

**PROPOSAL FOR A DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE  
MARKET**

**Draft LIST OF COMPROMISE AMENDMENTS**

12 June 2018

**Compromise amendment on text and data mining (Article 3,  
Article 3a, and corresponding recitals)**

**CA 4 on Article 3**

Compromise amendment replacing all relevant amendments, including: AM 529 (Zwiefka), AM 530 (Boutonnet et al.), AM 32 (Rapporteur), AM 531 (Regner, Weidenholzer), AM 532 (Negrescu), AM 533 (Karim, Dzhambazki), AM 534 (Rohde), AM 535 (Cavada et al.), AM 536 (Adinolfi et al.), AM 537 (Rozière et al.), AM 538 (Reda et al.), AM 540 (Niebler et al.), AM 542 (Guoga, Maydell), AM 543 (Geringer de Oedenberg et al.), AM 545 (Maštálka et al.), IMCO 40, AM 539 (Guteland), AM 541 (Le Grip), CULT 44, ITRE 35 1st part, AM 544 (Boutonnet et al.), AM 33 (Rapporteur), AM 546 (Maštálka et al.), AM 547 (Reda et al.), AM 548 (Reda et al.), IMCO 41, AM 549 (Niebler et al.), AM 550 (Szájer, Bocskor), AM 556 (Rozière et al.), AM 562 (Buda), AM 563 (Cavada et al.), AM 34 (Rapporteur), AM 565 (Maštálka), ITRE 35 4th part, AM 551 (Maštálka et al.), AM 552 (Ferrara et al.), AM 553 (Adinolfi et al.), AM 554 (Reda et al.), AM 555 (Geringer de Oedenberg et al.), CULT 45, IMCO 42, ITRE 35 2nd part, ITRE 35 3rd part, AM 557 (Adinolfi et al.), AM 559 (Reda et al.), AM 560 (Maštálka et al.), AM 561 (Geringer de Oedenberg et al.), AM 558 (Karim, Dzhambazki), CULT 46, IMCO 43, AM 564 (Reda et al.), AM 566 (Szájer, Bocskor), CULT 47

*Article 3  
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 ***of works or other subject-matter*** to which they have lawful access ***made in order to carry out text and data mining*** for the purposes of scientific research ***by research organisations***.

***Member States shall provide for educational establishments and cultural heritage institutions conducting scientific research within the meaning of Article 2 paragraph 1(a) or 1(b), 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, to also be able to benefit from the exception provided for in this Article.***

***1a. Reproductions and extractions made for text and data mining purposes shall be stored in a secure manner, for example by trusted bodies appointed for this purpose.***

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

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

#### CA 21 on recitals 8, 8a (new), 9, 10, 11, 12, 13

Compromise amendment replacing all relevant amendments, including: AM 111 (Zwiefka), AM 5 (Rapporteur), AM 112 (Maštálka, Chrysogonos, Kuneva), AM 113 (Reda, Childers, Andersson, Reimon, Benifei), AM 114 (Karim, Dzhambazki), AM 115 (Guoga, Maydell), AM 116 (Boutonnet, Bilde, Lebreton), AM 117 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 118 (Niebler, Ehler, Voss), AM 119 (Negrescu), IMCO 5, AM 120 (Rohde), ITRE 1, AM 121 (Cavada, Rochefort, Marinho e Pinto), AM 122 (Zwiefka), AM 6 (Rapporteur), AM 123 (Maštálka, Chrysogonos, Kuneva), AM 124 (Guoga, Maydell), AM 125 (Reda, Childers, Andersson, Reimon, Benifei), IMCO 6, AM 126 (Karim, Dzhambazki), AM 127 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 130 (Boutonnet, Bilde, Lebreton), AM 128 (Le Grip), AM 129 (Rohde), CULT 4, ITRE 2, AM 7 (Rapporteur), AM 131 (Reda, Childers, Andersson, Reimon, Benifei), AM 132 (Maštálka, Chrysogonos, Kuneva), AM 133 (Radev), AM 135 (Zwiefka), AM 8 (Rapporteur), AM 136 (Reda, Childers, Andersson, Reimon, Benifei), AM 140 (Rozière, Guillaume, Berès, Tarabella), CULT 5, AM 137 (Rohde), AM 138 (Szájer, Bocskor), AM 139 (Maštálka, Chrysogonos, Kuneva), AM 141 (Niebler, Ehler, Voss), AM 142 (Le Grip), AM 143 (Radev), AM 144 (Boutonnet, Bilde, Lebreton), AM 145 (Karim, Dzhambazki), AM 146 (Adinolfi, Ferrara, Borrelli, Tamburrano), IMCO 7, AM 147 (Guoga, Maydell), ITRE 4, AM 149 (Cavada, Rochefort, Marinho e Pinto), AM 148 (Ferrara, Adinolfi, Borrelli, Tamburrano), AM 150 (Maštálka, Chrysogonos, Kuneva), AM 151 (Zwiefka), AM 152 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 153 (Rozière, Guillaume, Berès, Tarabella), AM 154 (Niebler, Ehler, Voss), AM 155 (Rohde), AM 156 (Reda, Childers, Andersson, Reimon, Benifei), ITRE 5, IMCO 8, AM 157 (Karim, Dzhambazki), AM 158 (Zwiefka), AM 159 (Reda, Childers, Andersson, Reimon, Benifei), AM 160 (Maštálka), AM 161 (Adinolfi, Ferrara, Borrelli, Tamburrano), CULT 6, IMCO 9, AM 162 (Radev), ITRE 6, AM 163 (Zwiefka), CULT 7, AM 9 (Rapporteur), AM 167 (Radev), AM 168 (Rozière, Guillaume, Berès, Tarabella), AM 166 (Szájer, Bocskor), AM 165 (Le Grip), AM 169 (Boutonnet, Bilde, Lebreton), AM 164 (Maštálka, Chrysogonos, Kuneva), ITRE 7

- (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.~~ ***Text and data mining allows for the reading and analysis 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 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.

