



1.6.2017

COMPROMISE AMENDMENTS

1 - 23

Draft opinion
Catherine Stihler
(PE599.682v01-00)

Copyright in the Digital Single Market

Proposal for a directive
(COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))

Amendment 1 Catherine Stihler

Compromise amendment replacing Amendments: 72, 73, 74, 75

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on **rights in publications**, on the use of works and other subject-matter **by** online service providers **storing and giving access to user uploaded content** and on the transparency of authors' and performers' contracts.

Amendment

(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited, **and relevant legislation must be future proof so as to not restrict technological development**. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'²⁶, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning **and fair** marketplace for copyright, there should also be rules on the use of works and other subject-matter **on** online service providers and on the transparency of authors' and performers' contracts **and of the accounting deriving from the exploitation of protected works according to those** contracts.

Amendment 2

Catherine Stihler

Compromise amendment replacing Amendments: 78, 79, 80, 82

Proposal for a directive Recital 5

Text proposed by the Commission

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

Amendment

(5) In the fields of research **and innovation, transformative use, education and** 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 negatively **impacts** 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 **innovation**, research, teaching and preservation of cultural heritage should be reassessed **and complemented** in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies, illustration for teaching, **user-generated content, freedom of panorama**, and for preservation **and dissemination** of cultural heritage should be introduced. **Such exceptions or limitations should complement existing exceptions in Member States.** For uses not covered by the exceptions or **limitations** provided for in this Directive, the

be adapted.

exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted.

Or. en

Amendment 3 **Catherine Stihler**

Compromise amendment replacing Amendments: 83, 84

Proposal for a directive **Recital 6**

Text proposed by the Commission

(6) The exceptions and *the limitation* set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders.

Amendment

(6) The exceptions and *limitations* set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders. *They concern, in particular, access to education, knowledge and cultural heritage and, as such, are in the public interest.*

Or. en

Amendment 4 **Catherine Stihler**

Compromise amendment replacing Amendments: 89, 90, 91, 92, 93

Proposal for a directive **Recital 8**

Text proposed by the Commission

(8) New technologies enable the

Amendment

(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 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 sui generis 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.

automated computational analysis of information in digital form, such as text, sounds, images or *any other type of* data, generally known as text and data mining. Those technologies allow *the processing of* large amounts of *digitally stored* information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research *and science* community and in so doing encourage innovation. **Without a mandatory exception applying throughout the Union, all entities engaging in text and data mining, including individuals, public and private entities, despite having legal access to content** 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 sui generis database right, notably the reproduction of works or other subject-matter *in order to normalise data* 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. **The right to read is the right to mine.**

Or. en

Amendment 5

Catherine Stihler

Compromise amendment replacing Amendments: 94, 95, 96,

Proposal for a directive

Recital 9

Text proposed by the Commission

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

Amendment

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of ***text and data mining*** technologies ***which are relevant far beyond the area of*** scientific research. Moreover, where ***there is lawfully obtained*** 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 ***and action lines envisaged in the European Open Science Agenda*** will suffer unless steps are taken to address the legal uncertainty ***regarding text and data mining for all potential users. Union law must acknowledge that*** text and data mining ***is increasingly used beyond formal research organisations and for purposes other than scientific research which nevertheless contribute to innovation, technology transfer and the public interest.***

Or. en

Amendment 6
Catherine Stihler

Compromise amendment replacing Amendments: 1, 100, 102,

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) This legal uncertainty should be addressed by providing for a mandatory

Amendment

(10) This legal uncertainty should be addressed by providing for a mandatory

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

exception to the right of reproduction and also to the right to prevent extraction from a database. ***An additional mandatory exception should give research organisations access to information in a format that enables it to be text and data mined. Research organisations should also benefit from the exception when they engage into public-private partnerships, provided that they reinvest their profits in research.*** The new *exceptions* 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

Or. en

Amendment 7 **Catherine Stihler**

Compromise amendment replacing Amendments: 2, 107, 109

Proposal for a directive **Recital 11**

Text proposed by the Commission

(11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct *scientific* research or to do so together with the provision of educational services. ***Due to*** the diversity of such entities, it is important ***to have a common understanding of the beneficiaries of the exception.*** Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public

Amendment

(11) Research organisations across the Union encompass a wide variety ***and size*** of entities, ***including the public sector and cultural heritage institutions,*** the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. ***Taking into account*** the diversity of such entities, ***for instance small research organisations with only limited access to content,*** it is important ***that rightsholders provide access to normalised datasets for the purpose of text and data mining.*** Despite different legal forms and structures, research organisations across Member States generally have in common that they

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.*

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.

