/31/EC].</p> <p>Finally, in order to ensure a high</p>

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				level of copyright protection, the liability exemption mechanism provided for in Article 13 should not apply to service providers the main purpose of which is to engage in or to facilitate copyright piracy.
78.			<u>(37b) The assessment of whether an online content sharing service provider stores and gives access to a large amount of copyright-protected content needs to be made on a case-by-case basis and take account of a combination of elements, such as the audience of the service and the number of files of copyright-protected content uploaded by the users of the services.</u>	(37b) The assessment of whether an online content sharing service provider stores and gives access to a large amount of copyright-protected content needs to be made on a case-by-case basis and take account of a combination of elements, such as the audience of the service and the number of files of copyright-protected content uploaded by the users of the services.
79.	(38) Where information society service providers store and provide access to the public to copyright protected works or	(38) Where information society Online content sharing service providers store and provide access to the public to	(38) <u>This Directive clarifies under which conditions the</u> Where information society <u>online content sharing</u>	(38) This Directive clarifies that online content sharing service providers engage in an act of communication to the public or

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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 Council¹³.</p>	<p>copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing perform an act of communication to the public, they are obliged to and therefore are responsible for their content and should therefore conclude fair and appropriate licensing agreements with rightholders, unless they are eligible for. Where licensing agreements are concluded, they should also cover, to the same extent and scope, the liability exemption provided in of users when they are acting in a non-commercial capacity. In accordance with Article 14 of Directive 2000/31/EC of the European Parliament and of the Council 11(2a) the responsibility of online content sharing</p>	<p>service providers store and provide access to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing are engaging in an act of communication to the public or making available to the public within the meaning of Article 3(1) and (2) of Directive 2001/29/EC 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. It does not change the concept of communication to the public or of making available to the public under Union law nor does it affect the possible</p>	<p>making available to the public when they give the public access to copyright protected works or other protected subject matter uploaded by their users. Consequently, the online content sharing service providers should obtain an authorisation, including via a licencing agreement, from the relevant rightholders. This does not affect the concept of communication to the public or of making available to the public elsewhere under Union law nor does it affect the possible application of Article 3(1) and (2) of Directive 2001/29/EC to other service providers using copyright-protected content [, including to the micro and small enterprises or other service providers which are excluded from the scope of this Directive].</p>

¹³ 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).

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		<i>providers pursuant to Article 13 does not extend to acts of hyperlinking in respect of press publications. The dialogue between stakeholders is essential in the digital world. They should define best practices to ensure the functioning of licensing agreements and cooperation between online content sharing service providers and rightholders. Those best practices should take into account the extent of the copyright infringing content on the service.</i>	<u>application of Article 3(1) and (2) of Directive 2001/29/EC to other services using copyright-protected content.</u>	<i>[Uses being covered by licences is covered in recital 38(d)]</i>
80.	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.	<i>Deleted</i>	<i>Deleted, partly moved to recital (37a) Council's text – see row 77</i>	

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81.	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.	<i>Deleted</i>	<i>Deleted, partly moved to recital (38c) Council's text – see row 84</i>	
82.			<u>(38a)</u> [Renumbered - in ST 9134/18 recital 38(b)] <u>When online content sharing service providers communicate to the public, they should not</u>	[See comment in row 77, and comment on Article 13(3) in row 237A] [Commission's text proposed at the trilogue 13/12/2018, to be

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			<p><u>benefit from the limited liability provided for in Article 14 of Directive 2000/31/EC for the purposes of copyright relevant acts. This should not affect the possibility for the same online content sharing providers to benefit from such exemption of liability for other purposes than copyright when they are providing their services and host content at the request of their users in accordance with Article 14 of Directive 2000/31/EC.</u></p>	<p><i>further discussed]</i></p> <p><i>"When online content sharing service providers are liable for acts of communication to the public or making available to the public under the conditions established under this Directive, Article 14(1) of Directive 2000/31/EC should not apply to the liability arising from Article 13 of this Directive. This should not affect the application of Article 14(1) of Directive 2000/31/EC to these service providers for purposes falling outside the scope of this Directive."</i></p>
83.			<p>(38b) <i>[Renumbered - in ST 9134/18 recital (38c)]</i></p> <p><u>Taking into account the fact that online content sharing service providers give access to</u></p>	<p>(38b) TO BE ADAPTED TO THE FINAL TEXT of Article 13</p> <p>Taking into account the fact that</p>

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><u>content which is not uploaded by them but by their users, it is appropriate to provide that, for cases where no authorisation has been obtained by the services and, for the purpose of this Directive, they should not be liable for unauthorised acts in specific, well-defined circumstances, when they demonstrate that they have acted in a diligent manner with the objective to prevent such unauthorised acts, without prejudice to remedies under national law for cases other than liability for copyright infringements and to the possibility for national courts or administrative authorities of issuing injunctions. In particular, they should not be liable if some unauthorised content is available on their services despite their best efforts to prevent its availability by applying effective and</u></p>	<p>online content sharing service providers give access to content which is not uploaded by them but by their users, it is appropriate to provide for a specific liability mechanism for the purposes of this Directive for cases where no authorisation has been granted. This should be without prejudice to remedies under national law for cases other than liability for copyright infringements and to the possibility for national courts or administrative authorities of issuing injunctions in compliance with Union law.</p> <p>Where no authorisation has been granted to the services providers, they should make their best efforts in cooperation with rightholders and in accordance with high industry standards of professional diligence to avoid the availability on their services of unauthorised works and other subject matter, as identified by</p>

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			<p><u>proportionate measures based on the information provided by rightholders. In addition, for the online content sharing service providers not to be liable, they should also in any case, upon notification by rightholders of specific unauthorised works or other subject-matter, act expeditiously to remove or disable access to these and make their best efforts to prevent their future availability.</u></p>	<p>the relevant rightholders. For that purpose rightholders should provide the service providers with necessary and relevant data taking into account, among other factors, the size of rightholders and the type of their works and other subject matter. The steps taken by the online content sharing service providers in cooperation with right holders should not lead to the prevention of the availability of non-infringing content, including the use of works or other protected subject matter covered by a licencing agreement, exception or limitation to copyright. Thereby it should not affect users who are using the online content sharing providers' services in order to lawfully upload and access information on these services.</p> <p>The obligations established in Article 13 should also not lead to Member States imposing a</p>

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				<p>general monitoring obligation.</p> <p>When assessing whether an online content sharing service provider has made its best efforts according to the high industry standards of professional diligence, account should be taken of the principle of proportionality. For the purposes of this assessment, a number of elements should be considered, such as the size of the service, the state of the art of existing means for avoiding the availability of different types of content and their cost for the services. Different means to avoid the availability of unauthorised copyright protected content may be appropriate and proportionate per type of content and it is therefore not excluded that in some cases unauthorised content may only be avoided upon notification of rightholders.</p>

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				<p>Any steps taken by the service providers should be effective with regard to the objectives sought but should not go beyond what is necessary to achieve the objective of avoiding and discontinuing the availability of unauthorised works and other subject matter.</p> <p><u>[IF SMEs are not excluded:</u> <i>It is not excluded that in some cases unauthorised content may only be avoided upon notification of rightholders. In particular, small and micro enterprises as defined in Title I of the Annex to Commission Recommendation 2003/361/EC, should be expected to be subject to less burdensome obligations than larger service providers. Therefore, in specific cases it may not be proportionate to expect small and micro</i></p>

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				<p><i>enterprises to apply preventive measures and in such cases these enterprises should only be expected to expeditiously remove specific unauthorised works and other subject matter upon notification by rightholders.]</i></p> <p>If unauthorised works and other subject matter become available despite the best efforts made in cooperation with rightholders as required by this Directive, the online content sharing service providers should be liable in relation to the specific works and other subject matter for which they have received the relevant and necessary information from rightholders unless they demonstrate that they have made their best efforts pursuant to high industry standards of professional diligence. In addition, where specific unauthorised works or</p>

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				<p>other subject matter have become available on the services, including despite the best efforts made, the online content sharing service providers should be liable for unauthorised acts of communication to the public of works and other subject matter, when upon receiving a sufficiently substantiated notice, they fail to act expeditiously to remove from their websites or disable access to the notified works and subject matter and if they fail to demonstrate that they have made their best efforts to prevent their future uploads.</p> <p>When rightholders do not provide the service providers with the necessary and relevant data on their specific works and other subject matter or when no notification concerning the removal or disabling access to specific unauthorised works or other subject matter has been</p>

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				provided by rightholders and, as a result, online content sharing service providers cannot make their best efforts to avoid on their services the availability of unauthorised content in accordance with the high standard of professional diligence, the service providers should not be liable for unauthorised acts of communication to the public or of making available to the public of these unidentified works and other subject matter.
84.			<p><u>(38c)</u> <i>[Renumbered - in ST 9134/18 recital (38ca)]</i></p> <p><u>Appropriate collaboration carried out in good faith between online content sharing service providers and rightholders is essential for the effective application of the measures by the online content</u></p>	38(c) The online content sharing service providers should be transparent towards rightholders with regard to the steps taken in the context of the cooperation. As different actions may be undertaken by the online content sharing service providers, they should provide rightholders, at their request, with adequate

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><u>sharing service providers. These service providers should be transparent towards rightholders with regard to the deployed measures. As different measures may be used by the online content sharing service providers, they should provide rightholders with appropriate information on the type of measures used and the way they operate, including for example information on the success rate of the measures. Such information should be sufficiently specific to provide enough transparency for rightholders and allow cooperation to ensure effective functioning of the measures, without prejudice to the business secrets of service providers. Service providers should however not be required to provide rightholders with detailed and individualised information for each work and</u></p>	<p>information on the type of actions undertaken and the way they are implemented. Such information should be sufficiently specific to provide enough transparency to rightholders, without prejudice to the business secrets of online content sharing service providers. Service providers should however not be required to provide rightholders with detailed and individualised information for each work and other subject matter identified. This is without prejudice to contractual arrangements, which may contain more specific provisions on the information to be provided where agreements are concluded between service providers and rightholders.</p>

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			<p><u>other subject matter identified. This is without prejudice to contractual arrangements, which may contain more specific provisions on the information to be provided where agreements are concluded between service providers and rightholders. On the other hand, rightholders should provide the service providers with necessary and relevant data for the application of the measures to their specific unauthorised works or other subject matter taking also into account the size of rightholders and the type of their works and other subject matter. As long as no data for the application of the measures or no notification concerning removal or disabling access to specific unauthorised works or other subject matter has been provided by rightholders and, as a result, online content</u></p>	

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			<p><u>sharing service providers cannot take the measures or expeditious action as set out in this Directive, these service providers should not be liable for unauthorised acts of communication to the public or of making available to the public.</u></p>	
85.			<p><u>(38d) Where online content sharing service providers obtain authorisations, including via licensing agreements, for the use on the service of content uploaded by the users of the services, these authorisations should also cover the copyright relevant acts in respect of uploads by the users but only in cases where the users act in their private capacity and for non-commercial purposes, such as sharing their content without any profit making purpose.</u></p> <p>(38e) The measures taken by</p>	<p><i>[Commission's text proposed at the trilogue 13/12/2018, to be further discussed]</i></p> <p>(38d) Where online content sharing service providers obtain authorisations, including via licensing agreements, for the use on the service of content uploaded by the users of the service, these should also cover the copyright relevant acts of <u>in respect of uploads by the users when they upload content within the scope of the authorisation granted to the service providers</u>, but only in cases</p>

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			<p><u>the online content sharing service providers to prevent the availability of unauthorised works or other subject-matter should be effective but remain proportionate, in particular with regard to the size of the online content sharing service provider. While this Directive is expected to foster the development of effective technologies on the market, the availability of the measures may differ according to the type of content for which the measures are applied. Having regard to the technological developments in line with industry best practices, those measures should consequently ensure a level of efficiency appropriate to the amount and the type of works or other subject matter uploaded by the users of the services. For the purposes of assessing the proportionality of measures to</u></p>	<p>where the users act for non-commercial purposes, such as sharing their content without any profit making purpose, <i>or when the revenue generated by their uploads are not significant in relation to the copyright relevant act of the users for which they are covered. Examples of such acts include uploads of content by individual users, such as parodies, remakes, educational videos, or covers of music or videos made for leisure or generating little revenues because they attract small audience.</i></p> <p><u>When users have obtained an authorisation to upload and make available works or other subject-matter on an online content sharing service, the act of communication to the public is authorised and therefore the online content sharing service provider should not be obliged</u></p>

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			<p><u>be taken by the online content sharing service providers, the state of the art of existing technologies for the different types of content as well as the size of the services should be taken into account notably whether they are small and micro enterprises. Different measures may be appropriate and proportionate per type of content and it is therefore not excluded that in some cases unauthorised content may only be avoided upon notification of rightholders. The measures should be proportionate in order to avoid imposing disproportionately complicated or costly obligations on certain online content sharing service providers, taking into account notably their small size. In particular, small and micro enterprises as defined in Title I of the Annex to Commission Recommendation 2003/361/EC,</u></p>	<p><u>to obtain a license for this authorised act of communication to the public.</u></p>

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			<p><u>should be expected to be subject to less burdensome obligations than larger service providers. Therefore, taking into account the state of the art and the availability of technologies and their costs, in specific cases it may not be proportionate to expect small and micro enterprises to apply preventive measures and that therefore in such cases these enterprises should only be expected to expeditiously remove specific unauthorised works and other subject matter upon notification by rightholders.</u></p>	
86.	(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	(39) Collaboration between information society Member States should provide that where right holders do not wish to conclude licensing agreements, online content sharing service	<u>(39)</u> <i>Moved up to recital (38c)[which was recital (38ca) in ST 9134/18]</i>	

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	<p>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.</p>	<p>providers storing and providing access to the public to large amounts of copyright <i>and right holders should cooperate in good faith in order to ensure that unauthorised</i> protected works or other subject matter uploaded by, <i>are not available on</i> 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. <i>Cooperation between online</i> 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</p>		

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		<p>rightholders' content. Those technologies should also allow rightholders to get information from the information society service providers on the use of their content <i>and right holders should not lead to preventing the availability of non-infringing works or other protected subject matter, including those covered by an agreement exception or limitation to copyright.</i></p>		
87.		<p><i>(39a) Members States should ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such mechanisms should</i></p>	<p><u>(39a) [Renumbered - in ST 9134/18 recital (39b)]</u></p> <p><u>The measures taken by the online content sharing service providers should be without prejudice to the application of exceptions and limitations to copyright, including in particular those which guarantee the freedom of expression of users. For that</u></p>	<p>(39a) The steps taken by the online content sharing service providers should be without prejudice to the application of exceptions and limitations to copyright, including in particular those which guarantee the freedom of expression of users.</p> <p>Users acting for non-commercial purposes or users whose activities do not generate significant</p>

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		<p><i>be processed without undue delay. Right holders should reasonably justify their decisions to avoid arbitrary dismissal of complaints. Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the cooperation should not lead to any identification of individual users nor the processing of their personal data. Member States should also ensure that users have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.</i></p>	<p><u>purpose the service providers should put in place mechanisms allowing users to complain about the blocking or removal of uploaded content that could benefit from an exception or limitation to copyright. Replies to the users' complaints should be provided in a timely manner. To make these mechanisms function, cooperation from rightholders is needed, in particular with regard to the assessment of the complaints submitted and justifications for the removal of users' content. Member States should remain free to put in place independent authorities for assessing the complaints submitted by users and making decisions on their validity. The redress mechanism should be without prejudice to the right of the parties to take action before a court.</u></p>	<p>revenues should not be prevented from uploading and making available content that they have produced and that contains existing works or other protected subject matter for specific purposes such as of illustration or parody when these uses do not create significant harm to rightholders.</p> <p>The online content sharing service providers should also put in place effective and expeditious complaint and redress mechanisms allowing users to complain on the steps taken with regard to their uploads, in particular when they could benefit from an exception or limitation to copyright in relation to an upload that is removed or to which access is disabled. Any complaint filed under such mechanisms should be processed without undue delay and be subject to a decision by a human. When</p>

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				<p>rightholders request the services to take action against the uploads by users, such as disabling access to or removing content uploaded, the rightholders should duly justify their requests. Moreover, in accordance with Directive 2002/58/EC¹⁴ and Regulation (EU)2016/679¹⁵, the cooperation should not lead to any identification of individual users nor the processing of their personal data. Member States should also ensure that users have access to out-of-court redress mechanisms for the settlement of disputes. Such mechanisms should allow disputes to be settled impartially. Users should also have access to a court or another relevant judicial authority to assert the use of an exception</p>

¹⁴ ePrivacy-**Directive**: Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), *OJ L 201, 31.7.2002, p. 37–47*.

