



**2016/0280(COD)**

6.2.2017

# **DRAFT OPINION**

of the Committee on Culture and Education

for the Committee on Legal Affairs

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

Rapporteur: Marc Joulaud



## SHORT JUSTIFICATION

### Purpose and scope

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

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

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

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

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

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

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

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

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

### **Overall position of the Rapporteur**

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

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

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

#### **1. Provide legal certainty regarding the new exceptions and limitations**

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

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

#### **2. Define digital content platforms and ensure a fair cooperation with rightholders**

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

However, it is the Rapporteur's opinion that the proposal does not define with enough precision the scope of services falling under the requirements of Article 13 of this Directive,

creating legal uncertainty and a potential broader effect. In a similar manner, the scope, nature and basis of the mutual obligations between rightholders and those services is not clear enough in the view of the Rapporteur.

Therefore, the Rapporteur has proposed a new definition covering the information society services falling within the scope of this Directive, which he has termed ‘digital content platforms’. Instead of focusing on the technical characteristics of the service (ie the notion of storage), the Rapporteur believes that the notion of principal purpose is more appropriate to encapsulate properly the services relevant for the provisions of this Directive.

This approach has proved effective in other existing EU legislation, such as the AVMS Directive (2010/13/EU), and should provide the necessary legal certainty for the provision of this Directive to be effective. Hence, digital content platforms are considered to be information society services the main purpose of which is to provide the public with a significant amount of user-generated content, copyright-protected works or other subject-matter uploaded or displayed by their users for the purpose of information, entertainment or education.

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

### **3. Create a new pillar to protect consumer’s legitimate practices**

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

To create this fourth pillar, the Rapporteur first defines the notion of ‘user-generated content’, which is at the core of most user practices online. As user-generated content may comprise extracts of copyright-protected works in a way that is not harmful for the rightholders - already a widespread practice despite the legal uncertainty around it - the Rapporteur creates a new mandatory exception protecting the use of such extracts provided that they meet certain requirements ensuring that the use is proportionate.

In order to acknowledge and secure common non-commercial user practices that are not harmful for rightholders, the Rapporteur has enshrined the so-called “panorama exception” through a minimum harmonisation of the existing exception and excluded non-commercial uses from the scope of protection of press publications (Article 11).

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

### **4. Allow authors and performers to effectively enforce their rights**

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

## AMENDMENTS

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

### Amendment 1

#### Proposal for a directive

#### Recital 5

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

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

##### *Amendment*

(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, teaching, **libraries** 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, preservation of cultural heritage, **user-generated content, reproduction of works permanently situated in public places and use of never-in-commerce works** should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations

be adapted.

existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted *accordingly*. ***The term 'scientific research' used in this Directive is to be understood as referring both to the natural sciences and the human sciences.***

Or. en

## **Amendment 2**

### **Proposal for a directive Recital 9**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## **Amendment 3**

### **Proposal for a directive Recital 10**

*Text proposed by the Commission*

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

*Amendment*

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***To prevent unjustified dissemination of the content necessary for text and data mining, research organisations should destroy the content reproduced for the purpose of text and data mining once the all the acts necessary for the research have been performed.*** Research organisations should also benefit from the exception when they *enter* into public-private partnerships ***provided that the text and data mining acts performed relate directly to the purpose of the research carried out in the partnership concerned.***

Or. en

*Justification*

*This provision, based on good faith, is needed to avoid dissemination of protected works outside the scope of the exception. The conditions under which the exception applies for PPPs are also clarified.*

**Amendment 4**

**Proposal for a directive  
Recital 12**

*Text proposed by the Commission*

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to

*Amendment*

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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.

apply measures, **such as identification confirmation**, where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted **might** be jeopardised. Those measures should 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.

Or. en

#### *Justification*

*This is necessary to specify the kind of measures rightholders may take when unusual activity is detected on their networks or databases and might threaten the system's stability.*

### **Amendment 5**

#### **Proposal for a directive Recital 13**

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

(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.***

##### *Amendment*

(13) ***Rightholders should be compensated for*** uses under the text and data mining exception introduced by this Directive given ***the mandatory nature of the exception and the consequent investments that will be required by rightholders to make technically possible and facilitate the wide use of text and data mining techniques under the*** scope of the exception, ***which cause sufficient harm to justify such compensation.***

Or. en

#### *Justification*

*Given the mandatory nature of the exception and the economic harm caused to rightholders, due to the investments necessary to satisfy the increased demand, they should be fairly compensated as is traditionally provided for under the existing copyright rules.*

## Amendment 6

### Proposal for a directive

#### Recital 15

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

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

##### *Amendment*

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

Or. en

## Amendment 7

### Proposal for a directive

#### Recital 16

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

(16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational

##### *Amendment*

(16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational

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

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 *where the teaching activity is physically provided, including where it takes place outside the premises of the educational establishment*, and online uses through the educational establishment's secure electronic network, 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.