- (8a) *For text and data mining to occur, it is in most cases necessary first to access information and then to reproduce it. It is generally only after that information is normalised that it can be processed through text and data mining. Once there is lawful access to information, it is when that information is being normalised that a copyright-protected use takes place, since this leads to a reproduction by changing the format of the information or by extracting it from a database into a format that can be subjected to text and data mining. The copyright-relevant processes in the use of text and data mining technology is consequently not the text and data mining process itself which consists of a reading and analysis of digitally stored, normalised information, but the process of access and the process by which information is normalised to enable its automated computational analysis, insofar as this process involves extraction from a database or reproductions. The exceptions for text and data mining purposes provided for in this directive refer to these copyright-relevant processes necessary to enable text and data mining. Where existing copyright law has been inapplicable to uses of text and data mining, such uses should remain unaffected by this directive.*
- (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.
- (10) This legal uncertainty should be addressed by providing for a mandatory exception *for research organisations* 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. *Educational establishments and cultural heritage institutions that conduct scientific research should also be covered by the text and data mining exception provided that the results of the research do not benefit an undertaking exercising a decisive influence upon such organisation in particular. In the event that the research is carried out in the framework of a public private-partnership, the undertaking participating in the public private partnership should also have lawful access to the works and other subject matter. The reproductions and extractions made for text and data mining purposes shall be stored in a secure manner and in a way that ensures that the copies are only used for the purpose of scientific research. Research organisations should also benefit from the exception when they engage into public-private partnerships.*
- (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 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.

(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.

(13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception the harm should be minimal.

#### **CA 5 on Article 3a (new)**

##### **Article 3a** **Optional exception or limitation for text and data mining**

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

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

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

#### **CA 22 on recital 13 a (new)**

*(13a) To encourage innovation also in the private sector, Member States should be able to provide for an exception going further than the mandatory exception provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders for example by machine readable means.*

## **Compromise amendments on illustration for teaching (Article 4 and corresponding recitals)**

### **CA 6 on Article 4**

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 is primarily intended for the educational market or sheet music*, to the extent that adequate ~~licences~~ *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.*

#### **CA 23 on recital 14**

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.

### **CA 24 on recital 15**

Compromise amendment replacing all relevant amendments, including: AM 11 (Rapporteur), AM 179 (Radev), IMCO 12, CULT 9, AM 180 (Maštálka, Chrysogonos, Kuneva), ITRE 9, AM 182 (Guoga, Maydell), AM 183 (Geringer de Oedenberg, Stihler, Negrescu, Coffferati, Lauristin, Honeyball), AM 184 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 185 (Reda), AM 189 (Wölken, Köster), AM 186 (Złotowski), AM 187 (Złotowski), AM 181 (Buda), AM 188 (Karim, Dzhambazki)

(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.*

### **CA 25 on recital 16 and recital 16a**

Compromise amendment replacing all relevant amendments, including: AM 12 (Rapporteur), AM 190 (Adinolfi, Ferrara, Borrelli, Tamburrano), CULT 10, AM 193 (Reda), AM 194 (Rozière, Guillaume, Berès, Tarabella), AM 191 (Karim, Dzhambazki), AM 192 (Guoga, Maydell), AM 195 (Maštálka, Chrysogonos, Kuneva), IMCO 13, AM 196 (Radev), ITRE 10, AM 198 (Wölken, Köster), AM 197 (Szájer, Bocskor), AM 199 (Boutonnet, Bilde, Lebreton)

(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.*

### **CA 26 on recital 17 and recital 17a**

Compromise amendment replacing all relevant amendments, including AM 200 (Reda), AM 201(Wölken, Köster), AM 202(Adinolfi et al.), AM 203 (Maštálka et al.), IMCO 14 (CULT 11), AM 207 (Le Grip), AM 205 (Rozière et al.), AM 204 (Szájer, Bocskor), AM 206 (Boutonnet et al.), AM 208 (Szájer, Bocskor), CULT 12

(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. *These licencing agreements can take the form of collecting licensing agreements, extended collective licensing agreements and licences that are negotiated collectively such as “blanket licences”, in order to avoid educational establishments having to negotiate individually with rightholders. Such licensing agreements should be affordable and 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, or for teaching in educational establishment 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 *such* 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.*

## **Compromise amendments on cultural heritage institutions (Article 5 and corresponding recitals)**

### **CA 7 on Article 5**

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, Dzhabazki), 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 any material resulting from an act of reproduction of material in the public domain shall not be subject to copyright or related rights, provided that such reproduction is a faithful reproduction for purposes of preservation of the original material.***

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

### **CA 27 on recital 18**

Compromise amendment replacing all relevant amendments, including AM 209 (Reda), IMCO 15, AM 210 (Radev), AM 211 (Boutonnet, Bilde, Lebreton), AM 212 (Maštálka, Chrysogonos, Kuneva), ITRE 11, AM 213 (Cavada, Rochefort, Marinho e Pinto), AM 214 (Guoga, Maydell)

(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*.

#### **CA 28 on recital 19**

Compromise amendment replacing all relevant amendments, including: AM 216 (Boutonnet, Bilde, Lebreton), AM 215 (Chrysogonos, Maštálka, Kuneva), AM 217 (Reda), ITRE 12, AM 218 (Adinolfi, Ferrara, Borrelli, Tamburrano)

(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.***

#### **CA 29 on recital 20**

Compromise amendment replacing all relevant amendments, including: AM 219 (Chrysogonos, Maštálka, Kuneva), AM 220 (Reda), CULT 13, AM 221 (Szájér, Bocskor), AM 222 (Radev), ITRE 13, AM 224 (Guoga, Maydell), AM 225 (Boutonnet, Bilde, Lebreton), AM 223 (Ferrara, Adinolfi, Borrelli, Tamburrano), AM 226 (Adinolfi, Ferrara, Borrelli, Tamburrano)

(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, ~~for example~~ to address technological obsolescence or the degradation of original supports **or to insure works**. 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 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 maintain provisions to treat publicly accessible galleries as museums.***

#### **CA 30 on recital 21**

Compromise amendment replacing all relevant amendments, including: AM 227 (Cavada, Rochefort, Marinho e Pinto), AM 229 (Radev), AM 13 (Rapporteur), ITRE 14, AM 228 (Maštálka, Chrysogonos, Kuneva), AM 230 (Reda), IMCO 16, AM 231 (Boutonnet, Bilde, Lebreton)

(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.*

## **Compromise amendments on out-of-commerce works (Articles 7, 8, 9 and corresponding recitals)**

### **CA 3 on Article 2, paragraph 1, point 4a (new)**

Compromise amendment replacing all relevant amendments, including: AM 31 (Rapporteur), AM 523 (Reda), IMCO 39

