

COPYRIGHT DIRECTIVE PROPOSAL
DRAFT COMPROMISE AMENDMENTS

ARTICLE 4

Draft compromise amendments on illustration for teaching

Draft compromise amendment replacing all relevant amendments, including AM 568 (Adinolfi et al.), AM 569 (Mastalka et al.), AM 570 (Reda), AM 571 (Boutonnet et al.), AM 572 (Adinolfi et al.), AM 573 (Le Grip), AM 574 (Roziere et al.), AM 575 (Reda), AM 576 (Weidenholzer, Regner), AM 577 (Cavada, Marinho e Pinto), AM 578 (Radev), AM 579 (Guoga, Maydell), AM 580 (Geringer de Oedenberg et al.), AM 581 (Boutonnet et al.), AM 582 (Karim, Dzhambazki), AM 583 (Gasbarra et al.), AM 584 (Boutonnet et al.), AM 585 (Reda), AM 586 (Adinolfi et al.), AM 587 (Guoga, Maydell), AM 588 (Cavada et al.), AM 589 (Boutonnet et al.), AM 590 (Chrysogonos et al.), AM 591 (Geringer de Oedenberg), AM 592 (Rohde), AM 593 (Gasbarra et al.), AM 594 (Radev), AM 595 (Wolken, Koster), AM 596 (Gasbarra et al.), AM 597 (Adinolfi et al.), AM 598 (Cavada et al.), AM 599 (Rohde), AM 600 (Boutonnet et al.), AM 601 (Cavada et al.), AM 602 (Boutonnet et al.), AM 603 (Reda), AM 604 (Adinolfi et al.), AM 605 (Wolken, Koster), AM 606 (Reda), AM 607 (Adinolfi et al.), AM 608 (Wolken, Koster), AM 609 (Mastalka et al.), AM 610 (Buda), AM 611 (Boutonnet et al.), AM 612 (Roziere et al.), AM 613 (Le Grip), AM 614 (Reda), AM 615 (Wolken, Koster), AM 616 (Adinolfi et al.), AM 617 (Geringer de Oedenberg et al.), AM 618 (Guoga, Maydell), AM 619 (Boutonnet et al.), AM 620 (Cavada et al.), AM 621 (Boutonnet et al.), AM 622 (Szajer, Bocskor), AM 623 (Wolken, Koster), AM 624 (Zlotowski), AM 625 (Boutonnet et al.), AM 626 (Reda), AM 627 (Adinolfi et al.), AM 628 (Reda), AM 629 (Rohde), AM 630 (Adinolfi et al.), AM 631 (Roziere et al.), AM 632 (Guoga), AM 633 (Boutonnet et al.), AM 634 (Zlotowski), IMCO 44, IMCO 45, IMCO 46, IMCO 47, IMCO 48, IMCO 49, IMCO 50, (IMCO 51), ITRE 35, ITRE 36, ITRE 37, ITRE 38, CULT 48, CULT 49, CULT 50, CULT 51, CULT 52, CULT 53, CULT 54, CULT 55, CULT 56, CULT 57.

Article 4

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

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 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) takes place on the premises of an educational establishment, **or in any other venue where the teaching activity takes place under the responsibility of the educational establishment**, or through a secure electronic ~~environment network~~ accessible only by the educational establishment's pupils or students and teaching staff;

(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible **for reasons of practicability**.

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, **such as material which are primarily intended for the educational market or sheet music**, to the extent that ~~adequate licences~~ **equivalent collective licencing agreements** authorising the acts described in paragraph 1 **and tailored to the needs and specificities of educational establishments** are easily available in the market.

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

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

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.