Or. en

#### *Justification*

*To enlarge the scope of the exception so that it applies in cases where the teaching activity is provided outside the usual premises of the educational establishment.*

### **Amendment 8**

#### **Proposal for a directive Recital 17**

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

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

##### *Amendment*

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

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

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

Or. en

## Amendment 9

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

*Text proposed by the Commission*

*Amendment*

*(17a) In order to guarantee legal certainty when a Member State decides to subject the application of the exception to the availability of adequate licences, it is necessary to specify under which conditions an educational establishment may use protected work or other subject-*

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

Or. en

### *Justification*

*This is necessary to provide legal certainty for educational establishments when they need to determine whether the use of a copyright-protected work can fall under the exception or requires a licence.*

## **Amendment 10**

### **Proposal for a directive**

#### **Recital 20**

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

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only.

##### *Amendment*

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports ***or for the purpose of digitisation***. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a copy for preservation purposes only. ***Such an exception should cover both cultural heritage institutions holding the works or other subject-matter and third party cultural heritage institutions or service providers, which***

*may be requested to perform the act of reproduction on behalf of a cultural heritage institution within the scope of the exception.*

Or. en

#### *Justification*

*This provides legal certainty to the cultural heritage institutions on how they can enjoy this exception, especially in the context of cross-border cooperation with other cultural heritage institutions. Cultural heritage institutions rarely perform the act of preservation themselves and may require the assistance of another institution equipped with adequate specialised tools to perform the reproduction of a specific work.*

#### **Amendment 11**

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

##### **Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

*(21a) Digital tools allow citizens to make and disseminate easily reproductions of works located permanently in public places, such as sculptures or monuments, for their private or non-commercial uses. Such practices are not detrimental to rightholders and are widely accepted across the Union, though not always recognised officially in national law. Therefore, it is necessary to provide citizens in the Union with clear legal certainty for such uses. As such, Member States should be required to provide an exception authorising at least the reproduction, use and dissemination, for non-commercial use, of works permanently located in public places.*

Or. en

#### **Amendment 12**

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

##### **Recital 21 b (new)**

***(21b) Following technological developments and evolving consumer behaviour, a significant business model has emerged for online services, which relies on users uploading or displaying content, in various forms, directly on their service. Such user-generated content may comprise extracts or quotations of protected works or other subject-matter, which may be altered, combined or transformed for different purposes by users. Such uses of extracts or quotations within user-generated content, for various purposes such as the illustration of an idea, review or entertainment, are now widespread online and, provided that the use of such extracts or quotations of protected works or other subject-matter is proportionate, do not cause significant economic harm to the rightholders concerned and may even advertise the work used within the user-generated content.***

Or. en

*Justification*

*This is necessary to acknowledge the position and role of user-generated content in the online environment.*

**Amendment 13**

**Proposal for a directive**

**Recital 21 c (new)**

***(21c) Despite some overlap with existing exceptions or limitations, such as the one for quotation and parody, the use of protected works or other subject-matter within user-generated content is nonetheless not properly covered by the existing list of exceptions or limitations,***

*creating legal uncertainty for users. It is therefore necessary to provide a new specific exception to authorise the legitimate uses of extracts or quotations of protected works or other subject-matter within user-generated content.*

Or. en

*Justification*

*To underline the need for a specific new exception to provide legal clarity for the legitimate use of extracts or quotations of copyright-protected works within user-generated content. Such an exception may only apply in respect of the “3-step test”, thus protecting rightholders against disproportionate uses.*

**Amendment 14**

**Proposal for a directive  
Recital 21 d (new)**

*Text proposed by the Commission*

*Amendment*

***(21d) Technological developments mean that publicly accessible libraries, educational establishments, museums or archives frequently operate with secure electronic networks, making dedicated on-the-premises terminals obsolete and no longer adapted to consumer behaviour. As such, Member States should, on a voluntary basis, be entitled to provide that these institutions may communicate or make available, for the purposes of research or private study, to individual members of the public works and other subject-matter, not subject to purchase or licensing terms and contained in their collections, through secure electronic networks in lieu of dedicated terminals. Directive 2001/29/EC should be amended accordingly.***

Or. en

*Justification*

*The existing exception relies on a technology rendered obsolete by technical progress and*



*requires updating to make the exception effective.*

## **Amendment 15**

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

*Text proposed by the Commission*

*Amendment*

***(21e) Works that were never intended for commercial use, referred to as never-in-commerce works, present a significant challenge for cultural heritage institutions, as their possible digitisation and dissemination, including across borders is hampered by the difficulty or impossibility of obtaining prior consent from the rightholder concerned. This is detrimental to the overall objective of protecting and disseminating European cultural heritage, and can likely not be solved through a licensing scheme. Therefore cultural heritage institutions should benefit from an exception for the reproduction and dissemination for non-commercial purposes, including across borders, of never-in-commerce works or other subject-matter.***

Or. en

### *Justification*

*The near impossibility of obtaining licences for works that were never intended for commerce and the limited economic harm justifies an exception to facilitate the preservation and dissemination of such works by cultural heritage institutions.*

## **Amendment 16**

### **Proposal for a directive Recital 22**

*Text proposed by the Commission*

*Amendment*

(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works

(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works

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

or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult *or impossible*. This can be due, for example, to the age of the works or other subject-matter *or* their limited commercial value. 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.