¹⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *OJ L 119, 4.5.2016, p. 1–88*.

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				or limitation to copyright rules.
88.		<p><i>(39b) As soon as possible after the entry into force of this Directive, the Commission and the Member States should organise dialogues between stakeholders to harmonise and to define best practices. They should issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this Directive. When defining best practices, special account should be taken of fundamental rights, the use of exceptions and limitations. Special focus should also be given to ensuring that the burden on SMEs remains appropriate and that automated blocking of content is avoided.</i></p>	<p><u>(39b) [Renumbered - in ST 9134/18 recital (39c)]</u></p> <p><u>In order to foster best practices with regard to the measures to be taken by online content sharing service providers to avoid liability for unauthorised copyright acts, stakeholder dialogues should be encouraged by the Member States and the Commission. In order to give more clarity to the parties some guidance should also be provided by the Commission on the implementation of the measures including as to which measures could be considered to be proportionate for different types of content. For the purposes of the guidance the Commission should consult relevant stakeholders, including user organisations and technology providers, and take</u></p>	<p>(39b) As soon as possible after the entry into force of this Directive, the Commission, in collaboration with Member States, should organise dialogues between stakeholders to arrive to a uniform application of the obligation of cooperation and to define best practices with regard to the appropriate industry standards of professional diligence. For this purpose the Commission should consult relevant stakeholders, including user organisations and technology providers, and take into account the developments on the market. User organisations should also have access to information on actions carried out by online content sharing service providers to manage content online.</p>

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			<u>into account the developments on the market.</u>	
89.		<i>(39c) Member States should ensure that an intermediate mechanism exists enabling service providers and rightholders to find an amicable solution to any dispute arising from the terms of their cooperation agreements. To that end, Member States should appoint an impartial body with all the relevant competence and experience necessary to assist the parties in the resolution of their dispute.</i>		
90.		<i>(39d) As a principle, rightholders should always receive fair and appropriate remuneration. Authors and performers who have concluded contracts with intermediaries, such as labels and producers, should receive fair and appropriate remuneration from</i>		<i>[New, introductory recital to the whole chapter to clarify that the provision applies to "exploitation contracts". The proposed text is based on already green recitals 40 and 40a – if this is kept here, the repetitions can be deleted from recitals 40 and 40a.]</i>

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		<p><i>them, either through individual agreements and/ or collective bargaining agreements, collective management agreements or rules having a similar effect, for example joint remuneration rules. This remuneration should be mentioned explicitly in the contracts according to each mode of exploitation, including online exploitation. Members States should look into the specificities of each sector and should be allowed to provide that remuneration is deemed fair and appropriate if it is determined in accordance with the collective bargaining or joint remuneration agreement.</i></p>		<p>(39x) Authors and performers tend to be in a weaker contractual position when they grant a licence or transfer their rights, including through their own companies, for the purposes of exploitation in return for remuneration, and these natural persons need certain the protection provided for by this Directive to be able to fully benefit from their rights which are harmonised under Union law. This need does not arise when the contractual counterpart acts as end user and does not exploit the work or performance itself, which could among others be the case in some employment contracts.</p> <p>RED</p> <p><i>[Commission's text proposed at the trilogue 13/12/2018, to be further discussed]</i></p>

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				<p>(39Y) The remuneration of authors and performers should be appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject-matter, the actual exploitation of the work and all other circumstances of the case, including such as market practices or the actual exploitation of the work.</p> <p>A lump sum payment can constitute proportionate remuneration. Member States should have the possibility, taking into account the specificities of each sector, to define specific cases for the application of lump sums, such as cases when proportionate</p>

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				<p>remuneration can be reasonably determined already at the conclusion of the contract determining the basis of a proportional remuneration is impossible in practice, or when the contribution of the author or performer is not significant having regard to the overall work or performance taking into account the potential economic value of the rights.</p> <p>Members States should be free to implement the principle of appropriate and proportionate remuneration through different mechanisms, including collective bargaining and statutory mechanisms, provided that such mechanisms are in conformity with Union law.</p>

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				<p><i>[free licences: not mentioned in this recital but instead it was agreed to consider a general/horizontal recital clarifying that free licences/creative commons are not affected]</i></p> <p><i>[wording for such horizontal recital on free licences (suggested to be moved after recital 43a)]</i></p> <p>(43b) Nothing in this Directive should be interpreted as preventing holders of exclusive rights under Union copyright law from authorising the use of their works or other subject-matter for free, including through free licences, when they consider it appropriate.</p> <p><i>[To be further discussed at</i></p>

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				<i>political level]</i>
91.	<p>(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</p>	<p>(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 <i>comprehensive and relevant</i> information by their contractual counterparts or their successors in</p>	<p>(40) Certain rightholders such as authors 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 natural persons grant a licence or a transfer of rights for the purposes of exploitation in return for remuneration. <u>This need does not arise when the contractual counterpart acts as end user of the work and does not exploit the work or performance itself, which could among others be the case in some employment contracts. Additionally, this need does not arise when the exploitation has ceased, or when the author or performer has granted licence to the general public without</u></p>	<p>(40) Certain rightholders such as authors 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 natural persons grant a licence or a transfer of rights for the purposes of exploitation in return for remuneration. <u>This need does not arise when the contractual counterpart acts as end of the work and does not exploit the work or performance itself, which could among others be the case in some employment contracts. Additionally, this need does not arise when the exploitation has ceased, or when the author or performer has granted licence to the general public without</u></p>

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	transparency and balance in the system that governs the remuneration of authors and performers.	title is important for the transparency and balance in the system that governs the remuneration of authors and performers. <i>The information that authors and performers are entitled to expect should be proportionate and cover all modes of exploitation, direct and indirect revenue generated, including revenues from merchandising, and the remuneration due. The information on the exploitation should also include information about the identity of any sub-licensee or sub-transferee. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned.</i> [See Council's recital (40a) -row 92]	<u>remuneration.</u> [Last two phrases of recital (40) of the COM proposal were moved to new recital (40a) of Council's text - see following row 92]	<u>remuneration.</u> [tentatively agreed at TM, confirmed at trilogue 13/12/2018]
92.			<u>(40a)</u> As authors and performers tend to be in a weaker contractual	<u>(40a)</u> As authors and performers tend to be in a weaker contractual

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			<p>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. <u>The information should be: timely to allow access to recent data; adequate to include information relevant to the exploitation of the work or performance in a manner that is comprehensible to the author or performer; and sufficient to assess the economic value of the rights in question. As long as exploitation is ongoing, contractual</u></p>	<p>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 <i>and accurate</i> 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. <i>The information should be: timely-up-to-date to allow access to recent data; adequate to include information relevant to the exploitation of the work or performance in a manner that is comprehensible to the author or performer; and comprehensive to cover all sources of revenues relevant to the case, including, where</i></p>

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			<p><u>counterparts of authors and performers should provide information available to them on all modes of exploitation and on all relevant revenues with a regularity which is appropriate in the relevant sector, but at least annually. The processing of personal data, such as contact details and information on remuneration, that are necessary to keep authors and performers informed on the exploitation of their works and performances should be carried out by those who need to comply with the transparency obligation on the basis of Article 6(1)(c) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (General Data Protection Regulation).</u></p>	<p><i><u>applicable, merchandising revenues sufficient to assess the economic value of the rights in question.</u></i> As long as exploitation is ongoing, contractual counterparts of authors and performers should provide information available to them on all modes of exploitation and on all relevant revenues <i><u>worldwide</u></i> with a regularity which is appropriate in the relevant sector, but at least annually. <i><u>The information should be provided in a manner that is comprehensible to the author or performer and it should allow the effective assessment of the economic value of the rights in question.</u></i> <i><u>The transparency obligation should nevertheless apply only where copyright relevant rights are concerned.</u></i> The processing of personal data, such as contact details and information on remuneration, that are</p>

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				<p>necessary to keep authors and performers informed on the exploitation of their works and performances should be carried out by those who need to comply with the transparency obligation on the basis of Article 6(1)(c) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (General Data Protection Regulation).</p> <p><i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
93.			<p><u>(40b) In order to ensure that exploitation-related information is duly provided to authors and performers also in cases where the rights have been sublicensed by the first contractor to other parties who</u></p>	<p>(40b) In order to ensure that exploitation-related information is duly provided to authors and performers also in cases where the rights have been sublicensed by the first contractor to other parties who</p>

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			<p><u>exploit the rights, this Directive entitles authors and performers, in cases where the contractual partner has provided the information available to them, but the received information is not sufficient to assess the economic value of their rights, to request additional relevant information on the exploitation of the rights. This can be ensured either directly or through the contractual counterparts of authors and performers. Member States should have the option, in compliance with Union law, to provide for further measures through national provisions to ensure transparency for authors and performers.</u></p>	<p>exploit the rights, this Directive entitles authors and performers, in cases where the <i>first contractual counterpart</i> partner has provided the information available to them, but the received information is not sufficient to assess the economic value of their rights, to request additional relevant information on the exploitation of the rights. This can be ensured either directly <i>from sub-licensees</i> or through the contractual counterparts of authors and performers. <i>Authors and performers and their contractual counterparts may agree to keep the shared information confidential, but authors and performers should always have the possibility to use the shared information for exercising their rights under in this Directive.</i> Member States should have the option, in compliance with Union law, to</p>

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				<p>provide for further measures through national provisions to ensure transparency for authors and performers.</p> <p><i>[provisionally agreed at TM, confirmed at trilogue 13/12/2018]</i></p>
94.	<p>(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The</p>	<p>(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The</p>	<p>(41) When implementing transparency obligations, <u>Member States should take into account</u> the specificities of different content sectors and, <u>such as those</u> of the rights of the authors and performers in each music sector should be considered. Member States should consult, <u>the audiovisual sector and the publishing sector</u> and all relevant stakeholders as that should help determine <u>be involved when determining such</u> sector-specific requirements. <u>Where relevant, the significance of the contribution of authors and performers to the overall work</u></p>	<p>(41) When implementing transparency obligations, <u>Member States should take into account</u> the specificities of different content sectors and, <u>such as those</u> of the rights of the authors and performers in each music sector should be considered. Member States should consult, <u>the audiovisual sector and the publishing sector</u> and all relevant stakeholders as that should help determine <u>be involved when determining such</u> sector-specific requirements. <u>Where relevant, the significance of the contribution of authors and performers to the overall work</u></p>

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	<p>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.</p>	<p>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.</p>	<p><u>or performance should also be considered.</u> Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency- <u>which should ensure authors and performers the same or higher level of transparency as the minimum requirements provided for in this Directive.</u> 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 <u>and independent management entities or by other entities subject to the national rules implementing Directive 2014/26/EU</u> as those are already subject to transparency obligations under Directive</p>	<p><u>or performance should also be considered.</u> Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency- <u>which should ensure authors and performers the same or higher level of transparency as the minimum requirements provided for in this Directive.</u> 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 <i>in respect of</i> agreements concluded between rightholders and collective management organisations, independent management entities or other entities subject to the national rules implementing Directive 2014/26/EU as those organisations or entities are already subject to transparency</p>

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			2014/26/EU.	<p>obligations under Article 18 of Directive 2014/26/EU. Article 18 of Directive 2014/26/EU applies to organisations which manage copyright or related rights on behalf of more than one rightholder for the collective benefit of those rightholders. However, individually negotiated agreements concluded between rightholders and their contractual partners who act in their own interest and should be subject to the transparency obligation provided for in this Directive.</p> <p><i>[provisionally agreed at trilogue of 03/12/2018]</i></p>
95.	(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.	(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.	(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	(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

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	<p>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.</p>	<p>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 <i>direct and indirect</i> 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 <i>as well as of the nature and the contribution to the work of the author or performer. Such a contract adjustment request could also be made by the organisation representing the author or</i></p>	<p>title- <u>when the economic value of the rights turns out to be significantly higher than initially estimated.</u> Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism <u>should be provided</u> for cases where the remuneration originally agreed under a licence or a transfer of rights is <u>clearly becomes</u> disproportionately low compared to the relevant revenues and the benefits derived from the <u>subsequent</u> exploitation of the work or the fixation of the performance, including in light of <u>by</u> the transparency ensured by this Directive. <u>contractual counterpart of the author or performer.</u> The assessment of the situation should take account of the specific circumstances of each case, <u>including the contribution of the author or performer,</u> as well as of the</p>	<p>title- when the economic value of the rights turns out to be significantly higher than initially estimated. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism should be provided for cases where the remuneration originally agreed under a licence or a transfer of rights is clearly becomes disproportionately low compared to the relevant revenues and the benefits derived from the subsequent exploitation of the work or the fixation of the performance, including in light of by the transparency ensured by this Directive. contractual counterpart of the author or performer. <u>The revenues which should be taken into account for the assessment of the disproportion are all revenues relevant to the case, including, where applicable, merchandising</u></p>

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		<p><i>performer on his or her behalf, unless the request would be detrimental to the interests of the author or performer.</i> Where the parties do not agree on the adjustment of the remuneration, the author or performer <i>or a representative organisation appointed by them</i> should <i>on request by the author or performer</i> be entitled to bring a claim before a court or other competent authority.</p>	<p>specificities and <u>remuneration</u> practices of the different content sectors, <u>and whether the contract is based on a collective bargaining agreement.</u> 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. <u>This mechanism should not apply to contracts concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/UE.</u></p>	<p><u>revenues.</u> The assessment of the situation should take account of the specific circumstances of each case, <u>including the contribution of the author or performer,</u> as well as of the specificities and <u>remuneration</u> practices of the different content sectors, <u>and whether the contract is based on a collective bargaining agreement.</u> <i>Representatives of authors and performers duly mandated in accordance with national law, in compliance with Unions law, should have the possibility to provide assistance to one or more authors or performers in requesting the adjustment of the contracts, also taking into account the interests of other authors or performers when relevant. Those representatives should protect the identity of the represented authors and performers for as long as this is possible.</i> Where the parties do not agree on the</p>

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				<p>adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority. This mechanism should not apply to contracts concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/UE.</p> <p><i>[provisionally agreed at TM 07/12/2018, confirmed at trilogue 13/12/2018]</i></p>
96.	(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	(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	(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 <u>by authors and</u>	(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 by authors and

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	obligations of transparency and the contract adjustment mechanism.	obligations of transparency and the contract adjustment mechanism. <i>Representative organisations of authors and performers, including collective management organisations and trade unions, should be able to initiate such procedures at the request of authors and performers. Details about who initiated the procedure should remain undisclosed.</i>	<u>performers or their representatives on their behalf</u> related to obligations of transparency and the contract adjustment mechanism. <u>For that purpose, Member States may either create a new body or mechanism or rely on an existing one that fulfils the conditions established by this Directive-irrespective of whether these are industry-led or public, including when incorporated in the national judiciary system. Member States should have flexibility in deciding how the costs of the dispute resolution procedure should be allocated. This alternative dispute resolution procedure should be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.</u>	performers or their representatives on their behalf related to obligations of transparency and the contract adjustment mechanism. For that purpose, Member States may either create a new body or mechanism or rely on an existing one that fulfils the conditions established by this Directive-irrespective of whether these are industry-led or public, including when incorporated in the national judiciary system. Member States should have flexibility in deciding how the costs of the dispute resolution procedure should be allocated. This alternative dispute resolution procedure should be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.

