

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

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

**PART 2: ARTICLES**

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

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

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

**Note:**

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

*Differences between the Council's position and the Commission's proposal are highlighted in **bold/underlined**.*

*Deletions are marked with ~~strikethrough~~.*

|      | Location          | <b>COMMISSION PROPOSAL<br/>COM(2016)593</b>  | <b>EP TEXT</b>   | <b>COUNCIL TEXT<br/>doc. 9134/18</b>   | <b>POSSIBLE COMPROMISE SOLUTION</b>   |
|------|-------------------|--|--|--|---|
| 105. |                   | TITLE I<br>GENERAL PROVISIONS  | TITLE I<br>GENERAL PROVISIONS  | TITLE I<br>GENERAL PROVISIONS  | TITLE I<br>GENERAL PROVISIONS   |
| 106. | Art.1,<br>title   | <i>Article 1<br/>Subject matter and scope</i>   |
| 107. | Art. 1, para<br>1 | 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. | 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. | 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. | 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.<br><i>[identical text]</i> |

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| 108. | Art. 1, para 2                    | 2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU. | 2. Except in the cases referred to in Article 6, 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, <b>2000/31/EC</b> , 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU. | 2. Except in the cases referred to in Article <del>6</del> <b>17</b> , 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, <b>2000/31/EC</b> , 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU. |   |
| 109. | Art. 2, title                     | <i>Article 2 Definitions</i>  | <i>Article 2 Definitions</i>  | <i>Article 2 Definitions</i>  | <i>Article 2 Definitions</i>  |
| 110. | Art. 2, introductory part         | For the purposes of this Directive, the following definitions shall apply:  | For the purposes of this Directive, the following definitions shall apply:  | For the purposes of this Directive, the following definitions shall apply:  | For the purposes of this Directive, the following definitions shall apply:  |
| 111. | Art. 2, para 1, introductory part | (1) ‘research organisation’ means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to  | (1) ‘research organisation’ means a university, <b>including its libraries</b> , a research institute or any other organisation the primary goal of which is to conduct scientific research   | (1) ‘research organisation’ means a <del>university, a research institute or any other organisation</del> <b>an entity</b> , the primary goal of which is to conduct scientific research  | (1) ‘research organisation’ means a university, <b>including its libraries</b> , a research institute or any other <b>entity</b> the primary goal of which is to conduct scientific research <b>or to</b> |

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|      |                                | conduct scientific research and provide educational services:  | or to conduct scientific research and provide educational services:  | or to <del>conduct scientific research and provide educational services:</del><br><b><u>involving also the conduct of scientific research:</u></b>       | <b><i>carry out educational activities involving also the conduct of scientific research:</i></b><br><i>[provisionally agreed at Trilogue 25/10/2018]</i>                            |
| 112. | Art. 2, para 1, point (a)      | (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or   | (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or   | (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or   | (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or<br><i>[provisionally agreed at Trilogue 25/10/2018]</i>                               |
| 113. | Art. 2, para 1, point (b)      | (b) pursuant to a public interest mission recognised by a Member State;  | (b) pursuant to a public interest mission recognised by a Member State;  | (b) pursuant to a public interest mission recognised by a Member State;  | (b) pursuant to a public interest mission recognised by a Member State;<br><i>[provisionally agreed at Trilogue 25/10/2018]</i>  |
| 114. | Art. 2, para 1, closing phrase | in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising | 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 | 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 | 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 <b><i>significant</i></b> |

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|      |                | a decisive influence upon such organisation;  | a <i>significant</i> influence upon such organisation;   | a decisive influence upon such organisation;  | decisive influence upon such organisation;<br><i>[provisionally agreed at Trilogue 25/10/2018]</i>  |
| 115. | Art. 2, para 2 | (2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations; | (2) ‘text and data mining’ means any automated analytical technique <i>which analyses works and other subject matter</i> in digital form in order to generate information, <i>including, but not limited to</i> , patterns, trends and correlations. | (2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations; | (2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information, <i>including, but not limited to</i> , patterns, trends and correlations;<br><i>[provisionally agreed at Trilogue 25/10/2018]</i> |
| 116. | Art. 2, para 3 | (3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;  | (3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;   | (3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;  | (3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;<br><i>[provisionally agreed at Trilogue 25/10/2018]</i>  |

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| 117. | Art. 2, para 4 | (4) ‘press publication’ means a fixation of a collection of literary works of a journalistic nature, which may also comprise other 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. | (4) ‘press publication’ means a fixation <i>by publishers or news agencies</i> 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. <i>Periodicals which are published for scientific or academic purposes, such as scientific journals, shall</i> | (4) ‘press publication’ means a <del>fixation of a</del> collection <u>composed mainly</u> of literary works of a journalistic nature, which<br>:<br><i>[remaining part of this paragraph was split up in points (a) to (d) - see following rows 118-121]</i> |                              |

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|      |                           |                                     | <i>not be covered by this definition;</i> |   |                              |
| 118. | Art. 2, para 4, point (a) |                                     |   | <p><u>(a)</u> may also <del>comprise</del> <b>include</b> other works or subject-matter <del>and</del>;</p> <p><i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i></p>   |                              |
| 119. | Art. 2, para 4, point (b) |                                     |   | <p><u>(b)</u> 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, <del>;</del></p> <p><i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i></p> |                              |
| 120. | Art. 2, para 4, point (c) |                                     |   | <p><u>(c)</u> <del>has</del> <b>has</b> having the purpose of providing <b>the general public with</b></p>  |                              |

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|      |                                    |                                     |   | information related to news or other topics; and<br><i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i>   |                              |
| 121. | Art. 2, para 4, point (d)          |                                     |   | <b>(d)</b> is published in any media under the initiative, editorial responsibility and control of a service provider;<br><i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i> |                              |
| 122. | Art. 2, para 4a, introductory part |                                     | <i>(4a) ‘out of commerce work’ means:</i>   |  |                              |
| 123. | Art. 2, para 4a, point (a)         |                                     | <i>(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</i> |  |                              |

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|      |                                       |                                     | <i>through customary channels of commerce;</i>   |   |                              |
| 124. | Art. 2, para 4a, point (b)            |                                     | <i>(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;</i>  |   |                              |
| 125. | Art. 2, para 4b (EP)/para 5 (Council) |                                     | <i>(4b) ‘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 a significant amount of copyright protected works or other protected subject-matter uploaded by its users,</i> | <b><u>(5) ‘online content sharing service provider’ means a provider of an information society service whose main or one of the main purposes is to store and give the public access to a large amount of works or other subject-matter uploaded by its users which it organises and promotes</u></b> |                              |

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|  |          |                                     | <p><i>which the service optimises and promotes for profit making purposes.</i></p> <p><i>Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories, shall not be considered online content sharing</i></p> | <p><b><u>for profit-making purposes.</u></b></p> <p><b><u>Providers of services such as non-for-profit online encyclopaedias, non-for-profit educational and scientific repositories, non-for-profit open source software developing platforms, as well as internet access service providers, online marketplaces and providers of cloud services which allow users, including businesses for their internal purposes, to upload content for their own use shall not be considered online content sharing service providers within the meaning of this Directive;</u></b></p> |                              |

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|      |                                       |                                     | <i>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;</i> |  |                              |
| 126. | Art. 2, para 4c (EP)/para 6 (Council) |                                     | <i>(4c) ‘information society service’ means a service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council<sup>1a</sup>;</i>   | <b><u>(6) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535.</u></b> |                              |

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|      |                 |                                     | <p><i>1a Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).</i></p> |                              |                              |
| 127. | Art. 2, para 4d |                                     | <p><i>(4d) ‘automated image referencing service’ means any online service which reproduces or makes available to the public for indexing and referencing purposes graphic or art works or photographic works collected by automated means via a third-party online service.</i></p>  |                              |                              |

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| 128. |                | TITLE II<br>MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT   | TITLE II<br>MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT  | TITLE II<br>MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT   |  |
| 129. | Art. 3, title  | <i>Article 3<br/>Text and data mining</i>  | <i>Article 3<br/>Text and data mining</i>   | <i>Article 3<br/>Text and data mining <u>for the purposes of scientific research</u></i>   | <i>Article 3<br/>Text and data mining <u>for the purposes of scientific research</u><br/><br/>[provisionally agreed at Trilogue 25/10/2018]</i>  |
| 130. | Art. 3, para 1 | 1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and | 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 <del>made by research organisations in order to carry out text and</del> | 1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations <u>and cultural heritage</u> | 1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations <i>and cultural heritage institutions</i> in order |

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|  |          | data mining of works or other subject-matter to which they have lawful access for the purposes of scientific research. | <p><del>data mining</del> of works or other subject-matter to which <del>they have lawful access</del> <i>research organisations have lawful access and made in order to carry out text and data mining</i> for the purposes of scientific research <i>by such organisations.</i></p> <p><i>Member States shall provide for educational establishments and cultural heritage institutions conducting scientific research within the meaning of point (1)(a) or (1)(b) of Article 2, in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisations, to also be</i></p> | <u>institutions</u> in order to carry out text and data mining of works or other subject-matter to which they have lawful access, for the purposes of scientific research. | <p>to carry out text and data mining of works or other subject-matter to which they have lawful access, for the purposes of scientific research.</p> <p><i>[provisionally agreed at Trilogue 25/10/2018]</i></p> |

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|      |                 |  | <i>able to benefit from the exception provided for in this Article.</i>   |  |   |
| 131. | Art. 3, para 1a |  | <i>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.</i> | <b><u>1a. Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and not be retained for longer than necessary for achieving the purposes of scientific research.</u></b> | <i>1a. Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.</i><br><br><i>[provisionally agreed at Trilogue 25/10/2018]</i> |
| 132. | Art. 3, para 2  | 2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable. | 2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.<br><br><i>[See Council's Article 6(1) (row 155)]</i>               | 2. <i>[Moved to Article 6(1)]</i>  | <i>[Moved to Article 6(1)]</i><br><br><i>[provisionally agreed at Trilogue 25/10/2018]</i>  |