*(4a) ‘out of commerce works’ means*

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

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

### **CA 8 on Article 7**

Compromise amendment replacing all relevant amendments, including: AM 677 (Rozière et al.), AM 676 (Adinolfi et al.), AM 680 (Adinolfi et al.), AM 678 (Rozière et al.), IMCO 57, AM 679 (Boutonnet et al.), AM 687 (Adinolfi et al.), AM 688 (Karim, Dzhambazki), AM 689 (Rozière et al.), AM 690 (Reda), AM 681 (Adinolfi et al.), AM 682 (Rozière et al.), AM 683 (Adinolfi et al.), AM 685 (Adinolfi et al.), AM 686 (Rozière et al.), AM 40 (Adinolfi et al.), AM 692 (Reda), AM 693 (Cofferati), AM 41 (Rapporteur), AM 684 (Maštálka, Kuneva), AM 42 (Rapporteur), AM 43 (Rapporteur), AM 694 (Reda), AM 695 (Reda), AM 696 (Reda), AM 44 (Rapporteur), AM 697 (Karim, Dzhambazki), CULT 61, AM 698 (Adinolfi, et al.), AM 699 (Szájér, Bocskor), IMCO 58 Part 1, AM 700 (Adinolfi et al.), CULT 62, AM 45 (Rapporteur), ITRE 41, IMCO 58 Part 2, AM 46 (Rapporteur), AM 701 (Adinolfi et al.), CULT 63, AM 702, (Adinolfi et al.), IMCO 59, AM 703 (Adinolfi et al.), IMCO 60, CULT 64, AM 704 (Rozière et al.), IMCO 61, AM 705 (Adinolfi et al.), IMCO 62, AM 706 (Adinolfi et al.), AM 707 (Reda), IMCO 63, AM 47 (Rapporteur), AM 708 (Guteland)

## 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 available online of out-of-commerce works that are located permanently in their collections for not-for-profit purposes, 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, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so.~~

***Member States may provide a cut-off date 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.

### **CA 31 on recital 22**

Compromise amendment replacing all relevant amendments, including: AM 246 (Reda), AM 247 (Adinolfi et al.), AM 248 (Boutonnet et al.), AM 249 (Guoga, Maydell), CULT 18

(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.

### **CA 32 on recital 22a**

Compromise amendment replacing all relevant amendments, including: AM 233 (Comodini Cachia), AM 250 (Reda), AM 14 (Rapporteur), AM 261 (Chrysogonos et al.), AM 251 (Reda)

*(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 under an exception to copyright and related rights. 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 extended collective licencing arrangements concluded with cultural heritage institutions at national level for categories of works that are permanently in the collections of cultural heritage institutions. 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, in consultation with rightholders, collective management organisations and cultural heritage organisations and at appropriate intervals of time for which sectors and which types of works appropriate licence-based solutions are not available, in which case the exception should apply.*

### **CA 33 on recital 23**

Compromise amendment replacing all relevant amendments, including: AM 252 (Rozière, Guillaume, Berès, Tarabella), AM 253 (Chrysogonos, Maštálka, Kuneva), AM 254 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 255 (Cavada, Rochefort, Bergeron, Marinho e Pinto), ITRE 15, 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.

### **CA 34 on recital 24**

Compromise amendment replacing all relevant amendments, including: AM 256 (Rohde), AM 257 (Adinolfi, Ferrara, Borrelli, Tamburrano), 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.

### **CA 35 on recital 25**

Compromise amendment replacing all relevant amendments, including: AM 258 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 259 (Maštálka, Chrysogonos, Kuneva), ITRE 16, AM 260 (Boutonnet, Bilde, Lebreton)

(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.

### **CA 36 on recital 26**

Compromise amendment replacing all relevant amendments, including: AM 263 (Reda), AM 264 (Adinolfi, Ferrara, Borrelli, Tamburrano)

(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.

### **CA 37 on recital 27**

Compromise amendment replacing all relevant amendments, including: AM 265 (Reda), AM 15 (Rapporteur), AM 266 (Adinolfi, Ferrara, Borrelli, Tamburrano)

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

### **CA 9 on Article 8**

Compromise amendment replacing all relevant amendments, including: AM 709 (Boutonnet et al.), AM 710 (Boutonnet et al.), AM 48 (Rapporteur), AM 711 (Reda), AM 712 (Adinolfi et al.), IMCO 64, AM 713 (Boutonnet et al.), AM 49 (Rapporteur), AM 714 (Buda), AM 715 (Reda), AM 716 (Adinolfi et al.), IMCO 65, AM 717 (Boutonnet 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.

### **CA 38 on recital 28**

Compromise amendment replacing all relevant amendments, including: AM 267 (Boutonnet et al.), AM 268 (Reda), AM 269 (Adinolfi et al.)

(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 Council, 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.

### **CA 10 on Article 9**

Compromise amendment replacing all relevant amendments, including: AM 50 (Rapporteur), AM 718 (Adinolfi et al.), IMCO 66, ITRE 42, CULT 65, AM 719 (Boutonnet et al.), CULT 66, CULT 67

#### *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).

### **CA 39 on recital 28 a (new)**

Compromise amendment replacing all relevant amendments, including: 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.*

### **Compromise amendments on access to and availability of audiovisual works on video-on-demand platforms (Article 10 and corresponding recitals)**

### **CA 11 on Article 10**

Compromise amendment replacing all relevant amendments, including CULT 68, CULT 69, AM 724 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 726 (Buda), AM 727 (Dzhambazki), AM 723 (Cavada, Rochefort, Marinho e Pinto), AM 725 (Rohde), CULT 70

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.***

**CA 40 on recitals 29 and 30**

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 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.

## **Compromise amendments on publishers' right (Article 2, paragraph 1, point 4 + Article 11 and corresponding recitals)**

### **CA 20 on Article 2, paragraph 1, point 4**

Compromise amendment replacing all relevant amendments, including: AM 518 (Geringer de Oedenberg, Stihler, Weidenholzer), AM 519 (Reda et al.), AM 520 (Szájér, Bocskor), AM 521 (Adinolfi, Ferrara, Borrelli, Tamburrano), IMCO 38, CULT 43, AM 522 (Niebler, Ehler, Voss)

(4) 'press publication' means a fixation *by publishers or news agencies* 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. *Periodical publications which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition.*

