

CARRIED COMPROMISE AMENDMENTS

Compromise 1 by Rapporteur on Article 2 paragraph 3 covering Am. 338 (Silvia Costa), Am. 339 (Martina Michels, Kostadinka Kuneva), Am. 340 (Yana Toom, Catherine Stihler, Dita Charanzová), Am. 341 (Emma McClarkin, Zdzisław Krasnodebski, John Procter, Angel Dzhabazki), and Am. 342 (Momchil Nekov).

Proposal for a directive

Article 2 - paragraph 3

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(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 an <i>entity whose main purpose is the protection and promotion of cultural heritage, specifically</i> a publicly accessible library, museum, <i>gallery</i> , an archive or a film or audio heritage institution;

Compromise 2 by Rapporteur on Article 2 paragraph 4 covering Am. 40 (Rapporteur) and Am. 346 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Jeroen Lenaers, Herbert Reul).

Proposal for a directive

Article 2 - paragraph 4

<i>Text proposed by the Commission</i>	<i>Compromise amendment</i>
(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, <i>having the purpose of providing</i> information related to news or other topics and published in any media under the <i>initiative</i> , editorial responsibility and control of a service provider.	(4) 'press publication' means a <i>professional</i> fixation <i>under a single title</i> of a collection of literary works of a journalistic nature <i>produced by one or several authors</i> , which may also comprise other works or subject-matter and constitutes an individual item <i>where:</i>
	(a) <i>it occurs</i> within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine;
	(b) <i>its purpose is to provide</i> information related to news or other topics; and
	(c) <i>it is</i> published in any media under the initiative, editorial responsibility and control of a service provider.

Compromise 3 by Rapporteur on Article 3 covering Am. 43 (Rapporteur), Am. 45 (Rapporteur), Am. 46 (Rapporteur), Am. 47 (Rapporteur), Am. 351 (Giorgos Grammatikakis, Sylvie Guillaume, Luigi Morgano, Julie Ward, Silvia Costa, Elena Gentile), Am. 355 (Sabine Verheyen, Herbert Reul, Christian Ehler, Angelika Niebler), Am. 366 (Emma McClarkin, John Procter, Angel Dzhambazki) and Am. 368 (Andrea Bocskor)¹.

Proposal for a directive

Article 3

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Text and data mining	Text and data mining
1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have lawful access for the purposes of scientific research.	1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have <i>acquired</i> lawful access for the purposes of scientific research.
2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.	2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.
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.	3. Rightholders shall be allowed to apply <i>proportionate</i> 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 <i>and shall not prevent or hinder research organisations from enjoying the exception provided for in paragraph 1.</i>
4. Member States shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.	4. Member States shall encourage rightholders and research organisations <i>to work together</i> to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3 <i>and text and data mining protocols. In cooperation with Member States, the Commission shall encourage the exchange of best practices and experiences across the Union.</i>
	<i>4a. Member States may provide for</i>

¹ Please note that the content of Am. 44 and Am. 367 (on Article 3) is incorporated into the proposed compromise amendment on recitals 10, 11, 12 and 13. However, they are not formally included in the COMP on the recitals as they propose amendments to the Article itself. They are also not formally included here as their content is not reflected in the COMP on the Article.

	<i>fair compensation to rightholders for the use of their works or other subject-matter pursuant to paragraph 1.</i>
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Compromise 4 by Rapporteur on Article 4 covering Am. 48 (Rapporteur), Am. 49 (Rapporteur), Am. 50 (Rapporteur), Am. 51 (Rapporteur), Am. 52 (Rapporteur), Am. 373 (Robert Rochefort), Am. 374 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 379 (Luigi Morgano, Silvia Costa), Am. 385 (Luigi Morgano, Silvia Costa, Giorgos Grammatikakis), Am. 386 (Luigi Morgano, Silvia Costa), Am. 389 (Giorgos Grammatikakis, Sylvie Guillaume, Mary Honeyball, Luigi Morgano, Julie Ward, Silvia Costa, Theresa Griffin, Monika Smolková), Am. 395 (Luigi Morgano, Silvia Costa, Giorgos Grammatikakis), Am. 398 (Andrea Bocskor), Am. 399 (Giorgos Grammatikakis, Julie Ward, Monika Smolková), Am. 406 (Helga Trüpel) and Am. 410 (Emma McClarkin, John Procter, Angel Dzhabazki).

Proposal for a directive

Article 4

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Use of works and other subject-matter in digital and cross-border teaching activities	Use of works and other subject-matter in digital and cross-border teaching activities
1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 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) 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:
	(-a) <i>is made by an educational establishment recognised by the Member State in which it is established or by an entity certified by the Member State in which it is established to carry out teaching activities;</i>
(a) takes place <i>on the premises</i> 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 <i>where the teaching activities take place</i> or through a secure electronic network accessible only by the educational establishment's <i>or the certified entity's students</i> and teaching staff directly involved <i>in the teaching activity concerned;</i>
(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.
	<i>(ba) is limited to the duration justified by the illustrative purpose.</i>

	<i>1a. Member States may provide for proportionate restrictions on the amount of a work that can be used. Such restrictions shall take into account the needs and legitimate interests of both users and rightholders.</i>
2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising the acts described in paragraph 1 are easily available <i>in</i> the market.	2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising <i>at least</i> the acts described in paragraph 1 are easily available <i>on</i> the market <i>and appropriate to the needs and specificities of educational establishments and entities certified to carry out teaching activities.</i>
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.	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability, <i>accessibility</i> and visibility of the licences authorising the acts described in paragraph 1 for educational establishments <i>and entities certified to carry out teaching activities.</i>
	<i>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 or facilitate dialogue between rightholders, educational establishments and <u>entities certified to carry out teaching activities</u> with a view to establishing specific licences authorising the acts described in paragraph 1.</i>
	<i>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 and <u>entities certified to carry out teaching activities</u>, where the available licences shall be listed and kept up-to-date.</i>
	<i>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 <u>or entity certified to carry out teaching activities</u> established on its territory shall be covered by the exception provided under paragraph 1.</i>

	2b. Without prejudice to paragraph 2, any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.
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 or <u>entity certified to carry out teaching activities</u> is established.
4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	4. Without prejudice to paragraph 2, Member States shall provide for fair compensation to rightholders for the use of their works or other subject-matter pursuant to paragraph 1.