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				<i>[provisionally agreed at TM, to be confirmed at trilogue]</i>
97.		<i>(43a) When authors and performers license or transfer their rights, they expect their work or performance to be exploited. However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In such a case, and after a reasonable period of time has lapsed, authors and performers should have a right of revocation allowing them to transfer or license their right to another person. Revocation should also be possible when the transferee or licensee has not complied with</i>		<i>(43a) When authors and performers license or transfer their rights, they expect their work or performance to be exploited. However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In such a case, and after a reasonable period of time has elapsed, authors and performers should be able to benefit from a mechanism for the revocation of rights allowing them to transfer or license their rights to another person. Revocation should also be possible when the transferee</i>

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		<p><i>his or her reporting/transparency obligation provided for in Article 14 of this Directive. The revocation should only be considered after all the steps of alternative dispute resolution have been completed, particularly with regard to reporting. As exploitation of works can vary depending on the sectors, specific provisions could be taken at national level in order to take into account the specificities of the sectors, such as the audiovisual sector, or of the works and the anticipated exploitation periods, notably providing for time limits for the right of revocation. In order to prevent abuses and take into account that a certain amount of time is needed before a work is actually exploited, authors and performers should be able to exercise the right of revocation only after a certain period of</i></p>		<p><i>or licensee has not complied with his or her reporting/transparency obligation provided for in Article 14 of this Directive. The revocation should only be considered after all the steps of alternative dispute resolution have been completed, particularly with regard to reporting. As exploitation of works can vary depending on the sectors, specific provisions could be taken at national level in order to take into account the specificities of the sectors, such as the audio-visual sector, or of the works, notably providing for time frames for the right of revocation. In order to protect the legitimate interests of licensees and transferees of rights and to prevent abuses, and taking into account that a certain amount of time is needed before a work is actually exploited, authors and</i></p>

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		<i>time following the conclusion of the license or of the transfer agreement. National law should regulate the exercise of the right of revocation in the case of works involving a plurality of authors or performers, taking into account the relative importance of the individual contributions.</i>		<i>performers should be able to exercise the right of revocation in accordance with certain procedural requirements and only after a certain period of time following the conclusion of the license or of the transfer agreement. National law should regulate the exercise of the right of revocation in the case of works involving a plurality of authors or performers, taking into account the relative importance of the individual contributions.</i>
98.		<i>(43b) To support the effective application across Member States of the relevant provisions of this Directive, the Commission should, in cooperation with Member States, encourage the exchange of best practices and promote dialogue at Union level.</i>		<i>[To be deleted]</i>
99.			<u>(43a) The obligations laid down in Articles 14 and 15 of this</u>	<u>(43a) The obligations laid down in Articles 14, 15 and 16 of this</u>

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			<p><u>Directive should be of a mandatory nature and parties should not be able to derogate from these contractual provisions, whether included in the contracts between authors, performers and their contractual counterparts or in agreements between those counterparts and third parties such as non-disclosure agreements. As a consequence, the rules set out in Article 3(4) of the Regulation (EC) No 593/2008 of the European Parliament and of the Council¹⁶ should apply to the effect that where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not</u></p>	<p>Directive should be of a mandatory nature and parties should not be able to derogate from these contractual provisions, whether included in the contracts between authors, performers and their contractual counterparts or in agreements between those counterparts and third parties such as non-disclosure agreements. As a consequence, the rules set out in Article 3(4) of the Regulation (EC) No 593/2008 of the European Parliament and of the Council¹⁶ should apply to the effect that where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the</p>

¹⁶ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6–16).

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			<u>prejudice the application of Articles 14 and 15, as implemented in the Member State of the forum.</u>	application of Articles 14, 15 and 16, as implemented in the Member State of the forum. <i>[tentatively agreed at TM, confirmed at trilogue 13/12/2018]</i>
100.	(44) The objectives of this Directive, namely the modernisation of certain aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in	(44) The objectives of this Directive, namely the modernisation of certain aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in	(44) The objectives of this Directive, namely the modernisation of certain aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in	(44) The objectives of this Directive, namely the modernisation of certain aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in

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	that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.	that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.	that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.	that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
101.	(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.	(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.	(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.	(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.
102.	(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with	(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European	(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European	(46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC Regulation (EU)

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	Directive 95/46/EC of the European Parliament and of the Council ¹⁶ and Directive 2002/58/EC of the European Parliament and of the Council ¹⁷ .	Parliament and of the Council ¹⁵ Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council ¹⁶ The provisions of the General Data Protection Regulation, including the "right to be forgotten" should be respected.	Parliament and of the Council ¹⁷ and Directive 2002/58/EC of the European Parliament and of the Council ¹⁶ .	2016/679 of the European Parliament and of the Council and Directive 2002/58/EC of the European Parliament and of the Council ¹⁸ .
103.		<i>(46 a) It is important to stress the importance of anonymity, when handling personal data for commercial purposes. Additionally, the "by default" not sharing option with regards to personal data while using online platform interfaces</i>		<i>[deleted]</i>

¹⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31–50). This Directive is repealed with effect from 25 May 2018 and shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

¹⁸ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37–47), called, as amended by Directives 2006/24/EC and 2009/136/EC, the “e-Privacy Directive”.

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		<i>should be promoted.</i>		
104.	(47) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ¹⁷ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	(47) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ¹⁷ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	(47) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ¹⁷ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	(47) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ¹⁹ , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

¹⁹ OJ C 369, 17.12.2011, p. 14.

**Proposal for a Directive of the European Parliament and of the Council
on copyright in the Digital Single Market**

COM (2016) 593 final - 2016/0280 (COD)

PART 2: ARTICLES

Cell in green: The text can be deemed as already agreed
Cell in yellow: The issue needs further discussion at technical level
Cell in red: The issue needs further discussion in depth at the trilogue meetings

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
105.		TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS
106.	Art.1, title	<i>Article 1 Subject matter and scope</i>	<i>Article 1 Subject matter and scope</i>	<i>Article 1 Subject matter and scope</i>	<i>Article 1 Subject matter and scope</i>
107.	Art. 1, para 1	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into account	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework of the internal market, taking into	GREEN 1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the framework

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
		account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter. <i>[identical text]</i>
108.	Art. 1, para 2	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.	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.	2. Except in the cases referred to in Article 6 17 , 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.	GREEN 2. Except in the cases referred to in Article 6 17 , 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. <i>[identical text/consequential]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
					<i>change of cross-reference, confirmed by trilogue 03/12/2018]</i>
109.	Art. 2, title	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>
110.	Art. 2, introductory part	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	GREEN For the purposes of this Directive, the following definitions shall apply:
111.	Art. 2, para 1, introductory part	(1) ‘research organisation’ means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:	(1) ‘research organisation’ means a university, <i>including its libraries</i> , a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:	(1) ‘research organisation’ means a university, a research institute or any other organisation <u>an entity</u> , the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services: <u>involving also the conduct of scientific research:</u>	GREEN (1) ‘research organisation’ means a university, <i>including its libraries</i> , a research institute or any other <i>entity</i> the primary goal of which is to conduct scientific research <i>or to carry out educational activities involving also the conduct of scientific research:</i> <i>[provisionally agreed at Trilogue 25/10/2018]</i>
112.	Art. 2, para 1, point (a)	(a) on a non-for-profit basis or by reinvesting all	(a) on a non-for-profit basis or by reinvesting all	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific	GREEN

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
		the profits in its scientific research; or	the profits in its scientific research; or	research; or	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or <i>[provisionally agreed at Trilogue 25/10/2018]</i>
113.	Art. 2, para 1, point (b)	(b) pursuant to a public interest mission recognised by a Member State;	(b) pursuant to a public interest mission recognised by a Member State;	(b) pursuant to a public interest mission recognised by a Member State;	GREEN (b) pursuant to a public interest mission recognised by a Member State; <i>[provisionally agreed at Trilogue 25/10/2018]</i>
114.	Art. 2, para 1, closing phrase	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;	in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a significant influence upon such organisation;	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;	GREEN in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a significant decisive influence upon such organisation; <i>[provisionally agreed at Trilogue 25/10/2018]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
115.	Art. 2, para 2	(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 technique <i>which analyses works and other subject matter</i> in digital form in order to generate information, <i>including, but not limited to</i> , patterns, trends and correlations.	(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;	GREEN (2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information, <i>including, but not limited to</i> , patterns, trends and correlations; <i>[provisionally agreed at Trilogue 25/10/2018]</i>
116.	Art. 2, para 3	(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, an archive or a film or audio heritage institution;	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;	GREEN (3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution; <i>[provisionally agreed at Trilogue 25/10/2018]</i>
117.	Art. 2, para 4	(4) ‘press publication’ means a fixation of a collection of literary works of a journalistic nature,	(4) ‘press publication’ means a fixation <i>by publishers or news agencies</i> of a collection of literary	(4) ‘press publication’ means a fixation of a collection composed mainly of literary works of a	GREEN (4) ‘press publication’ means a collection composed mainly of

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		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.	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. <i>Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition;</i>	journalistic nature; which; <i>[remaining part of this paragraph was split up in points (a) to (d) - see following rows 118-121]</i>	literary works of a journalistic nature which: <i>[provisionally agreed at trilogue on 03/12/2018]</i>
118.	Art. 2, para 4, point (a)			(a) may also comprise include other works or subject-matter and ;	GREEN (a) may also include other works or subject matter;

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				<i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>	<i>[provisionally agreed at trilogue on 03/12/2018]</i>
119.	Art. 2, para 4, point (b)			(b) 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; 2. <i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>	GREEN b) 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; <i>[provisionally agreed at trilogue on 03/12/2018]</i>
120.	Art. 2, para 4, point (c)			(c) has having the purpose of providing the general public with information related to news or other topics; and <i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>	GREEN (c) has the purpose of providing the general public(*) with information related to news or other topics; and <i>[provisionally agreed at trilogue on 03/12/2018; (*) to be read in conjunction with the clarifications in recital (33),</i>

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					<i>row 70]</i>
121.	Art. 2, para 4, point (d)			(d) is published in any media under the initiative, editorial responsibility and control of a service provider; [See Article 2(4) of COM proposal and of EP text (row 117)]	GREEN (d) is published in any media under the initiative, editorial responsibility and control of a service provider. Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be considered as press publications for the purposes of this Directive. [provisionally agreed at trilogue on 03/12/2018]
122.	Art. 2, para 4a, introductory part		<i>(4a) ‘out of commerce work’ means:</i>		<i>(deleted)</i>
123.	Art. 2, para 4a, point (a)		<i>(a) an entire work or other subject matter in any</i>		<i>(deleted)</i>

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			<i>version or manifestation that is no longer available to the public in a Member State through customary channels of commerce;</i>		
124.	Art. 2, para 4a, point (b)		<i>(b) a work or other subject matter that has never been in commerce in a Member State, unless, from the circumstances of that case, it is apparent that its author objected to making it available to the public;</i>		<i>(deleted)</i>
125.	Art. 2, para 4b (EP)/para 5 (Council)		<i>(4b) ‘online content sharing service provider’ means a provider of an information society service one of the main purposes of which is to store and give access to the public to a significant amount of copyright protected works or other protected subject-</i>	<u>(5) ‘online content sharing service provider’ means a provider of an information society service whose main or one of the main purposes is to store and give the public access to a large amount of works or other subject-matter uploaded by its users which it organises and promotes for profit-</u>	5) ‘online content sharing service provider’ means a provider of an information society service whose main or one of the main purposes is to store and enable user to upload and share <i>a large(*)</i> amount of <i>copyright protected</i> works or other protected subject-matter which the service organises

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><i>matter uploaded by its users, which the service optimises and promotes for profit making purposes.</i></p> <p><i>Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories, shall not be considered online content sharing service providers within the meaning of this Directive. Providers of</i></p>	<p><u>making purposes. Providers of services such as non-for-profit online encyclopaedias, non-for-profit educational and scientific repositories, non-for-profit open source software developing platforms, as well as internet access service providers, online marketplaces and providers of cloud services which allow users, including businesses for their internal purposes, to upload content for their own use shall not be considered online content sharing service providers within the meaning of this Directive;</u></p>	<p>and promotes for profit-making purposes.</p> <p>[EP: <i>Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC</i>] providers of services such as <i>not-for profit</i> online encyclopedias, <i>not-for profit</i> educational and scientific repositories, <i>open source software developing and sharing platforms, electronic communication service providers [as defined in the new Telecom Code]</i>, online marketplaces and business-to business cloud services and cloud services which allow users to upload content for their own use shall not be considered online content sharing service</p>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive;</i>		providers within the meaning of this Directive. [(*) COM to provide recital on “large amount”; exclusion of Micro- and SMEs to be further discussed]
126.	Art. 2, para 4c (EP)/para 6 (Council)		<i>(4c) ‘information society service’ means a service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council^{1a};</i> <i>^{1a} Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying</i>	<u>(6) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535.</u>	GREEN (6) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 ^{1a} . <i>^{1a} Directive (EU) 2015/1535 of the European Parliament and</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).</i>		<i>of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).</i>
127.	Art. 2, para 4d		<i>(4d) ‘automated image referencing service’ means any online service which reproduces or makes available to the public for indexing and referencing purposes graphic or art works or photographic works collected by automated means via a third-party online service.</i>		
128.		TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-	TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-	TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-	TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
		BORDER ENVIRONMENT	BORDER ENVIRONMENT	BORDER ENVIRONMENT	BORDER ENVIRONMENT
129.	Art. 3, title	<i>Article 3 Text and data mining</i>	<i>Article 3 Text and data mining</i>	<i>Article 3 Text and data mining <u>for the purposes of scientific research</u></i>	GREEN <i>Article 3 Text and data mining <u>for the purposes of scientific research</u></i> <i>[provisionally agreed at Trilogue 25/10/2018]</i>
130.	Art. 3, para 1	1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have lawful access for the purposes of scientific research.	1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions 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 <i>research organisations have lawful access and made in order to carry out text and data</i>	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 <u>and cultural heritage institutions</u> 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	GREEN 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 <i>and cultural heritage institutions</i> 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.