Or. en

Amendment 8 **Catherine Stihler**

Compromise amendment replacing Amendments: 112, 114

Proposal for a directive **Recital 12**

Text proposed by the Commission

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

Amendment

(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 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, *proportionate and effective* to pursue the objective of ensuring the security of the system and should not undermine the effective application of the exception *or impede the reproducibility of research results.*

Or. en

Amendment 9 **Catherine Stihler**

Compromise amendment replacing Amendments: 3, 120, 121,

Proposal for a directive

Recital 14

Text proposed by the Commission

(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.

Amendment

(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. 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 full legal certainty when using works or other subject-matter in ***all*** teaching activities, including online and across borders.

Or. en

Amendment 10

Catherine Stihler

Compromise amendment replacing Amendments: AM 4, 123, 124, 125, 126, 127

Proposal for a directive

Recital 15

Text proposed by the Commission

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

Amendment

(15) While distance learning, *e-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 **activities and** establishments **including** in primary, secondary, vocational and higher education, **as well as organisations involved in teaching activities, including in the context of non-formal or informal education recognised by a Member State**, to the extent they pursue their educational activity for a non-commercial purpose. **In line with the Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training 'ET2020', the contribution of informal and non-formal education, alongside formal education, should be recognised and developed in order to deliver the Union's objectives.** 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.

Or. en

Amendment 11
Catherine Stihler

Compromise amendment replacing Amendments: 5, 129, 130, 133, 134

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) The exception or limitation should cover **digital** uses of works and other

Amendment

(16) The exception or limitation should cover **all** uses of works and other subject-

subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means in the classroom and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.

matter, *digital or otherwise*, such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The *notion of "illustration for teaching" is usually understood as allowing to use a work to give examples and to explain or support a course.* 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, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both *offline uses such as uses in the classroom or in organisations, such as libraries and other cultural heritage institutions involved in teaching activities* 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.

Or. en

Amendment 12 **Catherine Stihler**

Compromise amendment replacing Amendments: 6, 136, 137, 138

Proposal for a directive **Recital 17**

Text proposed by the Commission

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements *covering further uses*, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such

Amendment

(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on *extended collective* licensing agreements, are in place in a number of Member States in order to facilitate educational uses of *at least short parts or extracts of* works and

arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to **digital** uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes.

other subject-matter. Such arrangements have usually been developed taking account of the **constraints set by the closed list of voluntary exceptions at Union level, 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 **offline and online** uses and **particularly** cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or limitation or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. **Any other compensation mechanisms should be limited to cases where there is a risk of unreasonable prejudice to the legitimate interests of rightholders. In these cases Member States should be able to require compensation for the uses carried out under this exception.** This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and **affordable, covering all uses allowed under the exception, and** that educational establishments are aware of the existence of such licensing schemes.

Or. en

Amendment 13
Catherine Stihler

Compromise amendment replacing Amendments: 7, 141, 142, 143, 144

Proposal for a directive
Recital 18

Text proposed by the Commission

(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*.

Amendment

(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 *cultural heritage* for future generations. Digital technologies offer new ways to preserve the heritage contained in *the* collections *of cultural heritage institutions*, but they also create new challenges. *One such challenge is the systematic collection and preservation of works which are not originally published by traditional analogue means, but originate in a digital form (so-called born-digital works). Whereas publishers in member states are typically obliged to provide a reference copy of each published work to certain cultural heritage institutions for archiving purposes, such obligations often do not apply to born-digital works. In the absence of the provision of reference copies by the authors or publishers of born-digital works, cultural heritage institutions should be allowed to make reproductions of born-digital works at their own initiative whenever they are openly available on the Internet, in order to add them to their permanent collections. Cultural heritage institutions also engage in making internal reproductions for many varying purposes including insurance, rights clearance, and loans.* In view of these *possible* new challenges, it is necessary to adapt the

current legal framework by providing a mandatory exception to the right of reproduction.

Or. en

Amendment 14 **Catherine Stihler**

Compromise amendment replacing Amendments: 9, 146, 147, 148

Proposal for a directive **Recital 20**

Text proposed by the Commission

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

Amendment

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions *and educational establishments* to reproduce works and other subject-matter permanently in their collections for *the purpose of carrying out their public interest mission in* preservation, *research, education, culture and teaching*, for example to address technological obsolescence or the degradation of original supports, *to build collections or preserve born-digital works or for the purpose of digitisation*. Such an exception should allow for the making of copies *in any format or medium, including by any means of digitisation*, at any point in the life of a work or other subject-matter *and* to the extent required *for such reproduction, including via partnerships with other institutions or third parties, which may be requested to perform the act of reproduction on behalf of a cultural heritage institution within the scope of the exception, under the responsibility of the latter*.