Compromise 5 by Rapporteur on Article 5 covering Am. 53 (Rapporteur), Am. 54 (Rapporteur), Am. 416 (Emma McClarkin, John Procter), Am. 418 (Giorgos Grammatikakis, Sylvie Guillaume), Am. 420 (Yana Toom, Catherine Stihler, Dita Charanzová) and Am. 421 (Isabella Adinolfi).

Proposal for a directive

Article 5

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation.	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 <i>or digitise</i> 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, to the extent necessary for such preservation and <i>without modifying the original works beyond the need for their preservation.</i>
	<u>When a cultural heritage institution mandates a third party, including in another Member State, to perform an act of reproduction or digitisation for the purposes of the first subparagraph under its responsibility, the exception provided for in this Article shall be deemed to apply to that act of reproduction or digitisation,</u>

	<i><u>provided that all copies of the works or other subject-matter are returned to the requesting cultural heritage institution or deleted.</u></i>
	<i>Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.</i>

Compromise 6 by Rapporteur on Article 5 a (new) covering Am. 56 (Rapporteur).

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i><u>Use of quotations and extracts of copyright-protected works or other subject matter in content uploaded by users</u></i>
	<p><i>1. <u>Where a natural person makes the digital, non-commercial and proportionate use of short quotations or extracts of works and other subject-matter in the creation of a new work he or she has uploaded, for the purpose of criticism, review, illustration, caricature, parody or pastiche, 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 <u>Article 11 of this Directive</u> provided that the quotations or extracts:</u></i></p> <p><i>(a) relate to works or other subject-matter that have already been lawfully made available to the public;</i></p> <p><i>(b) are accompanied by the indication of the source, including the author's name, unless this turns out to be impossible; and</i></p> <p><i>(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.</i></p> <p><i>2. Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.</i></p>

	<p>3. <u>Information society service providers that store and/or provide to the public access 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 shall not be able invoke for their benefit the exception provided for in paragraph 1 of this Article in order to limit their liability or the extent of their obligations under the agreements concluded with rightholders in application of Article 13 of this Directive.</u></p> <p>4. <u>This exception is without prejudice to the provisions of Article 13 of this Directive.</u></p>
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Compromise 7 by EPP and ALDE Groups on Article 5 a (new) covering Am. 56 (Rapporteur).

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><u>Use of quotations and extracts of copyright-protected works or other subject matter in content uploaded by users</u></p>
	<p>1. <u>Where a natural person makes the digital, non-commercial and proportionate use of short quotations or extracts of works and other subject-matter in the creation of a new work he or she has uploaded, for the purpose of criticism, review, illustration, caricature, parody or pastiche, Member States may 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 11 of this Directive provided that the quotations or extracts:</u></p> <p>(a) <i>relate to works or other subject-matter that have already been lawfully made available to the public;</i></p> <p>(b) <i>are accompanied by the indication of the source, including the author's name, unless this turns out to be</i></p>

	<p><i>impossible; and</i></p> <p><i>(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.</i></p> <p><i>2. Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.</i></p> <p><i>3. <u>Information society service providers that store and/or provide to the public access 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 shall not be able invoke for their benefit the exception provided for in paragraph 1 of this Article in order to limit their liability or the extent of their obligations under the agreements concluded with rightholders in application of Article 13 of this Directive.</u></i></p> <p><i>4. <u>This exception is without prejudice to the provisions of Article 13 of this Directive.</u></i></p>
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Compromise 8 by Rapporteur on Article 7 covering Am. 58 (Rapporteur), Am. 59 (Rapporteur), Am. 61 (Rapporteur), Am. 453 (Andrea Bocskor), Am. 455 (Robert Rochefort) and Am. 456 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière).

Proposal for a directive

Article 7

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Use of out-of-commerce works by cultural heritage institutions	Use of out-of-commerce works by cultural heritage institutions
<p>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</p>	<p>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</p>

<p>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:</p>	<p>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:</p>
<p>(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;</p>	<p>(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;</p>
<p>(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;</p>	<p>(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;</p>
<p>(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.</p>	<p>(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.</p>
<p>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 <i>translations</i>, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so.</p>	<p>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 versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so <i>in the Member States where the competent collective management organisation and the cultural heritage institution are established. <u>For the purposes of this article, works that have never been, or were never intended to be, in commerce shall be treated as being out-of-commerce.</u></i></p>
<p>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 <i>and</i> reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.</p>	<p>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 <i>are out-of-commerce and</i> can be licensed in accordance with paragraph 1 do not extend beyond what is necessary, <i>proportionate</i>, reasonable, <i>are tailored to the specific category of works or other subject-matter concerned</i> and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to</p>

	presume that all works or other subject-matter in the collection are out of commerce.
3. Member States shall provide that appropriate publicity measures are taken regarding:	3. Member States shall provide that appropriate and effective publicity measures are taken regarding:
(a) the deeming of works or other subject-matter as out of commerce;	(a) the deeming of works or other subject-matter as out of commerce;
(b) the licence, and in particular its application to unrepresented rightholders;	(b) the licence, and in particular its application to unrepresented rightholders;
(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;	(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;
including during a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.	including for a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.
4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:	4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:
(a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and audiovisual works;	(a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and audiovisual works;
(b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or	(b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or
(c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b).	(c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b).
5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.	5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.

Compromise 9 by Rapporteur on Article 8².

Proposal for a directive

Article 8

² Please note that the compromise proposed is to retain the Commission text.

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Cross-border uses	Cross-border uses
1. Works or other subject-matter covered by a licence granted in accordance with Article 7 may be used by the cultural heritage institution in accordance with the terms of the licence in all Member States.	1. Works or other subject-matter covered by a licence granted in accordance with Article 7 may be used by the cultural heritage institution in accordance with the terms of the licence in all Member States.
2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by a licence granted in accordance with Article 7 and information about the possibility of rightholders to object referred to in Article 7(1)(c) are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of the licence.	2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by a licence granted in accordance with Article 7 and information about the possibility of rightholders to object referred to in Article 7(1)(c) are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of the licence.
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.