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| 133. | Art. 3, para 3 | 3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective. | 3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.   | 3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.  | 3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.<br><br><i>[provisionally agreed at Trilogue 25/10/2018]</i> |
| 134. | Art. 3, para 4 | 4. Member States shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.   | 4. Member States <del>shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.</del> <i>may continue to provide text and data mining exceptions in accordance with point (a) of Article</i> | 4. Member States shall encourage rightholders <del>and</del> research organisations <b>and cultural heritage institutions</b> to define commonly-agreed best practices concerning the application of the <b>obligation and</b> measures referred to <b>respectively</b> in paragraphs <b>1a and 3</b> . | 4. Member States shall encourage rightholders and, research organisations and cultural heritage institutions to define commonly-agreed best practices concerning the application of the obligation and measures referred to respectively in paragraphs 1a and 3.   |

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|      |                 |                                     | <i>5(3) of Directive 2001/29/EC.</i>  |   | <i>[provisionally agreed tbc at trilogue]<br/><br/>EP could agree at Trilogue 25/10/2018 to introduce the relation with existing exceptions under InfoSoc Directive under Article 17a (see row 306)]</i>                                  |
| 135. | Art. 3a, title  |                                     | <u><i>Article 3a</i></u><br><u><i>Optional exception or limitation for text and data mining</i></u>   | <u><i>Article 3a</i></u><br><u><i>Optional exception or limitation for text and data mining</i></u>   | <u><i>Article 3a</i></u><br><u><i>Optional exception or limitation for text and data mining</i></u>   |
| 136. | Art. 3a, para 1 |                                     | 1. <i>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)</i> | <u>1. <i>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)</i></u> | <i>1. <del>Without prejudice to Article 3 of this Directive,</del> Member States <b>may/shall</b> 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</i> |

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|  |          |                                     | <p><i>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.</i></p> | <p><b><u>of this Directive for temporary reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining.</u></b></p> | <p><i>Directive 96/9/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 11(1) of this Directive for temporary reproductions and extractions of lawfully accessible works and other subject-matter <del>that form a part of the process for the</del> <u>purposes</u> of text and data mining.</i></p> <p><i>[COM suggestion to turn the optional exception into a mandatory one by replacing “may provide” by “shall provide” to be discussed further at political level.</i></p> <p><i>Apart from 'may' or 'shall', text of Article 3a provisionally agreed as set out in rows 136, 137, 138 and 139]</i></p> |

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| 137. | Art. 3a, para 2 (EP)      |                                  | <i>2. Reproductions and extractions made pursuant to paragraph 1 shall not be used for purposes other than text and data mining.</i> |   | <i>2. Reproductions and extractions made pursuant to paragraph 1 may be retained as long as necessary for the purposes of text and data mining.</i><br><br><i>[provisionally agreed at Trilogue 25/10/2018 / TM 13/11/2018 ]</i>  |
| 138. | Art. 3a, para 2 (Council) |                                  |  | <b><u>2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by technical means.</u></b><br><br><i>[See para. 1 of EP text (row 136)]</i> | <i>2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders in an appropriate manner, such as machine readable means <u>for the content made publicly available online.</u></i> |

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|      |                 |   |  |   | <i>[provisionally agreed in conjunction with wording of recital (13a) (row 28)]</i>  |
| 139. | Art. 3a, para 3 |   | <b>3. Member States may continue to provide text and data mining exceptions in accordance with point (a) of Article 5 (3) of Directive 2001/29/EC.</b> |   | <b>3. <u>This Article shall not affect the application of Article 3 of this Directive.</u></b><br><br><i>[This phrase replaces the 'Without prejudice'-clarification previously contained in paragraph 1.</i><br><br><i>[provisionally agreed tbc at trilogue]</i><br><br><i>Agreed at Trilogue 25/10/2018 to introduce the relation with existing exceptions under InfoSoc Directive under Article 17a (see row 306)]</i> |
| 140. | Art. 4, title   | <i>Article 4<br/>Use of works and other subject-matter in digital</i> | <i>Article 4<br/>Use of works and other subject-matter in digital</i>  | <i>Article 4<br/>Use of works and other subject-matter in digital</i> | <i>Article 4<br/>Use of works and other subject-matter in digital and</i>  |

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|      |                | <i>and cross-border teaching activities</i>   | <i>and cross-border teaching activities</i>   | <i>and cross-border teaching activities</i>   | <i>cross-border teaching activities</i>   |
| 141. | Art. 4, para 1 | 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use: | 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use: | 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles-5(a), (b), (d) and <u>(e) and Article 7(1)</u> of Directive 96/9/EC, Article 4(1) <u>(a) and (b)</u> of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow <del>for</del> 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 <del>the</del> <u>such</u> use: | 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a), (b), (d) <i>and</i> (e) and 7(1) of Directive 96/9/EC, Article 4(1) <del>(a), and (b)</del> of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow 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 <i>such</i> use:<br><i>[Overall provisionally agreed at Trilogue 25/10/2018; reference to Directive 2009/24/EC agreed at TM provided that</i> |

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|      |                           |  |   |  | <i>it is clarified in a recital that distribution of software allowed under the exception is limited to digital transmission of software]</i>  |
| 142. | Art. 4, para 1, point (a) | (a) takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff; | (a) takes place on the premises of an educational establishment, <i>or in any other venue in which the teaching activity takes place under the responsibility of the educational establishment</i> , or through a secure electronic <del>network</del> <i>environment</i> accessible only by the educational establishment's pupils or students and teaching staff; | (a) takes place <del>on</del> <u>under</u> the <del>premises</del> <u>responsibility</u> of an educational establishment, <u>on its premises or other venues</u> , or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff; <u>and</u> | (a) takes place <i>under the responsibility</i> of an educational establishment, <i>on its premises or other venues</i> , or through a secure electronic <i>environment</i> accessible only by the educational establishment's pupils or students and teaching staff; <i>and</i><br><i>[provisionally agreed at Trilogue 25/10/2018 / TM 13/11/2018 together with text on recital 16a, row 33]</i> |
| 143. | Art. 4, para 1, point (b) | (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.   | (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible   | (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.   | (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.   |

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|      |                            |  | <i>for reasons of practicability.</i>  |  | <i>[provisionally agreed at Trilogue 25/10/2018]</i>  |
| 144. | Art. 4, para 2, sub-para 1 | 2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising the acts described in paragraph 1 are easily available in the market. | 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, <i>such as material which is primarily intended for the educational market or sheet music</i> , to the extent that adequate <del>licences</del> <i>licencing agreements</i> authorising the acts described in paragraph 1 <i>and tailored to the needs and specificities of educational establishments</i> are easily available in the market. | 2. <b><u>Notwithstanding Article 6(1)</u></b> , Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <b><u>uses or</u></b> types of works or other subject-matter, to the extent that adequate licences <b><u>covering the needs of educational establishments and</u></b> authorising the acts described in paragraph 1 are easily available in the market. | 2. <i>Notwithstanding Article 6(1)</i> , Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <i>uses or</i> types of works or other subject-matter, <i>such as material which is primarily intended for the educational market or sheet music</i> , to the extent that <i>suitable</i> licences authorising the acts described in paragraph 1 <i>covering the needs and specificities of educational establishments</i> are easily available in the market.<br><br><i>[provisionally agreed at Trilogue 25/10/2018 / TM 13/11/2018 together with text on recitals (16) and</i> |

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|      |                            |  |  |   | (17), rows 32 and 35 tbc by trilogue]   |
| 145. | Art. 4, para 2, sub-para 2 | Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments. | Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments. | Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 <b>available and visible</b> for educational establishments. | 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.<br><br><i>[provisionally agreed at TM together with text on recital (17) and (17a), rows 35 and 36, tbc by trilogue]</i> |
| 146. | Art. 4, para 3             | 3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to             | 3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic <del>networks</del> <b>environments</b> undertaken in compliance with the provisions of national law adopted pursuant to this Article | 3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to  | 3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic <b>environments</b> undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in   |

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|      |                 | occur solely in the Member State where the educational establishment is established.  | shall be deemed to occur solely in the Member State where the educational establishment is established.   | occur solely in the Member State where the educational establishment is established.   | the Member State where the educational establishment is established.<br><i>[provisionally agreed at Trilogue 25/10/2018 / TM 13/11/2018 together with text on recital 16a, row 33]</i>   |
| 147. | Art. 4, para 4  | 4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1. | 4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1. | 4. Member States may provide for fair compensation <del>for the harm incurred by the</del> <u>to</u> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1. | 4. Member States may provide for fair compensation <del>for the harm incurred by the</del> <u>to</u> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.<br><i>[provisionally agreed at Trilogue 25/10/2018 / TM 13/11/2018 together with text on recital (17a), row 36]</i> |
| 148. | Art. 4, para 4a |   | <b><i>4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to paragraph 1</i></b>                       |  | <i>[provisionally agreed at trilogue 25/10/2018 to deal with contractual override under Article 6(1)]</i><br><i>[Issue of royalty-free licences to be further</i>  |

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|      |                       |  | <p><i>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.</i></p> <p><i>[See Council's Article 6(1) (row 155)]</i></p> |  | <p><i>discussed in the context of the remuneration chapter and recital (40) of the Council]</i></p>  |
| 149. | Art. 5, title         | <i>Article 5<br/>Preservation of cultural heritage</i>   | <i>Article 5<br/>Preservation of cultural heritage</i>   | <i>Article 5<br/>Preservation of cultural heritage</i>   | <i>Article 5<br/>Preservation of cultural heritage</i>   |
| 150. | Art. 5, [para 1 (EP)] | Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting | <b>I.</b> 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,  | 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 | 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 |