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><i>mining</i> for the purposes of scientific research <i>by such organisations.</i></p> <p><i>Member States shall provide for educational establishments and cultural heritage institutions conducting scientific research within the meaning of point (1)(a) or (1)(b) of Article 2, in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisations, to also be able to benefit from the exception provided for in this Article.</i></p>	scientific research.	[provisionally agreed at Trilogue 25/10/2018]
131.	Art. 3, para 1a		<p><i>1a. Reproductions and extractions made for text and data mining purposes shall be stored in a secure manner, for example by</i></p>	<p><u>1a. Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an</u></p>	<p>GREEN</p> <p><i>1a. Copies of works or other subject-matter made in compliance with paragraph 1</i></p>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>trusted bodies appointed for this purpose.</i>	<u>appropriate level of security and not be retained for longer than necessary for achieving the purposes of scientific research.</u>	<i>shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.</i> <i>[provisionally agreed at Trilogue 25/10/2018]</i>
132.	Art. 3, para 2	2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.	2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable. <i>[See Council's Article 6(1) (row 155)]</i>	2. <i>[Moved to Article 6(1)]</i>	GREEN <i>[Moved to Article 6(1)]</i> <i>[provisionally agreed at Trilogue 25/10/2018]</i>
133.	Art. 3, para 3	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	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	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	GREEN 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

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
		objective.	objective.	objective.	not go beyond what is necessary to achieve that objective. <i>[provisionally agreed at Trilogue 25/10/2018]</i>
134.	Art. 3, para 4	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.	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 <i>may continue to provide text and data mining exceptions in accordance with point (a) of Article 5(3) of Directive 2001/29/EC.</i>	4. Member States shall encourage rightholders and research organisations and <u>and cultural heritage institutions</u> to define commonly-agreed best practices concerning the application of the <u>obligation and</u> measures referred to <u>respectively</u> in paragraphs <u>1a and 3</u> .	GREEN 4. Member States shall encourage rightholders and, research organisations and cultural heritage institutions to define commonly-agreed best practices concerning the application of the obligation and measures referred to respectively in paragraphs 1a and 3. <i>[provisionally agreed at Trilogue 26 November]</i> <i>[the relation with existing exceptions under InfoSoc Directive under Article 17a</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
					(see row 306)]
135.	Art. 3a, title		<u>Article 3a</u> <u>Optional exception or limitation for text and data mining</u>	<u>Article 3a</u> <u>Optional exception or limitation for text and data mining</u>	<u>Article 3a</u> Optional <u>exception or limitation for text and data mining</u>
136.	Art. 3a, para 1		1. <i>Without prejudice to Article 3 of this Directive, Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining, provided that the use of works and</i>	1. <u>Without prejudice to Article 3 of this Directive Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for temporary reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining.</u>	1. Without prejudice to Article 3 of this Directive, Member States may/shall provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 11(1) of this Directive for temporary reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process for the purposes of text and data

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>other subject matter referred to therein has not been expressly reserved by their rightholders, including by machine readable means.</i>		mining. <i>[COM suggestion to turn the optional exception into a mandatory one by replacing “may provide” by “shall provide” to be discussed further at political level.</i> <i>Apart from 'may' or 'shall', text of Article 3a provisionally agreed at trilogue 26/11/2018 as set out in rows 136, 137, 138 and 139]</i>
137.	Art. 3a, para 2 (EP)		2. Reproductions and extractions made pursuant to paragraph 1 shall not be used for purposes other than text and data mining.		GREEN 2. Reproductions and extractions made pursuant to paragraph 1 may be retained as long as necessary for the purposes of text and data mining. <i>[provisionally agreed at Trilogue 25/10/2018 /</i>

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					26/11/2018]
138.	Art. 3a, para 2 (Council)			<p><u>2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by technical means.</u></p> <p><i>[See para. 1 of EP text (row 136)]</i></p>	<p>GREEN</p> <p><i>2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders in an appropriate manner, such as machine readable means <u>for the content made publicly available online.</u></i></p> <p><i>[provisionally agreed at Trilogue 26/11/2018 in conjunction with wording of recital (13a) (row 28)]</i></p>
139.	Art. 3a, para 3		<p><i>3. Member States may continue to provide text and data mining exceptions in</i></p>		<p>GREEN</p> <p><u>3. This Article shall not affect the application of</u></p>

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			<i>accordance with point (a) of Article 5 (3) of Directive 2001/29/EC.</i>		<u>Article 3 of this Directive.</u> <i>[This phrase replaces the 'Without prejudice'-clarification previously contained in paragraph 1.</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i> <i>Agreed at Trilogue 25/10/2018 to introduce the relation with existing exceptions under InfoSoc Directive under Article 17a (see row 306)]</i>
140.	Art. 4, title	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>
141.	Art. 4, para 1	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive	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).	GREEN 1. Member States shall provide for an exception or limitation to the rights

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		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:	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:	(b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Article 4(1) (a) and (b) 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 such use:	provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a), (b), (d) and (e) and 7(1) of Directive 96/9/EC, Article 4(1) (a), and (b) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow 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 such use: <i>[provisionally agreed at Trilogue 26/11/2018; reference to Directive 2009/24/EC agreed provided that it is clarified in a recital that distribution of software allowed under the exception is limited to digital transmission of software]</i>
142.	Art. 4, para 1, point (a)	(a) takes place on the premises of an educational establishment or through a	(a) takes place on the premises of an educational establishment, or in any	(a) takes place on under the premises- responsibility of an educational	GREEN (a) takes place under the

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		secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;	<i>other venue in which the teaching activity takes place under the responsibility of the educational establishment</i> , or through a secure electronic network <i>environment</i> accessible only by the educational establishment's pupils or students and teaching staff;	establishment, <u>on its premises or other venues</u> , or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff; <u>and</u>	<i>responsibility</i> of an educational establishment, <i>on its premises or other venues</i> , or through a secure electronic <i>environment</i> accessible only by the educational establishment's pupils or students and teaching staff; and <i>[provisionally agreed at Trilogue 26/11/2018 together with text on recital 16a, row 33]</i>
143.	Art. 4, para 1, point (b)	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible <i>for reasons of practicability</i> .	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	GREEN (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible. <i>[provisionally agreed at Trilogue 25/10/2018]</i>
144.	Art. 4, para 2, sub-para 1	2. Member States may provide that the exception adopted pursuant to	2. Member States may provide that the exception adopted pursuant to	2. <u>Notwithstanding Article 6(1)</u> , Member States may provide that the	GREEN <i>2. Notwithstanding Article</i>

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		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.	paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, <i>such as material which is primarily intended for the educational market or sheet music</i> , to the extent that adequate licences <i>licencing agreements</i> authorising the acts described in paragraph 1 <i>and tailored to the needs and specificities of educational establishments</i> are easily available in the market.	exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <u>uses or</u> types of works or other subject-matter, to the extent that adequate licences <u>covering the needs of educational establishments and</u> authorising the acts described in paragraph 1 are easily available in the market.	6(1) , Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <i>uses or</i> types of works or other subject-matter, <i>such as material which is primarily intended for the educational market or sheet music</i> , to the extent that <i>suitable</i> licences authorising the acts described in paragraph 1 <i>covering the needs and specificities of educational establishments</i> are easily available in the market. <i>[provisionally agreed at Trilogue 25/10/2018 / 26/11/2018 together with text on recitals (16) and (17), rows 32 and 35 tbc by trilogue]</i>
145.	Art. 4, para 2, sub-para 2	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure	GREEN Member States availing themselves of the provision of the first subparagraph shall

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		appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.	appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.	appropriate availability and visibility of that rightholders make the licences authorising the acts described in paragraph 1 available and visible for educational establishments.	take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments. <i>[provisionally agreed at Trilogue 26/11/2018 together with text on recital (17) and (17a), rows 35 and 36]</i>
146.	Art. 4, para 3	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks environments undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.	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.	GREEN 3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic environments undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established. <i>[provisionally agreed at Trilogue 25/10/2018 /</i>

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					26/11/2018 together with text on recital 16a, row 33]
147.	Art. 4, para 4	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.	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.	4. Member States may provide for fair compensation for the harm incurred by the <u>to</u> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	GREEN 4. Member States may provide for fair compensation for the harm incurred by the <u>to</u> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1. [provisionally agreed at Trilogue 25/10/2018 / 26/11/2018 together with text on recital (17a), row 36]
148.	Art. 4, para 4a		4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to paragraph 1 shall be unenforceable. Member States shall ensure that rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1,		[provisionally agreed at trilogue 25/10/2018 to deal with contractual override under Article 6(1)] [Commission to provide a general recital on royalty free licences]

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			<i>generally or as regards specific types of works or other subject-matter that they may choose.</i> <i>[See Council's Article 6(1) (row 155)]</i>		
149.	Art. 5, title	<i>Article 5 Preservation of cultural heritage</i>	<i>Article 5 Preservation of cultural heritage</i>	<i>Article 5 Preservation of cultural heritage</i>	<i>Article 5 Preservation of cultural heritage</i>
150.	Art. 5, [para 1 (EP)]	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	I. 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 purposes of preservation of	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	GREEN 1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or

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		works or other subject-matter and to the extent necessary for such preservation.	such works or other subject-matter and to the extent necessary for such preservation.	works or other subject-matter and to the extent necessary for such preservation.	other subject-matter and to the extent necessary for such preservation. <i>[provisionally agreed at trilogue 25/10/2018]</i>
151.	Art. 5, para 1a		<i>1a. Member States shall ensure that any material resulting from an act of reproduction of material in the public domain shall not be subject to copyright or related rights, provided that such reproduction is a faithful reproduction for purposes of preservation of the original material.</i>		<i>1a. Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work shall not be subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.</i> <i>[provisionally agreed at trilogue of 13/12/2018 together with deletion of Article 6(1), row 154, and in conjunction with new recital in row 45a.]</i>

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					<i>[To be decided whether to place paragraph 1a outside Article 5, as this is not about an exception]</i>
152.	Art. 5, para 1b		<p><i>1b. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.</i></p> <p><i>[See Council's Article 6(1) (row 155)]</i></p>		<p>GREEN</p> <p><i>[provisionally agreed at trilogue 25/10/2018 to deal with contractual override under Article 6(1)]</i></p>
153.	Art. 6, title	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>
154.	Art. 6, para 1 (EP)		<p><i>1. Accessing content covered by an exception provided for in this Directive shall not confer on users any entitlement to</i></p>		<p>GREEN</p> <p><i>Deleted</i></p> <p><i>[provisionally agreed at</i></p>

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			<i>use it pursuant to another exception.</i>		<i>trilogue 13/12/2018]</i>
155.	Art. 6, para 1 (Council)			<p>1. Any contractual provision contrary to the exceptions provided for in Articles 3, 4(1) and 5 shall be unenforceable.</p> <p><i>[See Article 3(2) of the COM proposal and Parliament's Articles 3(2) and 4(4a) and 5(1b)]</i></p>	<p>GREEN</p> <p>1. Any contractual provision contrary to the exceptions provided for in Articles 3, 4 and 5 shall be unenforceable.</p> <p><i>[provisionally agreed at trilogue 25/10/2018]</i></p>
156.	Art. 6, para 2	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.	2. Article 5(5) and the first, third, fourth and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.	<p><u>2. Article 5(5) and the of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. The</u> first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to <u>the exceptions Articles 3, 4(1) and the limitation provided for under 5 of this Title Directive.</u></p>	<p>2. Article 5(5) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to Articles 3, 4 and 5 of this Directive.</p> <p><i>[EP agrees to drop reference to the fourth subparagraph of Article 6(4) of Directive 2001/29/EC;</i></p>

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					<i>TM 07.12: general reference to exceptions to be made in second sentence; to be finalised at technical level]</i>
157.		TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT
158.		CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works
159.	Art. 7, title	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7 Use of out-of-commerce works by cultural heritage institutions</i>
160.	Art. 7, para 1, introductory part	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,	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,	1. Member States shall provide that when a collective management organisation, on behalf of <u>in accordance with its members,</u> concludes <u>mandates, may conclude</u> a non-exclusive licence for non-commercial	GREEN 1. Member States shall provide that a collective management organisation, in accordance with its mandates, may conclude a non-exclusive licence for non-commercial purposes with a cultural

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		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:	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:	purposes with a cultural heritage institution for the digitisation reproduction , distribution, communication to the public or making available to the public 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 irrespective of whether all rightholders covered by the licence who are not represented by have mandated the collective management organisation, provided that:	heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject-matter permanently in the collection of the institution, irrespective of whether all rightholders covered by the licence have mandated the collective management organisation, provided that: <i>[provisionally agreed at Trilogue 26/11/2018]</i>
161.	Art. 7, para 1, point (a)	(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-	(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-	(a) the collective management organisation is, on the basis of mandates from rightholders, broadly sufficiently representative of rightholders in the	GREEN (a) the collective management organisation is, on the basis of mandates from rightholders, sufficiently representative of rightholders

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		matter and of the rights which are the subject of the licence;	matter and of the rights which are the subject of the licence;	category relevant type of works or other subject-matter and of the rights which are the subject of the licence;	in the relevant type of works or other subject-matter and of the rights which are the subject of the licence; <i>[provisionally agreed at Trilogue 26/11/2018]</i>
162.	Art. 7, para 1, point (b)	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence.
163.	Art. 7, para 1, point (c)	(c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.	(c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.	c) all rightholders may at any time object to exclude the possibility for collective management organisations to license their works or other subject-matter being deemed to be out of commerce and in accordance with this Article, either in general or in specific cases, or exclude the application of the any licence granted in accordance with this Article to their works or other subject-matter.	GREEN <i>[This point is moved to new paragraph 1b below – row 167]</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>

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164.	Art. 7, para 1a		1a. <i>Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies available online of out-of-commerce works that are located permanently in their collections for not-for-profit purposes, provided that:</i>		GREEN 1a. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a), (b), (d) and (e) 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 make available out-of-commerce works or other subject-matter that are permanently in their collections for non-commercial purposes, provided that: <i>[Council provisionally agreed at trilogue, provided that Council Article 9a is adopted]</i>
165.	Art. 7, para 1a, point (a)		(a) <i>the name of the author or any other identifiable rightholder is</i>		GREEN (a) the name of the author or any other identifiable

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			<i>indicated, unless this turns out to be impossible;</i>		rightholder is indicated, unless this turns out to be impossible; <i>[provisionally agreed at trilogue 03/12/2018; see also comment in row 164]</i>
166.	Art. 7, para 1a, point (b)		<i>(b) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the exception to their works or other subject-matter.</i>		GREEN (b) such works or other subject-matter are made available on non-commercial websites. <i>[provisionally agreed at trilogue 03/12/2018]</i> <i>[Text of EP covered in new paragraph 1b below – row 167; see also comment in row 164]</i>
167.	Art. 7, para 1b		<i>1b. Member States shall provide that the exception adopted pursuant to paragraph 1a does not apply in sectors or for types of works where appropriate</i>		GREEN 1b. Member States shall provide that the exception or limitation referred to in the previous paragraph only