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

RECITALS 14, 15, 16 and 17

Draft compromise amendment replacing all relevant amendments, including AM 171 (Boutonnet et. al), AM 172 (Adinolfi et. al), AM 173 (Mastalka et. al), AM 174 (Buda), AM 175 (Karime, Dzhambazki), AM 176 (Radev), AM 177 (Zlotowski), AM 178 (Reda), AM 179 (Radev), AM 180 (Mastalka et. al), AM 181 (Buda), AM 182 Guoga, Maydell), AM 183 (Geringer de Oedenberg et. al), AM 184 (Adinolfi et. al), AM 185 (Reda), AM 186 (Zlotowski), AM 187 Zlotowski), AM 188 (Karim, Dzhambazki), AM 189 (Wolken, Koster), AM 190 (Adinolfi et. al), AM 191 (Karim, Dzhambazki), AM 192 (Guoga, Maydell), AM 193 (Reda), AM 194 (Roziere et. al), AM 195 (Mastalka et. al), AM 196 Radev), AM 197 (Szajer, Bocskor), AM 198 (Wolken, Koster), AM 199 (Boutonnet et. al), AM 200 (Reda), AM 201 (Wolken, Koster), AM 202 (Adinolfi et. al), AM 203 (Mastalka et. al), AM 204 (Szajer, Bocskor), AM 205 (Roziere et. al), AM 206 (Boutonnet et. al), AM 207 (Le Grip), AM 208 (Szajer, Bocskor), IMCO 11, IMCO 12, IMCO 13, IMCO 14, ITRE 8, ITRE 9, ITRE 10, CULT 8, CULT 9, CULT 10, CULT 11, CULT 12,

(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.

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity. ***Where cultural heritage institutions pursue an educational objective and are involved in teaching activities, it should be possible for Member States to consider those institutions as an educational establishment under this exception in so far as their teaching activities are concerned.***

(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 exception or limitation of usage should be granted as long as the used work or other subject-matter indicates the source, including the authors' name, unless this turns out to be impossible for reasons of practicability.*** The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means ~~in the classroom~~ ***where the teaching activity is physically provided, including where it takes place outside the premises of the educational establishment, for example in libraries or cultural heritage institutions, as long as the use is done under the responsibility of the educational establishment,*** and online uses through the educational establishment's secure electronic ~~network~~ ***environment,*** the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

(16a) A secure electronic environment should be understood as digital teaching and learning environment, access to which is limited through appropriate authentication procedure to the

educational establishment's teaching staff and to the pupils or students enrolled in a study programme.

(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~~ ***affordable collective licencing agreements, including extended collective licencing agreements***, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, ***such as textbooks or sheet music***. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that ***collective*** 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. ***Member States should be able to provide for systems to ensure that there is fair compensation for right holders for uses under those exceptions or limitations. Member States should be encouraged to use systems that do not create an administrative burden, such as systems that provide for one-off payments.***

(17a) Where the harm to a rightholder would be minimal, no obligation for payment of compensation may arise.

ARTICLE 5

Draft compromise amendments on Cultural heritage institutions

Draft compromise amendment replacing all relevant amendments, including AM 635 (Reda), AM 636 (Regner, Weidenholzer), AM 637 (Rohde), AM 638 (Mastalka et. al), AM 639 (Radev), AM 640 (Cavada et. al), AM 641 (Reda), AM 642 (Rohde), AM 643 (Geringer de Oedenberg et. al), AM 644 (Karim, Dzhambazki), AM 645 (Ferrara et. al), AM 646 (Boutonnet et. al), AM 647 (Roziere et. al), AM 648 (Cavada et. al), AM 649 (Szajer, Bocskor), AM 650 (Regner, Weidenholzer), AM 651 (Geringer et. al), AM 652 (Reda), AM 653 (Cavada et. al), AM 654 (Adinolfi et. al), AM 655 (Mastalka et. al), AM 656 (Reda), IMCO 52, IMCO 53, CULT 58, CULT 59, ITRE 40.

Article 5

Preservation of cultural heritage

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions 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~~ **purposes of** preservation of such works or other subject-matter and to the extent necessary for such preservation.

1a Member States shall ensure that material in the public domain shall remain in the public domain after the reproduction made for purposes of preservation.