### **CA 12 on Article 11**

Compromise amendment replacing all relevant amendments, including: AM 731 (Reda et al.), AM 732 (Maštálka, Kuneva), AM 733 (Szájér, Bocskor), AM 734 (Geringer de Oedenberg, Stihler, Lauristin), AM 735 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 736 (Svoboda), AM 737 (Cavada, Rochefort, Marinho e Pinto), AM 738 (Niebler, Ehler, Voss), AM 739 (Honeyball, Rozière, Ward, Grammatikakis, Tarabella, Berès), AM 740 (Zwiefka, Wenta, Grzyb), AM 741 (Le Grip, Niebler, De Grandes Pascual, Estaràs Ferragut, Maullu, Arimont), AM 742 (Dzhambazki), CULT 71, ITRE 43, AM 743 (Geringer de Oedenberg, Stihler, Weidenholzer, Lauristin), AM 744 (Rohde), AM 745 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 747 (Delvaux, Honeyball, Rozière, Ward, Grammatikakis, Tarabella, Berès, Griffin, Moisă), AM 746 (Voss), AM 748 (Dzhambazki), AM 52 (Rapporteur), AM 749 (Guoga, Maydell), AM 754 (Karim), AM 750 (Złotowski), AM 752 (Estaràs Ferragut), AM 751 (Boutonnet, Bilde, Lebreton), AM 753 (Cavada, Rochefort, Le Grip, Marinho e Pinto), AM 755 (Zwiefka, Wenta, Grzyb), AM 756 (Honeyball, Rozière, Ward, Grammatikakis, Tarabella, Berès), AM 757 (Le Grip, Niebler, De Grandes Pascual, Estaràs Ferragut, Maullu, Arimont), AM 758 (Niebler, Ehler, Voss), CULT 72, ITRE 44, AM 53 (Rapporteur), AM 759 (Delvaux), CULT 73, AM 760 (Dzhambazki), AM 761 (Honeyball, Rozière, Tarabella, Berès, Moisă, Griffin), AM 762 (Dzhambazki), AM 763 (Dzhambazki), AM 764 (Dzhambazki), AM 765 (Rohde), AM 766 (Geringer de Oedenberg, Stihler, Weidenholzer, Lauristin), AM 767 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 768 (Boutonnet, Bilde, Lebreton), AM 769 (Dzhambazki), AM 770 (Niebler, Ehler, Voss), ITRE 45, AM 54 (Rapporteur), AM 771 (Guoga, Maydell), AM 772 (Rohde), AM 773 (Geringer de Oedenberg, Stihler, Weidenholzer, Lauristin), AM 774 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 775 (Cavada, Rochefort, Marinho e Pinto), AM 776 (Cavada, Rochefort, Marinho e Pinto), AM 55 (Rapporteur), AM 777 (Rohde), AM 778 (Guoga, Maydell), AM 779 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 780 (Geringer de Oedenberg, Stihler, Weidenholzer, Lauristin), AM 781 (Le Grip, Niebler,

De Grandes Pascual, Estaràs Ferragut, Maullu, Buda, Arimont), AM 783 (Niebler, Ehler, Voss), AM 782 (Dzhambazki), CULT 74, AM 784 (Niebler, Ehler, Voss), ITRE 46, CULT 75

## Art. 11

### Protection of press publications concerning digital uses

1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC ***so that they may obtain fair and proportionate remuneration*** for the digital use of their press publications ***by information society service providers***.

***1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.***

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

***2a. The rights referred to in paragraph 1 shall not extend to acts of hyperlinking.***

3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply *mutatis mutandis* in respect of the rights referred to in paragraph 1.

4. The rights referred to in paragraph 1 shall expire ~~5~~ 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.

***The right referred to in paragraph 1 shall not apply with retroactive effect.***

***4a. Member States shall ensure that authors, receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers.***

### **CA 41 on recital 31**

Compromise amendment replacing all relevant amendments, including: AM 281 (Reda et al.), AM 282(Adinolfi, Ferrara, Borrelli, Tamburrano), AM 283 (Szájer, Bocskor), AM 17 (Rapporteur), AM 284 (Cavada, Rochefort, Marinho e Pinto), AM 285 (Niebler, Ehler, Voss), AM 286 (Le Grip, Niebler, De Grandes Pascual, Estaràs Ferragut, Esther de Lange, Arimont), CULT 23, IMCO 17, AM 287(Buda), AM 288 (Karim), AM 289 (Negrescu, Kallas, Charanzová, Schaake), AM 290 (Geringer de Oedenberg, Stihler, Negrescu, Lauristin, Weidenholzer), AM 291 (Boutonnet, Bilde, Lebreton)

- (31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. **The increasing imbalance between powerful platforms and press publishers, which can also be news agencies, has already led to a remarkable regression of the media landscape on regional level.** In the transition from print to digital, publishers **and news agencies** of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.

### **CA 42 on recital 32**

Compromise amendment replacing all relevant amendments, including: AM 292 (Szájer, Bocskor), AM 293 (Rohde), AM 294 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 295 (Reda et al.), AM 296 (Maštálka), AM 297 (Karim), AM 298 (Geringer de Oedenberg, Stihler, Negrescu, Weidenholzer), AM 18 (Rapporteur), AM 300 (Cavada, Rochefort, Marinho e Pinto), AM 301 (Złotowski), AM 302 (Zwiefka, Wenta, Grzyb), AM 303 (Le Grip, Niebler, De Grandes Pascual, Estaràs Ferragut, Arimont), CULT 24, AM 304 (Niebler, Ehler, Voss), AM 305 (Estaràs Ferragut), AM 306 (Dzhambazki), IMCO 18, AM 299 (Boutonnet, Bilde, Lebreton)

- (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry *and thereby to guarantee the availability of reliable information*. It is therefore necessary *for European Union Member States* to provide at Union level ~~a harmonised~~ legal protection for press publications in *the European Union* ~~respect of~~ *for* digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses *in order to obtain fair and proportionate remuneration for such uses. Private uses should be excluded from this reference. Also, the listing in a search engine should not be considered as fair and proportionate remuneration.*

### **CA 43 on recital 33**

Compromise amendment replacing all relevant amendments, including: AM 307 (Geringer de Oedenberg, Stihler, Weidenholzer, Lauristin), AM 308 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 309 (Rohde), AM 310 (Maštálka, Chrysogonos, Kuneva), AM 311 (Svoboda), AM 312 (Reda et al.), AM 19 (Rapporteur), IMCO 19, AM 320 (Guoga, Maydell), AM 316 (Le Grip, Niebler, De Grandes Pascual, Estaràs Ferragut, Esther de Lange, Arimont), CULT 25, AM 318 (Cavada, Rochefort, Marinho e Pinto), AM 322 (Karim), AM 313 (Estaràs Ferragut), AM 314 (Buda), AM 315 (Dzhambazki), AM 317 (Złotowski), AM 319 (Niebler, Ehler, Voss), ITRE 17, AM 321 (Estaràs Ferragut), ITRE 18

- (33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service

provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking. ~~which do not constitute communication to the public~~

#### **CA 44 on recital 34**

Compromise amendment replacing all relevant amendments, including: AM 20 (Rapporteur), AM 323(Karim), AM 324 (Geringer de Oedenberg, Stihler,Weidenholzer, Lauristin), AM 325 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 326 (Reda et al.), AM 327 (Rohde), AM 328 (Maštálka), AM 329 (Guoga, Maydell), AM 330 (Svoboda), AM 331 (Cavada, Rochefort, Bergeron, Marinho e Pinto), AM 332 (Niebler, Ehler, Voss), ITRE 19, AM 333 (Złotowski), AM 335 (Estaràs Ferragut), IMCO 20, CULT 26, AM 336 (Le Grip, Niebler, De Grandes Pascual, Estaràs Ferragut, Arimont), AM 337 (Zwiefka, Wenta, Grzyb), AM 334 (Boutonnet, Bilde, Lebreton)