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			<i>licensing-based solutions, including but not limited to solutions provided for in paragraph 1, are available. Member States shall, in consultation with authors, other rightholders, collective management organisations and cultural heritage institutions, determine the availability of extended collective licensing-based solutions for specific sectors or types of works.</i>		<p>applies to types of works or other subject-matter for which no collective management organisation exists that fulfils the conditions referred to in point (a) of paragraph 1.</p> <p>1c. Member States shall provide that all rightholders may at any time, easily and effectively, exclude their works or other subject-matter from the licensing mechanism referred to in paragraph 1 or from uses under the exception or limitation referred to in paragraph 1a, either in general or in specific cases, including after the conclusion of a licence or the beginning of the use concerned.</p> <p><i>[provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]</i></p>
168.	Art. 7, para 2, sub-para 1	2. A work or other subject-matter shall be deemed to be out of	2. A work or other subject-matter shall be deemed to be out of	2. A work or other subject-matter shall be deemed to be out-of-	<p>GREEN</p> <p>2. A work or other subject-</p>

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		commerce when the whole work or other subject-matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so.	<p>commerce when the whole work or other subject-matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so. Member States may provide a cut-off date in relation to determining whether a work previously commercialised is deemed to be out of commerce.</p> <p><i>[See definition of out-of-commerce work in Parliament's Article 2(4a) (rows 122-126)]</i></p>	commerce when <u>it can be presumed in good faith that</u> the whole work or other subject-matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so. <u>after a reasonable effort is made to determine such availability.</u>	<p>matter shall be deemed to be out-of-commerce when it can be presumed in good faith that the whole work or other subject-matter is not available to the public through customary channels of commerce after a reasonable effort is made to determine such availability.</p> <p><i>[provisionally agreed at Trilogue 26/11/2018]</i></p>
169.	Art. 7, para 2, sub-para 2	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	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	Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the <u>may provide for specific</u> requirements used to determine whether works	<p>GREEN</p> <p>Member States may provide for specific requirements, <u>such as a cut-off date</u>, to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 or used under the</p>

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		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.	be licensed in accordance with paragraph 1 <i>or used in accordance with paragraph 1a</i> 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.	and other subject-matter can be licensed in accordance with paragraph 1 do . <u>Such requirements shall</u> not extend beyond what is necessary and reasonable, and do shall not preclude the possibility to determine the out-of-commerce status of a collection as a 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.	exception or limitation referred to in paragraph 1a. Such requirements shall not extend beyond what is necessary and reasonable, and shall not preclude the possibility to determine the out-of-commerce status of a set of works or other subject-matter as a whole, when it is reasonable to presume that all works or other subject-matter are out-of-commerce. <i>[provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]</i>
170.	Art. 7, para 3, introductory part	3. Member States shall provide that appropriate publicity measures are taken regarding:	3. Member States shall provide that appropriate publicity measures are taken regarding:	3. <i>[Moved to new Article 8a(2)]</i>	3. <i>[Moved to new Article 8a(2)]</i>
171.	Art. 7, para 3, point (a)	(a) the deeming of works or other subject-matter as out of commerce;	(a) the deeming of works or other subject-matter as out of commerce;		
172.	Art. 7, para	(b) the licence, and in	(b) the <i>any</i> licence, and in		

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	3, point (b)	particular its application to unrepresented rightholders;	particular its application to unrepresented rightholders;		
173.	Art. 7, para 3, point (c)	(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;	(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 and point (b) of paragraph 1a;		
174.	Art. 7, para 3, closing phrase	including during a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.	including during a reasonable period of time at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available.		
175.	Art. 7, para 4, introductory part / Art. 7, para 4 (Council)	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:	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:	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: <u>the cultural heritage institution is established.</u>	GREEN 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.

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					<i>[provisionally agreed at Trilogue 26/11/2018]</i>
176.	Art. 7, para 5, introductory part (Council)			5. <u>This Article shall not apply to sets of out-of-commerce if, following the reasonable effort to determine commercial availability, there is evidence that such sets predominantly consist of:</u>	GREEN 5. This Article shall not apply to sets of out-of-commerce works if, on the basis of the reasonable effort referred to in paragraph 2, there is evidence that such sets predominantly consist of: <i>[provisionally agreed at Trilogue 26/11/2018]</i>
177.	Art. 7, para 4, point (a) (EP)/ Art. 7, para 5, point (a) (Council)	(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;	(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;	(a) the works or other subject-matter phonograms were first published or, in the absence of publication, where they were first broadcast in a third country , except for cinematographic and or audiovisual works;	GREEN (a) works or other subject-matter first published or, in the absence of publication, first broadcast in a third country, except for cinematographic or audiovisual works; <i>[provisionally agreed at Trilogue 26/11/2018]</i>

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178.	Art. 7, para 4, point (b) (EP)/ Art. 7, para 5, point (b) (Council)	(b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or	(b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or	(b) <u>cinematographic or audiovisual works</u> , the producers of the works <u>which</u> have their headquarters or habitual residence, for cinematographic and audiovisual works <u>in a third country</u> ; or	GREEN (b) cinematographic or audiovisual works, the producers of which have their headquarters or habitual residence in a third country; or <i>[provisionally agreed at Trilogue 26/11/2018]</i>
179.	Art. 7, para 4, point (c) (EP) /Art. 7, para 5, point (c) (Council)	(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).	(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).	c) the cultural heritage institution is established, <u>works or other subject-matter of third country nationals</u> when a Member State or a third country could not be determined, after a <u>reasonable effort</u> , according to points (a) and (b-);	GREEN c) works or other subject-matter of third country nationals when a Member State or a third country could not be determined, after a reasonable effort, according to points (a) and (b); <i>[provisionally agreed at Trilogue 26/11/2018]</i>
180.	Art. 7, para 5 (EP)/ Art. 7, para 5,	5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of	5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of	5. Paragraphs 1, 2 and 3 shall not apply to <u>unless</u> the works or other subject-	GREEN unless the collective

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	closing phrase (Council)	third country nationals except where points (a) and (b) of paragraph 4 apply.	third country nationals except where points (a) and (b) of paragraph 4 apply.	matter collective management organisation is sufficiently representative of rightholders of that third country nationals except where points in the meaning of point (a) and (b) of paragraph 4 apply 1.	management organisation is sufficiently representative of rightholders of that third country in the meaning of point (a) of paragraph 1. [provisionally agreed at Trilogue 26/11/2018]
181.	Art. 8, title	<i>Article 8 Cross-border uses</i>	<i>Article 8 Cross-border uses</i>	<i>Article 8 Cross-border uses</i>	<i>Article 8 Cross-border uses</i>
182.	Art. 8, para 1	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.	1. Works Out-of-commerce 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 that Article in all Member States.	1. Works or other subject-matter covered by a A licence granted in accordance with Article 7 may be used allow the use of out-of-commerce works or other subject-matter by the cultural heritage institution in accordance with the terms of the licence in all any Member States State .	GREEN 1. A licence granted in accordance with Article 7 may allow the use of out-of-commerce works or other subject-matter by the cultural heritage institution in any Member State. 2. The uses of works and other subject-matter under the exception or limitation referred to in Article 7(1a) shall be deemed to occur

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					<i>solely in the Member State where the cultural heritage institution undertaking that use is established.</i> <i>[provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]</i>
183.	Art. 8, para 2	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	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 point (c) of Article 7(1) and point (b) of Article 7(1a) are made publicly permanently, easily and effectively accessible in a public single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available	2. <i>[Moved to new Article 8a(1)]</i>	GREEN 2. <i>[Moved to new Article 8a(1)]</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>

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		duration of the licence.	in Member States other than the one where the licence is granted, <i>or in the cases covered by Article 7(1a), where the cultural heritage institution is established</i> and for the whole duration of the licence.		
184.	Art. 8, para 3	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.	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.	3. <i>[Moved to new Article 8a(1) second subparagraph]</i>	GREEN 3. <i>[Moved to new Article 8a(1) second subparagraph]</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
185.	Art. 8a, title			<u>Article 8a</u> <u>Publicity measures</u>	GREEN <u>Article 8a</u> <u>Publicity measures</u> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
186.	Art. 8a, para 1, sub-para 1			<u>1.</u> Member States shall ensure that information that <u>allows for the purposes of</u>	GREEN 1. Member States shall

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				<p>the identification of the out-of-commerce works or other subject-matter covered by a licence granted in accordance with Article 7 and as well as information about the possibility possibilities of rightholders to object referred to in Article 7(1)(c) are, and, as soon as it is available, information on the parties to the licence, the covered territories and the allowed uses is made publicly accessible in a single online portal for from 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 to the public in accordance with the licence.</p>	<p>ensure that information from cultural heritage institutions, collective management organisations or relevant public authorities for the purposes of the identification of the out-of-commerce works or other subject-matter covered by a licence granted in accordance with Article 7(1) or used under the exception or limitation referred to in Article 7(1a) as well as information about the possibilities of rightholders referred to in Article 7(1c), and, as soon as it is available and where relevant, information on the parties to the licence, the covered territories and the allowed uses is made permanently, easily and effectively accessible in a public single online portal from at least six months before the works or other subject-matter are distributed, communicated to the public or</p>

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				<i>[Article 8(2) of the COM proposal, amended]</i>	made available to the public in accordance with the licence or under the exception or limitation. <i>[Article 8(2) of the COM proposal, amended]</i> <i>[provisionally agreed at Trilogue 26/11/2018, including clarification in recital (27) that the licence may cover one, several or all Member States; see also comment in row 164]</i>
187.	Art. 8a, para 1, sub-para 2			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. <i>[Article 8(3) of the COM proposal, amended]</i>	GREEN The portal shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012. <i>[Article 8(3) of the COM proposal, amended]</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
188.	Art. 8a, para			2. Member States shall provide that, <u>if necessary</u>	GREEN

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	2			<p><u>for the general awareness of rightholders, further</u> appropriate publicity measures are taken regarding: (a) the deeming of works or other subject-matter as out of commerce; (b) the licence, and in particular its application to unrepresented rightholders; <u>the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the licences granted and</u> (e) the possibilities to object of rightholders referred to in point (e) of paragraph 1 Article 7(1)(c).</p> <p>Including during a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.</p> <p><u>The additional appropriate</u></p>	<p>2. Member States shall provide that, if necessary for the general awareness of rightholders, further appropriate publicity measures are taken regarding the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the licences granted, the uses under the exception or limitation referred to in Article 7(1a) and the possibilities of rightholders referred to in Article 7(1c).</p> <p>The additional appropriate publicity measures shall be taken in the Member State where the licence is sought in accordance to Article 7(1) or, for uses under the exception or limitation referred to in Article 7(1a), where the cultural heritage institution is established. If there is evidence, such as the origin of</p>

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				<p><u>publicity measures shall be taken in the Member State where the licence is sought. If there is evidence, such as the origin of the works or other subject-matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.</u></p> <p><i>[Article 7(3) of the COM proposal, amended]</i></p>	<p>the works or other subject-matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.</p> <p><i>[Article 7(3) of the COM proposal, amended]</i></p> <p><i>[provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]</i></p>
189.	Art. 9, title	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>
190.	Art 9	Member States shall ensure a regular dialogue between representative users' and	Member States shall ensure a regular dialogue between representative users' and	Member States shall ensure <u>consult rightholders, collective management organisations and cultural</u>	GREEN Member States shall <u>consult</u>

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		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).	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) <i>and the exception referred to in Article 7(1a)</i> , 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).	<u>heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage</u> a regular dialogue between representative users' and rightholders' organisations, <u>including collective management organisations,</u> and any other relevant stakeholder organisations, to , on a sector-specific basis, <u>to</u> foster the relevance and usability of the licensing mechanisms referred to in Article 7(1);) <u>and to</u> 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).	rightholders, collective management organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage a regular dialogue between representative users' and rightholders' organisations, including collective management organisations, and any other relevant stakeholder organisations, on a sector-specific basis, to foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) and to ensure the effectiveness of the safeguards for rightholders referred to in this Chapter. <i>[provisionally agreed at Trilogue 26/11/2018]</i>
191.				<u>CHAPTER 1a</u>	<u>CHAPTER 1a</u>

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				<u>Measures to facilitate collective licensing</u>	<u>Measures to facilitate collective licensing</u>
192.	Art. 9a, title			<u>Article 9a</u> <u>Collective licensing with an extended effect</u>	<u>Article 9a</u> <u>Collective licensing with an extended effect</u> <i>[Article 9a provisionally agreed at trilogue 03/12/2018; final wording as set out in rows 193 - 202 (i.e. with technical clarifications from COM and related recitals (28a)-(28h), as set out in rows 56 - 63, to be confirmed by trilogue]</i>
193.	Art. 9a, para 1			<u>1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for in this Article, that when a collective management organisation, in accordance with its mandates from rightholders, enters into a licensing agreement for the</u>	<u>1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for in this Article, that when a collective management organisation, to which is subject to the national rules implementing Article 2 of Directive 2014/26/EU, applies and which, in accordance with its</u>

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				<p><u>exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised the organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.</u></p>	<p>mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised thethat collective management organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.</p> <p><i>[see comment in rows 192 and 164]</i></p>
194.	Art. 9a, para 2			<p><u>2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied</u></p>	<p>2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied</p>

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				<u>within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such mechanism safeguards the legitimate interests of rightholders.</u>	within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such licensing mechanism safeguards the legitimate interests of rightholders . <i>[see comment in rows 192 and 164]</i>
195.	Art. 9a, para 3			<u>3. The safeguards referred to in paragraph 1 must ensure that:</u>	3. The safeguards referred to in paragraph 1 must ensure shall provide that: <i>[see comment in rows 192 and 164]</i>
196.	Art. 9a, para 3, point (a)			<u>(a) the organisation is, on the basis of mandates from rightholders, sufficiently representative</u>	(a) the collective right management organisation is, on the basis of mandates from rightholders, sufficiently

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				<u>of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State;</u>	representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State; <i>[see comment in rows 192 and 164]</i>
197.	Art. 9a, para 3, point (b)			<u>(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;</u>	(b) equal treatment is guaranteed to all rightholders, <u>including</u> in relation to the terms of the licence; <i>[see comment in rows 192 and 164]</i>
198.	Art. 9a, para 3, point (c)			<u>(c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;</u>	(c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article; <i>[see comment in rows 192 and</i>

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					164]
199.	Art. 9a, para 3, point (d)			<u>(d) appropriate publicity measures are taken to raise the awareness of rightholders regarding the possibility for organisations to license works or other subject-matter and the licensing taking place in accordance with this Article, and the possibilities of rightholders referred to in point (c) starting from a reasonable period before the works or other subject-matter are used under the licence. Publicity measures should be effective without the need to inform each rightholder individually.</u>	(d) appropriate publicity measures are taken to raise the awareness of <u>inform</u> rightholders regarding the possibility for <u>the collective management</u> organisations to license works or other subject-matter and the licensing taking place in accordance with this Article, and the possibilities of rightholders referred to in point (c) starting from a reasonable period before the works or other subject-matter are used under the licence. Publicity measures should be effective without the need to inform each rightholder individually. <i>[see comment in rows 192 and 164]</i>
200.	Art. 9a, para			<u>4. The rules provided for in this Article are</u>	4. The rules provided for in this Article are without