Or. en

## Amendment 17

### Proposal for a directive Recital 23

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 18

### Proposal for a directive Recital 24

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 19**

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

*Text proposed by the Commission*

*Amendment*

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

*not already exist, covering the rights in each category of works.*

Or. en

### *Justification*

*As each sector presents very different characteristics, it is necessary to assess the eligibility criteria for the out-of-commerce mechanism accordingly. In order to improve overall licensing possibilities for out-of-commerce works, it is also reasonable to encourage the development of collective management organisations in sectors where they do not exist.*

## **Amendment 20**

### **Proposal for a directive**

#### **Recital 30**

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

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

##### *Amendment*

(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, ***managed by a designated existing or newly established national body***, allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. ***Where the negotiation involves parties from different Member States, they should agree beforehand on the Member State competent should the negotiation mechanism be required at some point in their negotiation.*** 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 ***division of any*** costs ***arising***. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.

Or. en

## Amendment 21

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

*Text proposed by the Commission*

*Amendment*

***(30a) Authors and performers usually transfer or license their rights to another party who will take it upon itself to negotiate licences covering the making available of the work concerned on video-on-demand platforms. It has been observed that such parties acting as rights distributors do not always take steps to seek licences with video-on-demand platforms, for various reasons, thus failing to disseminate the work for which they were transferred or licensed the rights and undermining the dissemination of European audiovisual works and the promotion of cultural diversity. When a significant proportion of the authors or performers of a work observes that a distributor has made insufficient efforts to license the concerned work to video-on-demand platforms, those authors or performers should be able to call upon the body in charge of the negotiation mechanism to start a dialogue with the distributor concerned and offer its help and expertise for the licensing of the work on a video-on-demand platform.***

Or. en

#### *Justification*

*Rightholders are not always in a position to focus on past works for which they have the distribution rights to seek licences for VOD platforms, meaning that many European works cannot be disseminated. Authors/performers who can demonstrate that inadequate steps have been taken to make a work available should be able to require the body designated under this article to offer its assistance to the relevant rightholder.*

## Amendment 22

### Proposal for a directive Recital 31

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*To clarify that non-commercial and private uses of press publications are not covered.*

## Amendment 23

### Proposal for a directive Recital 32

*Text proposed by the Commission*

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

*Amendment*

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

respect of digital uses.

respect of digital uses *for a commercial purpose*.

Or. en

*Justification*

*To clarify that non-commercial and private uses of press publications are not covered.*

**Amendment 24**

**Proposal for a directive**

**Recital 33**

*Text proposed by the Commission*

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

*Amendment*

(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only *professional* journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining *and whose credibility for the public relies to a certain extent on their specific brand name*. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking, *or to the text fixating the hyperlink, where such acts* do not constitute communication to the public *under Directive 2001/29/EC*.

Or. en

*Justification*

*To specify the scope of the notion of press publication. Clarifies the exclusion of hyperlinks, which refers to the direct technical link between two digital “locations”, by ensuring that the words used to “visualise” the hyperlink are not covered, including when they use parts of a press publication, such as the title of an article.*

## Amendment 25

### Proposal for a directive

#### Recital 34

*Text proposed by the Commission*

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

*Amendment*

(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, 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. ***Where content is automatically generated by an act of hyperlinking related to a press publication, such content should be covered by the protection granted to press publications under this Directive. That protection should not apply to cases where the content automatically generated was conceived or controlled by the rightholder itself, where it is a quotation of the press publication concerned, and where it does not reflect disproportionately the intellectual creation of the author of the press publication concerned.***

Or. en

*Justification*

*This aims to clarify the status of "snippets" and their possible inclusion within the scope of protection of press publication.*

## Amendment 26

### Proposal for a directive

#### Recital 36



*Text proposed by the Commission*

(36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should **be allowed to** determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, **whereas** the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.

*Amendment*

(36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation. The burden on the publisher to substantiate his claim should not exceed what is required under the system in place.

Or. en

**Amendment 27**

**Proposal for a directive**  
**Recital 37**

*Text proposed by the Commission*

(37) Over **the last** years, the functioning of the online content marketplace has gained in complexity. Online services **providing** access to **copyright protected** content uploaded by their users without the

*Amendment*

(37) Over **recent** years, the functioning of the online content marketplace has gained in complexity. Online services **the main purpose of which is to provide** access to **content, including copyright-**

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.