Compromise 10 by Rapporteur on Article 9 covering Am. 62 (Rapporteur), Am. 63 (Rapporteur) and Am. 64 (Rapporteur)

Proposal for a directive

Article 9

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Stakeholder dialogue	Stakeholder dialogue
Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, <i>on a sector-specific basis</i> , 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	Member States shall ensure a regular, <i>sector-specific</i> dialogue between 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, where applicable, assist in the

establishment of the requirements referred to in the second subparagraph of Article 7(2).	establishment of the requirements referred to in the second subparagraph of Article 7(2), <i>in particular regarding the representativeness of collective management organisations and the categorisation of works.</i>
	<i>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.</i>
	<i>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.</i>

Compromise 11 by Rapporteur on Article 10 covering Am. 65 (Rapporteur), Am. 66 (Rapporteur), Am. 67 (Rapporteur), Am. 481 (Helga Trüpel) and Am. 482 (Bogdan Brunon Wenta, Marc Joulaud, Sabine Verheyen)

Proposal for a directive

Article 10

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<i>Negotiation mechanism</i>	<i>Support for the availability of audiovisual works</i>
Member States shall <i>ensure</i> 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. <i>That body</i> shall provide assistance with negotiation <i>and help reach</i> agreements.	<i>1.</i> Member States shall <i>facilitate the availability of audiovisual works on video-on-demand platforms by ensuring that</i> , where <i>relevant</i> 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 <i>by mutual agreement</i> rely on the assistance of an impartial body with relevant experience. <i>The body created or designated by the Member State for the purposes of this Article</i> shall provide <i>impartial</i> assistance with negotiation <i>with a view to the conclusion of mutually acceptable</i> agreements.
No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in paragraph 1.	No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in paragraph 1.
	<i>1a. To encourage the continuous exploitation of audiovisual works on</i>

	<u><i>video-on-demand platforms, Member States shall foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.</i></u>
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Compromise 12 by Rapporteur on Article 11 covering Am. 68 (Rapporteur), Am. 69 (Rapporteur), Am. 490 (Giorgos Grammatikakis, Julie Ward), Am. 494 (Giorgos Grammatikakis, Julie Ward), Am. 495 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Herbert Reul), Am. 500 (Sabine Verheyen, Christian Ehler, Angelika Niebler), and Am. 502 (Giorgos Grammatikakis, Mary Honeyball, Julie Ward, Silvia Costa, Theresa Griffin, Elena Gentile, Monika Smolková)

Proposal for a directive

Article 11

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Protection of press publications <i>concerning digital uses</i>	Protection of 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 for the <i>digital</i> 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 for the use of their press publications.
	<u>1a. The rights referred to in paragraph 1 shall not prevent the legitimate private and non-commercial use of press publications by individual users.</u>
2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.
3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.
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	4. The rights referred to in paragraph 1 shall expire 8 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.	the year following the date of publication.
	<i>4a. Member States may ensure that a fair share of the revenue derived from the uses of press publishers' rights is attributed to journalists.</i>

Compromise 13 by Rapporteur on Article 12 covering Am. 70 (Rapporteur), Am. 505 (Luigi Morgano, Silvia Costa, Giorgos Grammatikakis) and Am. 506 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Jeroen Lenaers, Herbert Reul)

Proposal for a directive

Article 12

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Member States <i>may</i> provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.	Member States <i>shall</i> provide that where an author has transferred, <i>assigned</i> or licensed a right to a publisher, <i>that publisher is a rightholder by virtue and to the extent of</i> such a transfer <i>or assignment</i> or a licence. <i>Therefore, this transfer, assignment or licence</i> 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, assigned or licensed right.

Compromise 14 by Rapporteur on Article 13 covering Am. 72 (Rapporteur), Am. 73 (Rapporteur), Am. 74 (Rapporteur), Am. 75 (Rapporteur), Am. 76 (Rapporteur), Am. 510 (Giorgos Grammatikakis, Julie Ward), Am. 515 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 516 (Robert Rochefort), Am. 517 (Stefano Maullu), Am. 519 (Emma McClarkin, John Procter), Am. 520 (Silvia Costa, Luigi Morgano), Am. 521 (Santiago Fisas Ayxelà), Am. 522 (Giorgos Grammatikakis, Mary Honeyball, Julie Ward, Theresa Griffin, Elena Gentile, Monika Smolková), Am. 523 (Helga Trüpel), Am. 527 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 528 (Robert Rochefort), Am. 531 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 532 (Robert Rochefort), Am. 533 (Emma McClarkin, John Procter, Angel Dzhabazki), Am. 535 (Giorgos Grammatikakis, Julie Ward, Elena Gentile, Monika Smolková) and Am. 536 (Giorgos Grammatikakis, Sylvie Guillaume, Mary Honeyball, Luigi Morgano, Julie Ward, Theresa Griffin, Elena Gentile).

Proposal for a directive

Article 13

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>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</p>	<p>Use of protected content by information society service providers storing and/or giving access to significant amounts of works and other subject-matter uploaded by their users</p>
<p>1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.</p>	<p>1. Information society service providers that store and/or provide to the public access to copyright-protected works or other subject-matter uploaded by their users, <u>thereby going beyond the mere provision of physical facilities and performing an act of communication to the public,</u> shall conclude fair and balanced licensing agreements with any requesting rightholders. Under the terms of the agreements, these services shall, in cooperation with rightholders, take measures to ensure the effective and transparent functioning of the agreements concluded with rightholders for the use of their works or other subject-matter.</p> <p><u>Where, in the absence of a request from the rightholder, no licensing agreements are concluded pursuant to the first subparagraph, or where information society service providers that store and/or provide to the public access to significant amounts of copyright-protected works or other subject-matter are eligible for the liability exemption provided for in Article 14 of Directive 2000/31/EC, those providers shall take measures</u> to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers.</p> <p>Those measures, such as the use of effective content recognition technologies, shall be appropriate, proportionate and compliant with the relevant industry standards. The service providers shall provide rightholders with adequate and timely information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the</p>

	<p>recognition and use of the <i>rightholders'</i> works and other subject-matter. <i>Rightholders shall provide the information society service provider with the relevant and necessary data to allow the effective functioning of the measures deployed by the provider in application of this Article.</i></p>
<p>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.</p>	<p>2. Member States shall ensure that the service providers referred to in paragraph 1 put in place <i>effective mechanisms for rightholders to request licences and</i> complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1, <i>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.</i></p>
	<p><i>The complaints and redress mechanism established pursuant to the first subparagraph shall ensure that users and rightholders 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.</i></p>
	<p><i>Any complaint filed <u>by a user</u> under the mechanism shall be processed by the relevant rightholder within a reasonable period of time. The rightholder shall duly justify his/her decision.</i></p>
	<p><i>2a. Where information society providers take the measures referred to in paragraph 1, such measures shall be in full compliance with Directive 95/46/EC and Directive 2002/58/EC. Measures to prevent the <u>unauthorised making available</u> of copyright-protected works or other subject-matter shall be limited to specifically identified and duly notified works and shall not consist in active monitoring of all data of each user of the service.</i></p>
<p>3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through</p>	<p>3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through</p>