2. Any contractual provision contrary to the exception provided for in the first paragraph shall be unenforceable.

RECITALS 18, 19, 20 and 21

Draft compromise amendment replacing all relevant amendments, including AM 209 (Reda), AM 210 (Radev), AM 211 (Boutonnet et. al), AM 212 (Mastalka et. al), AM 2013 (Cavada et. al), AM 214 (Guoga, Maydell), AM 215 (Chrysogonos et. al), AM 216 (Boutonnet et. al), AM 217 (Reda), AM 218 (Adinolfi et. al), AM 219 (Chrysogonos et. al), AM 220 (Reda), AM 221 (Szajer, Bocskor), AM 222 (Radev), AM 223 (Ferrara et. al), AM 224 (Guoga, Maydell), AM 225 (Boutonnet et. al), AM 226 (Adinolfi et. al), AM 227 (Cavada et. al), AM 228 (Mastalka et. al), AM 229 (Radev), AM 230 (Reda), AM 231 (Boutonnet et. al), IMCO 15, IMCO 16, CULT 13, ITRE 11, ITRE 12, ITRE 13, ITRE 14.

(18) An act of preservation ~~may require a reproduction~~ of a work or other subject-matter in the collection of a cultural heritage institution, **may require a reproduction** and consequently **requires** 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 **by such institutions**.

(19) Different approaches in the Member States for acts of **reproduction for preservation** ~~by cultural heritage institutions~~ hamper cross-border cooperation, ~~and~~ the sharing of means of preservation **and the establishment of cross-border preservation networks in the internal market** by ~~cultural heritage institutions in the internal market~~ **organisations that are engaged in preservation**, leading to an inefficient use of resources. **This can have a negative impact on the preservation of cultural heritage.**

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, ~~for example~~ to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, **in any format or medium**, in the required number, at any point in the life of a work or other subject-matter **and** to the extent required in order to produce a copy for preservation purposes only. **The exception should cover the cases where such reproductions are undertaken by a third party acting on behalf and under the responsibility of beneficiary organisations, for example in the context of cooperation with other beneficiary organisations or when relying on external providers for preservation services, within the scope of the exception. The exception shall be deemed to apply to that act of reproduction, provided that all copies of the works or other subject-matter are returned to the requesting cultural heritage institution or deleted.**

The archives of research organisations or public-service broadcasting organisations should be considered cultural heritage institutions and therefore beneficiaries of this exception. Member States should, for the purpose of this exception, be able to treat publicly accessible galleries as museums.

(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies **of such works or other subject matter** are owned or permanently held by ~~the cultural heritage institution~~ **those organisations**, for example as a result of a transfer of ownership, ~~or~~ licence agreements, **a legal deposit or a long-term loan. Works or other subject matter that cultural heritage institutions access temporarily via a third-party server are not considered as being permanently in their collections.**

Kommentiert [PC1]: Technical meeting of 26.02.2018:
Groups agreed to come back later in view of definition

Draft compromise amendments on Out-of-Commerce works

ARTICLE 7

Draft compromise amendment that takes into account: AM 31 (Comodini), AM 683 (Cofferati), AM 678 (Rozière), AM 682 (Rozière), AM 686 (Rozière), 689 (Rozière), AM 699 (Szajer, Bocskor), AM 698 (Adinolfi et al.), CULT 61, IMCO 56, AM 702 (Adinolfi et al.), AM 704 (Rozière), AM 708 (Guteland), IMCO 59, AM 46 (Comodini).

Article 7

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

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

- (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;
- (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;
- (c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.

1 a. Member States shall provide for an exception or limitation to the rights provided for in Article 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies of out-of-commerce works that are located permanently in their collections available online, provided that:

- (a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;***
- (b) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the exception to their works or other subject-matter.***

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

2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, in all its ~~translations~~, versions and manifestations, ***in the Member States where the competent collective management organisation and the cultural heritage institution are established***, is not ***any more*** available to the public through customary channels of commerce ~~and cannot be reasonably expected to become so~~ ***or it has never been in commerce.***

Member States may provide a cut-off date for the determination whether a work previously commercialised is deemed to be out of commerce.