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|      |                 | cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation. | 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 <del>sole</del> <b>purpose purposes</b> of preservation of such works or other subject-matter and to the extent necessary for such preservation. | 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 <del>sole</del> purpose of the preservation of such works or other subject-matter and to the extent necessary for such preservation. | institutions to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for <b>purposes</b> of preservation of such works or other subject-matter and to the extent necessary for such preservation.<br><br><i>[provisionally agreed at trilogue 25/10/2018]</i> |
| 151. | Art. 5, para 1a |   | <b><i>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.</i></b>               |  | <i>[To be further discussed at political level; COM to provide technical assistance]</i>  |
| 152. | Art. 5, para 1b |   | <b><i>1b. Any contractual provision contrary to the</i></b>  |  | <i>[provisionally agreed at trilogue 25/10/2018 to deal</i>   |

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|      |                          |  | <i>exception provided for in paragraph 1 shall be unenforceable.</i><br><br><i>[See Council's Article 6(1) (row 155)]</i>   |   | <i>with contractual override under Article 6(1)]</i>   |
| 153. | Art. 6, title            | <i>Article 6<br/>Common provisions</i> | <i>Article 6<br/>Common provisions</i>  | <i>Article 6<br/>Common provisions</i>  | <i>Article 6<br/>Common provisions</i>   |
| 154. | Art. 6, para 1 (EP)      |  | <b>1. Accessing content covered by an exception provided for in this Directive shall not confer on users any entitlement to use it pursuant to another exception.</b> |   | <i>[To be discussed further at political level;<br/>Discussion to be held at technical level]</i>  |
| 155. | Art. 6, para 1 (Council) |  |   | 1. Any contractual provision contrary to the exceptions provided for in <b>Articles 3, 4(1) and 5</b> shall be unenforceable.<br><br><i>[See Article 3(2) of the COM proposal and</i> | 1. Any contractual provision contrary to the exceptions provided for in <b>Articles 3, 4 and 5</b> shall be unenforceable.<br><br><i>[provisionally agreed at trilogue 25/10/2018]</i> |

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|      |                |   |   | <i>Parliament's Articles 3(2) and 4(4a) and 5(1b)]</i>  |   |
| 156. | Art. 6, para 2 | Article 5(5) and the first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. | 2. Article 5(5) and the first, third, <i>fourth</i> and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. | <del>2. Article 5(5) and the of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under</del> <b><u>2. Article 5(5) and the of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions Articles 3, 4(1) and the limitation provided for under 5 of this Title Directive.</u></b> | 2. Article 5(5) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to Articles 3, 4 and 5 of this Directive.<br><br><i>[EP agrees to drop reference to the fourth subparagraph of Article 6(4) of Directive 2001/29/EC;</i><br><br><i>EP: to be left open until discussions on Article 7 finalised]</i> |
| 157. |                | TITLE III<br>MEASURES TO<br>IMPROVE LICENSING<br>PRACTICES AND<br>ENSURE WIDER<br>ACCESS TO CONTENT   | TITLE III<br>MEASURES TO<br>IMPROVE LICENSING<br>PRACTICES AND<br>ENSURE WIDER<br>ACCESS TO CONTENT   | TITLE III<br>MEASURES TO<br>IMPROVE LICENSING<br>PRACTICES AND<br>ENSURE WIDER<br>ACCESS TO CONTENT   | TITLE III<br>MEASURES TO IMPROVE<br>LICENSING PRACTICES<br>AND ENSURE WIDER<br>ACCESS TO CONTENT  |

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| 158. |                                   | CHAPTER 1<br>Out-of-commerce works  | CHAPTER 1<br>Out-of-commerce works  | CHAPTER 1<br>Out-of-commerce works   | CHAPTER 1<br>Out-of-commerce works  |
| 159. | Art. 7, title                     | <i>Article 7<br/>Use of out-of-commerce works by cultural heritage institutions</i>   | <i>Article 7<br/>Use of out-of-commerce works by cultural heritage institutions</i>   | <i>Article 7<br/>Use of out-of-commerce works by cultural heritage institutions</i>  | <i>Article 7<br/>Use of out-of-commerce works by cultural heritage institutions</i>   |
| 160. | Art. 7, para 1, introductory part | 1. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the | 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 | 1. Member States shall provide that <del>when a</del> collective management organisation, <del>on behalf of</del> <b>in accordance with its members,</b> <del>concludes</del> <b>mandates, may conclude</b> a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the <del>digitisation</del> <b>reproduction,</b> distribution, communication to the public or making available <b>to the public</b> of out-of-commerce works or other subject-matter permanently in the collection of the | 1. Member States shall provide that a collective management organisation, in accordance with its mandates, may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject-matter permanently in the collection of the institution, irrespective of whether all rightholders covered by the licence have mandated the |

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|      |                           | same category as those covered by the licence who are not represented by the collective management organisation, provided that:  | same category as those covered by the licence who are not represented by the collective management organisation, provided that:  | institution, <del>such a non-exclusive licensee may be extended or presumed to apply to rightholders of the same category as those</del> <b>irrespective of whether all rightholders</b> covered by the licence <del>who are not represented by</del> <b>have mandated</b> the collective management organisation, provided that: | collective management organisation, provided that:<br><br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i>   |
| 161. | Art. 7, para 1, point (a) | (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; | (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; | (a) the collective management organisation is, on the basis of mandates from rightholders, <del>broadly</del> <b>sufficiently</b> representative of rightholders in the <del>category</del> <b>relevant type</b> of works or other subject-matter and of the rights which are the subject of the licence;                         | (a) the collective management organisation is, on the basis of mandates from rightholders, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence;<br><br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i> |

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| 162. | Art. 7, para 1, point (b) | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;   | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;   | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;  | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence.  |
| 163. | Art. 7, para 1, point (c) | (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. | (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. | (c) all rightholders may at any time <del>object</del> <b><u>exclude the possibility for collective management organisations to license</u></b> their works or other subject-matter <del>being deemed to be out of commerce and</del> <b><u>in accordance with this Article, either in general or in specific cases, or</u></b> exclude the application of <del>the</del> <b><u>any licence granted in accordance with this Article</u></b> to their works or other subject-matter. | [ <i>This point is moved to new paragraph 1b below – line 167</i> ]<br><br>[ <i>provisionally agreed at TM; to be confirmed at trilogue</i> ] |
| 164. | Art. 7, para 1a           |  | 1a. <i>Member States shall provide for an exception or limitation to the rights provided for in</i>  |   | 1a. Member States shall provide for an exception or limitation to the rights provided for in Articles 2                                       |

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|      |                            |                                     | <i>Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies available online of out-of-commerce works that are located permanently in their collections for not-for-profit purposes, provided that:</i> |                              | and 3 of Directive 2001/29/EC, Articles 5(a), (b), (d) and (e) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, in order to allow cultural heritage institutions to make available out-of-commerce works or other subject-matter that are permanently in their collections for non-commercial purposes, provided that:<br><i>[to be discussed further]</i> |
| 165. | Art. 7, para 1a, point (a) |                                     | (a) <i>the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;</i>   |                              | (a) <del><i>{the author or any other identifiable rightholder was informed individually at least six months before the use, unless this turns out to be impossible, and}</i></del> the name of the author or any other identifiable rightholder is  |

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|      |                            |                                     |   |                              | <b>indicated, unless this turns out to be impossible;</b><br><i>[Council to get back to Member States on the deletion of the part in <del>strikethrough</del>]</i>  |
| 166. | Art. 7, para 1a, point (b) |                                     | <i>(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.</i> |                              | <b>(b) such works or other subject-matter are made available on dedicated non-commercial portals websites</b> <del><i>[which are accessible on the premises of cultural heritage institutions].</i></del><br><i>[Text of EP covered in new paragraph 1b below – line 167; Council to get back to Member States on the deletion of the part in <del>strikethrough</del>]</i> |
| 167. | Art. 7, para 1b            |                                     | <i>1b. Member States shall provide that the exception adopted pursuant to paragraph 1a does not apply in sectors</i>  |                              | 1b. Member States shall provide that the exception or limitation referred to in the previous paragraph only applies to types of works or  |

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|  |          |                                     | <p><i>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.</i></p> |                              | <p>other subject-matter for which no collective management organisation exists that fulfils the conditions referred to in point (a) of paragraph 1.</p> <p>1c. Member States shall provide that all rightholders may at any time, easily and effectively, exclude their works or other subject-matter from the licensing mechanism referred to in paragraph 1 or from uses under the exception or limitation referred to in paragraph 1a, either in general or in specific cases, including after the conclusion of a licence or the beginning of the use concerned.</p> <p><i>[provisionally agreed at TM; to be confirmed at trilogue]</i></p> |

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| 168. | Art. 7, para 2, sub-para 1 | 2. A work or other subject-matter shall be deemed to be out of commerce when the whole work or other subject-matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so. | <del>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.</del><br><b>Member States may provide a cut-off date in relation to determining whether a work previously commercialised is deemed to be out of commerce.</b><br><i>[See definition of out-of-commerce work in Parliament's Article 2(4a) (rows 122-126)]</i> | 2. A work or other subject-matter shall be deemed to be out-of-commerce when <b><u>it can be presumed in good faith that</u></b> the whole work or other subject-matter, <del>in all its translations, versions and manifestations,</del> is not available to the public through customary channels of commerce and cannot be reasonably expected to become so. <b><u>after a reasonable effort is made to determine such availability.</u></b> | 2. A work or other subject-matter shall be deemed to be out-of-commerce when it can be presumed in good faith that the whole work or other subject-matter is not available to the public through customary channels of commerce after a reasonable effort is made to determine such availability.<br><i>[provisionally agreed at technical meeting tbc at trilogue]</i> |
| 169. | Art. 7, para 2, sub-para 2 | Member States shall, in consultation with rightholders, collective   | Member States shall, in consultation with rightholders, collective  | Member States shall, <del>in consultation with rightholders, collective</del>   | Member States may provide for specific requirements, <b><u>such as a cut-off date,</u></b> to   |