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

#### **CA 45 on recital 35**

Compromise amendment replacing all relevant amendments, including: AM 339 (Geringer de Oedenberg, Stihler,Weidenholzer, Lauristin), AM 340 (Reda et al.), AM 341 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 342 (Rohde), AM 343 (Maštálka), AM 344 ( Karim), AM 345 (Svoboda), AM 346 (Niebler, Ehler, Voss), ITRE 20, CULT 27, AM 347 (Cavada, Rochefort, Marinho e Pinto), AM 348 (Marie-Christine Boutnnet, Bilde, Lebreton)

- (35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. ***Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for license of their work to the press publisher, authors whose work is incorporated in a press publication shall be entitled to an appropriate share of the new addiotional revenues press publishers receive for certain types of secondary use of their press publications by information society service providers in***

*respect to the rights provided for in Article 11 paragraph 1. The amount of the compensation attributed to the authors shall take into account the specific industry licensing standards regarding works incorporated in a press publication which are accepted as appropriate in the respective member State; and the compensation attributed to authors shall not affect the license terms agreed between the author and the press publisher for the use of the author's article by the press publisher.*

## **Compromise amendments on claims to fair compensation (Article 12 and corresponding recitals)**

### **CA 13 on Article 12**

Compromise amendment replacing all relevant amendments, including: AM 786 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 787 (Reda), AM 788 (Maštálka, Kuneva), AM 789 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 790 (Rohde), AM 791 (Gasbarra, Morgano, Costa, Honeyball), AM 792 (Rozière, Guillaume, Berès, Tarabella), CULT 76, ITRE 47, AM 793 (Dzhambazki), AM 794 (Cavada, Rochefort, Marinho e Pinto)

#### *Article 12*

#### *Claims to fair compensation*

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

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

### **CA 46 on recital 36**

Compromise amendment replacing all relevant amendments, including: AM 349 (Rohde), AM 350 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 351 (Reda), AM 352 (Maštálka), AM 353 (Rozière, Guillaume, Berès, Tarabella), AM 356 (Niebler, Ehler, Voss), AM 354 (Cavada, Rochefort, Marinho e Pinto), AM 355 (Karim), CULT 28, AM 358 (Cavada, Rochefort, Ries, Marinho e Pinto)

- (36) Publishers, including those of press publications, books or scientific publications ***and music publications***, often operate on the basis of the transfer of authors' rights by means of contractual agreements ***with authors*** or statutory provisions. In this context, publishers make an investment ***and acquire rights, in some fields including rights to***

*claim a share of compensation within joint collective management organisations of authors and publishers, with a view to the exploitation of the works contained in their publications and may in some instances ~~therefore also~~ be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a **large** number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and **to** improve legal certainty for all concerned parties, Member States should be allowed to ~~determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place~~ **provide an equivalent compensation sharing system if such a system was in operation in that Member State before 12 November 2015. The share between authors and publishers of such compensation can be set in the internal distribution rules of the collective management organisation acting jointly on behalf of authors and publishers, or set by Members States in law or regulation, in accordance with the equivalent system that was in operation in that Member State before 12 November 2015. This provision is without prejudice to the arrangements in the Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.***

## **Compromise amendments on “Value gap” (Article 13 and corresponding recitals + Article 1 + Article 2 point 4a and point 4b new)**

### **CA 1 on Article 1**

Compromise amendment replacing all relevant amendments, including: AM 489 (Boutonnet et al.), AM 488 (Ferrara et al.), CULT 40, AM 490 (Adinolfi et al.), AM 491 (Ferrara et al.), AM 28 (Rapporteur), AM 492 (Negrescu et al.), AM 493 (Reda), AM 494 (Karim, Dzhambazki), AM 495 (Geringer de Oedenberg et al.), IMCO 33, AM 496 (Geringer de Oedenberg et al.)

#### *Article 1*

#### *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, **2000/31/EC**, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and

**CA 2 on Article 2, points 4a (new) and 4b (new)**

*(4a) ‘online content sharing service provider’ means a provider of an information society service one of the main purposes of which is to store and give access to the public to copyright protected works or other protected subject-matter uploaded by its users, which the service optimises.*

*Services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all concerned rightholders, such as educational or scientific repositories, should not be considered online content sharing service providers within the meaning of this Directive. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive.*

*(4b) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council.*

**CA 14 on Article 13**

Compromise amendment replacing all relevant amendments, including AM 798 (Reda), AM 799 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 800 (Maštálka, Kuneva), AM 801 (Negrescu, Kallas, Charanzová, Schaake), AM 802 (Geringer de Oedenberg, Stihler, Negrescu), AM 803 (Zwiefka, Wentz), AM 804 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 805 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 806 (Le Grip, Niebler, Buda, Pietikäinen), LIBE 8, CULT 77, ITRE 48, IMCO 68, AM 807 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 56 (Rapporteur), AM 808 (Cavada, Rochefort, Berès), AM 809 (Geringer de Oedenberg), AM 810 (Le Grip, Niebler, Buda, Pietikäinen), AM 811 (Estaràs Ferragut), AM 812 (Cofferati, Costa), AM 813 (Wölken, Köster), AM 814 (Nieber, Ehler, Voss), AM 815 (Zwiefka, Wentz), AM 816 (Negrescu, Kallas, Charanzová, Schaake), AM 817 (De Grandes Pascual), AM 818 (Karim, Dzhambazki), AM 819 (Honeyball, Rozière, Delvaux, Ward, Grammatikakis, Tarabella, Berès, Griffin), AM 820 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 821 (Maullu), AM 822 (Guoga, Maydell), ITRE 49, AM 823 (Rohde), AM 824 (Estaràs Ferragut), AM 825 (Buda), CULT 78 (IMCO 69), LIBE 9, AM 826 (Le Grip, Niebler, Buda, Pietikäinen), AM 827 (Le Grip, Niebler, Buda, Pietikäinen), AM 57 (Rapporteur), IMCO 70, LIBE 10, AM 828 (Wölken, Köster), AM 829 (Le Grip, Niebler, Buda, Pietikäinen), AM 830 (Zwiefka, Wentz), AM 831 (Nieber, Ehler, Voss), AM 832 (Negrescu, Kallas, Charanzová, Schaake), AM 833 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 834 (Guoga), AM 835 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 836 (Le Grip, Niebler, Buda, Pietikäinen), AM 837 (Le Grip, Niebler, Buda, Pietikäinen), AM 58 (Rapporteur), AM 838 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 839 (Negrescu, Kallas, Charanzová, Schaake), AM 840 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 841 (Buda), AM 842 (Estaràs Ferragut), AM 843 (Geringer de Oedenberg), AM 844 (Guoga), AM 845 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 846 (Le Grip, Niebler, Buda, Pietikäinen), CULT 79 (IMCO