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 ***or used in accordance with paragraph 1a*** do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

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

- (a) the deeming of works or other subject-matter as out of commerce;
- (b) ~~the any~~ licence, and in particular its application to unrepresented rightholders;
- (c) the possibility of rightholders to object, referred to in point (c) of paragraphs 1 ***and paragraph (b) of 1a***;

including during a ~~reasonable~~ period of ***at least six months*** 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:

- (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
- (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.

Kommentiert [PC2]: Deletion proposed: to be checked with COM

ARTICLE 8

Draft compromise amendment that takes into account: AM 712 (Adinolfi et al.), AM 716 (Adinolfi et al.).

*Article 8
Cross-border uses*

1. ~~Works~~ **Out-of-commerce works** or other subject-matter covered by a ~~licence granted in accordance with Article 7~~ may be used by the cultural heritage institution in accordance with ~~the terms of the licence~~ **that Article** in all Member States.
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) **and 7(1a) and (b)** are made **permanently, easily and effectively** publicly accessible in a **public** single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, **or in the cases covered by Art 7(1a) where the cultural heritage institution is established** and for the whole duration of the licence.
3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

ARTICLE 9

Draft compromise amendment that takes into account: CULT 66

Article 9 Stakeholder dialogue

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

RECITALS 22 to 28a new

Recital 22

Draft compromise amendment that takes into account: CULT 18, AM 31 (Comodini), AM 698 (Adinolfi et al.), AM 523 (Reda), IMCO 58.

(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 **or have never been in commerce**. It is therefore necessary to provide for measures to facilitate the ~~licensing of rights in use of~~ out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.

*(22 a) Several Member States have already adopted extended collective licencing regimes, legal mandates or legal presumptions facilitating the licencing of out-of-commerce works. However considering the variety of works and other subject-matter in the collections of cultural heritage institutions and the variance between collective management practices across Member States and sectors of cultural production, such measures may not provide a solution in all cases, for example, because there is no practice of collective management for a certain type of works or other subject matter. In such particular instances, it is therefore necessary to allow cultural heritage institutions to make out of commerce works held in their permanent collection available online ~~through their own secure electronic networks environment~~ under an exception to copyright and related rights. ~~Whereas~~ **While** it is essential to harmonise the scope of the new mandatory exception in order to allow cross-border uses of out of commerce works, Member States should **nevertheless** be allowed to **use or continue to use** ~~build on the existing~~ extended collective licencing arrangements concluded with cultural heritage institutions at national level for ~~certain categories of works that are permanently in the collections of cultural heritage institutions concluded at national level~~. The lack of agreement on the conditions of the licence should not be interpreted as the lack of availability of licensing-based solutions. Any uses under this exception should be subject to the same opt out and publicity requirements as uses authorised by a licensing mechanism. In order to ensure that the exception only applies when certain conditions are fulfilled and to provide for legal certainty, Member States should determine **to which sectors and to which types of works**; **the exception applies** in consultation with rightholders, collective management organisations and cultural heritage organisations and at appropriate intervals of time, ~~in which sectors and for which types of works the exception can apply.~~*

Kommentiert [PC3]: S&D proposal in order to allow for Scandinavian specificities: agreed at technical meeting of 08.03.2018

Recital 23

Draft compromise amendment that takes into account: CULT 19

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

Recital 24

Draft compromise amendment that takes into account: CULT 20

(24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important **and should be encouraged by the Member States**. That system includes in particular rules of good governance, transparency and reporting, as well as

the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such *licensing mechanisms or of such exceptions* to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.

Recital 25

Draft compromise amendment that takes into account: AM 259 (Mastalka et al.), AM 258 (Adinolfi et al.), ITRE 16.

(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 *the solutions on the use of out-of-commerce works introduced by this directive* ~~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~~ *cultural heritage institutions* and collective management organisations when doing so.

Recital 26

No changes proposed

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

Recital 27

Draft compromise amendment that takes into account: AM 15 (Comodini).

(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~~ *contribute towards*

covering the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.

Recital 28

No changes proposed

(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 *or the exception* provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences *or of the exception* 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.