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|      |                 | management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce. | 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 <i>or used in accordance with paragraph 1a</i> 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. | <del>management organisations and cultural heritage institutions, ensure that the</del> <b>may provide for specific</b> requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 <del>do</del> . <b>Such requirements shall</b> not extend beyond what is necessary and reasonable, and <del>do</del> <b>shall</b> not preclude the possibility to determine the out-of-commerce status of a collection as <b>set of works or other subject-matter as</b> a whole, when it is reasonable to presume that all works or other subject-matter <del>in the collection are</del> out-of-commerce. | determine whether works and other subject-matter can be licensed in accordance with paragraph 1 <b>or used under the exception or limitation referred to in paragraph 1a</b> . Such requirements shall not extend beyond what is necessary and reasonable, and shall not preclude the possibility to determine the out-of-commerce status of a set of works or other subject-matter as a whole, when it is reasonable to presume that all works or other subject-matter are out-of-commerce.<br><br><i>[provisionally agreed at TM to be confirmed at trilogue]</i> |
| 170. | Art. 7, para 3, | 3. Member States shall provide that appropriate publicity  | 3. Member States shall provide that appropriate   | 3. <i>[Moved to new Article 8a(2)]</i>   | 3. <i>[Moved to new Article 8a(2)]</i>  |

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|      | introductory part              | measures are taken regarding:   | publicity measures are taken regarding:  |  |   |
| 171. | Art. 7, para 3, point (a)      | (a) the deeming of works or other subject-matter as out of commerce;  | (a) the deeming of works or other subject-matter as out of commerce;   |  |   |
| 172. | Art. 7, para 3, point (b)      | (b) the licence, and in particular its application to unrepresented rightholders;   | (b) <del>the</del> <i>any</i> licence, and in particular its application to unrepresented rightholders;  |  |   |
| 173. | Art. 7, para 3, point (c)      | (c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;   | (c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 <i>and point (b) of paragraph 1a;</i>   |  |   |
| 174. | Art. 7, para 3, closing phrase | including during a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available. | including during a <del>reasonable</del> period of <del>time</del> <i>at least six months</i> before the works or other subject-matter are digitised, distributed, communicated to the public or made available. |  |   |
| 175. | Art. 7, para 4,                | 4. Member States shall ensure that the  | 4. Member States shall ensure that the   | 4. Member States shall ensure that the | 4. Member States shall ensure that the licences |

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|      | introductory part / Art. 7, para 4 (Council) | licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where: | licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where: | licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:<br><b><u>the cultural heritage institution is established.</u></b> | referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where the cultural heritage institution is established.<br><br><i>[provisionally agreed at TM; to be discussed whether the meaning of “representative” should be further clarified ]</i> |
| 176. | Art. 7, para 5, introductory part (Council)  |   |   | <b><u>5. This Article shall not apply to sets of out-of-commerce if, following the reasonable effort to determine commercial availability, there is evidence that such sets predominantly consist of:</u></b>  | 5. This Article shall not apply to sets of out-of-commerce works if, on the basis of the reasonable effort referred to in paragraph 2, there is evidence that such sets predominantly consist of:<br><br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i>  |
| 177. | Art. 7, para 4, point (a) (EP)/ Art. 7, para | (a) the works or phonograms were first published or, in the absence of publication,   | (a) the works or phonograms were first published or, in the absence of publication,   | (a) <del>the</del> works or <b><u>other subject-matter phonograms</u></b> were first published or, in the  | (a) works or other subject-matter first published or, in the absence of publication, first broadcast in  |

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|      | 5, point (a) (Council)  | where they were first broadcast, except for cinematographic and audiovisual works;   | where they were first broadcast, except for cinematographic and audiovisual works;   | absence of publication, <del>where they were first broadcast</del> <b>in a third country</b> , except for cinematographic <del>and</del> <b>or</b> audiovisual works;  | a third country, except for cinematographic or audiovisual works;<br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i>   |
| 178. | Art. 7, para 4, point (b) (EP)/ Art. 7, para 5, point (b) (Council) | (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or  | (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or  | (b) <b>cinematographic or audiovisual works</b> , the producers of <del>the</del> <b>works</b> <del>which</del> have their headquarters or habitual residence, <del>for</del> <del>cinematographic and audiovisual works</del> <b>in a third country</b> ; or                  | (b) cinematographic or audiovisual works, the producers of which have their headquarters or habitual residence in a third country; or<br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i> |
| 179. | Art. 7, para 4, point (c) (EP) /Art. 7, para 5, point (c) (Council) | (c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b). | (c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b). | c) <del>the cultural heritage institution is established,</del> <b>works or other subject-matter of third country nationals</b> when a Member State or a third country could not be determined, after <del>a</del> <b>reasonable effort</b> , according to points (a) and (b); | c) works or other subject-matter of third country nationals when a Member State or a third country could not be determined, after a reasonable effort, according to points (a) and (b);                   |

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|      |  |  |  |  | <i>[provisionally agreed at TM;<br/>to be confirmed at trilogue]</i>   |
| 180. | Art. 7, para 5 (EP)/<br>Art. 7, para 5, closing phrase (Council) | 5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.     | 5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.   | 5. <del>Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter</del> <b>unless the collective management organisation is sufficiently representative of rightholders of that third country nationals except where points in the meaning of point (a) and (b) of paragraph 4 apply</b> 1. | unless the collective management organisation is sufficiently representative of rightholders of that third country in the meaning of point (a) of paragraph 1.<br><br><i>[provisionally agreed at TM;<br/>to be confirmed at trilogue]</i> |
| 181. | Art. 8, title  | <i>Article 8<br/>Cross-border uses</i>   | <i>Article 8<br/>Cross-border uses</i>   | <i>Article 8<br/>Cross-border uses</i>   | <i>Article 8<br/>Cross-border uses</i>   |
| 182. | Art. 8, para 1   | 1. Works or other subject-matter covered by a licence granted in accordance with Article 7 may be used by the cultural heritage institution in accordance with the | 1. <del>Works</del> <b>Out-of-commerce works</b> or other subject-matter covered by <del>a licence granted in accordance with Article 7</del> <b>may be</b> used by the cultural heritage institution in accordance with the | 1. <del>Works or other subject-matter covered by a</del> <b>A</b> licence granted in accordance with Article 7 may be used <b>allow the use of out-of-commerce works or other subject-matter</b> by the cultural   | 1. A licence granted in accordance with Article 7 may allow the use of out-of-commerce works or other subject-matter by the cultural heritage institution in any Member State.   |

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|      |                | terms of the licence in all Member States.   | <del>terms of the licence</del> <i>that Article</i> in all Member States.  | heritage institution in accordance with the terms of the licence in all <u>any</u> Member States <u>State</u> . | <i>2. The uses of works and other subject-matter under the exception or limitation referred to in Article 7(1a) shall be deemed to occur solely in the Member State where the cultural heritage institution undertaking that use is established.</i><br><br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i> |
| 183. | Art. 8, para 2 | 2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by a licence granted in accordance with Article 7 and information about the possibility of rightholders to object referred to in Article 7(1)(c) are made publicly accessible in a single online portal for at least six months before the works or | 2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by a <del>licence granted in accordance with</del> Article 7 and information about the possibility of rightholders to object referred to in <i>point (c) of Article 7(1) and point (b) of Article 7(1a)</i> are made <del>publicly</del> <i>permanently, easily and effectively</i> | 2. <i>[Moved to new Article 8a(1)]</i>  | 2. <i>[Moved to new Article 8a(1)]</i>   |

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|      |                | other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of the licence. | accessible in a <i>public</i> 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, <i>or in the cases covered by Article 7(1a), where the cultural heritage institution is established</i> and for the whole duration of the licence. |  |  |
| 184. | Art. 8, para 3 | 3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.                               | 3. The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.  | 3. <i>[Moved to new Article 8a(1) second subparagraph]</i> | 3. <i>[Moved to new Article 8a(1) second subparagraph]</i> |

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| 185. | Art. 8a, title              |                                     |         | <u>Article 8a</u><br><u>Publicity measures</u>   | <u>Article 8a</u><br><u>Publicity measures</u>   |
| 186. | Art. 8a, para 1, sub-para 1 |                                     |         | <u>1.</u> Member States shall ensure that information <del>that allows for</del> <b>the purposes of</b> the identification of the <b>out-of-commerce</b> works or other subject-matter covered by a licence <del>granted in accordance with Article 7 and</del> <b>as well as</b> information about the <del>possibility</del> <b>possibilities</b> of rightholders <del>to object referred to in Article 7(1)(c) are</del> , <b>and, as soon as it is available, information on the parties to the licence, the covered territories and the allowed uses is</b> made publicly accessible in a single online portal <del>for</del> <b>from</b> at least six months | 1. Member States shall ensure that information <b>from cultural heritage institutions, collective management organisations or relevant public authorities</b> for the purposes of the identification of the out-of-commerce works or other subject-matter <b>covered by a licence granted in accordance with Article 7(1) or used under the exception or limitation referred to in Article 7(1a)</b> as well as information about the possibilities of rightholders referred to in Article 7(1c), and, as soon as it is available <b>and where relevant</b> , information on the parties to the licence, <u>the</u> covered territories and <u>the</u> |