Or. en

Amendment 15
Catherine Stihler

Compromise amendment replacing Amendments: 10, 149, 150

Proposal for a directive
Recital 21

Text proposed by the Commission

(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.

Amendment

(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, ***held on long-term loan or are*** permanently held by the cultural heritage institution ***or educational establishment***, for example as a result of a transfer of ownership or licence agreements.

Or. en

Amendment 16
Catherine Stihler

Compromise amendment replacing Amendments 28, 304, 305

Proposal for a directive
Article 1

Text proposed by the Commission

Subject matter and scope

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

Amendment

Subject matter and scope

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

and other subject-matter.

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

and other subject-matter.

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

Or. en

Amendment 17 **Catherine Stihler**

Compromise amendment replacing Amendments : 30, 307, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319

Proposal for a directive **Article 2**

Text proposed by the Commission

Definitions

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

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

- (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or
- (b) pursuant to a public interest mission recognised by a Member State;

in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;

Amendment

Definitions

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

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

- (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or
- (b) pursuant to a public interest mission recognised by a Member State;

in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;

(1a) ‘educational establishment’ means a school, college, university, or any other

(2) 'text and data mining' means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations;

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

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

organisation the primary goal of which is to provide educational services:

(a) on a not-for-profit basis or by reinvesting all the profits in such provision; or

(b) pursuant to a public interest mission recognised by a Member State.

(2) 'text and data mining' means any automated analytical **or computational** technique aiming to analyse text and data **or other subject matter** in digital form in order to generate information, **including but not limited to** patterns, trends and correlations;

(3) 'cultural heritage institution' means a publicly accessible library or museum **or gallery, an educational establishment**, an archive or a film or audio heritage institution, **or a public service broadcaster**;

(3a) 'user generated content' means an image, a set of moving images or without sound, a phonogram, text, software, data, or a combination of the above, which is uploaded to an online service by its users.

(4a) 'out of commerce work' means a work or other subject-matter that is not available to the public through customary channels of commerce. Out of commerce works include both works that have

previously been available commercially and works that have never been commercially available.

Or. en

Amendment 18
Catherine Stihler

Compromise amendment replacing Amendments 31, 32, 33, 34, 320, 321, 325, 326, 328, 330, 331, 332, 333, 334, 335, 337, 338, 339,

Proposal for a directive
Article 3

Text proposed by the Commission

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*.

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.

Amendment

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, **Article 4(1) of Directive 2009/24/EC** and Article 11(1) of this Directive for reproductions and extractions in order to carry out text and data mining of works or other subject-matter to which *there's* lawful access. ***This includes, for the sole purpose of text and data mining, the permission to extract contents of databases and to make reproductions.***

2. Any contractual provision *or legal protection of technological measures* contrary to the exception provided for in paragraph 1 shall be unenforceable.

3. Rightholders shall *not* be allowed to apply measures to *prevent or to, hinder the application of the exception provided for in paragraph 1*. ***Should any measures be applied, they shall not exceed what is deemed necessary to pursue the objective of ensuring the security of the system and shall not undermine the effective application of the exception. These measures shall be reasonable and***

efficient, not prevent, or hamper or unreasonably restrict the ability to text and mine data or the ability to develop text and data mining tools that differ from those offered by the rightholders as long as the security of the networks and databases are protected.

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. *The Commission and* Member States shall encourage rightholders and **beneficiaries** to define commonly-agreed best practices concerning *text and data mining protocols. Such best practice text and data mining protocols may be harmonised at Union level.*

Member States shall also designate a facility to safely store datasets used for text and data mining and to make them accessible for verification purposes.

Or. en

Amendment 19 **Catherine Stihler**

Compromise amendment replacing Amendments 35, 36, 38, 39, 40, 41, 340, 341, 342, 344, 345, 348, 352, 353, 357, 358, 365, 366, 367, 373

Proposal for a directive **Article 4**

Text proposed by the Commission

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,

Amendment

Use of works and other subject-matter in teaching and educational activities

1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 and 4 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, **educational purposes or scientific research**, to the extent justified

provided that the use:

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

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

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 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 undertaken in compliance with the provisions of national law adopted

by the non-commercial purpose to be achieved, provided that the use:

(a) takes place on the premises of an educational establishment or **other venues, such as cultural heritage institutions, involved in teaching activities, or** through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff, **or registered members of the cultural heritage institution involved in non-formal or informal education;**

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

1a. Any contractual provision contrary to the exception set out in paragraph 1 shall be unenforceable.