*protected* content, uploaded by their users without the involvement of right holders have flourished and have become *primary* sources of access to content online, *sometimes unfairly competing with services whose content is licensed directly by rightholders*. This affects rightholders' *ability* to determine whether, and under which conditions, their work and other subject-matter are *being used*, as well as their *scope for obtaining* appropriate remuneration for it.

Or. en

## Amendment 28

### Proposal for a directive Recital 38

#### *Text proposed by the Commission*

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

In respect of Article 14, it is necessary to verify *whether the service* provider plays

#### *Amendment*

(38) Where information society service providers *provide a platform, referred to as a digital content platform, whose main purpose is to give* the public *direct access to user-generated content, copyright-protected* works or other subject-matter *actively* uploaded *or displayed* by their users, thereby going beyond the mere provision of physical facilities and performing an act of communication to the public, they *should be* obliged to conclude licensing agreements with rightholders *that request such an agreement*, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council<sup>34</sup>. *The obligation to conclude licencing agreements should not extend to search engines, as defined by Directive 2016/1148/EU, and should only encompass rightholders whose category of works is significantly present on the concerned platform.*

In respect of Article 14 *of Directive 2000/31/EC and eligibility for the liability*

*an* active role, including *by optimising* the presentation of the uploaded works or subject-matter or *promoting them*, irrespective of the nature of the means used therefor.

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

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

*exemption provided therein*, it is necessary to verify *the extent of the role played by the platform provider*. *Where the provider plays a sufficiently active role including through the optimisation of* the presentation of the uploaded *or displayed user-generated content*, works or subject-matter or *through their promotion*, irrespective of the nature of the means used therefor, *the provider should no longer be considered to be merely hosting such user-generated content, works or other subject-matter*.

In order to ensure the functioning of any licensing agreement, *platform* providers *whose main purpose is to provide* the public *with access to significant* amounts of *user-generated content, copyright-protected* works or other subject-matter uploaded *or displayed* by their users should take appropriate and proportionate measures to ensure protection of *copyright-protected* works or other subject-matter, such as implementing effective technologies. This obligation should also apply when *those* providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC, *but have voluntarily entered into agreements with rightholders*.

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

Or. en

### *Justification*

*To clarify and narrow the scope of services concerned by Article 13. Only services that are designed for the provision or display of significant amounts of content and play an active role should be subject to the provisions of the Directive.*

## Amendment 29

### Proposal for a directive Recital 39

*Text proposed by the Commission*

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

*Amendment*

(39) Collaboration between *rightholders and digital content platform providers* is essential for the functioning of technologies, such as content recognition technologies. In such cases, rightholders should provide the necessary data to allow the *platforms* to identify their content and the *platforms* should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. The *platform providers* 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 *digital content platform* providers on the use of their content covered by an agreement. *When assessing the proportionality and effectiveness of the measures implemented by the platform provider, any technological constraints and limitations should be taken into due consideration.*

Or. en

## Amendment 30

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

*Text proposed by the Commission*

*Amendment*

*(39a) As the measures and technologies deployed by digital content platform providers in application of this Directive may occasionally have a negative or*

*disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the concerned content is covered by an exception or limitation, it is necessary to require platform providers to set up a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. Rightholders should examine and process any complaints received within a reasonable amount of time and take swift corrective action where measures taken against specific content prove to be unjustified or disproportionate. Content uploaded or displayed by the user of a platform may generate revenue that might be distributed by the platform provider to the user concerned or to a rightholder, including when content is affected by measures deployed by a platform provider in application of agreements with rightholders. While the dispute over this content is being processed and resolved, it is necessary to provide that such revenues should not be attributed or distributed to the user or the rightholder concerned until the dispute has been definitively resolved through the mechanism put in place by the platform provider and that the rightful beneficiary of such revenues has been determined.*

Or. en

#### *Justification*

*Given the potential adverse effect on content uploaded or displayed by users on digital content platforms, it is necessary to strengthen and specify the requirements for the complaints and redress mechanism.*

## Amendment 31

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

*Text proposed by the Commission*

*Amendment*

***(39b) Given the requirements under this Directive in terms of agreements and cooperation between digital content platform providers and rightholders, the efficient functioning of the various mechanisms established across the Union requires that both parties work together in a relationship based on trust and fairness. To avoid unnecessary long and costly legal proceedings, it is necessary to provide an intermediary procedure for parties to seek an amicable solution to any dispute regarding the relevant provisions of this Directive. Member States should support such a mechanism by designating an impartial body with relevant experience and competence to assist the parties in the resolution of their dispute.***

Or. en

*Justification*

*Given the increased level of cooperation between rightholders and digital content platforms provided for under the Directive, it is necessary to provide a dispute resolution mechanism to facilitate the process.*

## Amendment 32

### Proposal for a directive Recital 40

*Text proposed by the Commission*

*Amendment*

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

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

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

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. *However*, 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 transparency and balance in the system that governs the remuneration of authors and performers.