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	4			<u>without prejudice to the application of collective licensing mechanisms with an extended effect in conformity with other provisions of Union law, including those which allow exceptions or limitations, and shall not apply to mandatory collective management of rights.</u>	<p>prejudice <u>does not affect</u> to the application of collective licensing mechanisms with an extended effect in conformity with other existing provisions of Union law, including these <u>provisions</u> which allow exceptions or limitations.</p> <p><u>This article</u> shall not apply to mandatory collective management of rights.</p> <p><u>Article 7 of Directive 2014/26/EU shall apply to the licensing mechanism provided for in this Article.</u></p> <p><i>[see comment in row 192 and 164]</i></p>
201.	Art. 9a, para 5			<u>5. Where the law of a Member State provides for a licensing mechanism in accordance with this Article, the Member State concerned shall inform the Commission about the scope of that law, purposes</u>	<p>5. Where the law of a Member State provides for a licensing mechanism in accordance with this Article, the Member State concerned shall inform the Commission about the scope of that law, purposes and types of licences</p>

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				<u>and types of licences that may be introduced under that law as well as contact details for organisations issuing licences in accordance with the mechanism in paragraph 1. The Commission shall publish this information.</u>	that may be introduced under that law as well as contact details for organisations issuing licences in accordance with the mechanism in paragraph 1, <u>and the way in which information on the licensing and the possibilities of rightholders referred to in point (c) of paragraph 3 can be obtained.</u> The Commission shall publish this information. <i>[see comment in row 192 and 164]</i>
202.	Art. 9a, para 6			<u>6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 31 December 2020, submit to the European Parliament and to the</u>	6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 10 April 2021 , submit to the European Parliament and to the Council a report on the use of such mechanisms referred to in

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				<p><u>Council a report on the use of such mechanisms referred to in paragraph 1 in the EU and their impact on licensing and rightholders. The Commission's report shall be accompanied, if appropriate, by a legislative proposal, including as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2): the cross-border effect of such national schemes.</u></p>	<p>paragraph 1 in the EU, and their <u>impact on licensing and rightholders, including rightholders who are not members and/or who are nationals of, or resident in, another Member State, their effectiveness to facilitate the dissemination of cultural content, -and the impact on the internal market, including the cross-border provision of services and competition.</u> The Commission's report shall be accompanied, if appropriate, by a legislative proposal, including as regards the cross-border effect of such national schemes.</p> <p><i>[see comment in row 192 and 164]</i></p>
203.		CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-

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					on-demand platforms
204.	Art. 10, title	<i>Article 10 Negotiation mechanism</i>	<i>Article 10 Negotiation mechanism</i>	<i>Article 10 Negotiation mechanism</i>	<i>Article 10 Negotiation mechanism</i>
205.	Art. 10, sub-para 1	Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of rights, they may rely on the assistance of an impartial body with relevant experience. That body shall provide assistance with negotiation and help reach agreements.	Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of <i>audiovisual</i> rights, they may rely on the assistance of an impartial body with relevant experience. That body <i>The impartial body created or designated by the Member State for the purpose of this Article</i> shall provide assistance <i>to the parties</i> with negotiation and help <i>them</i> to reach agreement.	Member States shall ensure that where parties wishing <u>facing difficulties related to the licensing of rights when seeking to</u> conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of rights, they <u>services,</u> may rely on the assistance of an impartial body with relevant experience. That <u>or of mediators. The body or mediators shall provide assistance to the parties with negotiation their negotiations and help them reach agreements, including, where appropriate, by submitting proposals to the parties.</u>	GREEN Member States shall ensure that parties facing difficulties related to the licensing of rights when seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services, may rely on the assistance of an impartial body or of mediators. The impartial body created or designated by the Member State for the purpose of this Article or mediators shall provide assistance to the parties with their negotiations and help them reach agreements, including, where appropriate, by submitting proposals to the parties.

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					<i>[provisionally agreed at Trilogue 26/11/2018]</i>
206.	Art. 10, sub-para 2	No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in paragraph 1.	No later than [date mentioned in Article 21(1)] Member States shall notify inform the Commission of the body referred to in paragraph 1. they create or designate pursuant to the first paragraph.	No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body or mediators referred to in paragraph 1 no later than [date mentioned in Article 21(1)]. In cases where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found.	GREEN Member States shall notify to the Commission the body or mediators referred to in paragraph 1 no later than [date mentioned in Article 21(1)]. In cases where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found. <i>[provisionally agreed at Trilogue 26/11/2018]</i>
207.	Art. 10, sub-para 3		To encourage the availability of audiovisual works on video-on-demand		GREEN <i>[provisionally agreed at</i>

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			<i>platforms, Member States shall foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.</i>		<i>Trilogue on 26/11/2018 to insert part of the EP mandate of this row into a recital (not in Article) along the following lines: Member States should encourage dialogue between representative organisations, without it being an obligation for Member States]</i>
208.			CHAPTER 2a Access to Union publications		GREEN Deleted <i>[it is the Presidency's understanding of the outcome of the trilogues on 26/11/2018 / 03/12/2018 that it was provisionally agreed that this provision would be removed from the Directive]</i>
209.	Art. 10a, title		Article 10 a Union Legal Deposit		GREEN Deleted <i>[see comments in row 208]</i>
210.	Art. 10a, para		1. Any electronic		GREEN

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
	1		<i>publication dealing with Union-related matters such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, that is made available to the public in the Union shall be subject to a Union Legal Deposit.</i>		Deleted <i>[see comments in row 208]</i>
211.	Art. 10a, para 2		2. <i>The European Parliament Library shall be entitled to delivery, free of charge, of one copy of every publication referred to in paragraph 1.</i>		GREEN Deleted <i>[see comments in row 208]</i>
212.	Art. 10a, para 3		3. <i>The obligation set out in paragraph 1 shall apply to publishers, printers and importers of publications for the works they publish, print or import in the Union.</i>		GREEN Deleted <i>[see comments in row 208]</i>
213.	Art. 10a, para		4. <i>From the day of the delivery to the European</i>		GREEN

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
	4		<i>Parliament Library, the publications referred to in paragraph 1 shall become part of the European Parliament Library permanent collection. They shall be made available to users at the European Parliament Library's premises exclusively for the purpose of research or study by accredited researchers and under the control of the European Parliament Library.</i>		Deleted <i>[see comments in row 208]</i>
214.	Art. 10a, para 5		<i>5. The Commission shall adopt acts to specify the modalities relating to the delivery to the European Parliament Library of publications referred to in paragraph 1.</i>		GREEN Deleted <i>[see comments in row 208]</i>
215.		TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
		COPYRIGHT	COPYRIGHT	COPYRIGHT	COPYRIGHT
216.		CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications
217.	Art. 11, title	<i>Article 11 Protection of press publications concerning digital uses</i>	<i>Article 11 Protection of press publications concerning digital uses</i>	<i>Article 11 Protection of press publications concerning digital <u>online</u> uses</i>	<i>Article 11 Protection of press publications concerning <u>online</u> uses</i> <i>[to be confirmed at trilogue]</i>
218.	Art. 11, para 1	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC <i>so that they may obtain fair and proportionate remuneration</i> for the digital use of their press publications <i>by information society service providers</i> .	1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital online use of their press publications by information society service providers .	GREEN 1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service providers. These rights shall not apply to private or non-commercial uses of press publications carried out by individual users.

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
					<p>The protection granted under the first subparagraph shall not apply to acts of hyperlinking.</p> <p><i>[provisionally agreed at trilogue 03/12/2018;</i></p> <p><i>Recital to clarify that individual users that contribute to Wikipedia are not covered]</i></p>
219.	Art. 11, para 1, sub-para 2			<p><u>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short</u></p>	<p>RED</p> <p><u>The rights referred to in the first subparagraph shall not apply in respect of uses of individual words or very short extracts of a press publication.</u></p>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
				excerpts, or both criteria.	
220.	Art. 11, para 1a		<i>1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.</i>		[integrated into paragraph 1, row 218; to be confirmed at trilogue]
221.	Art. 11, para 2	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such The rights referred to in paragraph 1 may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.	GREEN 2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. The rights referred to in paragraph 1 may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
					<i>[provisionally agreed at trilogue 03/12/2018]</i>
222.	Art. 11, para 2, sub-para 2			<u>When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection has expired.</u>	GREEN When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection has expired. <i>[provisionally agreed at trilogue 03/12/2018]</i>
223.	Art. 11, para 2a		<i>2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by</i>		GREEN <i>[integrated into paragraph 1, row 218, as provisionally</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>individual words.</i>		<i>agreed at trilogue 03/12/2018]</i>
224.	Art. 11, para 3	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	GREEN 3. Articles 5 to 8 of Directive 2001/29/EC and Directives 2012/28/EU and (EU) 2017/1564 shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1. <i>[identical text]</i>
225.	Art. 11, para 4	4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.	4. The rights referred to in paragraph 1 shall expire 20 5 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. <i>The right referred to in paragraph 1 shall not apply with retroactive effect.</i>	4. The rights referred to in paragraph 1 shall expire 20 years 1 year after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date o publication.	RED 4. The rights referred to in paragraph 1 shall expire 20 years 1 year 2 years 5 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date o publication. <i>[term of protection to be further discussed at trilogue]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
					<p>Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].</p> <p><i>[last sentence provisionally agreed at trilogue 03/12/2018]</i></p>
226.	Art. 11, para 4a		<p><i>4a. Member States shall ensure that authors receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers</i></p>		<p>RED</p> <p>4a. Member States shall provide that authors of the works incorporated in a press publication receive an appropriate share of the additional revenues press publishers receive for the use of their press publications by information society service providers.</p> <p><i>[Remuneration of journalists (authors of the works contained in a press publication) to be discussed further at trilogue, possibly in</i></p>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
					context of the remuneration chapter] [see also recital (35) in row 73]
227.	Art. 11, para 5			5. Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].	GREEN [integrated into paragraph 4; see last sentence in row 225 as provisionally agreed at trilogue 03/12/2018]
228.	Art, 12, title	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>
229.	Art. 12, sub-para 1 (EP)/ Art. 12, introductory part (Council)]	Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.	Member States with compensation-sharing systems between authors and publishers for exceptions and limitations may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the	Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim be entitled to a share of: [remaining part of this paragraph of the COM proposal was moved to new point (a) (see row 230)]	GREEN Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to be entitled to a share of the compensation for the uses of the work made under an exception or limitation to the transferred or

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			uses of the work made under an exception or limitation to the transferred or licensed right, <i>provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015.</i>		licensed right. <i>[provisionally agreed at trilogue 03/12/2018]</i> <i>[to be read in conjunction with recital (36), as provisionally agreed at TM 04/12/2018, tbc at trilogue - see row 74]</i>
230.	Art. 12, point (a)			(a) the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right; and <i>[See Parliament's subparagraph 1 of Article 12 (row 229)]</i>	GREEN <i>[integrated into row 229]</i> <i>[provisionally agreed at trilogue 03/12/2018]</i>
231.	Art. 12, point (b)			(b) the remuneration for public lending provided for in Article 6(1) of Directive 2006/115/EC.	GREEN <i>Deleted</i> <i>[provisionally agreed at trilogue 03/12/2018]</i>
232.	Art. 12, sub-para 2		<i>The first paragraph shall be without prejudice to the</i>		GREEN

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			<i>arrangements in Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.</i>		The first paragraph shall be without prejudice to existing and future arrangements in Member States concerning public lending rights. <i>[provisionally agreed at trilogue 03/12/2018]</i> <i>[to be read in conjunction with recital (36), as provisionally agreed at TM 04/12/2018 to be confirmed at trilogue - see row 74]</i>
233.			CHAPTER 1a <i>Protection of sport event organizers</i>		GREEN <i>Deleted</i> <i>[it is the Presidency's understanding of the outcome of the trilogues on 26/11/2018 / 03/12/2018 that it was provisionally agreed that this provision would be removed from the Directive]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
234.	Art. 12a, title		Article 12a <i>Protection of sport event organizers</i>		GREEN <i>Deleted</i> <i>[see comment in row 233]</i>
235.	Art. 12a		<i>Member States shall provide sport event organizers with the rights provided for in Article 2 and Article 3 (2) of Directive 2001/29/EC and Article 7 of Directive 2006/115/EC.</i>		GREEN <i>Deleted</i> <i>[see comment in row 233]</i>
236.		CHAPTER 2 Certain uses of protected content by online services	CHAPTER 2 Certain uses of protected content by online services	CHAPTER 2 Certain uses of protected content by online services	CHAPTER 2 Certain uses of protected content by online services
237.	Art. 13, title	<i>Article 13</i> <i>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</i>	<i>Article 13</i> <i>Use of protected content by information society online content sharing service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users</i>	<i>3. Article 13</i> <i>Use of protected content by information society online content sharing service providers storing</i>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text proposal in row 237A]</i>
237A		GREEN			

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p style="text-align: center;"><i>Article 13</i></p> <p style="text-align: center;"><i>Use of protected content by online content sharing service providers</i> <i>{storing and giving access to large amounts of works and other subject matter uploaded by their users}</i></p> <p style="text-align: center;"><i>[text provisionally agreed at trilogue 13/12/2018]</i></p> <hr/> <p>GREEN</p> <p>1. Member States shall provide that an online content sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of this directive when it gives the public access to copyright protected works or other protected subject matter uploaded by its users.</p> <p style="text-align: center;"><i>[text provisionally agreed at trilogue 13/12/2018]</i></p> <hr/> <p>GREEN</p> <p>An online content sharing service provider shall therefore obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of Directive 2001/29/EC, {for instance by concluding a licencing agreement}, in order to communicate or make available to the public works or other subject matter.</p> <p style="text-align: center;"><i>[text provisionally agreed at trilogue 13/12/2018]</i></p> <hr/> <p>GREEN</p> <p>2. Member States shall provide that when an authorisation has been obtained, including via a licensing agreement, by an online content sharing service provider, this authorisation shall also cover acts carried out by users of the services falling within Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis <u>or their activity does not generate significant revenues.</u></p> <p style="text-align: center;"><i>[provisionally agreed at trilogue 03/12/2018]</i></p>			

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		<p data-bbox="479 341 1832 384"><i>[“...not generate significant revenues” to be clarified in a recital: see proposal for recital in row 85]</i></p> <p data-bbox="479 424 640 456">YELLOW</p> <p data-bbox="479 496 1989 679">3. When an online content sharing service provider performs an act of communication to the public or an act of making available to the public, under the conditions established under this Directive, the limitation of liability established in Article 14(1) of Directive 2000/31/EC shall not apply to the situations covered by this Article. This shall not affect the application of Article 14(1) of Directive 2000/31/EC to these service providers for purposes falling outside the scope of this Directive.</p> <p data-bbox="524 695 2011 767"><i>[text agreed at trilogue of 13/12/2018; to be further discussed whether this issue should be dealt with in the Article or in a recital]</i></p> <p data-bbox="479 807 1890 943">4. If no authorisation is granted, <u>online content sharing service providers shall be liable for unauthorised acts of communication to the public of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information or submitted a notice, unless the service providers demonstrate that they have:</u></p> <p data-bbox="524 983 1155 1015"><u>(a) made best efforts to obtain an authorisation]</u></p> <p data-bbox="524 1054 1872 1158"><u>(b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information</u></p> <p data-bbox="524 1198 1890 1302"><u>(c) acted expeditiously, upon receiving a sufficiently substantiated notice by the rightholders, to remove from their websites or to disable access to the notified works and subject matters, and made best efforts to prevent their future uploads in accordance with paragraph (b).</u></p>			

