

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

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

PART 2: ARTICLES

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

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

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

Note:

Differences between the EP's position and the Commission's proposal are highlighted in bold /italic. Deletions are marked with strikethrough.

Differences between the Council's position and the Commission's proposal are highlighted in bold/underlined. Deletions are marked with ~~strikethrough~~.

Row	Location	COMMISSION PROPOSAL	EP TEXT	COUNCIL TEXT	POSSIBLE COMPROMISE SOLUTION
105.		TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	
106.	Art.1, title	<i>Article 1</i> <i>Subject matter and scope</i>	<i>Article 1</i> <i>Subject matter and scope</i>	<i>Article 1</i> <i>Subject matter and scope</i>	
107.	Art. 1, para 1	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights in the	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and related rights	

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.

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108. Art. 1, para 2
2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.
2. Except in the cases referred to in Article 6~~17~~, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, **2000/31/EC**, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.

109. Art. 2, title

Article 2

Definitions

Article 2

Definitions

110. Art. 2, introductory part

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

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

111. Art. 2, para 1, introductory part

(1) ‘research organisation’ means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to provide educational services;

(1) ‘research organisation’ means a university, **including** ~~a research institute or any other organisation~~ **its libraries**, a research institute or any other organisation the primary goal of which is to conduct scientific research or to provide educational services;

and provide educational services:
involving also the conduct of scientific research:

112. Art. 2, para 1, point (a) (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or

113. Art. 2, para 1, point (b) (b) pursuant to a public interest mission recognised by a Member State; (b) pursuant to a public interest mission recognised by a Member State;

114. Art. 2, para 1, closing phrase in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a *significant* influence upon such organisation; in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a *significant* influence upon such organisation;

115. Art. 2, para 2 (2) 'text and data mining' means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations; (2) 'text and data mining' means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations; *which analyses works and other subject matter* in digital form in order to generate information, *including, but not limited to*, patterns, trends and correlations.

116. Art. 2, para 3 (3) 'cultural heritage institution' means a publicly accessible library or museum, an archive or a film or audio heritage institution; (3) 'cultural heritage institution' means a publicly accessible library or museum, an archive or a film or audio heritage institution;

117. Art. 2, para 4 (4) 'press publication' means a fixation of a collection of literary works of a journalistic nature, which may also comprise other journalistic works, which (4) 'press publication' means a fixation of a collection of literary works of a journalistic nature, which may also comprise other journalistic works of a journalistic nature, which

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 media under the initiative, editorial responsibility and control of a service provider.

of literary works of a journalistic nature, which ~~;~~ *[remaining part of this paragraph was split up in points (a) to (d) - see following rows 118-121]*

118. Art. 2, para 4, point (a)

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 media under the initiative, editorial responsibility and control of a service provider. ***Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition;***

119. Art. 2, para 4, point (b)

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; ~~;~~ *[See Article 2(4) of COM proposal and of EP text (row 117)]*

120. Art. 2, para 4, point (c)

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; ~~;~~ *[See Article 2(4) of COM proposal and of EP text (row 117)]*

purpose of providing ~~the~~ **the**

point (c)

purpose of providing the general public with information related to news or other topics; and

[See Article 2(4) of COM proposal and of EP text (row 117)]

121. Art. 2, para 4, point (d)

(d) is published in any media under the initiative, editorial responsibility and control of a service provider;;

[See Article 2(4) of COM proposal and of EP text (row 117)]

122. Art. 2, para 4a, introductory part

(4a) *'out of commerce work'* means:

123. Art. 2, para 4a, point (a)

(a) *an entire work or other subject matter in any version or manifestation that is no longer available to the public in a Member State through customary channels of commerce;*

124. Art. 2, para 4a, point (b)

(b) *a work or other subject matter that has never been in commerce in a Member State, unless, from the circumstances of that case, it is apparent that its author objected to making it available to the public;*

125. Art. 2, para 4b (EP)/para 5 (Council)

(5) 'online content sharing service provider' means a provider of an information society service whose main or one of the main purposes is to store

one of the main purposes of which is to store and give access to the public to a significant amount of copyright protected works or other protected subject-matter uploaded by its users, which the service optimises and promotes for profit making purposes.

Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories, shall not be considered online content sharing service providers within the meaning of this Directive;

Providers of services such as non-for-profit online encyclopaedias, non-for-profit educational and scientific repositories, non-for-profit open source software developing platforms, as well as internet access service providers, online marketplaces and providers of cloud services which allow users, including businesses for their internal purposes, to upload content for their own use shall not be considered online content sharing service providers within the meaning of this Directive;

126. Art. 2, para 4c
(EP)/para 6
(Council)

(4c) 'information society service' means a service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council^{1a};

(6) 'information society service' means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535.

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

127. Art. 2, para 4d

(4d) 'automated image referencing service' means any online service which reproduces or makes available to the public for indexing and referencing purposes graphic or art works or photographic works collected by automated means via a third-party online service.