<p>stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, <i>among others</i>, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.</p>	<p>stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, <i>inter alia</i>, the nature of the services, the availability <i>and affordability</i> of the technologies and their effectiveness <i>in respect of the range of types of content and</i> in light of technological developments. <i>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 paragraph 1 of this Article.</i></p>
	<p><i>Member States shall encourage industry-led solutions to address sector-specific issues and the effective enforcement of existing measures to tackle piracy, including raising awareness of legal routes to copyright-protected <u>works or other subject-matter</u>.</i></p>
	<p><i>3a. Member States shall provide that disputes between rightholders and <u>information society providers</u> concerning the application of paragraph 1 of this Article may be submitted to an alternative dispute resolution mechanism.</i></p>
	<p><i>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.</i></p>
	<p><i>No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in subparagraph 2.</i></p>

Compromise 15 by Rapporteur on Article 13a covering Am. 538 (Helga Trüpel) and 540 (Giorgos Grammatikakis, Mary Honeyball, Julie Ward, Theresa Griffin)

Proposal for a directive

Article 13a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>Article 13a</i>
	<i>Use of protected content by automated image referencing information society services</i>

	<p><i>Member States shall provide that information society service <u>providers</u> that automatically reproduce or refer to significant amounts of copyright-protected visual works <u>and make them available to the public</u> for the purpose of indexing and referencing shall conclude <u>fair and balanced</u> licensing agreements with any requesting rightholders in order to ensure <u>their</u> fair remuneration. <u>The remuneration may be managed by the collective management organisation of the rightholders concerned.</u></i></p>
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Compromise 16 by Rapporteur on Article 14 covering Am. 77 (Rapporteur), Am. 78 (Rapporteur), Am. 545 (Dietmar Köster), Am. 546 (Giorgos Grammatikakis, Sylvie Guillaume, Mary Honeyball, Julie Ward, Theresa Griffin), Am. 547 (Helga Trüpel), Am. 549 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Herbert Reul, Jeroen Lenaers), Am. 550 (Emma McClarkin, John Procter, Angel Dzhambazki), Am. 552 (Mary Honeyball, Julie Ward, Theresa Griffin), Am. 553 (Helga Trüpel), Am. 554 (Dietmar Köster), Am. 556 (Giorgos Grammatikakis, Sylvie Guillaume), Am. 557 (Giorgos Grammatikakis, Sylvie Guillaume, Mary Honeyball, Julie Ward, Theresa Griffin, Monika Smolková), Am. 559 (Helga Trüpel), Am. 561 (Dietmar Köster), Am. 564 (Dietmar Köster) and Am. 565 (Emma McClarkin, John Procter, Angel Dzhambazki).

Proposal for a directive

Article 14

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Transparency obligation	Transparency obligation
<p>1. Member States shall ensure that authors and performers receive <i>on a regular basis</i> 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.</p>	<p>1. Member States shall ensure that authors and performers receive <i>at least once a year</i> and taking into account the specificities of each sector, timely, adequate, <i>accurate</i> and sufficient information on the exploitation <i>and promotion</i> of their works and performances from those to whom they have <i>directly</i> licensed, <i>assigned</i> or transferred their rights, notably as regards modes of exploitation, <i>promotional activities undertaken</i>, revenues generated and remuneration due.</p>
	<p><i>For the purposes of this paragraph, <u>any relevant successor in title shall provide the beneficiary of a licence or transfer of rights</u> with the necessary and relevant information to allow the beneficiary to fulfil the obligations provided for under this Article.</i></p>
2. The obligation in paragraph 1 shall	2. The obligation in paragraph 1 shall

<p>be proportionate and effective and shall ensure <i>an appropriate</i> level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.</p>	<p>be proportionate and effective and shall ensure <i>a high</i> level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency <u>and the disproportionate nature of the burden is duly justified.</u></p>
	<p>2a. Member States shall facilitate the development of sector-specific standard procedures through stakeholder dialogue and foster automated processing, making use of international identifiers of works.</p>
<p>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.</p>	<p>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.</p>
	<p>3a. Where existing collective bargaining agreements provide for comparable requirements resulting in an equivalent level of transparency, the obligation in paragraph 1 shall be deemed to have been fulfilled.</p>
<p>4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.</p>	<p>4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.</p>

Compromise 17 by Rapporteur on Article 14a covering Am. 539 (Trüpel), Am. 541 (Grammatikakis, Guillaume, Honeyball, Ward, Costa, Griffin, Gentile, Smolková), Am 543 (Fisa Ayxelà) and Am. 584 (Rapporteur)

Proposal for a directive

Article 14 a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	Article 14 a
	<i>Unwaivable right to fair remuneration for authors and performers</i>
	1. Member States shall ensure that, when authors and performers transfer or

	<i>assign the <u>right of making available to the public their works or other subject-matter for their use on information society services making available works or other subject-matter through a licensed catalogue</u>, they retain the right to obtain fair remuneration derived from the direct exploitation of their works present in the catalogue of those services.</i>
	<i>2. The right of an author or performer to obtain fair remuneration for the making available of his/her work <u>as described in paragraph 1</u> cannot be waived. Paragraph 1 does not apply where an author or performer grants a free non-exclusive right for the benefit of all users for the use of his/her work.</i>
	<i>3. The administration of the right to fair remuneration for the making available of an author's or performer's work shall be entrusted to the respective collective management organisation. <u>That collective management organisation shall collect the fair remuneration from information society services making works available to the public.</u></i>
	<i>4. <u>Where the right to fair remuneration has been already provided for in original agreements, for audiovisual works, or in collective agreements, including voluntary collective management agreements, between the author or the performer and his/her contractual counterparty, the provisions in this Article shall be deemed to have been complied with.</u></i>

Compromise 18 by Rapporteur on Article 15 covering Am. 79 (Rapporteur), Am. 80, Am. 573 (Zdzisław Krasnodebski), Am. 574 (Giorgos Grammatikakis, Sylvie Guillaume, Julie Ward, Silvia Costa) and Am. 580 (Giorgos Grammatikakis, Sylvie Guillaume, Monika Smolková)