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		<p>4a. In determining whether the service has complied with its obligations under paragraph 4, in the light of the principle of proportionality the following shall, should, among others be taken into account:</p> <p>(a) the type, the audience and the size of the service [including whether they are provided by a microenterprise or a small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC (<i>Role of SMEs to be discussed in relation to the scope – discussion is still open on this point - see Article 2(5), row 125</i>)];</p> <p>(b) the number and type of works or other subject matter uploaded by the users of the service;</p> <p>(c) the availability of suitable and effective <i>means technologies</i> and their cost for service providers</p> <hr/> <p>5. The cooperation between online content service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users which do not infringe copyright and related rights, including where such works or subject matter are covered by an exception or limitation.</p> <p><u>Users shall be allowed to upload and make available content that they have generated themselves and which includes parts of, existing protected works and subject matter for purposes illustration, quotation, criticism, review, caricature, parody or pastiche.</u></p> <p>6. <i>(deleted/merger into paragraph 4)</i></p>			

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		<p>GREEN</p> <p>7. The application of the provisions in this article shall not lead to any general monitoring obligation as defined in Article 15 of Directive 2000/31/EC.</p> <p>Member States shall provide that online content sharing service providers shall provide rightholders, at their request, with adequate information on the functioning of their practices with regard to <i>the cooperation referred to in paragraph 4</i> and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.</p> <p><i>[transparency/reporting obligations provisionally agreed at trilogue 03/12/2018]</i></p>			
		<p>8. Member States shall provide that an online sharing service provider puts in place an effective and expeditious complaint and redress mechanism that is available to users of the service in case of disputes over the removal of or blocking or disabling access to works or other subject matter uploaded by them.</p>			
		<p>When rightholders request to remove or disable access to their specific works or other subject matter, they shall duly justify the reasons for their requests. Complaints submitted under this mechanism shall be processed without undue delay and decisions to remove or disable access to uploaded content shall be subject to human review.</p> <p>Member States shall also ensure that out-of-court redress mechanisms are available for the settlement of disputes. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law, without prejudice to the rights of users to have recourse to efficient judicial remedies. users have access to an independent body for the resolution of disputes and that there are national procedural rules in place to allow users to assert their rights before a court.</p>			
		<p>GREEN</p>			

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		<p data-bbox="528 331 1995 435">This Directive shall in no way affect legitimate uses, such as uses under exceptions and limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of their personal data, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation.</p> <p data-bbox="490 507 629 539">YELLOW</p> <p data-bbox="528 576 1984 647"><i>Online content sharing service providers shall inform the users about the possibility for them to use works and other subject matter under exceptions or limitations to copyright and related rights provided for in Union law.</i></p> <p data-bbox="490 719 607 751">GREEN</p> <p data-bbox="490 791 2000 1118">9. As of [date of entry into force of this Directive] the Commission in cooperation with the Member States shall organise stakeholder dialogues to discuss best practices for the cooperation between the online content sharing service providers and rightholders. The Commission shall, in consultation with online content sharing service providers, rightholders, users associations and other relevant stakeholders and taking into account the results of the stakeholder dialogues, issue guidance on the application of Article 13 in particular regarding cooperation referred to in <i>paragraph 4</i>. When discussing the best practices, the need to balance the fundamental rights shall be taken into account. For the purpose of this stakeholders dialogue, users associations shall have access to adequate information from online content sharing service providers on the functioning of their practices with regard to in <i>paragraph 4</i>.</p> <p data-bbox="528 1174 1906 1246"><i>[provisionally agreed at trilogue 03/12/2018; with exact wording provisionally agreed at TM, confirmed at trilogue of 13/12/2018]</i></p>			

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238.	Art. 13, para 1	1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the	1. <i>Without prejudice to Article 3(1) and (2) of Directive 2001/29/EC, online content sharing</i> Information society service providers that store and provide <i>perform an act of communication</i> to the public access to large amounts of works or other subject-matter uploaded by their users. <i>They shall in</i> 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	1. <u>Member States shall provide that an online content sharing service provider performs an act of communication to the public or an act of making available to the public when it gives the public access to copyright protected works or other protected subject matter uploaded by its users. An online content sharing service provider shall obtain an authorisation from the rightholders referred to in Article 3(1) and giving access to large amounts of (2) of Directive 2001/29/EC in order to communicate or make available to the public works or other subject matter. Where no such authorisation has been obtained, the service provider shall prevent the availability on its service of</u>	[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]

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		deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.	therefore conclude fair and 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. <i>licensing agreements with right holders.</i>	those works and other subject-matter uploaded by matter, including through the application of measures referred to in paragraph 4. <u>This subparagraph shall apply without prejudice to exceptions and limitations provided for in Union law. Member States shall provide that when an authorisation has been obtained, including via a licensing agreement, by an online content sharing service provider, this authorisation shall also cover acts of uploading by the users of the service falling within Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis.</u> [Last two sentences of COM proposal were moved to Council's paragraphs 5 and 6 respectively]	
239.	Art. 13, para		2. Member States shall		[Article 13 to be further

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	2 (EP)		<p>ensure that the <i>Licensing agreements which are concluded by online content sharing</i> service providers with right holders for the acts of communication 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., <i>shall cover the liability for works uploaded by the users of such online content sharing services in line with the terms and conditions set out in the licensing agreement, provided that such users do not act for commercial purposes.</i></p> <p><i>[See Council's paragraph 1, subparagraph 3 (row 238)]</i></p>		<i>discussed at trilogue - see latest compromise text in row 237A]</i>
240.	Art. 13, para 2a (EP)		<i>2a. Member States shall provide that where right holders do not wish to</i>		<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>conclude licensing agreements, online content sharing service providers and right holders shall cooperate in good faith in order to ensure that unauthorised protected works or other subject matter are not available on their services. Cooperation between online content service providers and right holders shall not lead to preventing the availability of non-infringing works or other protected subject matter, including those covered by an exception or limitation to copyright.</i>		237A]
241.	Art. 13, para 2 / para 2b (EP)	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	<i>2b. Members States shall ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation</i>	<i>[Paragraph 2 of the COM proposal was moved to new paragraph 7 of Council's text]</i>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>

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		in paragraph 1.	<p><i>referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such mechanisms shall be processed without undue delay and be subject to human review. Right holders shall reasonably justify their decisions to avoid arbitrary dismissal of complaints. Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the cooperation shall not lead to any identification of individual users nor the processing of their personal data. Member States shall also ensure that users have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of</i></p>		

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			<p><i>an exception or limitation to copyright rules.</i></p> <p><i>[See Council's Article 13(7) (row 252)]</i></p>		
242.	Art. 13, para 3 (EP)	3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.	<p>3. <i>As of [date of entry into force of this directive], the Commission and the Member States shall facilitate where appropriate, the cooperation organise dialogues between the information society service providers and rightholders through stakeholder dialogues stakeholders to harmonise and to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments. and issue guidance to</i></p>	<i>[See new paragraph 8 of Council's text]</i>	<p><i>[stakeholder dialogues were moved to row 253, now paragraph 8 in row 237A]</i></p> <p><i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i></p>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this Directive. When defining best practices, special account shall be taken of fundamental rights, the use of exceptions and limitations as well as ensuring that the burden on SMEs remains appropriate and that automated blocking of content is avoided.</i>		
243.	Art. 13, para 3 (Council)			<u>3. When an online content sharing service provider performs an act of communication to the public or an act of making available to the public, it shall not be eligible for the exemption of liability provided for in Article 14</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
				<u>of Directive 2000/31/EC for unauthorised acts of communication to the public and making available to the public, without prejudice to the possible application of Article 14 of Directive 2000/31/EC to those services for purposes other than copyright relevant acts.</u>	
244.	Art. 13, para 4, introductory part			<u>4. In the absence of the authorisation referred to in the second subparagraph of paragraph 1, Member States shall provide that an online content sharing service provider shall not be liable for acts of communication to the public or making available to the public within the meaning of this Article when:</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>
245.	Art. 13, para			<u>(a) it demonstrates that it has made best efforts to</u>	<i>[Article 13 to be further</i>

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	4, point (a)			<u>prevent the availability of specific works or other subject matter by implementing effective and proportionate measures, in accordance with paragraph 5, to prevent the availability on its services of the specific works or other subject matter identified by rightholders and for which the rightholders have provided the service with relevant and necessary information for the application of these measures; and</u>	<i>discussed at trilogue - see latest compromise text in row 237A]</i>
246.	Art. 13, para 4, point (b)			<u>(b) upon notification by rightholders of works or other subject matter, it has acted expeditiously to remove or disable access to these works or other subject matter and it demonstrates that it has made its best efforts to prevent their users' future</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>

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				<u>availability through the measures referred to in point (a).</u>	
247.	Art. 13, para 5, introductory part			<u>5. The measures referred to in point (a) of paragraph 4 shall be effective and proportionate, taking into account, among other factors:</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>
248.	Art. 13, para 5, point (a)			<u>(a) the nature and size of the services, in particular whether they are provided by a microenterprise or a small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC, and their audience;</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>
249.	Art. 13, para 5, point (b)			<u>(b) the amount and the type of works or other subject matter uploaded by the users of the services;</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>

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250.	Art. 13, para 5, point (c)			<u>(c) the availability and costs of the measures as well as their effectiveness in light of technological developments in line with the industry best practice referred to in paragraph 8.</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>
251.	Art. 13, para 6			<u>6. Member States shall ensure that online content sharing service providers and rightholders cooperate with each other in a diligent manner to ensure the effective functioning of the measures referred to in point (a) of paragraph 4 over time. Online content sharing service providers shall provide rightholders, at their request, with adequate information on the deployment and functioning of these measures to allow the assessment of their effectiveness, in particular information on the type of measures used and, where</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>

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				<u>licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.</u>	
252.	Art. 13, para 7			7. <u>Member States shall ensure that the measures referred to in paragraph 4 are implemented by the online content sharing service provider without prejudice to the possibility for their users to benefit from exceptions or limitations to copyright. For that purpose, the service providers referred to in paragraph 1 shall put in place a complaints and redress mechanisms that are <u>is</u> available to users of the service in case of disputes over the application of the measures referred to in paragraph 1 to their content. Complaints submitted under this</u>	<i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
				<p><u>mechanism shall be processed by the online content sharing service provider in cooperation with relevant rightholders within a reasonable period of time. Rightholders shall duly justify the reasons for their requests to remove or block access to their specific works or other subject matter. Member States shall endeavour to put in place independent bodies to assess complaints related to the application of the measures.</u> <i>[Paragraph 2 of the COM proposal, amended]</i></p>	
253.	Art. 13, para 8			<p><u>8. The Commission and the Member States shall encourage stakeholder dialogues to define best practices for the measures referred to in point (a) of paragraph 4. Member States shall also endeavour to establish mechanisms to</u></p>	<p><i>[Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]</i></p>

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
				<p><u>facilitate the assessment of the effectiveness and proportionality of these measures and provide the Commission regularly with information on those mechanisms. The Commission shall, in consultation with online content sharing service providers, rightholders and other relevant stakeholders and taking into account the results of the stakeholder dialogues and the national mechanisms, issue guidance on the application of the measures referred to in point (a) of paragraph 4.</u> <i>[Paragraph 3 of the COM proposal, reworded]</i></p>	
254.	Art. 13a, title		<i>Article 13a</i>		
255.	Art. 13a, sub-para 1		<i>Member States shall provide that disputes between successors in title and</i>		

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			<i>information society services regarding the application of Article 13(1) may be subject to an alternative dispute resolution system.</i>		
256.	Art. 13a, sub-para 2		<i>Member States shall establish or designate an impartial body with the necessary expertise, with the aim of helping the parties to settle their disputes under this system.</i>		
257.	Art. 13a, sub-para 3		<i>The Member States shall inform the Commission of the establishment of this body no later than (date mentioned in Article 21(1)).</i>		
258.	Art. 13b, title		<i>Article 13b</i> <i>Use of protected content by information society services providing automated image referencing</i>		
259.	Art. 13b		<i>Member States shall ensure that information society</i>		

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>service providers that automatically reproduce or refer to significant amounts of copyright-protected visual works and make them available to the public for the purpose of indexing and referencing conclude fair and balanced licensing agreements with any requesting rightholders in order to ensure their fair remuneration. Such remuneration may be managed by the collective management organisation of the rightholders concerned.</i>		
260.				<u>TITLE IV</u> <u>MEASURES TO</u> <u>ACHIEVE A WELL-</u> <u>FUNCTIONING</u> <u>MARKETPLACE FOR</u> <u>COPYRIGHT</u>	<i>(deleted)</i>
261.		CHAPTER 3 Fair remuneration in contracts of authors and	CHAPTER 3 Fair remuneration in contracts of authors and	CHAPTER 3 Fair remuneration in exploitation contracts of authors and performers	CHAPTER 3 Fair remuneration in exploitation contracts of

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
		performers	performers		authors and performers <i>[to be discussed at political level]</i>
262.	Art. -14, title		<i>Article -14</i> <i>Principle of fair and proportionate remuneration</i>		RED <i>Article -14</i> <i>Principle of [fair] [appropriate and proportionate] remuneration</i> <i>[Article -14 to be further discussed at trilogue]</i>
263.	Art. -14, para 1		1. Member States shall ensure that authors and performers receive fair and proportionate remuneration for the exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and		RED 1. Member States shall ensure that when authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter they are entitled to receive appropriate and proportionate remuneration.