71), LIBE 11, ITRE 50, ITRE 52 5th part, CULT 80, CULT 81, AM 59 (Rapporteur), AM 847 (Maullu), AM 848 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 849 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 851 (Zwiefka, Wenta), AM 850 (Negrescu, Kallas, Charanzová, Schaake), AM 852 (Wölken, Köster), AM 853 (Geringer de Oedenberg, Stihler, Negrescu, Lauristin, Weidenholzer), AM 60 (Rapporteur), IMCO 72, LIBE 12, CULT 82, AM 854 (Zwiefka, Wenta), CULT 85, AM 855 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 856 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 857 (Geringer de Oedenberg, Stihler, Negrescu), AM 858 (Zwiefka, Wenta), AM 859 (Negrescu, Kallas, Charanzová, Schaake), AM 860 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 861 (Guoga), AM 862 (De Grandes Pascual), AM 61 (Rapporteur), AM 863 (Cofferati), CULT 83, IMCO 73, LIBE 13, ITRE 51, CULT 84, AM 864 (Negrescu, Kallas, Charanzová, Schaake), AM 866 (Zwiefka, Wenta), AM 865 (Estaràs Ferragut), ITRE 52, LIBE 14, AM 867 (Honeyball, Rozière, Delvaux, Ward, Grammatikakis, Tarabella, Berès, Griffin)

### Article 13

#### Use of protected content by *online content sharing service providers*

***-1a. Without prejudice of Art. 3 (1) and (2) of the Directive 2001/29/EC online content sharing service providers perform an act of communication to the public and shall conclude fair and appropriate licensing agreements with rightholders, unless the rightholder does not wish to grant a license or licenses are not available—Licensing agreements concluded by the online content sharing service providers with rights holders shall cover the liability for works uploaded by the users of their services in line with terms and conditions set out in the licensing agreement, provided that these users do not act for commercial purposes or are not the rightholder or his representative.***

***1. Online content sharing service providers referred to in paragraph -1a shall, in cooperation with rightholders, take appropriate and proportionate measures to ensure the functioning of licensing agreements where concluded with rightholders for the use of their works or other subject-matter on those services.***

***In the absence of licensing agreements with rightholders online content sharing service providers shall take, in cooperation with rightholders, appropriate and proportionate measures leading to the non-availability of copyright or related-right infringing works or other subject-matter on those services, while non-infringing works and other subject matter shall remain available.***

***1a. Member States shall ensure that the online content sharing service providers referred to in the previous sub-paragraphs shall apply the above mentioned measures based on the relevant information provided by rightholders.***

***The online content sharing service providers shall be transparent towards rightholders and shall inform rightholders of the measures employed, their implementation, as well as when relevant, shall periodically report on the use of the works and other subject-matter.***

***1.b Members States shall ensure that the implementation of such measures shall be proportionate and strike a balance between the fundamental rights of users and rightholders and shall in accordance with Article 15 of Directive 2000/31/EC, where***

*applicable not impose a general obligation on online content sharing service providers to monitor the information which they transmit or store.*

*2. To prevent misuses or limitations in the exercise of exceptions and limitations to copyright law, Member States shall ensure that the service providers referred to in paragraph 1 put in place **effective and expeditious** complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. **Any complaint filed under such mechanisms shall be processed without undue delay. The rightholders should reasonably justify their decisions to avoid arbitrary dismissal of complaints.***

*Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the measures referred to in paragraph 1 should not require the identification of individual users and the processing of their personal data.*

*Member States shall also ensure that, in the context of the application of the measures referred to above, users have access to a court or other relevant judicial authority to assert the use of an exception or limitation to copyright rules.*

3. Member States shall facilitate, where appropriate, the cooperation between the **online content sharing service providers** ~~information society service providers~~, users and rightholders through stakeholder dialogues to define best practices **for the implementation of the measures referred to in paragraph 1 in a manner that is proportionate and efficient**, taking into account, among others, the nature of the services, the availability of technologies and their effectiveness in light of technological developments.

### **CA 47 on recital 37**

Compromise amendment replacing all relevant amendments, including AM 359 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 360 (Estaràs Ferragut), AM 361 (De Grandes Pascual), AM 362 (Chrysogonos, Maštálka, Kuneva), AM 365 (Negrescu, Kallas, Charanzová, Schaake), AM 366 (Geringer de Oedenberg, Stihler, Negrescu), AM 367 (Guoga, Maydell), AM 369 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), CULT 29, IMCO 22, ITRE 22, AM 363 (Buda), AM 364 (Niebler, Ehler, Voss), AM 368 (Karim, Dzhambazki), AM 370 (Rozière et al.), AM 371 (Buda), AM 372 (Zwiefka, Wenta), CULT 2, AM 374 (Niebler, Ehler, Voss), AM 373 (Estaràs Ferragut), AM 375 (Cavada, Rochefort, Berès, Ries, Ehler, Marinho e Pinto), AM 376 (Rozière et al.), AM 377 (Niebler, Ehler, Voss), ITRE 23, AM 379 (Rozière et al.), AM 378 (Estaràs Ferragut), IMCO 23

(37) Over the last years, the functioning of the online content market has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to **copyright protected** content online. **Online services are means of providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. However, if they allow for diversity and ease of**

*access to content they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders. This affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it, since some user uploaded content services do not enter into licensing agreements on the basis that they claim to be covered by the “safe-harbor” exemption of Directive 2000/31/EC.*

#### **CA 48 on recital 37a**

*(37a) Certain information society services providers, as part of their normal use, are designed to give access to the public to copyright protected content or other subject-matter uploaded by their users.*

*The definition of an online content sharing service provider under this Directive shall cover information society service providers one of the main purposes of which is to store and give access to the public or to stream copyright protected content uploaded / made available by its users and that optimise content, including amongst others promoting displaying, tagging, curating, sequencing the uploaded works or other subject-matter, irrespective of the means used therefore and therefore act in an active way.*

*The definition on online content sharing service providers under this directive does not cover services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all concerned rightholders, such as educational or scientific repositories. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive.*