Or. en

### Amendment 33

#### Proposal for a directive

#### Recital 41

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

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.

##### *Amendment*

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements *and establish standard reporting requirements and procedures accordingly*. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.

Or. en

## Amendment 34

### Proposal for a directive

#### Recital 42

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 35

### Proposal for a directive

#### Recital 43

*Text proposed by the Commission*

(43) Authors and performers are often reluctant to enforce their rights against

*Amendment*

(43) Authors and performers are often reluctant to enforce their rights against



their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism.

their contractual partners before a court or tribunal *as bringing a legal action can entail significant costs and may have an adverse effect on their capacity to seek contractual relationships in future.* Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism. *Such a mechanism should be open for individual or collective claims, brought either directly by the authors and performers concerned or through an organisation acting on their behalf.*

Or. en

#### *Justification*

*This is necessary to avoid any potential chilling effect on the willingness of authors and performers to activate such a mechanism.*

#### **Amendment 36**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### **Amendment 37**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

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

**Amendment 38**

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

*Text proposed by the Commission*

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

*Amendment*

2. Except in the cases referred to in Article 6 ***and otherwise explicitly specified in Article 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, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

Or. en

## Amendment 39

### Proposal for a directive

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 40

### Proposal for a directive

#### Article 2 – paragraph 4

*Text proposed by the Commission*

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

*Amendment*

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

(a) ***it occurs*** within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine;

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

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

Or. en

### *Justification*

*To clarify in the definition that the scope of press publications is to cover professional journalistic publications, involving several journalists, and not individual or private initiatives.*

#### **Amendment 41**

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

*Text proposed by the Commission*

*Amendment*

***(4a) 'digital content platform' means an information society service as defined in Article 2(a) of Directive 2000/31/EC, the principal purpose of which is to provide the general public, via electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC, with a significant amount of user-generated content, copyright-protected works or other subject-matter uploaded or displayed by its users, with or without the consent or knowledge of rightholders, for the purposes of information, entertainment or education.***

Or. en

### *Justification*

*To clarify and narrow the scope of services concerned by article 13; only services which are designed for the provision or display of significant amounts of content should be subject to the provisions of the Directive.*

#### **Amendment 42**

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

*Text proposed by the Commission*

*Amendment*

***(4b) 'user-generated content' means an image, a set of moving images with or without sound, a phonogram, data, or a combination of the above, which is***

*uploaded or displayed on a digital content platform by one or more users.*

Or. en

*Justification*

*Creation of a new definition to clarify one of the core elements of the activity of digital content platforms.*

**Amendment 43**

**Proposal for a directive  
Article 3 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Clarification necessary to underline how the works subject to text and data mining have been obtained.*

**Amendment 44**

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

*Text proposed by the Commission*

*Amendment*

***2a. Research organisations shall delete the reproductions of the works or other subject-matter made pursuant to paragraph 1 once the text and data mining acts necessary for the purposes of***

*scientific research have been carried out.*

Or. en

*Justification*

*This provision, based on good faith, is needed to avoid dissemination of protected works outside the scope of the exception. The conditions under which the exception applies for PPPs are also clarified.*

**Amendment 45**

**Proposal for a directive  
Article 3 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*To clarify that legitimate measures put in place to ensure the technical stability of the networks and databases storing the works cannot be used to undermine effective enjoyment of the text and data mining exception.*

**Amendment 46**

**Proposal for a directive  
Article 3 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

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. ***In cooperation***

referred to in paragraph 3.

***with the Member States, the Commission shall encourage the exchange of best practices and experiences across the Union.***

Or. en

*Justification*

*To help streamline and optimise practices across the Union regarding the application of the text and data mining exception.*

**Amendment 47**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*Given the mandatory nature of the exception and the economic harm caused to rightholders, due to the investments necessary to satisfy the increased demand, they should be fairly compensated as is traditionally provided for under the existing copyright rules.*

**Amendment 48**

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

*Text proposed by the Commission*

*Amendment*

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

(a) takes place on the premises ***where the teaching activities*** of an educational establishment ***recognised by the Member State in which it is established are carried out*** or through a secure electronic network accessible only by the educational establishment's pupils or students and

teaching staff;

Or. en

*Justification*

*To enlarge the scope of the exception so that it applies in cases where the teaching activity is provided outside the usual premises of the educational establishment.*

**Amendment 49**

**Proposal for a directive**

**Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*This is necessary to guarantee the application of the exception.*

**Amendment 50**

**Proposal for a directive**

**Article 4 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en



## *Justification*

*To underline that licences can go beyond the scope of the exception provided in the Directive and that licences need to be designed for educational establishments, taking into account their needs and constraints.*