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|      |                             |                                     |         | <p>before the works or other subject-matter are <del>digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of</del> <b>to the public in accordance with</b> the licence.</p> <p><i>[Article 8(2) of the COM proposal, amended]</i></p> | <p><del>allowed uses is made permanently, easily and effectively</del> accessible in a <b>public</b> single online portal from at least six months before the works or other subject-matter are distributed, communicated to the public or made available to the public in accordance with the licence <b>or under the exception or limitation.</b></p> <p><i>[Article 8(2) of the COM proposal, amended]</i></p> <p><i>[provisionally agreed at TM tbc in Trilogue; clarification in recital (27) that the licence may cover one, several or all Member States]</i></p> |
| 187. | Art. 8a, para 1, sub-para 2 |                                     |         | <p><del>3. — The portal referred to in paragraph 2 shall be established and managed by the European Union Intellectual Property Office in accordance with</del></p>  | <p>The portal shall be established and managed by the European Union Intellectual Property Office in accordance with</p>   |

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|      |                 |                                     |         | Regulation (EU) No 386/2012.<br><i>[Article 8(3) of the COM proposal, amended]</i>  | Regulation (EU) No 386/2012.<br><i>[Article 8(3) of the COM proposal, amended]</i><br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i>   |
| 188. | Art. 8a, para 2 |                                     |         | 2. Member States shall provide that, <b><u>if necessary for the general awareness of rightholders, further</u></b> appropriate publicity measures are taken regarding: <del>(a) the deeming of works or other subject-matter as out of commerce;</del> (b) the licence, and in particular its application to unrepresented rightholders; <b><u>the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the</u></b> | 2. Member States shall provide that, if necessary for the general awareness of rightholders, further appropriate publicity measures are taken regarding the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the licences granted, <b><u>the uses under the exception or limitation referred to in Article 7(1a)</u></b> and the possibilities of rightholders referred to in Article 7(1c).<br><br>The additional appropriate publicity measures shall be taken in the Member State |

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|  |          |                                     |         | <p><b><u>licences granted and</u></b> <del>(e)</del> the possibilities to object of rightholders referred to in point (e) of paragraph 1 Article 7(1)(c) <del>;</del>.</p> <p><del>Including during a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available.</del></p> <p><b><u>The additional appropriate publicity measures shall be taken in the Member State where the licence is sought. If there is evidence, such as the origin of the works or other subject-matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures</u></b></p> | <p>where the licence is sought <b>in accordance to Article 7(1) or, for uses under the exception or limitation referred to in Article 7(1a), where the cultural heritage institution is established.</b> If there is evidence, such as the origin of the works or other subject-matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.</p> <p><i>[Article 7(3) of the COM proposal, amended]</i></p> <p><i>[provisionally agreed at TM; to be confirmed at trilogue]</i></p> |

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|      |               |  |  | <b><u>shall also cover those Member States and third countries.</u></b><br><i>[Article 7(3) of the COM proposal, amended]</i>  |  |
| 189. | Art. 9, title | <i>Article 9<br/>Stakeholder dialogue</i>  | <i>Article 9<br/>Stakeholder dialogue</i>  | <i>Article 9<br/>Stakeholder dialogue</i>  | <i>Article 9<br/>Stakeholder dialogue</i>  |
| 190. | Art 9         | Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1), ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the | 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) <b>and the exception referred to in Article 7(1a)</b> , ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, | Member States shall <del>ensure</del> <b><u>consult rightholders, collective management organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage</u></b> a regular dialogue between representative users' and rightholders' organisations, <b><u>including collective management organisations,</u></b> and any other relevant stakeholder organisations, <del>to,</del> on a | Member States shall <u>consult</u> rightholders, collective management organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage a regular dialogue between representative users' and rightholders' organisations, including collective management organisations, and any other relevant stakeholder organisations, on a sector-specific basis, to foster the relevance and usability of the licensing mechanisms referred to in |

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|      |                | requirements referred to in the second subparagraph of Article 7(2). | where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2). | sector-specific basis, <u>to</u> foster the relevance and usability of the licensing mechanisms referred to in Article 7(1); <u>and to</u> ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, <del>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).</del> | Article 7(1) and to ensure the effectiveness of the safeguards for rightholders referred to in this Chapter.<br><br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i> |
| 191. |                |  |   | <b><u>CHAPTER 1a</u></b><br><b><u>Measures to facilitate collective licensing</u></b>  |  |
| 192. | Art. 9a, title |  |   | <b><u>Article 9a</u></b><br><b><u>Collective licensing with an extended effect</u></b>   | <b><u>Article 9a</u></b><br><b><u>Collective licensing with an extended effect</u></b><br><br><i>[Article 9a as a whole provisionally agreed in TM tbc in trilogue; COM to send</i>  |

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|      |                 |                                     |         |  | <i>suggestions for clarifications necessary to address COM legal concerns]</i>  |
| 193. | Art. 9a, para 1 |                                     |         | <b><u>1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for in this Article, that when a collective management organisation, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised the organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with</u></b> | 1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for in this Article, that when a collective management organisation, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised the organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with respect to such an agreement, the organisation has a legal mandate or is presumed to |

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|      |                 |                                     |         | <b><u>respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.</u></b>  | represent rightholders who have not authorised the organisation accordingly.  |
| 194. | Art. 9a, para 2 |                                     |         | <b><u>2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such</u></b> | 2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such mechanism safeguards |

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|      |                            |                                     |         | <b><u>mechanism safeguards the legitimate interests of rightholders.</u></b>   | the legitimate interests of rightholders.  |
| 195. | Art. 9a, para 3            |                                     |         | <b><u>3. The safeguards referred to in paragraph 1 must ensure that:</u></b>   | 3. The safeguards referred to in paragraph 1 must ensure that:   |
| 196. | Art. 9a, para 3, point (a) |                                     |         | <b><u>(a) the organisation is, on the basis of mandates from rightholders, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State;</u></b> | (a) the organisation is, on the basis of mandates from rightholders, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State; |
| 197. | Art. 9a, para 3, point (b) |                                     |         | <b><u>(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;</u></b>   | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;   |

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| 198. | Art. 9a, para 3, point (c) |                                     |         | <b><u>(c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;</u></b>  | (c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;   |
| 199. | Art. 9a, para 3, point (d) |                                     |         | <b><u>(d) appropriate publicity measures are taken to raise the awareness of rightholders regarding the possibility for organisations to license works or other subject-matter and the licensing taking place in accordance with this Article, and the possibilities of rightholders referred to in point (c) starting from</u></b> | (d) appropriate publicity measures are taken to raise the awareness of rightholders regarding the possibility for organisations to license works or other subject-matter and the licensing taking place in accordance with this Article, and the possibilities of rightholders referred to in point (c) starting from a reasonable period before the works or other subject-matter are used under the licence. Publicity |

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|      |                 |                                     |         | <b><u>a reasonable period before the works or other subject-matter are used under the licence. Publicity measures should be effective without the need to inform each rightholder individually.</u></b>  | measures should be effective without the need to inform each rightholder individually.   |
| 200. | Art. 9a, para 4 |                                     |         | <b><u>4. The rules provided for in this Article are without prejudice to the application of collective licensing mechanisms with an extended effect in conformity with other provisions of Union law, including those which allow exceptions or limitations, and shall not apply to mandatory collective management of rights.</u></b> | 4. The rules provided for in this Article are without prejudice to the application of collective licensing mechanisms with an extended effect in conformity with other provisions of Union law, including those which allow exceptions or limitations, and shall not apply to mandatory collective management of rights. |
| 201. | Art. 9a, para 5 |                                     |         | <b><u>5. Where the law of a Member State provides</u></b>  | 5. Where the law of a Member State provides for a  |

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|      |                 |                                     |         | <b><u>for a licensing mechanism in accordance with this Article, the Member State concerned shall inform the Commission about the scope of that law, purposes and types of licences that may be introduced under that law as well as contact details for organisations issuing licences in accordance with the mechanism in paragraph 1. The Commission shall publish this information.</u></b> | licensing mechanism in accordance with this Article, the Member State concerned shall inform the Commission about the scope of that law, purposes and types of licences that may be introduced under that law as well as contact details for organisations issuing licences in accordance with the mechanism in paragraph 1. The Commission shall publish this information. |
| 202. | Art. 9a, para 6 |                                     |         | <b><u>6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 31 December 2020, submit</u></b>  | 6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by <b>10 April 2021</b> , submit to the European Parliament and to   |

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|      |          |   |   | <p><b><u>to the European Parliament and to the Council a report on the use of such mechanisms referred to in paragraph 1 in the EU and their impact on licensing and rightholders. The Commission's report shall be accompanied, if appropriate, by a legislative proposal, including</u></b> as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).<b><u>the cross-border effect of such national schemes.</u></b></p> | <p>the Council a report on the use of such mechanisms referred to in paragraph 1 in the EU and their impact on licensing and rightholders. The Commission's report shall be accompanied, if appropriate, by a legislative proposal, including as regards the cross-border effect of such national schemes.</p> |
| 203. |          | CHAPTER 2<br>Access to and availability of audiovisual works on video-on-demand platforms | CHAPTER 2<br>Access to and availability of audiovisual works on video-on-demand platforms | CHAPTER 2<br>Access to and availability of audiovisual works on video-on-demand platforms  | CHAPTER 2<br>Access to and availability of audiovisual works on video-on-demand platforms  |