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 **equivalent extended collective licencing agreements** authorising the acts described in paragraph 1 are **affordable and** 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, **accessibility** and visibility of the licences authorising the acts described in paragraph 1 for educational establishments **and cultural heritage institutions.**

No sooner than ... [three years after the date of entry into force of this Directive], and in consultation with all stakeholders, the Commission shall report on the availability of such licenses, with a view to proposing improvements if needed.

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.

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.

pursuant to this Article shall be deemed to occur solely in the Member State from where the educational establishment is established *or from where the educational activity originates.*

4. Member States may provide for fair compensation for *any unreasonable actions contrary to the legitimate interests of* rightholders *in relation* to the use of their works or other subject-matter pursuant to paragraph 1.

4a. Member States shall ensure that the rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1, generally or as regards specific types of works of other subject-matter that they may choose.

Or. en

Amendment 20 **Catherine Stihler**

Compromise amendment replacing Amendments 42, 43, 44, 375, 377, 378, 379, 381, 382, 383

Proposal for a directive **Article 5**

Text proposed by the Commission

Preservation of cultural heritage

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

Amendment

Reproduction by of cultural heritage institutions and educational establishments, including cross-border activities

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 *or educational establishments*, to make copies of any

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.

works or other subject-matter that are permanently in their collections, *or use the facilities of third parties to do so, or are publicly accessible on the Internet*, in any format or medium, *to the extent necessary for such reproduction, for the purpose of, individually or collaboratively with others, carrying out their public interest mission in* preservation, *research, culture, education and teaching.*

Member States shall recognise that once a work is in the public domain (copyright and related rights in a work have expired or never existed), faithful reproductions in full or in part of that work, regardless of the mode of reproduction and including digitisation, shall equally not be subject to copyright or related rights. Any contractual provision contrary to the exception set out in paragraph 1 shall be unenforceable.

Or. en

Amendment 21
Catherine Stihler

Compromise amendment replacing Amendments: 384, 389, 395

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

Freedom of panorama

Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC and point (a) of Article 5 and Article 7 (1) of Directive 96/9/EC, permitting the reproductions and use of works, such as works of architecture or sculpture, made to be located permanently in public places.

Any contractual provision contrary to the exception provided for in this Article shall

be unenforceable.

Or. en

Amendment 22

Catherine Stihler

Compromise amendment replacing Amendments 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 406, 407, 410, 413, 414

Proposal for a directive

Article 7

Text proposed by the Commission

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:

Amendment

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

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 cultural heritage institutions to distribute, communicate to the public or make available out-of-commerce works or other subject-matter permanently in the collection of the institution for non-commercial purposes. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this paragraph before 22 December 2020. When applying the exception or limitation Member States shall take due account of remuneration schemes to compensate for any unreasonable actions contrary to the legitimate interests of rightholders, and ensure that all rightholders may at any time object to the use of any of their works or other subject-matter that are deemed to be out of commerce and be able to exclude the use of their works or other subject-matter. Acts which would otherwise be permitted under paragraph 1 shall not be permitted if valid extended***

collective licencing solutions are available authorising the acts in question and the cultural heritage institution responsible for those acts knew or ought to have been aware of that fact. 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.

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

Member States shall, in consultation with

- (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.

2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, ***is not available through customary channels in any form suitable for the work permanently in the collection of a cultural heritage institution. Out of commerce works include both works that have previously been available commercially and works that have never been commercially available.***

Member States shall, in consultation with

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

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)

rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter *are out of commerce* do not extend beyond what is necessary and reasonable and *proportionate* 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) *any* licence, and in particular its application to unrepresented rightholders;
- (c) the possibility of rightholders to object, referred to *in paragraph 2 and* point (c) of *paragraph 4*;

including during 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:

- (a) the *majority of* works or phonograms were first published or, in the absence of publication, where they were first *created or* 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 *proven* efforts, according to points (a) and

and (b).

(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.

Or. en

Amendment 23 **Catherine Stihler**

Compromise amendment replacing Amendments: 58, 59, 415, 416, 417,

Proposal for a directive **Article 8**

Text proposed by the Commission

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.

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.

Amendment

Cross-border uses

1. Works or other subject-matter **used** in accordance with Article 7 may be used by the cultural heritage **institutions** in all Member States.

2. Member States shall ensure that information that allows the identification of the works or other subject-matter **used** in accordance with Article 7 and information about the possibility of rightholders to object referred to in **Article 7(2) and 4(c)** are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are distributed, communicated to the public or made available in **all** Member States.

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.

Or. en