128.

TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- BORDER ENVIRONMENT	TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- BORDER ENVIRONMENT
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129. Art. 3,
title

Article 3 Text and data mining	Article 3 Text and data mining
<u>Text and data mining</u>	<u>Text and data mining for the purposes of scientific research</u>

130. Art. 3, para 1

Member States shall	Member States shall
1.	1.

130. Art. 3, para 1

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

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

Member States shall provide for educational establishments and cultural heritage institutions conducting scientific research within the meaning of point (1)(a) or (1)(b) of Article 2, in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisations, to also be able to benefit from the exception provided for in this Article.

131. Art. 3, para 1a

1a. Reproductions and extractions made for text and data mining purposes shall be stored in a secure manner, for example

1a. Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an

136. Art. 3a, para 1

1. Without prejudice to Article 3 of this Directive, Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining, provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by technical means.

137. Art. 3a, para 2
(EP)

2. Reproductions and extractions made pursuant to paragraph 1 shall not be used for purposes other than text and data mining.

138. Art. 3a, para 2
(Council)

2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by technical means.

139. Art. 3a, para 3

3. *Member States may continue to provide text and data mining exceptions in accordance with point (a) of Article 5 (3) of Directive 2001/29/EC.*

140. Art. 4,

title

Article 4

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

Article 4

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

Article 4

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

141. Art. 4, para 1

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

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

142. Art. 4, para 1, point (a)

(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

(a) takes place ~~on~~ under the ~~premises~~ responsibility of an educational establishment, on its premises or other venues, or through a secure electronic network accessible

educational establishments and pupils or students and teaching staff;

the educational establishment, or through a secure electronic network environment accessible only by the educational establishment's pupils or students and teaching staff;

143. Art. 4, para 1, point (b) is accompanied by (b) is accompanied by (b) the indication of the source, including the author's name, unless this turns out to be impossible.

the indication of the source, including the author's name, unless this turns out to be impossible **for reasons of practicability**.

144. Art. 4, para 2, sub-para 1

2. Member States may 2. **Notwithstanding** 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 2. **Article 6(1)**, 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, **such as material which is primarily intended for the educational market or sheet music**, to the extent that adequate licences **covering the needs of educational establishments and licensing agreements** authorising the acts described in paragraph 1 **and tailored to the needs and specificities of educational establishments and licensing agreements** are easily available in the market.

145. Art. 4, para 2, sub-para 2

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

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

for educational establishments.

acts described in paragraph 1 **available and visible** for educational establishments.

146. Art. 4, para 3
3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.
3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

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

148. Art. 4, para 4a

4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to paragraph 1 shall be unenforceable. Member States shall ensure that rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1, generally or as regards specific types of works or other subject-matter that they may choose.

149. Art. 5, title *Article 5* *Article 5* *Article 5*
Preservation of cultural *Preservation of cultural* *Preservation of cultural*
heritage *heritage* *heritage*
150. Art. 5, [para 1 (EP)] Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.
151. Art. 5, para 1a *Member States shall ensure that any material resulting from an act of reproduction of material in the public domain shall not be subject to copyright or related rights, provided that such reproduction is a faithful reproduction for purposes of preservation of the original material.*
152. Art. 5, para 1b *Any contractual*
- 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.

152. Art. 5, para 1b

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

[See Council's Article 6(1) (row 155)]

153. Art. 6, title
Common provisions

Article 6
Common provisions

154. Art. 6, para 1
(EP)

1. Accessing content covered by an exception provided for in this Directive shall not confer on users any entitlement to use it pursuant to another exception.

155. Art. 6, para 1
(Council)

1. Any contractual provision contrary to the exceptions provided for in Articles 3, 4(1) and 5 shall be unenforceable.
[See Article 3(2) of the COM proposal and Parliament's Articles 3(2) and 4(4a) and 5(1b)]

156. Art. 6, para 2

Article 5(5) and the first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.
Article 5(5) and the first, third, **fourth** and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. **The** first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions **Articles 3, 4(1)** and the limitation provided for under **5** of this **Title** Directive.

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

158. CHAPTER 1
Out-of-commerce works
CHAPTER 1
Out-of-commerce works

159. Art. 7, title
Use of out-of-commerce works by cultural heritage institutions
Article 7
Use of out-of-commerce works by cultural heritage institutions
Article 7
Use of out-of-commerce works by cultural heritage institutions

160. Art. 7, para 1, introductory part
1. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management organisation, provided that:
Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management organisation, provided that:
~~Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those covered by the licence who are not represented by the collective management organisation, provided that:~~

irrespective of whether all rightholders covered by the licence ~~who are not represented by~~ **have**

~~represented by~~**have**
mandated the collective
management organisation,
provided that:

161. Art. 7, para 1, point (a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-matter and of the rights which are the subject of the licence;
162. Art. 7, para 1, point (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;
163. Art. 7, para 1, point (c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.
164. Art. 7, para 1a 1a. *Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive*
- (a) the collective management organisation is, on the basis of mandates from rightholders, ~~broadly~~**sufficiently** representative of rightholders in the ~~category~~**relevant type** of works or other subject-matter and of the rights which are the subject of the licence;
- (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;
- (c) all rightholders may at any time ~~object~~ **exclude the possibility for collective management organisations to license** their works or other subject-matter being ~~deemed to be out of commerce and~~ **in accordance with this Article, either in general or in specific cases, or** exclude the application of ~~the~~**any** licence, ~~granted in accordance with this Article~~ to their works or other subject-matter.

rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies available online of out-of-commerce works that are located permanently in their collections for not-for-profit purposes, provided that:

165. Art. 7, para 1a,
point (a)

(a) *the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;*

166. Art. 7, para 1a,
point (b)

(b) *all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the exception to their works or other subject-matter.*

167. Art. 7, para 1b

1b. Member States shall provide that the exception adopted pursuant to paragraph 1a does not apply in sectors or for types of works where appropriate licensing-based solutions, including but not limited to solutions provided for in paragraph 1, are available. Member States shall, in consultation with authors, other rightholders, collective

other rightholders, collective management organisations and cultural heritage institutions, determine the availability of extended collective licensing-based solutions for specific sectors or types of works.

168. Art. 7, para 2, sub-para 1
2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so.
2. A work or other subject-matter shall be deemed to be out-of-commerce when **it can be presumed in good faith that** the whole work or other subject-matter, in all its translations, versions and manifestations; is not available to the public through customary channels of commerce and cannot be reasonably expected to become so. **Member States may provide a cut-off date in relation to determining whether a work previously commercialised is deemed to be out of commerce.**

[See definition of out-of-commerce work in Parliament's Article 2(4a) (rows 122-126)]

169. Art. 7, para 2, sub-para 2
- Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary and **accordance with paragraph 1 or used in paragraph 1 de, Such**
- Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the **may provide for specific** requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 or used in paragraph 1 de, **Such**

175. Art. 7, para 4, introductory part / Art. 7, para 4 (Council) Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:

176. Art. 7, para 5, introductory part (Council)

177. Art. 7, para 4, point (a) (EP)/ Art. 7, para 5, point (a) (Council)

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

(a) the works or ~~other subject-matter phonograms~~ were first published or, in the absence of publication, ~~where they were first broadcast~~ in a third country, except for cinematographic ~~and~~ audiovisual works;

178. Art. 7, para 4, point (b) (EP)/ Art. 7, para 5, point (b) (Council)

(b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or

(b) cinematographic or audiovisual works, the producers of ~~the works~~ which have their headquarters or habitual residence, ~~for cinematographic and audiovisual works~~ in a third country; or

179. Art. 7, para 4, point (c) (EP) / Art. 7, para 5, point (c) (Council)

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

(c) the cultural heritage institution is established, works or other subject-matter of third country nationals, when a Member State or a third country could not be determined, after a

5. This Article shall not apply to sets of out-of-commerce if, following the reasonable effort to determine commercial availability, there is evidence that such sets predominantly consist of:

- reasonable efforts, according to points (a) and (b).
 not be determined, after a reasonable effort, according to points (a) and (b).
 (b-);
180. Art. 7, para 5 Paragraphs 1, 2 and 5. Paragraphs 1, 2 and 5.
 (EP)/ Art. 7, 3 shall not apply to the works 3 shall not apply to unless the
 para 5, closing or other subject-matter of works or other subject-
 phrase third country nationals except third country nationals except matter collective
 (Council) where points (a) and (b) of where points (a) and (b) of
 paragraph 4 apply. paragraph 4 apply.
 paragraph 4 apply.
181. Art. 8, title *Article 8* *Article 8*
 Cross-border uses *Cross-border uses*
 Cross-border uses
182. Art. 8, para 1 1. Works or other 1. Works ***Out-of-***
 subject-matter covered by a subject-matter covered by a ***A***
 licence granted in accordance licence granted in accordance
 with Article 7 may be used with Article 7 may be used
 by the cultural heritage with Article 7 ***may be*** used
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183. Art. 8, para 2 2. Member States shall 2. Member States shall 2. [*Moved to new Article*
 ensure that information that ensure that information that 8a(1)]
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 to in Article 7(1)(c) are made to in ***point (c) of Article 7(1)***
 publicly accessible in a single and ***point (b) of Article 7(1a)***
- country nationals except
 where points in the meaning
 of point (a) and (b) of
 paragraph 4 apply.
- country nationals except
 where points in the meaning
 of point (a) and (b) of
 paragraph 4 apply.
- commerce works or other
 subject-matter by the
 cultural heritage institution in
 accordance with the terms of
 the licence in all Member
 States.
- commerce works or other
 subject-matter covered by a
 licence granted in accordance
 with Article 7 may be used
 allow the use of out-of-
 commerce works or other
 subject-matter by the
 cultural heritage institution in
 accordance with the terms of
 the licence in all Member
 States.

publicly accessible in a single **and point (b) of Article 7(1a)** online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of the licence.

are made ~~publicly~~ **permanently, easily and effectively** accessible in a **public** single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, **or in the cases covered by Article 7(1a), where the cultural heritage institution is established** and for the whole duration of the licence.