#### **CA 49 on recital 38**

Compromise amendment replacing all relevant amendments, including AM 380 (Regner, Weidenholzer), AM 381 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 382 (Maštálka), AM 383 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 384 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 385 (Negrescu, Kallas, Charanzová, Schaake), AM 386 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 387 (Estaràs Ferragut), AM 388 (Honeyball, Rozière, Delvaux, Ward, Griffin, Grammatikakis, Tarabella, Berès, Costa), AM 389 (Niebler, Ehler, Voss), AM 390 (Geringer de Oedenberg, Stihler, Negrescu, Weidenholzer), AM 391 (Buda), AM 392 (Chrysogonos, Maštálka, Kuneva), AM 393 (Zwiefka, Wenta), AM 394 (Maullu), AM 21 (Rapporteur), AM 399 (Karim), AM 395 (Guoga), AM 396 (Le Grip, Niebler, Pietikäinen), AM 397 (De Grandes Pascual), AM 398 (Estaràs Ferragut), AM 400 (Wölken, Köster), IMCO 24 , LIBE 1, CULT 30 1st part, ITRE 24, AM 22 (Rapporteur), AM 401 (Geringer de Oedenberg, Stihler, Negrescu), AM 402 (Negrescu, Kallas, Charanzová, Schaake), AM 403 (Guoga, Maydell), AM 404 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 405 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), IMCO 25 , LIBE 2, AM 406 (Chrysogonos, Maštálka, Kuneva), AM 407 (Honeyball, Rozière, Delvaux, Ward, Griffin,

Grammatikakis, Tarabella, Berès, Costa), AM 408 (Maullu), AM 409 (Wölken, Köster), AM 410 (Estaràs Ferragut), AM 411 (Karim, Dzhabazki), AM 412 (Zwiefka, Wenta), ITRE 25, CULT 30 2nd part, LIBE 3, AM 413(Geringer de Oedenberg, Stihler,Negrescu), AM 414 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 415 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 416 (Negrescu, Kallas, Charanzová, Schaake), AM 23 (Rapporteur), AM 418 (Le Grip, Niebler, Pietikäinen), AM 419 (Estaràs Ferragut), AM 420 (Wölken, Köster), AM 417(Zwiefka, Wenta), AM 423 (Karim, Dzhabazki), IMCO 26, LIBE 4, CULT 30 3rd part, AM 422 (De Grandes Pascual), AM 424 (Cofferati), AM 427 (Maullu), AM 421 (Guoga), AM 425 (Buda), AM 426 (Boutonnet, Bilde, Lebreton), ITRE 26, AM 24 (Rapporteur), LIBE 5, IMCO 27, AM 428 (Guoga, Maydell), AM 429 (Zwiefka, Wenta), AM 432 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 433 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 430 (Rozière, Honeyball, Guillaume, Berès, Tarabella)

***(38) Online content sharing service providers perform an act of communication to the public and therefore are responsible for their content. As a consequence, they should conclude fair and appropriate licensing agreements with rightholders. Therefore they cannot benefit from the liability exemption provided for in Article 14 of Directive 200/31/EC of the European Parliament and of the Council.***

***The rightholder should not be obliged to conclude licensing agreements.***

In respect of Article 14 *of the Directive 2000/31/EC of the European Parliament and of the Council*, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefore.

Where licensing agreements are concluded, these should also cover, ***to the same extent and scope*** the liability of the users when they are acting in a non-commercial capacity.

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

***In the absence of agreements with the rightholders it is also reasonable to expect from online content sharing service providers to take appropriate and proportionate measures leading to the non-availability of copyright or related-right infringing works or other subject matter on those services. These service providers are important content distributors, thereby impacting on the exploitation of copyright-protected content. Such service providers should take appropriate and proportionate measures to ensure the non-availability of works or other subject matter as identified by right holders. These measures should however not lead to the non-availability of non-infringing works or other subject matter uploaded by users.***

### **CA 50 on recital 39**

**Compromise amendment replacing all relevant amendments, including** AM 434 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 435 (Geringer de Oedenberg, Stihler,Negrescu), AM 436

(Regner, Weidenholzer), AM 437 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), AM 438 (Maštálka), LIBE 6, IMCO 28, AM 439 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 440 (Zwiefka, Wenta), AM 441 (De Grandes Pascual), AM 442 (Rozière, Honeyball, Guillaume, Berès, Tarabella), AM 443 (Guoga, Maydell), AM 444 (Negrescu, Kallas, Charanzová, Schaake), AM 445 (Wölken, Köster), AM 447 (Karim, Dzhambazki), AM 448 (Le Grip, Niebler, Pietikäinen), CULT 31, ITRE 27, AM 446, (Cofferati), AM 25 (Rapporteur), AM 449 (Buda), AM 450 (Estaràs Ferragut), CULT 32, AM 451 (Honeyball, Rozière, Delvaux, Grammatikakis, Tarabella, Berès, Costa, Griffin), AM 454 (Cavada, Rochefort, Berès, Marinho e Pinto), AM 455 (Estaràs Ferragut), AM 431 (Reda, Kallas, Schaake, Childers, Andersson, Reimon, Benifei), IMCO 27

(39) Cooperation between online content sharing service providers and rightholders is essential for the functioning of *the measures*. ***In particular***, rightholders should provide the *relevant* information ~~data~~ *to the services* to allow *them* to identify their content *when applying the measures*. ***The service providers*** should be transparent towards rightholders with regard to the deployed *measures technologies*, to allow the assessment of their appropriateness. ***When assessing the proportionality and effectiveness of the measures implemented, technological constraints and limitations as well as the amount or the type of works or other subject matter uploaded by the users of the services should be taken into due consideration.***

*In accordance with Article 15 of Directive 2000/31/EC, where applicable, the implementation of measures by service providers should not consist in a general monitoring obligation and should be limited to ensuring the non-availability of unauthorised uses on their services of specific and duly notified copyright protected works or other subject-matter.*

*When implementing such measures, the service providers shall also strike a balance between the rights of users and those of the rightholders under the Charter of Fundamental Rights of the European Union. The –measures applied should not require the identification of individual users that upload content and should not involve the processing of data relating to individual users, in accordance with Directive 95/46/EC and Directive 2002/58/EC.*

*Since the measures deployed by online content sharing service providers in application of this Directive could have a negative or disproportionate effect on legitimate content that is uploaded or displayed by users, in particular where the concerned content is covered by an exception or limitation, online content sharing service providers should be required to offer a complaints mechanism for the benefit of users whose content has been affected by the measures. Such a mechanism should enable the user to ascertain why the content concerned has been subject to measures and include basic information on the relevant exceptions and limitations applicable. It should prescribe minimum standards for complaints to ensure that rightholders are given sufficient information to assess and respond to complaints.*

*Rightholders or a representative should reply to any complaints received within a reasonable amount of time. The platforms or a trusted third party responsible for the redress mechanism should take corrective action without undue delay where measures prove to be unjustified.*

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

## **Compromise amendments on fair remuneration (Article -14a, Article 14, Article 15, Article 16 and corresponding recitals)**

### **CA 15 on Article -14a (new)**

Compromise amendment replacing all relevant amendments, including: AM 868 (Rozière et al.), AM 870 (Estaràs Ferragut), AM 875 (Chrysogonos et al.), AM 874 (Durand et al.), AM 876 (Cavada et al.), AM 923 (Honeyball et al.), CULT 92, ITRE 56, AM 924 (Chrysogonos et al.), AM 925 (Chrysogonos et al.), AM 926 (Niebler et al.), AM 930 (Guteland), AM 927 (Adinolfi et al.), AM 928 (Regner, Weidenholzer), AM 929 (Honeyball et al.), AM 948 (Maštálka et al.)