Proposal for a directive

Article 15

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Contract adjustment mechanism	Contract adjustment mechanism
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	Member States shall ensure that authors and performers, <i>or their appointed representatives</i> , are entitled to request additional, <i>fair</i> remuneration from the party with whom they entered into a

when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues <i>and benefits</i> derived from the exploitation of the works or performances.	contract for the exploitation of the rights when <i>due justification is given to demonstrate that</i> the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.
	<i>Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.</i>

Compromise 19 by Rapporteur on Article 16 covering Am. 81 (Rapporteur), Am. 586 (Helga Trüpel), Am. 587 (Zdzisław Krasnodebski) and Am. 591 (Dietmar Köster)

Proposal for a directive

Article 16

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Dispute resolution mechanism	Dispute resolution mechanism
Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.	<i>Without prejudice to other judicial remedies</i> , Member States shall provide that disputes concerning the transparency obligation under Article 14, the contract adjustment mechanism under Article 15 <i>and the unwaivable right to remuneration under Article 14a</i> may be submitted to a voluntary, alternative dispute resolution procedure.
	<i>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 their behalf by a collective organisation representing them. The costs directly linked to the procedure should be affordable.</i>

Compromise 20 by the Rapporteur on Recital 5 covering Am. 1 (Rapporteur) and Am. 100 (Momchil Nekov)

Proposal for a directive

Recital 5

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted.</p>	<p>(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, <i>distance and blended learning</i> and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted <i>accordingly. The term 'scientific research' used in this Directive is to be understood as referring both to the natural sciences and the human sciences.</i></p>

Compromise 21 by the Rapporteur on Recitals 10, 11, 12 and 13³ covering Am. 2 (Rapporteur), Am. 3 (Rapporteur), Am. 4 (Rapporteur) and Am. 126 (Giorgos Grammatikakis, Sylvie Guillaume, Luigi Morgano, Julie Ward, Monika Smolková)

Proposal for a directive

Recital 8

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information to gain new knowledge and discover new trends. Whilst text and data</p>	<p>(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information to gain new knowledge and discover new trends. Whilst text and data</p>

³ Please note that the content of Am. 44 and Am. 367 (on Article 3) are incorporated into the proposed compromise amendment on recitals 10, 11, 12 and 13. However, they are not formally included in the COMP as they propose amendments to the Article itself.

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

Recital 9

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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.</p>	<p>(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 <i>acquired</i> 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.</p>

Proposal for a directive

Recital 10

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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.</p>	<p>(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. <i>To prevent unjustified dissemination of the content necessary for text and data mining, <u>research organisations should be allowed to store and preserve in a secure way the reproductions of the works or other subject matter obtained pursuant to the new exception, for the time needed to perform the research. The reproductions of the works or other subject-matter made for the purpose of text and data mining should be deleted once all the activities necessary for the research have been performed.</u></i> Research organisations should also benefit from the exception when they <i>enter</i> into public-private partnerships, <i>provided that the text and data mining acts performed relate directly to the purpose of the research carried out in the partnership concerned. <u>In the context of public-private partnerships, the protected works or other subject-matter used pursuant to the exception should have been lawfully acquired by the commercial partner.</u></i></p>

Proposal for a directive

Recital 11

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with</p>	<p>(11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with</p>

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

Recital 12

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception..</p>	<p>(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures, <i>such as identification confirmation</i>, where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted <i>might</i> be jeopardised. Those measures should <i>be proportionate, should</i> 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.</p>

Proposal for a directive

Recital 13

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(13) There is no need to provide for</p>	<p><i>deleted</i></p>

<p>compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception the harm should be minimal.</p>	
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Compromise 22 by the Rapporteur on Recitals 14, 15, 16, 17 and 17a covering Am. 6 (Rapporteur), Am. 7 (Rapporteur), Am. 8 (Rapporteur), Am. 9 (Rapporteur), Am. 147 (Julie Ward, Theresa Griffin), Am. 149 (Emma McClarkin, John Procter, Angel Dzhabazki), Am. 151 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 152 (Robert Rochefort), Am. 162 (Robert Rochefort), Am. 163 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière) and Am. 164 (Andrea Bocskor)

Proposal for a directive

Recital 14

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.</p>	<p>(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning, <u>which may be carried out outside traditional formal learning settings and involve a wider range of providers.</u> Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments <u>and entities certified by the Member States to carry out a teaching activity</u> benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including</p>

online and across borders.

Proposal for a directive

Recital 15

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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 <i>to determine</i> the non-commercial nature of the activity.</p>	<p>(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 <i>recognised by the Member State in which they are established</i> in primary, secondary, vocational and higher education, <u>as well as any entities that are certified by the Member State in which they are established to carry out specific teaching</u> activities to the extent <i>that</i> they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment <u>or of the certified entity</u> are not the decisive factors <i>in determining</i> the non-commercial nature of the activity.</p>

Proposal for a directive

Recital 16

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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 <i>in the</i></p>	<p>(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, <u>with the exception of sheet music</u>, to support, enrich or complement the teaching, including the related learning activities. <i>Member States should be allowed to set appropriate limits concerning the amount of certain categories of protected works or other subject-matter that can be used, as long as these limits strike a fair balance between the needs and legitimate interests of users and rightholders.</i> The use of the works or other subject-matter <i>or of extracts of them</i> under the exception or limitation should be</p>

<p><i>classroom</i> and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.</p>	<p>only in the context of teaching and learning activities carried out under the responsibility of educational establishments <u>or certified entities</u>, 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 <i>in the learning space where the teaching activities are carried out, including outside the premises of the educational establishment or certified entity carrying them out</i>, and online uses through the educational establishment's <u>or certified entity's</u> secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.</p>
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Proposal for a directive

Recital 17

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in 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</p>	<p>(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in 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</p>

<p>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 <i>that such</i> mechanism <i>results</i> in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes.</p>	<p>under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, <u>for which licences are easily available</u>. In order to avoid <i>such a</i> mechanism <i>resulting</i> 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 <u>and entities certified to carry out a teaching activity</u> are aware of the existence of such licensing schemes. <i>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.</i></p>
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Proposal for a directive