184. Art. 8, para 3 3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.
3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.
3. *[Moved to new Article 8a(1) second subparagraph]*

185. Art. 8a, title

Article 8a

Publicity measures

186. Art. 8a, para 1, sub-para 1
1. Member States shall ensure that information that **allows for the purposes of** the identification of the **out-of-commerce** works or other subject-matter covered by a licence granted in accordance with ~~Article 7 and~~ **as well as** information about the **possibilities** of rightholders to object referred to in Article 7(1)(c) are,

holders to object to the
to in Article 7(1)(c) are),
and, as soon as it is
available, information on
the parties to the licence,
the covered territories and
the allowed uses is made
publicly accessible in a single
online portal ~~for~~ from at least
six months before the works
or other subject-matter are
~~digitised,~~ distributed,
communicated to the public
or made available in Member
States ~~other than the one~~
~~where the licence is granted,~~
~~and for the whole duration~~
of to the public in
accordance with the licence.

[Article 8(2) of the COM
proposal, amended]

187. Art. 8a, para 1,
sub-para 2

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

[Article 8(3) of the COM
proposal, amended]

188. Art. 8a, para 2

2. Member States
shall provide that, if
necessary for the general
awareness of
right holders, further
appropriate publicity
measures are taken
regarding: ~~(a) the deemed~~
~~of works or other subject-~~
~~matter as out of commerce;~~
~~(b) the licence, and in~~

~~(b) the licence, and in particular its application to unrepresented rightholders; **the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the licences granted and (e) the**~~ possibilities to object of rightholders referred to in point (e) of paragraph 1 Article 7(1)(c) ;

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

The additional appropriate publicity measures shall be taken in the Member State where the licence is sought. If there is evidence, such as the origin of the works or other subject-matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.

[Article 7(3) of the COM proposal, amended]

189. Art. 9, title

Article 9
Stakeholder dialogue

Article 9
Stakeholder dialogue

Article 9
Stakeholder dialogue

190. Art 9

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

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) *and the exception referred to in Article 7(1a)*, 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).

Member States shall ensure consult rightholders, collective management organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage a regular dialogue between representative users' and rightholders' organisations, including collective management organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, to foster the relevance and usability of the licensing mechanisms referred to in Article 7(1); and to ensure the effectiveness of the safeguards for rightholders referred to in this Chapter; 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).

191.

CHAPTER 1a

Measures to facilitate collective licensing

192. Art. 9a, title

Article 9a

Collective licensing with an
extended effect

193. Art. 9a, para 1

1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for in this Article, that when a collective management organisation, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised the organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.

194. Art. 9a, para 2

2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to

onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such mechanism safeguards the legitimate interests of rightholders.

195. Art. 9a, para 3

3. The safeguards referred to in paragraph 1 must ensure that:

196. Art. 9a, para 3, point (a)

(a) the organisation is, on the basis of mandates from rightholders, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State;

197. Art. 9a, para 3, point (b)

(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;

198. Art. 9a, para 3, point (c)

(c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;

199. Art. 9a, para 3,

(d) appropriate

199. Art. 9a, para 3,
point (d)

(d) appropriate
publicity measures are
taken to raise the awareness
of rightholders regarding
the possibility for
organisations to license
works or other subject-
matter and the licensing
taking place in accordance
with this Article, and the
possibilities of rightholders
referred to in point (c)
starting from a reasonable
period before the works or
other subject-matter are
used under the licence.
Publicity measures should
be effective without the
need to inform each
rightholder individually.

200. Art. 9a, para 4

4. The rules provided
for in this Article are
without prejudice to the
application of collective
licensing mechanisms with
an extended effect in
conformity with other
provisions of Union law,
including those which allow
exceptions or limitations,
and shall not apply to
mandatory collective
management of rights.

201. Art. 9a, para 5

5. Where the law of a
Member State provides for
a licensing mechanism in
accordance with this
Article, the Member State
concerned shall inform the
Commission about the
scope of that law, purposes

scope of that law, purposes and types of licences that may be introduced under that law as well as contact details for organisations issuing licences in accordance with the mechanism in paragraph 1. The Commission shall publish this information.

202. Art. 9a, para 6

6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 31 December 2020, submit to the European Parliament and to the Council a report on the use of such mechanisms referred to in paragraph 1 in the EU and their impact on licensing and rightholders. The Commission's report shall be accompanied, if appropriate, by a legislative proposal, including as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2) the cross-border effect of such national schemes.