Recital 28 a new

Draft compromise amendment that takes into account: CULT 21

(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.~~

ARTICLE 10

Draft compromise amendments on access to and availability of audiovisual works on video-on-demand platforms

Draft compromise amendment replacing all relevant amendments, including AM 723 (Cavada et al.), AM 724 (Adinolfi et al.), AM 725 (Rohde), AM 726 (Buda), AM 727 (Dzhambazki), CULT 68, CULT 69.

Article 10 Negotiation mechanism

Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of *audiovisual* rights, they may rely on the assistance of an impartial body with relevant experience. ~~That body~~ ***The impartial body created or designated by the Member State for the purpose of this Article shall provide assistance with negotiation and help reach agreements to the parties.***

No later than [date mentioned in Article 21(1)] Member States shall ~~notify to~~ ***inform*** the Commission ~~of the body they create or designate referred to in pursuant to the first subparagraph paragraph 1.~~

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

RECITALS 29 and 30

Draft compromise amendment replacing all relevant amendments, including AM 273 (Boutonnet et al.), AM 274 (Adinolfi et al.), AM AM 276 (Szajer, Bocskor), AM 277 (Adinolfi et al.), AM 278 (Buda), AM 279 (Boutonnet et al.), CULT 22.

(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.

(30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms, ~~this Directive requires Member States to~~ ***should*** set up a negotiation mechanism, ***managed by an existing or newly established national body***, allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. ***The participation in this negotiation mechanism and the subsequent conclusion of agreements should be voluntary. Where a negotiation involves parties from different Member States, they should agree beforehand on the competent Member State should they decide to rely on the negotiation mechanism.*** The body should meet with the

Kommentiert [FN4]: Technical change proposed by lawyer linguists

parties and help with the negotiations by providing professional, *impartial* 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~~ *division* of ~~the~~ *any* costs *arising, and the composition of such bodies*. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.

ARTICLES 14 to 16

Draft compromise amendments on fair remuneration in contracts of authors and performers

Article -14 (new)

Draft compromise amendment replacing all relevant amendments, including: AM 925 (Chrysogonos, Mastalka, Kuneva), AM 926 (Niebler, Ehler, Voss), AM 927 (Adinolfi et. al), AM 928 (Regner, Weidenholzer), AM 929 (Honeyball et. al), AM 930 (Guteland)

Article -14

Member States shall ensure that contracts with authors and performers provide for ~~are entitled to~~ fair, proportionate and ~~equitable~~ appropriate remuneration of the revenues derived from ~~all models of~~ the exploitation and every use of their works.

Contracts shall specify the remuneration attached to each mode of exploitation.

Kommentiert [PC5]: Not being discussed further

Article 14

Draft compromise amendment replacing all relevant amendments, including: AM 877 (Maullu), 878 (Chrysogonos), 879 (Reda), 880 (Rohde), 881 (Voss), 882 (Honeyball et. al), 883 (Roziere et. al), 884 (Guoga), 885 (Niebler et. al), 886 (Guteland), 887 (Mastalka, Kuneva), 888 (Zwiefka, Brunon Wenta), 889 (Comodini Cachia), 890 (Adinolfi et. al), AM 891 (Svoboda), AM 892 (Regner, Weidenholzer), AM 893 (Feringer de Oedenberg et. al), AM 899 (Reda), AM 900 (Adinolfi et. al), AM 901 (Geringer de Oedenberg et. al), AM 902 (Honeyball et. al), AM 903 (Chrysogonos et. al), AM 904 (Svoboda), AM 905 (Radev), AM 906 (Guoga), AM 907 ((Niebler, Ehler, Voss), AM 909 (Geringer de Oedenberg et. al), AM 910 (Adinolfi et. al), AM 911 (Reda), AM 912 (Svoboda), AM 913 (Mastalka, Kuneva), AM 914 (Rohde), AM 915 (Guoga), AM 916 (Voss), AM 917 (Chrysogonos et. al), AM 918 (Honeyball et. al), AM 919 (Buda), AM 920 (Reda), AM 921 (Karim, Dzhabazki)

Article 14

Transparency obligation

1. Member States shall ensure that authors and performers receive on a regular basis, **not less than once a year**, and taking into account the specificities of each sector, timely, ~~adequate and sufficient~~ **accurate, relevant and comprehensive** information on the