Recital 17a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>(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 <u>or an entity certified to carry out teaching activities</u> may use protected works or other subject-matter under the exception and, conversely, when it should act under a licensing scheme. Therefore, when an educational establishment <u>or a certified entity</u> 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.</i></p>

Compromise 23 by the Rapporteur on Recitals, 18, 19, 20 and 21 covering Am. 10 (Rapporteur), Am. 173 (Martina Michels), Am. 175 (Helga Trüpel), Am. 176 (Andrea Bocskor), Am. 177 (Yana Toom, Catherine Stihler, Dita Charanzová) and Am. 179 (Isabella Adinolfi)

Proposal for a directive

Recital 18

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

Proposal for a directive

Recital 19

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(19) Different approaches in the Member States for acts of preservation by cultural heritage institutions hamper cross-border cooperation and the sharing of means of preservation by cultural heritage institutions in the internal market, leading to an inefficient use of resources.	(19) Different approaches in the Member States for acts of preservation by cultural heritage institutions hamper cross-border cooperation and the sharing of means of preservation by cultural heritage institutions in the internal market, leading to an inefficient use of resources.

Proposal for a directive

Recital 20

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter

<p>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.</p>	<p>permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports <i>or for the purpose of digitisation</i>. Such an exception should allow for the making of copies <i>in any format or medium</i> 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. <i>Such an exception should cover both cultural heritage institutions holding the works or other subject-matter and third parties <u>mandated by a cultural heritage institution</u> to perform the act of reproduction within the scope of the exception.</i></p>
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Proposal for a directive

Recital 21

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

Compromise 24 by Rapporteur on Recitals 21a, 21b, 21c and 21d covering Am. 12 (Rapporteur), Am. 13 (Rapporteur) and Am. 185 (Marc Joulaud, Sabine Verheyen, Jean-Marie Cavada, Christian Ehler, Angelika Niebler)

Proposal for a directive

Recital 21a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p>(21a) Following technological developments and evolving consumer behaviour, <u>new information society services have emerged allowing their users to upload content in various forms. Such content uploaded by users may comprise extracts or quotations of protected works or other subject-matter, which may be altered, combined or transformed. Such uses of extracts or quotations within content uploaded by users, for various purposes such as the illustration of an idea, criticism or review, 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 content concerned.</u></p>

Proposal for a directive

Recital 21b (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p>(21b) Despite some overlap with existing exceptions or limitations, <u>content uploaded or made available by a user that comprise short quotations or extracts of protected works or other subject-matter, is not properly covered by the existing list of exceptions or limitations, nor can it be solely addressed through contractual arrangements. This grey area creates legal uncertainty for both users and rightholders, leading to frustration and abuses. It is therefore necessary to complete the existing exceptions provided by Directive 2001/29/EC, in particular those related to quotation and parody, by providing a new specific exception to authorise the short, proportionate and non-commercial uses of extracts or quotations of protected works or other subject-matter within content uploaded by a user.</u></p>

Proposal for a directive

Recital 21c (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>(21c) Where content <u>uploaded by a natural person</u> involves <u>the short, proportionate and non-commercial use for the legitimate purpose of a quotation or of an extract of a work or other subject-matter</u>, such use should be covered by the exception provided in this Directive. This exception should only be applied in certain special cases which do not conflict with normal exploitation of the work or other subject-matter concerned and do not unreasonably prejudice the legitimate interests of the rightholder. For the purpose of assessing such prejudice, the degree of originality of the content concerned, the length/extent of the quotation or extract used, <u>whether the quotation or extract is a subordinate part of the content concerned</u>, <u>the professional nature of the content concerned</u> or the degree of economic harm should be examined, where relevant. This exception should be without prejudice to the moral rights of the authors of the work or other subject-matter concerned.</i></p>

Proposal for a directive

Recital 21d (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<u>(21d) Information society services should not be able to invoke for their benefit the exception provided in this Directive for the use of short quotations or extracts of protected works or other subject-matter in content uploaded by users to limit their liability or the extent of their obligations under the agreements concluded with rightholders in application of Article 13 of this Directive.</u>

Compromise 25 by Rapporteur on Recitals 22, 23, 24, 25, 26, 27, 28 and 28a covering Am. 16 (Rapporteur), Am. 17 (Rapporteur), Am. 18 (Rapporteur) and Am. 19 (Rapporteur)

Proposal for a directive

Recital 22

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(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.	(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 <i>or impossible</i> . 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 <i>or have never been in commerce</i> . 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.

Proposal for a directive

Recital 23

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

Recital 24

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

Proposal for a directive

Recital 25

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, specific requirements and	(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, specific requirements and

procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.	procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.
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Proposal for a directive

Recital 26

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

Proposal for a directive

Recital 27

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

Proposal for a directive

Recital 28

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences to their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council³³, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.</p>	<p>(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences to their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council³³, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.</p>
<p>³³ Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1–6).</p>	<p>³³ Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1–6).</p>

Proposal for a directive

Recital 28a

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>(28a) In order to ensure that the licensing mechanisms established for out-of-commerce works are relevant and function properly, that rightholders are adequately protected under those mechanisms, that licences are properly publicised and that legal clarity is ensured with regard to the representativeness of collective management organisations and the categorisation of works, Member 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.</i></p>

Compromise 26 by the Rapporteur on Recitals 29 and 30 covering Am. 20 (Rapporteur), Am. 21 (Rapporteur) and Am. 211 (Bogdan Brunon Wentz, Marc Joulaud, Sabine Verheven)

Proposal for a directive

Recital 29

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(29) On-demand services have the potential to play a decisive role in the dissemination of European works across the European Union. However, agreements on the online exploitation of such works may face difficulties related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the online exploitation of the work or where there are issues linked to the windows of exploitation.</p>	<p>(29) On-demand services have the potential to play a decisive role in the dissemination of European works across the European Union. However, agreements on the online exploitation of such works may face difficulties related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the online exploitation of the work or where there are issues linked to the windows of exploitation.</p>