203.

CHAPTER 2

Access to and availability of audiovisual works on video-on-demand platforms

CHAPTER 2

Access to and availability of audiovisual works on video-on-demand platforms

Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found.

207. Art. 10, sub-para 3
To encourage the availability of audiovisual works on video-on-demand platforms, Member States shall foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.

208. *CHAPTER 2a
Access to Union publications*

209. Art. 10a, title
*Article 10 a
Union Legal Deposit*

210. Art. 10a, para 1
1. Any electronic publication dealing with Union-related matters such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, that is made available to the public in the Union shall be subject to a Union Legal Deposit.

211. Art. 10a, para 2
2. The European Parliament Library shall be entitled to delivery, free of charge, of one copy of every publication referred to in paragraph 1.

212. Art. 10a, para 3
3. The obligation set

212. Art. 10a, para 3

3. *The obligation set out in paragraph 1 shall apply to publishers, printers and importers of publications for the works they publish, print or import in the Union.*

213. Art. 10a, para 4

4. *From the day of the delivery to the European Parliament Library, the publications referred to in paragraph 1 shall become part of the European Parliament Library permanent collection. They shall be made available to users at the European Parliament Library's premises exclusively for the purpose of research or study by accredited researchers and under the control of the European Parliament Library.*

214. Art. 10a, para 5

5. *The Commission shall adopt acts to specify the modalities relating to the delivery to the European Parliament Library of publications referred to in paragraph 1.*

215.

TITLE IV	TITLE IV	TITLE IV
MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT

216.

CHAPTER 1	CHAPTER 1	CHAPTER 1
Rights in publications	Rights in publications	Rights in publications

217. Art. 11, title	<i>Article 11</i> <i>Protection of press</i> <i>publications concerning</i> <i>digital uses</i>	<i>Article 11</i> <i>Protection of press</i> <i>publications concerning</i> <i>digital uses</i>	<i>Article 11</i> <i>Protection of press</i> <i>publications concerning</i> <i>digital uses</i>
218. Art. 11, para 1	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC <i>so that they may obtain fair and proportionate remuneration</i> for the digital use of their press publications <i>by information society service providers</i> .	1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications <u>by information society service providers</u> .
219. Art. 11, para 1, sub-para 2			<u>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</u>
220. Art. 11, para 1a		<i>1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.</i>	

221. Art. 11, para 2 2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.
2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. ~~Such~~The rights referred to in paragraph 1 may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.

222. Art. 11, para 2,
sub-para 2

When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection has expired.

223. Art. 11, para 2a

2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by individual words

224. Art. 11, para 3 3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply *mutatis mutandis* in respect of the rights referred to in paragraph 1. 3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply *mutatis mutandis* in respect of the rights referred to in paragraph 1.
225. Art. 11, para 4 4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. 4. The rights referred to in paragraph 1 shall expire ~~20 years~~ **1 year** after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. ***The right referred to in paragraph 1 shall not apply with retroactive effect.***
226. Art. 11, para 4a 4a. ***Member States shall ensure that authors receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers***
227. Art. 11, para 5 5. **Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].**
228. Art. 12, title *Article 12* *Article 12* *Claims to fair compensation* *Claims to fair compensation*
229. Art. 12, sub-para 1 (EP)/ Art. 12, Member States may provide that where an author has transferred or licensed a right ***with compensation-sharing systems between authors and*** transferred or licensed a right

Art. 12, introductory part (Council)] 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.

and limitations may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right, **provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015.**

230. Art. 12, point (a)

(a) the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right; **and**
[See Parliament's subparagraph 1 of Article 12 (row 229)]

231. Art. 12, point (b)

(b) **the remuneration for public lending provided for in Article 6(1) of Directive 2006/115/EC.**

232. Art. 12, sub-para 2

The first paragraph shall be without prejudice to the arrangements in Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or

licensing schemes, or concerning remuneration rights on the basis of national law.

233.

CHAPTER 1a
Protection of sport event organizers

234. Art. 12a, title

Article 12a
Protection of sport event organizers

235. Art. 12a

Member States shall provide sport event organizers with the rights provided for in Article 2 and Article 3 (2) of Directive 2001/29/EC and Article 7 of Directive 2006/115/EC.

236.

CHAPTER 2
Certain uses of protected content by online services

CHAPTER 2
Certain uses of protected content by online services

CHAPTER 2
Certain uses of protected content by online services

237. Art. 13, title

Article 13
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

Article 13
Use of protected content by ~~information society~~ online content sharing service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users

Article 13
Use of protected content by ~~information society~~ online content sharing service providers storing

238. Art. 13, para 1

1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users in cooperation with rightholders, ensure the functioning of

1. **Member States shall provide that an online content sharing service provider performs an act of communication to the public or an act of making available to the public when it gives the public access to ~~copyright protected works~~**

it gives the public access to copyright protected works or other protected subject matter uploaded by its users.