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| 204. | Art. 10, title      | <i>Article 10<br/>Negotiation mechanism</i>  | <i>Article 10<br/>Negotiation mechanism</i>  | <i>Article 10<br/>Negotiation mechanism</i>   | <i>Article 10<br/>Negotiation mechanism</i>   |
| 205. | Art. 10, sub-para 1 | 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 rights, they may rely on the assistance of an impartial body with relevant experience. That body shall provide assistance with negotiation and help reach agreements. | 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 <b>audiovisual</b> rights, they may rely on the assistance of an impartial body with relevant experience. <del>That body</del> <b>The impartial body created or designated by the Member State for the purpose of this Article</b> shall provide assistance <b>to the parties</b> with negotiation and help <b>them</b> to reach agreement. | Member States shall ensure that <del>where parties wishing to</del> <b>face difficulties related to the licensing of rights when seeking</b> to conclude an agreement for the purpose of making available audiovisual works on video-on-demand <del>platforms face difficulties relating to the licensing of rights, they</del> <b>services,</b> may rely on the assistance of an impartial body with relevant experience. <del>That</del> <b>body or mediators. The</b> body <b>or mediators</b> shall provide assistance <b>to the parties</b> with <del>negotiation</del> <b>their negotiations</b> and help <b>them</b> reach agreements, <b>including, where appropriate, by</b> | Member States shall ensure that parties facing difficulties related to the licensing of rights when seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services, may rely on the assistance of an impartial body or of mediators. The <b>impartial body created or designated by the Member State for the purpose of this Article</b> or mediators shall provide assistance to the parties with their negotiations and help them reach agreements, including, where appropriate, by submitting proposals to the parties. |

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|      |                     |   |  | <b><u>submitting proposals to the parties.</u></b>  | <i>[provisionally agreed at TM; to be confirmed at trilogue]</i>  |
| 206. | Art. 10, sub-para 2 | No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in paragraph 1. | No later than [date mentioned in Article 21(1)] Member States shall <del>notify to</del> <b><i>inform</i></b> the Commission <b><i>of</i></b> the body referred to in paragraph 1. <b><i>they create or designate pursuant to the first paragraph.</i></b> | No later than [date mentioned in Article <del>21(1)</del> ] Member States shall notify to the Commission the body <b><u>or mediators</u></b> referred to in paragraph 1 <b><u>no later than [date mentioned in Article 21(1)]. In cases where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found.</u></b> | Member States shall notify to the Commission the body or mediators referred to in paragraph 1 no later than [date mentioned in Article 21(1)]. In cases where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found.<br><br><i>[provisionally agreed at TM; to be confirmed at trilogue]</i> |
| 207. | Art. 10, sub-para 3 |   | <b><i>To encourage the availability of audiovisual works on video-on-demand platforms, Member States shall foster</i></b>  |   | <i>[provisionally agreed at TM not to insert part of the EP mandate in the Article but into a recital along the following lines: Member</i>   |

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|      |                  |                                     | <i>dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.</i>  |                              | <i>States should encourage dialogue between representative organisations, without it being an obligation for Member States]</i> |
| 208. |                  |                                     | <b>CHAPTER 2a</b><br><b>Access to Union publications</b>  |                              | <i>[To be discussed further at political level, preparatory discussion at technical level]</i>                                  |
| 209. | Art. 10a, title  |                                     | <b>Article 10 a</b><br><b>Union Legal Deposit</b>   |                              |   |
| 210. | Art. 10a, para 1 |                                     | <b>1. Any electronic publication dealing with Union-related matters such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, that is made available to the public in the Union shall be subject to a Union Legal Deposit.</b> |                              |   |

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| 211. | Art. 10a,<br>para 2 |                                     | <b>2. The European Parliament Library shall be entitled to delivery, free of charge, of one copy of every publication referred to in paragraph 1.</b>   |                              |                              |
| 212. | Art. 10a,<br>para 3 |                                     | <b>3. The obligation set out in paragraph 1 shall apply to publishers, printers and importers of publications for the works they publish, print or import in the Union.</b>   |                              |                              |
| 213. | Art. 10a,<br>para 4 |                                     | <b>4. From the day of the delivery to the European Parliament Library, the publications referred to in paragraph 1 shall become part of the European Parliament Library permanent collection. They shall be made available to users at the European Parliament Library's premises exclusively for the</b> |                              |                              |

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|      |                  |  | <i>purpose of research or study by accredited researchers and under the control of the European Parliament Library.</i>   |  |   |
| 214. | Art. 10a, para 5 |  | <i>5. The Commission shall adopt acts to specify the modalities relating to the delivery to the European Parliament Library of publications referred to in paragraph 1.</i> |  |   |
| 215. |                  | TITLE IV<br>MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT | TITLE IV<br>MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT  | TITLE IV<br>MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT |   |
| 216. |                  | CHAPTER 1<br>Rights in publications  | CHAPTER 1<br>Rights in publications   | CHAPTER 1<br>Rights in publications  |   |
| 217. | Art. 11, title   | <i>Article 11<br/>Protection of press</i>                                    | <i>Article 11<br/>Protection of press</i>   | <i>Article 11<br/>Protection of press</i>                                    | <i>[To be further discussed at political level;</i> |

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|      |                             | <i>publications concerning digital uses</i>   | <i>publications concerning digital uses</i>  | <i>publications concerning <del>digital</del><u>online</u> uses</i>  | <i>Preparatory work to be done at technical level]</i> |
| 218. | Art. 11, para 1             | 1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications. | 1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC <b><i>so that they may obtain fair and proportionate remuneration</i></b> for the digital use of their press publications <b><i>by information society service providers.</i></b> | 1. Member States shall provide publishers of press publications <b><u>established in a Member State</u></b> with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the <del>digital</del> <b><u>online</u></b> use of their press publications <b><u>by information society service providers.</u></b> |  |
| 219. | Art. 11, para 1, sub-para 2 |   |  | <b><u>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into</u></b>  |  |

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|      |                  |  |  | <u>account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</u>  |                              |
| 220. | Art. 11, para 1a |  | <i>1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.</i>  |   |                              |
| 221. | Art. 11, para 2  | 2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights | 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 | 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. <del>Such</del> <u>The</u> |                              |

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|      |                             | 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. | 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. | rights <b><u>referred to in paragraph 1</u></b> may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.                                |                              |
| 222. | Art. 11, para 2, sub-para 2 |  |  | <b><u>When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works</u></b> |                              |

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|      |                  |   |  | <u>or other subject-matter whose protection has expired.</u>  |                              |
| 223. | Art. 11, para 2a |   | <i>2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by individual words.</i>  |   |                              |
| 224. | Art. 11, para 3  | 3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.  | 3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.   | 3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.  |                              |
| 225. | Art. 11, para 4  | 4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. | 4. The rights referred to in paragraph 1 shall expire <del>20</del> 5 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. <i>The right referred to in paragraph 1</i> | 4. The rights referred to in paragraph 1 shall expire <del>20 years</del> <b>1 year</b> after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date o publication. |                              |

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|      |  |   | <i>shall not apply with retroactive effect.</i>   |   |                              |
| 226. | Art. 11, para 4a                                   |   | <i>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</i> |   |                              |
| 227. | Art. 11, para 5                                    |   |   | <b>5. Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].</b> |                              |
| 228. | Art, 12, title                                     | <i>Article 12<br/>Claims to fair compensation</i>                                       | <i>Article 12<br/>Claims to fair compensation</i>   | <i>Article 12<br/>Claims to fair compensation</i>   |                              |
| 229. | Art. 12, sub-para 1 (EP)/<br>Art. 12, introductory | Member States may provide that where an author has transferred or licensed a right to a | Member States <i>with compensation-sharing systems between authors and publishers for</i>   | Member States may provide that where an author has transferred or licensed a right to a                                 |                              |

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|      | part (Council)]    | 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. | <i>exceptions and limitations</i> 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, <i>provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015.</i> | publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to <del>claim</del> <b>be entitled to</b> a share of-;<br><i>[remaining part of this paragraph of the COM proposal was moved to new point (a) (see row 230)]</i> |                              |
| 230. | Art. 12, point (a) |  |  | <b>(a)</b> the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right-; <b>and</b>  |                              |

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|      |                     |                                     |   | <i>[See Parliament's subparagraph 1 of Article 12 (row 229)]</i>   |                              |
| 231. | Art. 12, point (b)  |                                     |   | <b><u>(b) the remuneration for public lending provided for in Article 6(1) of Directive 2006/115/EC.</u></b> |                              |
| 232. | Art. 12, sub-para 2 |                                     | <i>The first paragraph shall be without prejudice to the arrangements in Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.</i> |  |                              |
| 233. |                     |                                     | <b>CHAPTER 1a<br/>Protection of sport event organizers</b>  |  |                              |

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| 234. | Art. 12a, title |  | <b>Article 12a</b><br><i>Protection of sport event organizers</i>   |   | <i>[To be discussed further at political level; preparatory discussion at technical level]</i>      |
| 235. | Art. 12a        |  | <i>Member States shall provide sport event organizers with the rights provided for in Article 2 and Article 3 (2) of Directive 2001/29/EC and Article 7 of Directive 2006/115/EC.</i>   |   |   |
| 236. |                 | CHAPTER 2<br>Certain uses of protected content by online services  | CHAPTER 2<br>Certain uses of protected content by online services   | CHAPTER 2<br>Certain uses of protected content by online services   |   |
| 237. | Art. 13, title  | <i>Article 13</i><br><i>Use of protected content by information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users</i> | <i>Article 13</i><br><i>Use of protected content by <del>information society</del> <b>online content sharing</b> service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users</i> | <i>Article 13</i><br><i>Use of protected content by <del>information society</del> <b>online content sharing</b> service providers <del>storing</del></i> | <i>[To be further discussed at political level; Preparatory work to be done at technical level]</i> |