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			<i>statutory remuneration mechanisms.</i>		<i>[to be further discussed at trilogue]</i>
264.	Art. -14, para 2		2. Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.		<p>RED</p> <p>2. In the implementation of this principle into national law, Member States shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests.</p> <p><i>[recitals to clarify that the principle of fair remuneration does not prevent authors and performers from granting a license/transferring their rights for free, nor from concluding licensing agreements for a lump sum remuneration; see elements for recital language in row 90]</i></p> <p><i>[to be further discussed at trilogue]</i></p>

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265.	Art. -14, para 3		3. Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.		RED <i>Deleted</i> <i>[to be further discussed at trilogue]</i>
266.	Art. -14, para 4		4. Contracts shall specify the remuneration applicable to each mode of exploitation.		RED <i>Deleted</i> <i>[to be further discussed at trilogue]</i>
267.	Art. 14, title	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>
268.	Art. 14, para 1	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	1. Member States shall ensure that authors and performers receive on a regular basis, <i>not less than once a year</i> , and taking into account the specificities of each sector <i>and the relative importance of each</i>	1. Member States shall ensure that authors and performers receive on a regular basis, <u>at least once a year</u> , and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their	1. Member States shall ensure that authors and performers receive on a regular basis, <i>at least once a year</i> , and taking into account the specificities of each sector <i>and the relative importance of each individual contribution</i> timely, [adequate

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		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.	timely adequate and sufficient, individual contribution, accurate, relevant and comprehensive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, direct and indirect revenues generated, and remuneration due.	works and performances from those to whom they have licensed or transferred their rights or their successors in title , notably as regards modes of exploitation, revenues generated and remuneration due.	and sufficient/ up to date, relevant and comprehensive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights or their successors in title , notably as regards modes of exploitation, direct and indirect all(*) revenues generated and remuneration due. [(*) explicit reference to 'merchandising' as example of a possible form of covered revenues in the recitals (see recital (40a), row 92, and recital (42), row 95)]
269.	Art. 14, para 1a		1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party	<u>1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed to another party, authors and performers may, at</u>	1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed, authors and performers or their representatives shall , at their request, receive from

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			<i>shall share all information referred to in paragraph 1 with the licensee or transferee.</i>	<u>their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart of the author or the performer.</u>	<i>sub-licensees</i> additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of paragraph 1. <i>Where this information is requested, the first contractual counterpart of authors and performers shall provide information on the identity of those sub-licensees.</i> Member States may provide that <i>any</i> such request to those <i>sub-licensees</i> is made directly or indirectly through the contractual counterpart of the author or the performer. <i>[provisionally agreed at trilogue of 13/12/2018]</i>
270.	Art. 14, para 1a, sub-para 2		<i>The main licensee or transferee shall pass all the information referred to in the first subparagraph on to the author or performer. That information shall be unchanged, except in the</i>		Deleted <i>[integrated into row 219, provisionally agreed at Trilogue of 13/12/2018]</i>

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			<p><i>case of commercially sensitive information as defined by Union or national law, which, without prejudice to Articles 15 and 16a, may be subject to a non-disclosure agreement, for the purpose of preserving fair competition. Where the main licensee or transferee does not provide the information as referred to in this subparagraph in a timely manner, the author or performer shall be entitled to request that information directly from the sub-licensee.</i></p> <p><i>[See Council's Article 14(1a) (row 269)]</i></p>		
271.	Art. 14, para 2	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector.	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate a high level of transparency in every sector.	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector.	<p>GREEN</p> <p>2. The obligation in paragraph 1 shall be proportionate and effective and shall to ensure an appropriate a</p>

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		However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.	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 <i>a high</i> level of transparency.	However, in those Member States may provide that in duly justified cases where the administrative burden resulting from the obligation in paragraph 1 would be become 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 is limited to the obligation remains effective types and ensures an appropriate level of transparency. information that can reasonably be expected in such cases.	<i>high</i> level of transparency in every sector. Member States may provide that in duly justified cases where the administrative burden resulting from the obligation in paragraph 1 would be become disproportionate in view of the revenues generated by the exploitation of the work or performance, -the obligation is limited to the types and level of information that can reasonably be expected in such cases. [provisionally agreed at Trilogue 26/11/2018]
272.	Art. 14, para 3	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.	<i>Deleted</i>	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.	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, unless the author or performer demonstrates that

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					<p><i>he requires the information for exercising his rights under Article 15(1) and requests the information for that purpose.</i></p> <p><i>[provisionally agreed at trilogue 13/12/2018;</i></p> <p><i>“demonstrates”: EN equivalent for DE</i></p> <p><i>“darlegen”/“bescheinigen”]</i></p>
273.	Art. 14, para 3a			<p><u>3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.</u></p>	<p>GREEN</p> <p><i>3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they are comparable to the obligations / meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of</i></p>

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					<i>paragraphs 1 to 3.</i> <i>[provisionally agreed at rilogue 26/11/2018]</i>
274.	Art. 14, para 4	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU <i>or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2.</i>	4. Paragraph 1 shall not be applicable to <u>agreements concluded by</u> entities subject to the transparency obligations established by <u>defined in Article 3(a) and (b) of</u> Directive 2014/26/EU. <u>or by other entities subject to the national rules implementing Directive 2014/26/EU.</u>	GREEN 4. <i>When Article 18 of Directive 2014/26/EU is applicable, the obligation laid down in paragraph 1 shall not apply in respect of agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/EU.</i> <i>[provisionally agreed at Trilogue 03/12/2018/, together with related wording of recital (41), row 94]</i>
275.	Art. 15, title	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>
276.	Art. 15, [para 1 (Council)]	Member States shall ensure that authors and performers are entitled to request	Member States shall ensure, <i>in the absence of collective bargaining agreements</i>	1. Member States shall ensure that authors and performers are entitled to	GREEN 1. Member States shall ensure, <i>in the absence of an</i>

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		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.	<i>providing for a comparable mechanism, that authors and performers or any representative organisation acting on their behalf</i> are entitled to request <i>claim</i> additional, appropriate <i>and fair</i> 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 <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances. <i>[See Council's Article 15(1a) (row277)]</i>	request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights <u>or their successors in title,</u> when the remuneration originally agreed is <u>turns out to be</u> disproportionately low compared to the subsequent relevant revenues and benefits derived from the <u>actual</u> exploitation of the works or performances.	<i>applicable collective bargaining agreement providing for a comparable mechanism, that authors and performers <u>or their representatives</u> are entitled to claim additional, appropriate and fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights or their successors in title, when the remuneration originally agreed turns out to be disproportionately low compared to <i>all</i> the subsequent relevant revenues and derived from the exploitation of the works or performances. <i>[provisionally agreed at Trilogue 03/12/2018; as to revenues, see comment on Article 14(1), row 268]</i>
277.	Art. 15, para 1a			<u>1a. Members States may provide that for agreements subject to or based on collective bargaining agreements the</u>	<i>[Article 15(1a) Council's text deleted/incorporated into paragraph 1]</i>

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				<u>rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.</u>	<i>[provisionally agreed at trilogue 03/12/2018]</i>
278.	Art. 15, para 2			<u>2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/EU.</u>	2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities <i>which are already</i> subject to the national rules implementing Directive 2014/26/EU. <i>[provisionally agreed at trilogue 13/12/2018]</i>
279.	Art. 16, title	<i>Article 16 Dispute resolution mechanism</i>	<i>Article 16 Dispute resolution mechanism</i>	<i>Article 16 Dispute resolution mechanism</i> <u>procedure</u>	GREEN <i>Article 16 Dispute resolution procedure</i> <i>[provisionally agreed at</i>

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					<i>Trilogue 26/11/2018]</i>
280.	Art. 16, [para 1 (Council)]	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. <i>Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers.</i> <i>[See Council's Article 16(2) (row 281)]</i>	<u>1.</u> Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.	GREEN Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. <i>Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors and performers.</i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
281.	Art. 16, para 2		<i>[See Parliament's Article 16 last phrase (row 280)]</i>	<u>2. Member States shall ensure that representative organisations of authors and performers, including collective management</u>	<i>[Article 16(2) Council's text deleted/incorporated into paragraph 1]</i> <i>[provisionally agreed at</i>

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				<u>organisations, may initiate such disputes on behalf of one or more authors and performers at their request.</u>	<i>Trilogue 26/11/2018]</i>
282.	Art. 16a (Council), title			<i><u>Article 16a</u></i> <i><u>Contractual provisions</u></i>	GREEN <i><u>Article 16a</u></i> <i><u>Contractual Common provisions</u></i> <i>[provisionally agreed at Trilogue 26/11/2018]</i>
283.	Art. 16a (Council)			<u>Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.</u>	GREEN <u>(1) Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Chapter(*) Directive shall be unenforceable in relation to authors and performers.</u> <i>[(*) 'Chapter' refers to Articles 14,15 and 16, ie the provisions of the initial Commission</i>

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					<p><i>proposal; see also recital (43a), row 99</i></p> <p><i>[provisionally agreed at Trilogue 26/11/2018]</i></p> <p><i>(2) [Exclusion of software developers]</i></p> <p><u>Member States shall provide that Articles -14 to 16a of this Directive do not apply to authors of a computer program in the sense of Article 2 of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs*.</u></p> <p>[REDACTED]</p> <p><i>* Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version), OJ L 111, 5.5.2009,</i></p>

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					p. 16–22.
284.	Art. 16a (EP), title		<i>Article 16 a</i> <i>Right of revocation</i>		RED <i>Article 16 a</i> <i>Right of revocation</i> <i>[Article 16a to be further discussed at trilogue]</i>
285.	Art. 16a (EP), para 1		1. <i>Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject-matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions</i>		RED 1. Member States [shall ensure][may provide] that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject-matter on an exclusive basis, the author or performer may revoke in whole or in part the licence or the transfer of rights where there is a lack of exploitation of the work or other protected subject-matter [EP: or where there is a continuous lack of regular reporting in accordance with

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			<i>taking into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i>		Article 14]. [to be further discussed at trilogue]
286.	Art. 16a (EP), para 2		<i>2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the rights. Where a work or other subject-matter contains the</i>		RED 2. Specific provisions for the mechanism for revocation shall be provided for in national law taking into account (a) the specificities of the different sectors and the different types of works and performances; and (b) where a work or other subject-matter contains the contribution of more than one author or performer, the

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			<p><i>contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.</i></p>		<p>relative importance of the individual contributions and the legitimate interests of all authors and performers affected by the exercise of the revocation mechanism by an individual author or performer.</p> <p>Member States may exclude works or other subject matter from the application of the mechanism if such works or subject matter usually contain contributions of a plurality of authors or performers.</p> <p>Member States may provide that the revocation mechanism shall be exercised only within a specific time frame, where this is duly justified by the specificities of the sector, type of work or protected subject matter concerned.</p> <p>Member States may provide that that authors or performers may terminate the exclusivity of the contract instead of</p>

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					<p>revoking the rights.</p> <p><i>[to be further discussed at trilogue]</i></p>
287.	Art. 16a (EP), para 3		<p>3. Paragraphs 1 and 2 shall not apply if the non-exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.</p>		<p>RED</p> <p>3. Member States may provide that the revocation provided for in paragraph 1 may be exercised only after a reasonable time after the conclusion of the licence or transfer agreement. The author or performer shall notify the person to whom the rights have been licensed or transferred and set an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the license or the transfer.</p>

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					<i>[to be further discussed at trilogue]</i>
288.	Art. 16a (EP), para 4		<i>4. Contractual or other arrangements derogating from the right of revocation shall be lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.</i>		<p>RED</p> <p>[EP: 4. Paragraph 1 shall not apply if the non-exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.]</p> <p>[EP: 5. Member States may provide that any contractual provision derogating from the revocation mechanism shall be enforceable only if it is based on a collective bargaining agreement.]</p> <p><i>[to be further discussed at trilogue]</i></p>

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289.		TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS
290.	Art. 17, title	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>
291.	Art. 17, para 1	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:
292.	Art. 17, para 1, point (a)	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:
293.	Art. 17, para 1, point (a)	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];"	GREEN "(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];" <i>[provisionally agreed at</i>

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					<i>technical meeting of 13.11.2018]</i>
294.	Art. 17, para 1, point (b)	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:
295.	Art. 17, para 1, point (b)	"(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];"	GREEN "(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];" <i>[provisionally agreed at technical meeting of 13.11.2018]</i>
296.	Art. 17, para 2	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:
297.	Art. 17, para 2, point (a)	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:

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298.	Art. 17, para 2, point (a)	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and the limitation <u>exception</u> provided for in <u>Article 5 of</u> Directive [this Directive];"	GREEN "(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exception and the limitations provided for in <i>Article 5 of</i> Directive [this Directive];" <i>[provisionally agreed at technical meeting of 13.11.2018]</i>
299.	Art. 17, para 2, point (b)	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:
300.	Art. 17, para 2, point (b)	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated,	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated,	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent	GREEN "(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated,

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		unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];"	unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];" <i>[provisionally agreed at technical meeting of 13.11.2018]</i>
301.	Art. 17, para 2, point (c)	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:
302.	Art. 17, para 2, point (c)	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;
303.	Art. 17, para 2, point (c)	(f) to facilitate the exchange of information on the relevant developments in legislation	(f) to facilitate the exchange of information on the relevant developments in legislation and case law	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the

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		and case law as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];	as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];	application of the measures taken by Member States to implement Directive [this Directive];	practical application of the measures taken by Member States to implement Directive [this Directive];
304.	Art. 17, para 2, point (c)	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."
305.	Art. 17a, title		<i>Article 17 a</i>		GREEN <i>Article 17 a</i>
306.	Art. 17a		<i>Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations existing in Union law, for uses covered by the exceptions or the limitation provided for in this Directive.</i>		GREEN <i>Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations set out in Directives 96/9/EC and 2001/29/EC, for uses or fields covered by the exceptions or limitations provided for in this Directive and on condition that their application does not adversely</i>

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					<i>affect nor circumvent the mandatory rules set out in this Directive.</i> <i>[provisional agreement at trilogue 25/10/2018 /26/11/2018; a recital should clarify that Article 17a does not allow MS to not implement the mandatory exceptions under this Directive]</i>
307.	Art. 18	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>
308.	Art. 18, para 1	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].
309.	Art. 18, para 2	2. The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)].	<i>Deleted</i>	2. <i>[Deleted]</i>	<i>(Deleted)</i>

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310.	Art. 18, para 3	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].
311.	Art. 19, title	<i>Article 19 Transitional provision</i>	<i>Article 19 Transitional provision</i>	<i>Article 19 Transitional provision</i>	<i>Article 19 Transitional provision</i>
312.	Art. 19	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].
313.	Art. 20, title	<i>Article 20 Protection of personal data</i>	<i>Article 20 Protection of personal data</i>	<i>Article 20 Protection of personal data</i>	<i>Article 20 Protection of personal data</i>
314.	Art. 20	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.

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315.	Art. 21, title	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>
316.	Art. 21, para 1	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 24 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 24] months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
317.	Art. 21, para 1, sub-para 2	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
318.	Art. 21, para 2	2. Member States shall communicate to the Commission the text of the	2. Member States shall communicate to the Commission the text of the	2. Member States shall communicate to the Commission the text of the	2. Member States shall communicate to the Commission the text of the

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		main provisions of national law which they adopt in the field covered by this Directive.	main provisions of national law which they adopt in the field covered by this Directive.	main provisions of national law which they adopt in the field covered by this Directive.	main provisions of national law which they adopt in the field covered by this Directive.
319.	Art. 22, title	<i>Article 22 Review</i>	<i>Article 22 Review</i>	<i>Article 22 Review</i>	<i>Article 22 Review</i>
320.	Art. 22, para 1	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.
321.	Art. 22, para 2	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.
322.	Art. 23, title	<i>Article 23</i>	<i>Article 23</i>	<i>Article 23</i>	<i>Article 23</i>

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		<i>Entry into force</i>	<i>Entry into force</i>	<i>Entry into force</i>	<i>Entry into force</i>
323.	Art. 23	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .
324.	Art. 24, title	<i>Article 24 Addressees</i>	<i>Article 24 Addressees</i>	<i>Article 24 Addressees</i>	<i>Article 24 Addressees</i>
325.	Art. 24	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.