### **Amendment 51**

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

*Text proposed by the Commission*

*Amendment*

***2a. For the purposes of applying paragraph 2, Member States shall actively assist in ensuring the availability of the licences authorising at least the acts described in paragraph 1, for example by acquiring collective licences on behalf of the educational establishments established on its territory or by facilitating dialogue between rightholders and educational establishments with a view to establishing specific licences authorising the acts described in paragraph 1.***

***Member States shall ensure the visibility of the licences authorising the acts described in paragraph 1 through appropriate tools, such as a single portal or database accessible to educational establishments, where the available licences shall be listed and kept up-to-date.***

***Where a Member State has availed itself of the provision in paragraph 2 and a licence for the digital use of a work is not displayed on the tool referred to in the second subparagraph, an educational establishment established on its territory may invoke the exception under paragraph 1.***

Or. en

## *Justification*

*This is necessary to provide legal clarity regarding the obligations of Member States and for*

*educational establishments.*

## **Amendment 52**

### **Proposal for a directive Article 4 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

4. Member States **shall** 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.

Or. en

*Justification*

*Given the mandatory nature of the exception and the economic harm caused to rightholders, due to the investments necessary to satisfy the increased demand, they should be fairly compensated as is traditionally provided for under the existing copyright rules.*

## **Amendment 53**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## **Amendment 54**

### **Proposal for a directive**

#### **Article 5 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*For the purpose of enjoying the exception under the first subparagraph of this Article, cultural heritage institutions may request that another cultural heritage institution or a service provider perform on their behalf the act of copying or digitising the works or other subject-matter that are permanently in the collection of the requesting cultural heritage institution, provided that all copies made of the works or other subject-matter are returned to the requesting cultural heritage institution or destroyed.*

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

Or. en

#### *Justification*

*This provides legal certainty to cultural heritage institutions on how they can enjoy this exception, especially in the context of cross-border cooperation with other cultural heritage institutions.*

## **Amendment 55**

### **Proposal for a directive**

#### **Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 5a*

##### *Panorama exception*

*Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC and point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, permitting at least the non-*

*commercial digital reproduction and use of works, such as works of architecture or sculpture, made to be located permanently in public places.*

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

Or. en

## **Amendment 56**

### **Proposal for a directive Article 5 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 5b*

##### *User-generated content exception*

*Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, point (a) of Article 4(1) of Directive 2009/24/EC and Article 13 of this Directive in order to allow for the digital use of quotations or extracts of works and other subject-matter comprised within user-generated content for purposes such as criticism, review, entertainment, illustration, caricature, parody or pastiche provided that the quotations or extracts:*

- (a) relate to works or other subject-matter that have already been lawfully made available to the public;*
- (b) are accompanied by the indication of the source, including the author's name, unless this turns out to be impossible; and*
- (c) are used in accordance with fair practice and in a manner that does not extend beyond the specific purpose for which they are being used.*

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

Or. en

*Justification*

*This is necessary to acknowledge the position and role of user-generated content in the online environment and to provide legal clarity for the legitimate use of extracts or quotations of copyright-protected works within UGC. Such an exception may only apply in respect of the “3-step test”, thus protecting rightholders against disproportionate uses.*

**Amendment 57**

**Proposal for a directive  
Article 5 c (new)**

*Text proposed by the Commission*

*Amendment*

***Article 5c***

***Exception for never-in-commerce works***  
***Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to permit, for the non-commercial purposes of a cultural heritage institution, the digitisation, distribution, communication to the public or making available of works or other subject-matter that were never in commerce and which are permanently in the collection of the institution.***

Or. en

*Justification*

*The near impossibility of obtaining licences for works that were never intended for commerce and the limited economic harm justifies an exception to facilitate the preservation and dissemination of such works by cultural heritage institutions.*

## Amendment 58

### Proposal for a directive

#### Article 7 – paragraph 2 – subparagraph 1

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

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

##### *Amendment*

A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so ***in the Member States where the competent collective management organisation and the cultural heritage institution are established.***

Or. en

##### *Justification*

*To facilitate the eligibility of out-of-commerce works through this mechanism and so as not to burden cultural heritage institutions, it is necessary to narrow down the Member States in which the work should be commercially "unfindable" in order to qualify as out-of-commerce.*

## Amendment 59

### Proposal for a directive

#### Article 7 – paragraph 2 – subparagraph 2

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

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

##### *Amendment*

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

commerce.

to presume that all works or other subject-matter in the collection are out of commerce.

Or. en

## **Amendment 60**

### **Proposal for a directive Article 7 – paragraph 3 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

3. Member States shall provide that appropriate publicity measures, ***such as a single portal***, are taken regarding:

Or. en

## **Amendment 61**

### **Proposal for a directive Article 7 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## **Amendment 62**

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

*Text proposed by the Commission*

Member States shall ensure a regular dialogue between representative users' and

*Amendment*

Member States shall ensure a regular, ***sector-specific*** dialogue between

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).