An online content sharing service provider shall obtain an authorisation from the rightholders referred to in Article 3(1) and giving access to large amounts of(2) of Directive 2001/29/EC in order to communicate or make available to the public works or other subject matter. Where no such authorisation has been obtained, the service provider shall prevent the availability on its service of those works and other subject-matter uploaded by matter, including through the application of measures referred to in paragraph 4. This subparagraph shall apply without prejudice to exceptions and limitations provided for in Union law.

Member States shall provide that when an authorisation has been obtained, including via a licensing agreement, by an online content sharing service provider, this authorisation shall also cover acts of uploading by the users of the service falling within Article 3 of Directive 2001/29/EC when they are not acting on a

amounts of works or other subject-matter uploaded by their users. They shall in cooperation with

rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be

therefore conclude fair and appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter. licensing agreements with right holders.

ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be

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

they are not acting on a commercial basis.

[Last two sentences of COM proposal were moved to Council's paragraphs 5 and 6 respectively]

239. Art. 13, para 2
(EP)

2. Member States shall ensure that the ***Licensing agreements which are concluded by online content sharing*** service providers ***with right holders for the acts of communication*** referred to in paragraph 1 ~~part~~ 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~~, ***shall cover the liability for works uploaded by the users of such online content sharing services in line with the terms and conditions set out in the licensing agreement, provided that such users do not act for commercial purposes.***

[See Council's paragraph 1, subparagraph 3 (row 238)]

240. Art. 13, para 2a
(EP)

2a. ***Member States shall provide that where right holders do not wish to conclude licensing agreements, online content sharing service providers and right holders shall cooperate in good faith in order to ensure that unauthorised protected***

order to ensure that unauthorised protected works or other subject matter are not available on their services. Cooperation between online content service providers and right holders shall not lead to preventing the availability of non-infringing works or other protected subject matter, including those covered by an exception or limitation to copyright.

241. Art. 13, para 2 / para 2b (EP) Member States shall 2b. Members States *[Paragraph 2 of the COM proposal was moved to new paragraph 7 of Council's text]*

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.

shall ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such mechanisms shall be processed without undue delay and be subject to human review. Right holders shall reasonably justify their decisions to avoid arbitrary dismissal of complaints. Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the cooperation shall not lead to any identification of individual users nor the processing of their personal

processing of their personal data. Member States shall also ensure that users have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.

[See Council's Article 13(7) (row 252)]

242. Art. 13, para 3 (EP) *3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.* *As of [date of entry into force of this directive], the Commission and the Member States shall facilitate where appropriate, the cooperation **organise dialogues** between the information society service providers and rightholders **delegates stakeholders to harmonise and** to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments:* *and issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this*

[See new paragraph 8 of Council's text]

*Member States shall facilitate where appropriate, the cooperation **organise dialogues** between the information society service providers and rightholders **delegates stakeholders to harmonise and** to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments:*

and issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this

the meaning of this Directive. When defining best practices, special account shall be taken of fundamental rights, the use of exceptions and limitations as well as ensuring that the burden on SMEs remains appropriate and that automated blocking of content is avoided.

243. Art. 13, para 3
(Council)

3. When an online content sharing service provider performs an act of communication to the public or an act of making available to the public, it shall not be eligible for the exemption of liability provided for in Article 14 of Directive 2000/31/EC for unauthorised acts of communication to the public and making available to the public, without prejudice to the possible application of Article 14 of Directive 2000/31/EC to those services for purposes other than copyright relevant acts.

244. Art. 13, para 4,
introductory
part

4. In the absence of the authorisation referred to in the second subparagraph of paragraph 1, Member States shall provide that an online content sharing service provider shall not be liable for acts of communication to the public or making

for acts of communication to the public or making available to the public within the meaning of this Article when:

245. Art. 13, para 4, point (a)

(a) it demonstrates that it has made best efforts to prevent the availability of specific works or other subject matter by implementing effective and proportionate measures, in accordance with paragraph 5, to prevent the availability on its services of the specific works or other subject matter identified by rightholders and for which the rightholders have provided the service with relevant and necessary information for the application of these measures; and

246. Art. 13, para 4, point (b)

(b) upon notification by rightholders of works or other subject matter, it has acted expeditiously to remove or disable access to these works or other subject matter and it demonstrates that it has made its best efforts to prevent their users' future availability through the measures referred to in point (a).

247. Art. 13, para 5, introductory part

5. The measures referred to in point (a) of paragraph 4 shall be

introductory
part

referred to in point (a) of paragraph 4 shall be effective and proportionate, taking into account, among other factors:

248. Art. 13, para 5,
point (a)

(a) the nature and size of the services, in particular whether they are provided by a microenterprise or a small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC, and their audience;

249. Art. 13, para 5,
point (b)

(b) the amount and the type of works or other subject matter uploaded by the users of the services;

250. Art. 13, para 5,
point (c)

(c) the availability and costs of the measures as well as their effectiveness in light of technological developments in line with the industry best practice referred to in paragraph 8.