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| 238. | Art. 13, para 1 | 1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate | 1. <i>Without prejudice to Article 3(1) and (2) of Directive 2001/29/EC, online content sharing</i> Information society service providers <del>that store and provide</del> <i>perform an act of communication</i> to the public access to large amounts of works or other subject-matter uploaded by their users. <i>They</i> shall in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content | 1. <u>Member States shall provide that an online content sharing service provider performs an act of communication to the public or an act of making available to the public when it gives the public access to copyright protected works or other protected subject matter uploaded by its users.</u><br><br><u>An online content sharing service provider shall obtain an authorisation from the rightholders referred to in Article 3(1) and giving access to large amounts of(2) of Directive 2001/29/EC in order to communicate or make available to the public works or other subject matter. Where no such authorisation has been</u> |                              |

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|  |          | information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter. | <del>recognition technologies, shall be <i>therefore</i> appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.</del> <i>licensing agreements with right holders.</i> | <b><u>obtained, the service provider shall prevent the availability on its service of those</u></b> works and other subject-matter uploaded by <b><u>matter, including through the application of measures referred to in paragraph 4. This subparagraph shall apply without prejudice to exceptions and limitations provided for in Union law.</u></b><br><br><b><u>Member States shall provide that when an authorisation has been obtained, including via a licensing agreement, by an online content sharing service provider, this authorisation shall also cover acts of uploading by the users of the service falling within Article 3 of Directive 2001/29/EC</u></b> |                              |

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|      |                      |                                     |   | <p><b><u>when they are not acting on a commercial basis.</u></b></p> <p><i>[Last two sentences of COM proposal were moved to Council's paragraphs 5 and 6 respectively]</i></p> |                              |
| 239. | Art. 13, para 2 (EP) |                                     | <p>2. Member States shall ensure that the <b><i>Licensing agreements which are concluded by online content sharing</i></b> service providers <b><i>with right holders for the acts of communication</i></b> referred to in paragraph 1 put in place complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1., <b><i>shall cover the liability for works uploaded by the users of such online content sharing services</i></b></p> |   |                              |

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|      |                       |                                     | <p><i>in line with the terms and conditions set out in the licensing agreement, provided that such users do not act for commercial purposes.</i></p> <p><i>[See Council's paragraph 1, subparagraph 3 (row 238)]</i></p>   |                              |                              |
| 240. | Art. 13, para 2a (EP) |                                     | <p><i>2a. Member States shall provide that where right holders do not wish to conclude licensing agreements, online content sharing service providers and right holders shall cooperate in good faith in order to ensure that unauthorised protected works or other subject matter are not available on their services. Cooperation between online content service providers and right holders shall not lead to</i></p> |                              |                              |

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|      |                                |   | <i>preventing the availability of non-infringing works or other protected subject matter, including those covered by an exception or limitation to copyright.</i>  |   |                              |
| 241. | Art. 13, para 2 / para 2b (EP) | 2. Member States shall ensure that the service providers referred to in paragraph 1 put in place complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. | <b><i>2b. Members States shall ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such mechanisms shall be processed without undue delay and be subject to human review. Right holders shall reasonably justify their decisions to avoid arbitrary dismissal</i></b> | <i>[Paragraph 2 of the COM proposal was moved to new paragraph 7 of Council's text]</i> |                              |

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|      |                      |   | <p><i>of complaints. Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation, the cooperation shall not lead to any identification of individual users nor the processing of their personal data. Member States shall also ensure that users have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.</i></p> <p><i>[See Council's Article 13(7) (row 252)]</i></p> |  |                              |
| 242. | Art. 13, para 3 (EP) | 3. Member States shall facilitate, where appropriate, the | 3. <i>As of [date of entry into force of this directive], the Commission</i>   | <i>[See new paragraph 8 of Council's text]</i> |                              |

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|  |          | <p>cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.</p> | <p><i>and the</i> Member States shall <del>facilitate where appropriate, the cooperation</del> <i>organise dialogues</i> between the <del>information society service providers and rightholders through stakeholder dialogues</del> <i>stakeholders to harmonise and</i> to define best practices, such as <del>appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.</del> <i>and issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their</i></p> |                              |                              |

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|      |                           |                                     | <i>works or other subject matter within the meaning of this Directive. When defining best practices, special account shall be taken of fundamental rights, the use of exceptions and limitations as well as ensuring that the burden on SMEs remains appropriate and that automated blocking of content is avoided.</i> |   |                              |
| 243. | Art. 13, para 3 (Council) |                                     |   | <b><u>3. When an online content sharing service provider performs an act of communication to the public or an act of making available to the public, it shall not be eligible for the exemption of liability provided for in Article 14 of Directive 2000/31/EC for unauthorised acts of communication to the public and making</u></b> |                              |

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|      |                                    |                                     |         | <u>available to the public, without prejudice to the possible application of Article 14 of Directive 2000/31/EC to those services for purposes other than copyright relevant acts.</u>  |                              |
| 244. | Art. 13, para 4, introductory part |                                     |         | <u>4. In the absence of the authorisation referred to in the second subparagraph of paragraph 1, Member States shall provide that an online content sharing service provider shall not be liable for acts of communication to the public or making available to the public within the meaning of this Article when:</u> |                              |
| 245. | Art. 13, para 4, point (a)         |                                     |         | <u>(a) it demonstrates that it has made best efforts to prevent the</u>   |                              |

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|      |                            |                                     |         | <u>availability of specific works or other subject matter by implementing effective and proportionate measures, in accordance with paragraph 5, to prevent the availability on its services of the specific works or other subject matter identified by rightholders and for which the rightholders have provided the service with relevant and necessary information for the application of these measures; and</u> |                              |
| 246. | Art. 13, para 4, point (b) |                                     |         | <u>(b) upon notification by rightholders of works or other subject matter, it has acted expeditiously to remove or disable access to these works or other subject matter and it demonstrates that it has</u>   |                              |

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|      |                                    |                                     |         | <b><u>made its best efforts to prevent</u></b> their users <b><u>future availability through the measures referred to in point (a).</u></b>  |                              |
| 247. | Art. 13, para 5, introductory part |                                     |         | <b><u>5. The measures referred to in point (a) of paragraph 4 shall be effective and proportionate, taking into account, among other factors:</u></b>  |                              |
| 248. | Art. 13, para 5, point (a)         |                                     |         | <b><u>(a) the nature and size of the services, in particular whether they are provided by a microenterprise or a small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC, and their audience;</u></b> |                              |

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| 249. | Art. 13, para 5, point (b) |                                     |         | <b><u>(b) the amount and the type of works or other subject matter uploaded by the users of the services;</u></b>   |                              |
| 250. | Art. 13, para 5, point (c) |                                     |         | <b><u>(c) the availability and costs of the measures as well as their effectiveness in light of technological developments in line with the industry best practice referred to in paragraph 8.</u></b>  |                              |
| 251. | Art. 13, para 6            |                                     |         | <b><u>6. Member States shall ensure that online content sharing service providers and rightholders cooperate with each other in a diligent manner to ensure the effective functioning of the measures referred to in point (a) of paragraph 4 over time. Online content</u></b> |                              |

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|      |                 |                                     |         | <u>sharing service providers shall provide rightholders, at their request, with adequate information on the deployment and functioning of these measures to allow the assessment of their effectiveness, in particular information on the type of measures used and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.</u> |                              |
| 252. | Art. 13, para 7 |                                     |         | <u>7. Member States shall ensure that the measures referred to in paragraph 4 are implemented by the online content sharing service provider without</u>   |                              |

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|  |          |                                     |         | <p><u>prejudice to the possibility for their users to benefit from exceptions or limitations to copyright. For that purpose,</u> the service providers referred to in paragraph 1 <u>shall</u> put in place <u>a</u> complaints and redress mechanisms that <u>are is</u> available to users of the service in case of disputes over the application of the measures referred to in paragraph 1 <u>to their content. Complaints submitted under this mechanism shall be processed by the online content sharing service provider in cooperation with relevant rightholders within a reasonable period of time. Rightholders shall duly justify the reasons for their requests to</u></p> |                              |

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|      |                 |                                     |         | <p><b><u>remove or block access to their specific works or other subject matter. Member States shall endeavour to put in place independent bodies to assess complaints related to the application of the measures.</u></b></p> <p><i>[Paragraph 2 of the COM proposal, amended]</i></p>   |                              |
| 253. | Art. 13, para 8 |                                     |         | <p><b><u>8. The Commission and the Member States shall encourage stakeholder dialogues to define best practices for the measures referred to in point (a) of paragraph 4. Member States shall also endeavour to establish mechanisms to facilitate the assessment of the effectiveness and proportionality of these measures and provide the Commission</u></b></p> |                              |

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|      |                      |                                     |   | <p><b><u>regularly with information on those mechanisms. The Commission shall, in consultation with online content sharing service providers, rightholders and other relevant stakeholders and taking into account the results of the stakeholder dialogues and the national mechanisms, issue guidance on the application of the measures referred to in point (a) of paragraph 4.</u></b></p> <p><i>[Paragraph 3 of the COM proposal, reworded]</i></p> |                              |
| 254. | Art. 13a, title      |                                     | <i>Article 13a</i>  |   |                              |
| 255. | Art. 13a, sub-para 1 |                                     | <i>Member States shall provide that disputes between successors in title and information society services regarding the</i> |   |                              |

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

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| 259. | Art. 13b |                                     | <i>Member States shall ensure that information society service providers that automatically reproduce or refer to significant amounts of copyright-protected visual works and make them available to the public for the purpose of indexing and referencing conclude fair and balanced licensing agreements with any requesting rightholders in order to ensure their fair remuneration. Such remuneration may be managed by the collective management organisation of the rightholders concerned.</i> |  |                              |
| 260. |          |                                     |  | <b><u>TITLE IV</u></b><br><b><u>MEASURES TO ACHIEVE A WELL-FUNCTIONING</u></b> |                              |