#### Article -14a

##### *Principle of fair and appropriate remuneration*

- 1) Member States shall ensure that rightholders receive fair and appropriate remuneration from the exploitation of their works.*
- 2) Member States shall ensure that authors and performers receive fair and appropriate remuneration from the exploitation of their works, including the online exploitation, and that contracts with authors and performers provide for this remuneration. This may be done for each sector through a combination of individual agreements and/ or collective bargaining agreements, collective management agreements or similar rules.*
- 3) Contracts shall, where possible, specify the remuneration attached to each mode of exploitation.*
- 4) Member States shall take account of the specificities of each sector in determining whether remuneration for granted rights is appropriate.*
- 5) Paragraphs 1, 2 and 3 do not apply in the case that an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.*

### **CA 51 on recital 39a (new)**

Compromise amendment replacing all relevant amendments, including: AM 471 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 472 (Voss), CULT 37

*(39a) As a principle rightholders should always receive fair and appropriate remuneration. Authors and performers who have concluded contracts with intermediaries, such as labels and producers, should receive fair and appropriate remuneration from them, either through individual agreements and/ or collective bargaining agreements, collective management agreements or rules having a similar effect, for example joint remuneration rules. This remuneration should be mentioned explicitly in the contracts according to each mode of exploitation, including online exploitation. Members States should look into the specificities of each sector and may regulate that a remuneration is deemed fair and appropriate if it is determined in accordance with the collective bargaining or joint remuneration agreement.*

#### **CA 16 on Article 14**

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, Dzhambazki)

#### *Article 14*

##### *Transparency obligation*

1. Member States shall ensure that authors and performers receive on a regular basis, ***not less than once a year***, and taking into account the specificities of each sector ***and the relative importance of each individual contribution***, timely, ***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 all information referred to in paragraph 1 with the licensee or transferee.***

***The main licensee or transferee shall pass all the information referred to in the first subparagraph on to the author or performer. That information shall be unchanged, except in the case of commercially sensitive information as defined by Union or national laws, which, without prejudice to Articles 15 and 16a, may be subject to a non-disclosure agreement, for the purpose of preserving fair competition. Where the main licensee or transferee does not provide the information as referred to in the second subparagraphs in a timely manner, the author or performer shall be entitled to request that 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 transparency requirements comparable to those referred to in paragraph 2.**

### **CA 52 on recital 40 and recital 41**

Compromise amendment replacing all relevant amendments, including AM 458 (Reda), AM 460 (Rozière, Honeyball, Guillaume, Berès, Tarabella), ITRE 28, AM 461 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 462 (Svoboda), CULT 34, AM 463 (Guoga, Maydell), AM 459 (Cavada, Rochefort, Le Grip, Marinho e Pinto), IMCO 29, AM 26 (Rapporteur), AM 464 (Rozière, Honeyball, Guillaume, Berès, Tarabella), AM 465 (Karim, Dzhabazki), AM 466 (Cavada, Rochefort, Le Grip, Marinho e Pinto), AM 468 (Buda), AM 469 (Svoboda), AM 467 (Reda), CULT 35, IMCO 30, ITRE 29, AM 470 (Adinolfi, Ferrara, Borrelli, Tamburrano)

(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 information on the exploitation should also include information about the identity of any ~~or~~ the sub-licensee or sub-transferee. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned.***

(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.

### **CA 17 on Article 15**

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, ***in the absence of collective bargaining agreements providing for a comparable mechanism***, that authors and performers ***or any representative organisation acting on their behalf*** are entitled to request ***claim*** additional, ~~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.

### **CA 53 on recital 42**

Compromise amendment replacing all relevant amendments, including AM 474 (Karim, Dzhambazki), AM 475 (Maullu), AM 476 (Cavada, Rochefort, Le Grip, Ries, Marinho e Pinto), AM 473 (Buda), IMCO 31, AM 478 (Svoboda), CULT 36, AM 479 (Guoga, Maydell), AM 477 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 27 (Rapporteur), AM 480 (Rozière, Guillaume, Berès, Tarabella)

(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 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.

### **CA 19 on Article 16**

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.*

### **CA 54 on recital 43**

Compromise amendment replacing all relevant amendments, including AM 481 (Guoga), IMCO 32, CULT 38, AM 482 (Adinolfi, Ferrara, Borrelli, Tamburrano), AM 483 (Karim, Dzhambazki)

(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.*

### **Compromise amendments on revocation right (Article 16a new and corresponding recital)**

### **CA 18 on Article 16a (new)**

Compromise amendment replacing all relevant amendments, including AM 952 (Zwiefka, Brunon Wenta), AM 953 (Chrysogonos, Mastalka, Kuneva), AM 958 (Svoboda), AM 959 (Niebler, Ehler, Voss), AM 961 (Geringer de Oedenberg et. al), ITRE 58

**Art 16a**  
**Right of revocation**

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

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

**3. Paragraphs 1 and 2 shall not apply if the non-exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.**

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

**CA 55 on recital 43a (new)**

**(43a) When authors and performers license or transfer their rights, they expect their work or performance to be exploited. However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In this case, and after a reasonable time period has lapsed, authors and performers should have a right of revocation allowing them to transfer or license their right to another person. Revocation should also be possible when the transferee or licensee has not complied with his reporting/transparency obligation provided for in Article 14. The revocation should only be considered after all the steps of alternative dispute resolution have been completed, particularly with regard to reporting. As exploitation of works can vary depending on the sectors, specific provisions could be taken at national level in order to take into account the specificities of the sectors - such as the audiovisual sector - or works and the anticipated**

*exploitation periods, notably providing for time limits for the right of revocation. In order to prevent abuses and take into account that a certain amount of time is needed before a work is actually exploited, authors and performers should be able to exercise the right of revocation only after a certain period of time following the conclusion of the license or of the transfer agreement. National law should regulate the exercise of the right of revocation in the case of works involving a plurality of authors or performers, taking into account the relative importance of the individual contributions.*