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

- 1.a. **Member States shall ensure that where the licensee *or transferee* of rights of authors and performers subsequently licenses those rights to another party, such party shall share relevant and comprehensive information with the licensee *or transferee*, who shall pass it on to the author or performer unmodified and unabridged. ~~It~~ in cases where the direct licensee *or transferee* does not provide the information from the subsequent licensee in a timely and comprehensive manner, authors and performers shall on *their* request receive the information directly from the sub-licensee.**
2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure ~~an~~ appropriate **a high** 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~~ **a high** level of transparency.
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.~~
4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU **or to collective bargaining agreements, where those obligations or agreements provide for comparable transparency requirements resulting in a level of transparency that is equivalent to that comparable to those referred to in paragraph 2.**

Kommentiert [PC6]: ALDE proposes to add: "unless prevented by law" in order to limit the disclosure of sensitive/confidential information

Kommentiert [PC7]: To be discussed further at political level

Kommentiert [PC8]: Lawyer-linguists suggest the following alternative drafting:
"In cases where the direct licensee or transferee does not provide the information from the subsequent licensee in a timely and comprehensive manner, authors and performers may request that information directly from the sub-licensee. Where the sub-licensee has received such a request, he/she shall send the information directly to the authors and performers concerned."

Article 15

Draft compromise amendment replacing all relevant amendments, including: AM 924 (Chrysogonos et. al), AM 925 (Chrysogonos et. al), AM 926 (Niebler, Ehler, Voss), AM 931 (de Grandes Pascual), AM 932 (Buda), AM 933 (Cavada et. al), AM 934 (Guoga), AM 935 (Chrysogonos et. al), AM 936 (Radev), AM 937 (Rohde), AM 938 (Karim), AM 939 (Roziere et. al) AM 940 (Honeyball), AM 941 (Adinolfi et. al), AM 942 (Guteland), 943 (Niebler, Ehler, Voss), AM 944 (Zwiefka, Brunon Wenta), AM 945 (Cofferati), AM 946 (Maullu), AM 947 (Regner, Weidenholzer)

Article 15 Contract adjustment mechanism

Member States shall ensure that authors and performers **or any representative organisation acting on their behalf** are entitled to ~~request claim~~ additional, ~~and~~ appropriate **and fair** remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant *direct or indirect* revenues and benefits derived from the exploitation of the works or performances ~~as a result of a change of circumstances that occurred during the exploitation of the contract.~~

Article 16

Draft compromise amendment replacing all relevant amendments, including: AM 962 (Mastalka et. al), AM 963 (Adinolfi et. al), AM 964 (Honeyball et. al), AM 965 (Dzhambazki), AM 967 (Chrysogonos et. al), AM 968 (Regner, Weidenholzer), AM 969 (Honeyball et. al), AM 970 (Guoga)

Article 16 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. **Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers.**

RECITALS to Art. 14 to 16

(39a) The fair proportionate and appropriate remuneration of authors and performers should be set as a general principle. This principle should not lead to the creation of an additional right, but be implemented through a transparency obligation, a contract adjustment mechanism and, a dispute resolution mechanism and a right of revocation. This would contribute to a protection of their work in accordance to the fundamental principle of EU law.

Kommentiert [FN9]: Recital belonging to Art -14a - not discussed yet

(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~~ ***comprehensive and relevant*** 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. ***The information that authors and performers should be entitled to expect should be proportionate and cover ~~the~~ all modes of exploitation, direct and indirect revenue generated, including revenues from merchandising, and the remuneration due. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned. ~~When authors and performers' contribution is not significant having regard to the overall work or performance, this information may be given only if authors or performers explicitly request it.~~***

(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.

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

(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. *Representative organisations of authors and performers, including collective management organisations and Trade Unions, should be able to initiate such procedures at the request of authors and performers. Details about who initiated the procedure should remain undisclosed.*

Kommentiert [PC10]: Deletion requested by S&D
(technical meeting of 08.03.2018)