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

Or. en

#### *Justification*

*As each sector presents very different characteristics, it is necessary to assess the eligibility criteria for the out-of-commerce mechanism accordingly.*

### **Amendment 63**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### *Justification*

*In order to improve overall licensing possibilities for out-of-commerce works, it is also reasonable to encourage the development of collective management organisations in sectors where they do not exist.*

### **Amendment 64**

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



*Text proposed by the Commission*

*Amendment*

***In cooperation with the Member States, the Commission shall encourage the exchange of best practices across the Union regarding the results of any dialogue established pursuant to this Article.***

Or. en

## **Amendment 65**

### **Proposal for a directive Article 10 – title**

*Text proposed by the Commission*

*Amendment*

***Negotiation mechanism***

***Support for the availability of audiovisual works***

Or. en

## **Amendment 66**

### **Proposal for a directive Article 10 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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 ***facilitate the availability of audiovisual works on video-on-demand platforms by ensuring 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. ***The body created or designated by the Member State for the purposes of this Article*** shall provide assistance with negotiation and help reach agreements.

## **Amendment 67**

### **Proposal for a directive**

#### **Article 10 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Assistance from the body referred to in paragraph 1 may be sought by any of the parties involved in the negotiation of an agreement, provided that the other party agrees to the involvement of the body.*

*When a significant proportion of the authors or performers of an audiovisual work provide sufficient evidence to demonstrate that rightholders have unjustifiably taken insufficient steps to make available the work on a video-on-demand platform, the body referred to in paragraph 1 may be called upon to provide its assistance to the rightholders concerned for the conclusion of an agreement for the purpose of making available this work on a video-on-demand platform.*

Or. en

#### *Justification*

*Rightholders are not always in a position to focus on past works for which they have the distribution rights to seek licences for VOD platforms, meaning that many European works cannot be disseminated. Authors/performers who can demonstrate that inadequate steps have been taken to make a work available should be able to require the body designated under this article to offer its assistance to the relevant rightholder.*

## **Amendment 68**

### **Proposal for a directive**

#### **Article 11 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall provide

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.

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 **by a party using such press publications for commercial purposes.**

Or. en

*Justification*

*This clarifies that private and non-commercial uses are not covered by this Article, which covers only business-to-business relationships.*

**Amendment 69**

**Proposal for a directive  
Article 11 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

4. The rights referred to in paragraph 1 shall expire **3** 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.

Or. en

*Justification*

*Given the average lifespan of press publications, which is considerably shorter than other types of copyright-protected work, and the need to strike a balance with citizens' right to access information, it is necessary to reduce the term of protection.*

**Amendment 70**

**Proposal for a directive  
Article 12 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

Member States **shall** 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.

made under an exception or limitation to the transferred or licensed right.

Or. en

### *Justification*

*This is necessary to provide legal clarity and to prevent disproportionate economic harm to relevant rightholders.*

## **Amendment 71**

### **Proposal for a directive Article 13 – title**

#### *Text proposed by the Commission*

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

#### *Amendment*

Use of protected content by *digital content platform* providers

Or. en

## **Amendment 72**

### **Proposal for a directive Article 13 – paragraph 1**

#### *Text proposed by the Commission*

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

#### *Amendment*

1. *Digital content platform* providers *shall enter into a fair licensing agreement with any requesting rightholder, provided that the category of works covered by the rightholder represents a significant amount of the content displayed on the platform. Under the terms of the agreement concluded* with rightholders, *digital content platform providers shall* take measures to ensure the functioning of *these* 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

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

other subject-matter identified by rightholders through the cooperation with the *platform* providers ***or to authorise by default all content uploaded by a user specified at any point by the rightholder.*** Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The *platform* 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. ***Rightholders shall provide the platform provider with the relevant and necessary elements to ensure the proper functioning of the measures deployed by the provider in application of this Article.***

Or. en

#### *Justification*

*This clarifies the conditions under which a digital content platform must enter into an agreement with a rightholder and the mutual obligations necessary for the functioning of the measures to apply these agreements.*

### **Amendment 73**

#### **Proposal for a directive Article 13 – paragraph 2**

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

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

##### *Amendment*

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

*as the dispute has been resolved under the mechanism.*

Or. en

*Justification*

*Given the potential adverse effect on content uploaded or displayed by users on digital content platforms, it is necessary to strengthen and specify the requirements for the complaints and redress mechanism.*

**Amendment 74**

**Proposal for a directive**

**Article 13 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*The complaints and redress mechanism established pursuant to the first subparagraph shall ensure that users have access to sufficient information on the relevant exceptions and limitations that may apply to content affected by the measures referred to in paragraph 1.*