251. Art. 13, para 6

6. Member States shall ensure that online content sharing service providers and rightholders cooperate with each other in a diligent manner to ensure the effective functioning of the measures referred to in point (a) of paragraph 4 over time. Online content sharing service providers shall provide rightholders, at

service providers shall provide rightholders, at their request, with adequate information on the deployment and functioning of these measures to allow the assessment of their effectiveness, in particular information on the type of measures used and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.

252. Art. 13, para 7

7. Member States shall ensure that the measures referred to in paragraph 4 are implemented by the online content sharing service provider without prejudice to the possibility for their users to benefit from exceptions or limitations to copyright. For that purpose, the service providers referred to in ~~paragraph 1~~ shall put in place a complaints and redress mechanisms that are is available to users of the service in case of disputes over the application of the measures referred to in paragraph 1 to their content. Complaints submitted under this mechanism shall be processed by the online content sharing

online content sharing service provider in cooperation with relevant rightholders within a reasonable period of time. Rightholders shall duly justify the reasons for their requests to remove or block access to their specific works or other subject matter. Member States shall endeavour to put in place independent bodies to assess complaints related to the application of the measures.

[Paragraph 2 of the COM proposal, amended]

253. Art. 13, para 8

8. The Commission and the Member States shall encourage stakeholder dialogues to define best practices for the measures referred to in point (a) of paragraph 4. Member States shall also endeavour to establish mechanisms to facilitate the assessment of the effectiveness and proportionality of these measures and provide the Commission regularly with information on those mechanisms. The Commission shall, in consultation with online content sharing service providers, rightholders and other relevant stakeholders and taking into account the results of the stakeholder

results of the stakeholder dialogues and the national mechanisms, issue guidance on the application of the measures referred to in point (a) of paragraph 4.

[Paragraph 3 of the COM proposal, reworded]

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

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

260.

TITLE IV

MEASURES TO
ACHIEVE A WELL-
FUNCTIONING
MARKETPLACE FOR
COPYRIGHT

261. CHAPTER 3
Fair remuneration in contracts of authors and performers

CHAPTER 3
Fair remuneration in contracts of authors and performers

CHAPTER 3
Fair remuneration in **exploitation** contracts of authors and performers

262. Art. -14, title

Article -14

Principle of fair and proportionate remuneration

263. Art. -14, para 1

1. *Member States shall ensure that authors and performers receive fair and proportionate remuneration for the exploitation of their works and other subject matter,*

exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and statutory remuneration mechanisms.

- 264. Art. -14, para 2
 - 2. *Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.*
- 265. Art. -14, para 3
 - 3. *Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.*
- 266. Art. -14, para 4
 - 4. *Contracts shall specify the remuneration applicable to each mode of exploitation.*
- 267. Art. 14, title *Article 14 Transparency obligation* *Article 14 Transparency obligation*
 - 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
- 268. Art. 14, para 1 *Article 14 Transparency obligation*
 - 1. Member States shall ensure that authors and performers receive on a regular basis, **not less than once a year**, and taking into account the specificities of each sector **and the relative importance of each individual contribution**, timely adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed

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

timely adequate and sufficient, *accurate, relevant and comprehensive* information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, *direct and indirect* revenues generated, and remuneration due.

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

269. Art. 14, para 1a

1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.

1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed to another party, authors and performers may, at their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart of the author or the performer.

270. Art. 14, para 1a, sub-para 2

The main licensee or transferee shall pass all the information referred to in the first subparagraph on to the author or performer.

appropriate level of transparency.

appropriate *a high* level of transparency.

provided that is limited to the obligation remains effective types and ensures an appropriate level of transparency: information that can reasonably be expected in such cases.

272. Art. 14, para 3 **Deleted**

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

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

273. Art. 14, para 3a

3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.

274. Art. 14, para 4 4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.

4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU *or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in*

4. Paragraph 1 shall not be applicable to agreements concluded by entities subject to the transparency obligations established by Article 3(a) and (b) of Directive 2014/26/EU: or by other entities subject to the national rules implementing Directive 2014/26/EU

- | 275. Art. 15, title | Article 15
Contract adjustment
mechanism | Article 15
Contract adjustment
mechanism | Article 15
Contract adjustment
mechanism |
|----------------------------------|--|--|---|
| 276. Art. 15, [para 1 (Council)] | 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, in the absence of collective bargaining agreements providing for a comparable mechanism, that authors and performers or any representative organisation acting on their behalf are entitled to request claim additional, appropriate and fair 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 or their successors in title , when the remuneration originally agreed is turns out to be disproportionately low compared to the subsequent relevant revenues and benefits-derived from the actual exploitation of the works or performances. |
| 277. Art. 15, para 1a | | | 1a. <u>Members States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the</u> |

remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.