Proposal for a directive

Recital 30

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(30) To facilitate the licensing of rights in audiovisual works <i>to</i> 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.</p>	<p>(30) To facilitate the licensing of rights in audiovisual works, <i>relevant rights are consolidated with the producer by law or by contract. In order to promote cultural diversity and the availability of works on</i> video-on-demand platforms, this Directive requires Member States to set up a <i>facilitation</i> mechanism, <i>managed by an existing or newly established national body</i>, allowing <i>relevant</i> parties willing to conclude an agreement <i>for the licensing of audiovisual works to video-on-demand platforms</i> to rely on the assistance of an impartial body. <i>Where a negotiation involves parties from different Member States, they should agree beforehand on the Member State competent should the <u>facilitation</u> mechanism be required.</i> The body should meet with the parties and <i>facilitate</i> the negotiations by providing professional and external advice. Against that background, Member States should decide on the conditions of the functioning of the <i>facilitation</i> mechanism, including the timing and duration of the assistance to negotiations and <i>the division of any costs arising.</i> Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the <i>facilitation</i> forum.</p>

Compromise 27 by Rapporteur on Recitals 31, 32, 33, 34 and 35 covering Am. 22 (Rapporteur), Am. 24 (Rapporteur), Am. 25 (Rapporteur), Am. 218 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Herbert Reul), Am. 231 (Andrea Bocskor), Am. 233 (Giorgos Grammatikakis, Luigi Morgano, Julie Ward, Silvia Costa, Elena Gentile), Am. 238 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Herbert Reul), Am. 240 (Giorgos Grammatikakis, Julie Ward) and Am. 244 (Giorgos Grammatikakis, Sylvie Guillaume, Mary Honeyball, Luigi Morgano, Silvia Costa, Silvia Costa, Theresa Griffin, Elena Gentile, Monika Smolková)

Proposal for a directive

Recital 31

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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</p>	<p>(31) A free and pluralist press is essential to ensure quality <i>and decently remunerated</i> journalism and citizens' access to information. It provides a</p>

<p>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 <i>is</i> often complex and inefficient.</p>	<p>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. <i>Online services, such as news aggregators and search engines, have increasingly developed their activities by making profit from the content of press publishers. These profits are not shared fairly with <u>journalists</u> and publishers.</i> In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment <i>are</i> often complex and inefficient.</p>
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Proposal for a directive

Recital 32

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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 <i>in respect of digital uses</i>. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications <i>in respect of digital uses</i>.</p>	<p>(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. 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.</p>

Proposal for a directive

Recital 33

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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</p>	<p>(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only <i>professional</i> journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining <i>and whose credibility for the public relies to a certain extent on their specific brand name</i>. Such publications would include, for instance, daily</p>

<p>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 <i>which</i> do not constitute communication to the public.</p>	<p>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 <i>where such acts</i> do not constitute communication to the public <i>under Directive 2001/29/EC</i>.</p>
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Proposal for a directive

Recital 34

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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, <i>insofar as digital uses are concerned</i>. 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.</p>	<p>(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. 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. <u>The rights granted under this Directive should be without prejudice to the authors' rights and should not apply to the legitimate uses of press publications by individual users acting in a private and non-commercial capacity. The protection granted to press publications under this Directive should apply to content automatically generated by an act of hyperlinking related to a press publication without prejudice to the legitimate use of quotations.</u></p>

Proposal for a directive

Recital 35

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works</p>	<p>(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works</p>

<p>and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.</p>	<p>and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. <i>Member States should <u>be allowed to provide</u> that a fair share of remuneration derived from uses of the press publishers rights is attributed to journalists.</i></p>
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Compromise 28 by Rapporteur on Recitals 37, 38, 39, 39a and 39b covering Am. 27 (Rapporteur), Am. 28 (Rapporteur), Am. 29 (Rapporteur), Am. 30 (Rapporteur), Am. 31 (Rapporteur), Am. 251 (Giorgos Grammatikakis, Mary Honeyball, Mary Honeyball, Luigi Morgano, Julie Ward, Silvia Costa, Theresa Griffin, Elena Gentile), Am. 252 (Sabine Verheyen, Jeroen Lenaers, Rapporteur), Am. 254 (Momchil Nekov), Am. 258 (Andrea Bocskor), Am. 259 (Sabine Verheyen, Christian Ehler, Angelika Niebler, Herbert Reul), Am. 260 (Santiago Fisas Aixelà), Am. 261 (Robert Rochefort), Am. 262 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 263 (Silvia Costa, Luigi Morgano), Am. 264 (Giorgos Grammatikakis, Mary Honeyball, Theresa Griffin, Monika Smolková), Am. 265 (Zdzisław Krasnodebski), Am. 266 (Helga Trüpel), Am. 273 (Helga Trüpel), Am. 278 (Robert Rochefort), Am. 279 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière), Am. 281 (Emma McClarkin, Zdzisław Krasnodebski, John Proctgel Dzhambazki), Am. 282 (Giorgos Grammatikakis, Julie Ward), Am. 289 (Giorgos Grammatikakis, Sylvie Guillaume, Sylvie Guillaume, Julie Ward, Theresa Griffin, Monika Smolková), Am. 291 (Emma McClarkin, John Procter), Am. 292 (Robert Rochefort), Am. 295 (Emma McClarkin, John Procter), Am. 296 (Sylvie Guillaume, Pervenche Berès, Virginie Rozière) and Am. 297 (Robert Rochefort)

Proposal for a directive

Recital 37

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(37) Over <i>the last</i> years, the functioning of the online content marketplace has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of <i>right holders</i> have flourished and have become <i>main</i> 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</p>	<p>(37) Over <i>recent</i> years, the functioning of the online content marketplace has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement <i>or agreement of rightholders</i> have flourished and have become <i>primary</i> sources of access to content online. <i>In so doing, they unfairly compete with services whose content is licensed directly by rightholders by making profits from content that they do not create and do not</i></p>

<p>appropriate remuneration for it.</p>	<p><i>always share fairly with the creators <u>concerned</u> and by driving down the overall value of creative content online. <u>While allowing easy access to diverse content</u>, this affects rightholders' <i>ability</i> to determine whether, and under which conditions, their work and other subject-matter are <i>being</i> used, as well as their <i>scope for obtaining</i> appropriate remuneration for it, <u>since some user-uploaded content services do not enter into licensing agreements on the basis that they are covered by the safe harbour exemption of Directive 2000/31/EC.</u></i></p>
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Proposal for a directive