*Any complaint filed under the mechanism shall be processed by the relevant rightholder within a reasonable period of time. The rightholder shall duly justify its decision.*

Or. en

*Justification*

*Given the potential adverse effect on content uploaded or displayed by users on digital content platforms, it is necessary to strengthen and specify the requirements for the complaints and redress mechanism.*

**Amendment 75**

**Proposal for a directive**

**Article 13 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Member States shall facilitate,

3. Member States shall facilitate,

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

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

Or. en

## Amendment 76

### Proposal for a directive

#### Article 13 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

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

*Member States shall create or designate an impartial body with relevant expertise to assist the parties in the resolution of their dispute under the mechanism provided for in the first subparagraph.*

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

Or. en

*Justification*

*Given the increased level of cooperation between rightholders and digital content platforms*

*provided for under the Directive, it is necessary to provide a dispute resolution mechanism to facilitate the process.*

## **Amendment 77**

### **Proposal for a directive Article 14 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*This clarifies the obligation under this Article.*

## **Amendment 78**

### **Proposal for a directive Article 14 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***For the purposes of this paragraph, the beneficiary of a licence or transfer of rights shall provide the party from which it has acquired the licence or rights with the necessary and relevant information to allow that party to fulfil its obligations under this Article.***

Or. en



## *Justification*

*This ensures that the obligation is applied throughout the chain of rights.*

### **Amendment 79**

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

#### **Article 15 – title**

*Text proposed by the Commission*

*Amendment*

Contract adjustment *mechanism*

Contract adjustment *right*

Or. en

### **Amendment 80**

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

#### **Article 15 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

### **Amendment 81**

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

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

*Text proposed by the Commission*

*Amendment*

*The procedure referred to in paragraph 1 may be initiated by any of the parties to*

*the dispute or through a collective action from several authors or performers with the same contractual partner and similar claims, or be initiated on behalf of the author or performer by a collective organisation representing him/her, such as a union or a guild.*

Or. en

### *Justification*

*This is necessary to avoid any potential chilling effect on the willingness of authors and performers to activate such a mechanism.*

## **Amendment 82**

### **Proposal for a directive**

#### **Article 17 – paragraph 2 – point b a (new)**

Directive 2001/29/EC

Article 5 – paragraph 3 – point d

#### *Present text*

(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;

#### *Amendment*

***(ba) point (d) of Article 5(3) is amended as follows:***

"(d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose, ***without prejudice to the exceptions and the limitation provided for in Directive [this Directive];***"

Or. en

*(This amendment seeks to amend a provision within the existing act - Article 5, paragraph 3, point d - that was not referred to in the Commission proposal. Please note, however, that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure legal consistency with the Rapporteurs' position.)*

### *Justification*

*This amendment is required to take account of the new mandatory exception introduced for user-generated content.*

### **Amendment 83**

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

#### **Article 17 – paragraph 2 – point b b (new)**

Directive 2001/29/EC

Article 5 – paragraph 3 – point h

#### *Present text*

(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;

#### *Amendment*

***(bb) Point (h) of Article 5(3) is amended as follows:***

"(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places, ***without prejudice to the exceptions and the limitation provided for in Directive [this Directive];***"

Or. en

*(This amendment seeks to amend a provision within the existing act - Article 5, paragraph 3, point h - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure legal consistency with the Rapporteurs' position.)*

### *Justification*

*This is necessary to take account of the mandatory panorama exception introduced.*

### **Amendment 84**

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

#### **Article 17 – paragraph 2 – point b c (new)**

Directive 2001/29

Article 5 – paragraph 3 – point k

#### *Present text*

(k) use for the purpose of caricature,

#### *Amendment*

***(bc) Point (k) of Article 5(3) is amended as follows:***

"(k) use for the purpose of caricature,

parody or pastiche;

parody or pastiche, *without prejudice to the exceptions and the limitation provided for in Directive [this Directive];*"

Or. en

*(This amendment seeks to amend a provision within the existing act - Article 5, paragraph 3, point k - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)*

*Justification*

*This is necessary to take into account the new mandatory exception introduced for user-generated content.*

**Amendment 85**

**Proposal for a directive**

**Article 17 – paragraph 2 – point b d (new)**

Directive 2001/29/EC

Article 5 – paragraph 3 – point n

*Present text*

(n) use by communication or making available, for the purpose of research or private study, to individual members of the public **by dedicated terminals on the premises** of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;

*Amendment*

**(bd) Point (n) of Article 5(3) is amended as follows:**

"(n) use by communication or making available, for the purpose of research or private study, to individual members of the public **through the secure electronic network** of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;"

Or. en

*(This amendment seeks to amend a provision within the existing act - Article 5, paragraph 3, point n - that was not referred to in the Commission proposal.)*

*Justification*

*This is minor amendment to the existing voluntary exception in Directive 2001/29/EC to take account of technological developments.*



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

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

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

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

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

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