278. Art. 15, para 2

2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/EU.

279. Art. 16, title

Article 16
Dispute resolution mechanism

Article 16
Dispute resolution mechanism

Article 16

Dispute resolution mechanism
procedure

280. Art. 16, [para 1 (Council)]

Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. **Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers.**

281. Art. 16, para 2

[See Parliament's Article 16 last phrase (row 280)]

2. Member States shall ensure that representative organisations of authors and performers, including

[See Council's Article 16(2) (row 281)]

and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.

282. Art. 16a
(Council), title

Article 16a

Contractual provisions

283. Art. 16a
(Council)

Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.

284. Art. 16a (EP),
title

Article 16 a

Right of revocation

285. Art. 16a (EP),
para 1

1. *Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject-matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking into account the specificities of different sectors and*

into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.

286. Art. 16a (EP),
para 2

2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the rights. Where a work or other subject-matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.

287. Art. 16a (EP),
para 3

3. Paragraphs 1 and 2 shall not apply if the non-exercise of the rights is

exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.

288. Art. 16a (EP),
para 4

4. *Contractual or other arrangements derogating from the right of revocation shall be lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.*

289. TITLE V
FINAL PROVISIONS

TITLE V
FINAL PROVISIONS

290. Art. 17,
title

*Article 17
Amendments to other
directives*

*Article 17
Amendments to other
directives*

291. Art. 17, para 1

1. Directive 96/9/EC is 1. amended as follows:

292. Art. 17, para 1,
point (a)

(a) In Article 6(2),
point (b) is replaced by the
following:

(a) In Article 6(2),
point (b) is replaced by the
following:

293. Art. 17, para 1,
point (a)

"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive]."

"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];"

provided for in **Article 3**
of Directive [this
Directive];"

Directive [this Directive];

299. Art. 17, para 2, (b) In Article 5(3), point (a) is replaced by the following:
- (b) In Article 5(3), point (a) is replaced by the following:
300. Art. 17, para 2, point (b) "(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"
- (b) In Article 5(3), point (a) is replaced by the following:
- (b) In Article 5(3), point (a) is replaced by the following:
301. Art. 17, para 2, (c) In Article 12(4), the following points are added:
- (c) In Article 12(4), the following points are added:
302. Art. 17, para 2, point (c) "(e) to examine the impact of the transition of Directive [this Directive] on the functioning of the internal market and to highlight any transition difficulties;"
- (e) to examine the impact of the transition of Directive [this Directive] on the functioning of the internal market and to highlight any transition difficulties;
303. Art. 17, para 2, point (c) (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to
- (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to

application of the measures taken by Member States to implement Directive [this Directive];

304. Art. 17, para 2, point (c) (g) to discuss any other questions arising from the application of Directive [this Directive]."

305. Art. 17a, title *Article 17 a*

306. Art. 17a *Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations existing in Union law, for uses covered by the exceptions or the limitation provided for in this Directive.*

307. Art. 18 *Article 18 Application in time Article 18 Application in time*

308. Art. 18, para 1 1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].

1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].

309. Art. 18, para 2 2. ~~The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)].~~

310. Art. 18, para 3 3. This Directive shall apply without prejudice to any acts concluded and rights any acts concluded and rights

311.	Art. 19, title	<i>Article 19</i> <i>Transitional provision</i>	any acts concluded and rights acquired before [the date mentioned in Article 21(1)].
312.	Art. 19	<i>Article 19</i> <i>Transitional provision</i>	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].
313.	Art. 20, title	<i>Article 20</i> <i>Protection of personal data</i>	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.
314.	Art. 20	<i>Article 20</i> <i>Protection of personal data</i>	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.
315.	Art. 21, title	<i>Article 21</i> <i>Transition</i>	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
316.	Art. 21, para 1	<i>Article 21</i> <i>Transition</i>	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 24 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
317.	Art. 21, para 1, sub-para 2	<i>Article 21</i> <i>Transition</i>	When Member States adopt those provisions, they shall contain a reference to this Directive or to the corresponding provisions of the national law.

contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

318. Art. 21, para 2. Member States shall 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

319. Art. 22, title *Article 22* *Review* *Article 22* *Review*

320. Art. 22, para 1. 1. No sooner than [five 1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

321. Art. 22, para 2. 2. Member States shall 2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.

322. Art. 23, title *Article 23* *Entry into force* *Article 23* *Entry into force*

323. Art. 23 This Directive shall enter into force on the twentieth day following that of its publication in the *Official*

following that of its publication in the *Official Journal of the European Union*.

324. Art. 24, title Article 24 Addressses Article 24 Addressses

325. Art. 24 This Directive is addressed to the Member States. This Directive is addressed to the Member States.