Recital 38

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(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 <i>are</i> 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 Council³⁴.</p>	<p>(38) Where information society service providers store and/or 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 <i>both</i> an act of communication to the public <i>and an act of reproduction</i>, they <i>should be</i> obliged to conclude <i>fair and balanced</i> licensing agreements with rightholders <i>that request such an agreement, in order to ensure the protection of rightholders' legitimate interests and their fair remuneration</i>, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴.</p>
<p>In respect of Article 14, it is necessary to verify <i>whether</i> the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefore.</p>	<p>In respect of Article 14 <i>of Directive 2000/31/EC and eligibility for the liability exemption provided therein</i>, it is necessary to verify <i>the extent of the role played by the information society service provider</i>. <i>Where</i> the provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter, promoting them <i>or commercially exploiting them</i>, irrespective of the nature</p>

	of the means used therefor, <i>the provider should no longer be considered to be merely hosting such content and therefore ineligible for the liability exemption.</i>
In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users should take appropriate and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective technologies. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.	In order to ensure the functioning of any licensing agreement, <i>or, in the absence of such an agreement, to prevent the unauthorised availability on their service of works or other-subject matter identified by their rightholders</i> , information society service providers storing and/or providing access to the public to <i>significant</i> amounts of copyright protected works or other subject-matter uploaded by their users should take, <i>in cooperation with rightholders</i> , appropriate and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective technologies, <i>and facilitate effective and transparent reporting to rightholders</i> . This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC. <i>This obligation should not apply to online marketplaces.</i>
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³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).	³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

Proposal for a directive

Recital 39

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(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,	(39) Collaboration between information society service providers storing and providing access to the public to significant amounts of copyright protected works or other subject-matter uploaded by their users and rightholders is essential to ensure the effective 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, such as reference files and metadata. They should deliver data in a timely fashion

<p>to allow the assessment of their appropriateness. The services should in particular provide rightholders with information on the type of technologies used, the way they are operated and their success rate for the recognition of rightholders' content. Those technologies should also allow rightholders to get information from the information society service providers on the use of their content covered by an agreement.</p>	<p><i>and in an appropriate format. <u>Data should be complete and accurate.</u> 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. When assessing the proportionality and effectiveness of the measures implemented, technological constraints and limitations should be taken into due consideration. Those technologies should not require the identification of individual users uploading content and should not process data relating to individual users, in accordance with Directive 95/46/EC and Directive 2002/58/EC. <u>They should be limited to preventing the unauthorised availability of specifically identified and duly notified works based on the information provided by rightholders and therefore not lead to a general monitoring obligation.</u></i></p>
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Proposal for a directive

Recital 39a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>(39a) Since the measures and technologies deployed by information society services providers in application of this Directive may 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, platform providers should be required to offer 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. <u>It</u></i></p>

	<p><i>should prescribe minimum standards for complaints to ensure that rightholders are given sufficient information to assess and respond to complaints. Rightholders should process any complaints received within a reasonable amount of time and take corrective action where measures prove to be unjustified. User-uploaded content stored or provided on an <u>information society service</u> may generate revenue, including when content is affected by measures deployed by an <u>information society service provider</u>. While a dispute over this content is being processed and resolved, such revenues should not be attributed or distributed to the user or the rightholder concerned until the dispute has been resolved through the <u>complaints and redress mechanism</u>.</i></p>
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Proposal for a directive

Recital 39b (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>(39b) In view of the requirements imposed by this Directive regarding agreements and cooperation between information society service providers and rightholders, <u>and in order to avoid unnecessary long and costly legal proceedings</u>, it is necessary to provide for an intermediate procedure which will permit the parties to seek an amicable solution to any dispute concerning 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.</i></p>

Compromise 29 by the Rapporteur on Recitals 40 and 41 covering Am. 32 (Rapporteur), Am. 33 (Rapporteur), Am. 301 (Helga Trüpel), Am. 305 (Dietmar Köster), Am. 307 (Emma McClarkin, John Procter, Angel Dzhambazki), Am. 308 (Giorgos Grammatikakis, Sylvie Guillaume, Mary Honeyball, Julie Ward, Monika Smolková), Am. 309 (Helga Trüpel), Am. 310 (Dietmar Köster) and Am. 311 (Emma McClarkin, John Procter, Angel Dzhambazki)

Proposal for a directive

Recital 40

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers.</p>	<p>(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker negotiating position when they grant licences or transfer their rights by contract, 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 regular sharing of adequate and accurate information by their direct contractual counterparts or their successors in title is necessary for transparency and balance in the system that governs the remuneration of authors and performers.</p>

Proposal for a directive

Recital 41

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

	where <u>existing</u> collective bargaining agreements <u>provide an equivalent level of transparency</u> .
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Compromise 30 by the Rapporteur on Recital 42 covering Am. 34 (Rapporteur), Am. 317 (Giorgos Grammatikakis), Am. 318 (Dietmar Köster) and Am. 319 (Helga Trüpel)⁴

Proposal for a directive

Recital 42

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(42) Certain contracts for the exploitation of rights harmonised at Union level are <i>of long duration</i>, 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, <i>including in light of</i> the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.</p>	<p>(42) <i>Many</i> contracts for the exploitation of rights harmonised at Union level are <i>long-term in nature</i>, 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 <i>it is demonstrated that</i> the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits, <i>such as subsidies or equity shares</i>, derived from the exploitation of the work or the fixation of the performance, <i>taking into account</i> the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case, <i>of any expenditure genuinely incurred in the production of the work or performance</i>, as well as of the specificities and practices of the different content sectors. <i>It may be decided not to apply the adjustment mechanism when the contribution of the authors or performers is not significant</i></p>

⁴ Please note that the proposed compromise incorporates the idea of “net revenues” included in some amendments to Article 15 (e.g. Am. 80 and Am. 575) through the addition “takes account... of any expenditure genuinely incurred in the production of the work or performance”.

	<i>having regard to the overall work or performance.</i> 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.
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Compromise 31 by the Rapporteur on Recitals 43 covering Am. 35 (Rapporteur), Am. 323 (Zdzisław Krasnodebski), Am. 324 (Dietmar Köster) and Am. 325 (Helga Trüpel)

Proposal for a directive

Recital 43

<i>Text proposed by the Commission</i>	<i>Amendment</i>
(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.	(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal <i>as bringing a legal action can entail significant costs and may have an adverse effect on their capacity to seek contractual relationships in the future.</i> Member States should therefore provide for an alternative dispute resolution procedure that addresses claims <i>by authors, performers or their appointed representatives</i> related to obligations of transparency, <i>the unwaivable right to remuneration</i> and the contract adjustment mechanism. <i>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 and should be affordable.</i>