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|      |                  |   |   | <b><u>MARKETPLACE FOR COPYRIGHT</u></b>   |   |
| 261. |                  | CHAPTER 3<br>Fair remuneration in contracts of authors and performers | CHAPTER 3<br>Fair remuneration in contracts of authors and performers   | CHAPTER 3<br>Fair remuneration in <b>exploitation</b> contracts of authors and performers | <i>[to be discussed at political level]</i>                     |
| 262. | Art. -14, title  |   | <b><i>Article -14<br/>Principle of fair and proportionate remuneration</i></b>  |   | <i>[Article -14 to be further discussed at political level]</i> |
| 263. | Art. -14, para 1 |   | <b><i>1. Member States shall ensure that authors and performers receive fair and proportionate remuneration for the exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and statutory</i></b> |   |   |

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|      |                     |   | <i>remuneration mechanisms.</i>   |   |   |
| 264. | Art. -14,<br>para 2 |   | <b>2.</b> <i>Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.</i>                         |   |   |
| 265. | Art. -14,<br>para 3 |   | <b>3.</b> <i>Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.</i> |   |   |
| 266. | Art. -14,<br>para 4 |   | <b>4.</b> <i>Contracts shall specify the remuneration applicable to each mode of exploitation.</i>  |   |   |
| 267. | Art. 14, title      | <i>Article 14<br/>Transparency obligation</i> | <i>Article 14<br/>Transparency obligation</i>   | <i>Article 14<br/>Transparency obligation</i> | <i>Article 14<br/>Transparency obligation</i> |

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| 268. | Art. 14, para 1 | 1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due. | 1. Member States shall ensure that authors and performers receive on a regular basis, <i>not less than once a year</i> , and taking into account the specificities of each sector <i>and the relative importance of each individual contribution</i> , timely <del>adequate and sufficient</del> , <i>accurate, relevant and comprehensive</i> 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, <i>direct and indirect</i> revenues generated, and remuneration due. | 1. Member States shall ensure that authors and performers receive on a regular basis, <u>at least once a year</u> , and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights <u>or their successors in title</u> , notably as regards modes of exploitation, revenues generated and remuneration due. | 1. Member States shall ensure that authors and performers receive on a regular basis, <i>at least once a year</i> , and taking into account the specificities of each sector [ <i>and the relative importance of each individual contribution</i> ], timely, <del>[adequate and sufficient/</del> <i>up to date, relevant and comprehensive</i> information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights <i>or their successors in title</i> , notably as regards modes of exploitation, <i>direct and indirect all(*)</i> revenues generated and remuneration due.<br><br>[(*) <i>subject to including into the recitals an explicit reference to 'merchandising'</i> |

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|      |                  |                                     |   |   | <i>as example of a possible form of covered revenues]</i>                 |
| 269. | Art. 14, para 1a |                                     | <i>1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.</i> | <b><u>1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed to another party, authors and performers may, at their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart</u></b> | <i>[To be further discussed at political level, to be prepared at TM]</i> |

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|      |                              |                                     |   | <u>of the author or the performer.</u> |  |
| 270. | Art. 14, para 1a, sub-para 2 |                                     | <i>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 law, 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 this subparagraph in a timely manner, the author or performer shall be entitled</i> |  | <i>[provisionally agreed at technical meeting tbc at Trilogue]</i> |

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|      |                 |   | <p><i>to request that information directly from the sub-licensee.</i></p> <p><i>[See Council's Article 14(1a) (row 269)]</i></p>  |  |  |
| 271. | Art. 14, para 2 | <p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate 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</p> | <p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure <del>an</del> appropriate <b>a high</b> 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 <del>an</del></p> | <p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. <del>However, in these</del> <b>Member States may provide that in duly justified</b> cases where the administrative burden resulting from the obligation <b>in paragraph 1</b> would <del>be</del> <b>become</b> disproportionate in view of the revenues generated by the exploitation of the work or performance, <del>Member States may adjust the obligation in paragraph 1, provided that</del> <b>is limited</b></p> | <p>2. The obligation in paragraph 1 shall be proportionate and effective <del>and shall</del> <b>to</b> ensure <del>an</del> appropriate <b>a high</b> level of transparency in every sector. <b>Member States may provide that in duly justified</b> cases where the administrative burden resulting from the obligation <b>in paragraph 1</b> would <del>be</del> <b>become</b> disproportionate in view of the revenues generated by the exploitation of the work or performance, the obligation <b>is limited to the types and level of information that can reasonably be expected in such cases.</b></p> |

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|      |                 | appropriate level of transparency.  | appropriate <i>a high</i> level of transparency. | <del>to the obligation remains effective</del><br><del>types</del> and ensures an appropriate level of transparency.<br><b><u>information that can reasonably be expected in such cases.</u></b>    | [provisionally agreed at TM, tbc by trilogue]   |
| 272. | Art. 14, para 3 | 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. | <i>Deleted</i>                                   | 3. Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance. | 3. [Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.]<br><br><i>[Member States may decide that in the case of authors and performers whose contribution is not significant having regard to the overall work or performance the obligation in paragraph 1 apply only on request of the author or performer.]</i><br><br><i>[to be discussed at political level]</i> |

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| 273. | Art. 14, para 3a |   |   | <b><u>3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.</u></b> | <i>3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they are comparable to the obligations /meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.</i><br><br><i>[provisionally agreed at TM, tbc by trilogue]</i> |
| 274. | Art. 14, para 4  | 4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU. | 4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU <i>or to collective bargaining agreements, where those obligations or agreements</i> | 4. Paragraph 1 shall not be applicable to <b><u>agreements concluded by</u></b> entities subject to the transparency obligations established by <b><u>defined in Article 3(a) and (b) of</u></b> Directive 2014/26/EU; <b><u>or</u></b>  | 4. Paragraph 1 shall not be applicable to <b><u>agreements concluded by entities defined in Article 3(a) [and (b)] of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive</u></b>   |

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|      |                             |   | <i>provide for transparency requirements comparable to those referred to in paragraph 2.</i>                                       | <b><u>by other entities subject to the national rules implementing Directive 2014/26/EU.</u></b>                                     | 2014/26/EU [ <b>when Directive 2014/26/EU provides for transparency obligations comparable to those laid down in this Directive</b> ].<br><br>[preliminary agreement on the aim of this paragraph, which is to avoid that CMOs are subject to transparency obligations of this Directive in addition to the already applicable transparency obligations of the Collective management Directive (double obligations for CMOs to be avoided!); exact wording to be further discussed] |
| 275. | Art. 15, title              | <i>Article 15<br/>Contract adjustment mechanism</i>   | <i>Article 15<br/>Contract adjustment mechanism</i>  | <i>Article 15<br/>Contract adjustment mechanism</i>  | <i>Article 15<br/>Contract adjustment mechanism</i>   |
| 276. | Art. 15, [para 1 (Council)] | Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration | Member States shall ensure, <b><i>in the absence of collective bargaining agreements providing for a comparable mechanism,</i></b> | <b><u>1.</u></b> Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration | 1. Member States shall ensure, <b><i>in the absence of an applicable collective bargaining agreement providing for a comparable</i></b>   |

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|  |          | <p>from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.</p> | <p>that authors and performers <i>or any representative organisation acting on their behalf</i> are entitled to request <i>claim</i> additional, appropriate <i>and fair</i> 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 <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances.</p> <p><i>[See Council's Article 15(1a) (row277)]</i></p> | <p>from the party with whom they entered into a contract for the exploitation of the rights <u>or their successors in title</u>, when the remuneration originally agreed is <u>turns out to be</u> disproportionately low compared to the subsequent relevant revenues <del>and benefits</del> derived from the <u>actual</u> exploitation of the works or performances.</p> | <p><i>mechanism</i>, that authors and performers <i>or any representative organisation acting [at the specific request / on behalf] of one or more authors or performers</i> are entitled to <i>claim</i> additional, appropriate <i>and fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights or their successors in title, when the remuneration originally agreed turns out to be disproportionately low compared to the subsequent relevant <del>direct or indirect</del> revenues and <del>benefits</del> derived from the exploitation of the works or performances.</p> <p><i>[to be discussed further at political level;</i></p> <p><i>Deletion of 'direct or indirect': see Article 14]</i></p> |

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| 277. | Art. 15, para 1a |                                     |         | <b><u>1a. Members States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.</u></b> | <i>[Article 15(1a) Council's text deleted/incorporated into paragraph 1]<br/><br/>[provisionally agreed at TM tbc by trilogue]</i> |
| 278. | Art. 15, para 2  |                                     |         | <b><u>2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/EU.</u></b>  | <i>[to be discussed at trilogue]</i>   |

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| 279. | Art. 16, title                    | <i>Article 16<br/>Dispute resolution<br/>mechanism</i>  | <i>Article 16<br/>Dispute resolution<br/>mechanism</i>  | <i>Article 16<br/>Dispute resolution<br/><del>mechanism</del><u>procedure</u></i>   | <i>Article 16<br/>Dispute resolution<br/><b>procedure</b><br/>[provisionally agreed at TM<br/>tbc by trilogue]</i>  |
| 280. | Art. 16,<br>[para 1<br>(Council)] | Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. | Member States shall 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. <b>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.</b><br><br>[See Council's Article 16(2) (row 281)] | <b>1.</b> 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 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. <b>Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors and performers.</b> |

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|      |                           |                                     |  |  | <i>[provisionally agreed at TM tbc by trilogue]</i>  |
| 281. | Art. 16, para 2           |                                     | <i>[See Parliament's Article 16 last phrase (row 280)]</i> | <b><u>2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.</u></b> | <i>[Article 16(2) Council's text deleted/incorporated into paragraph 1]</i><br><i>[provisionally agreed at TM tbc by trilogue]</i>   |
| 282. | Art. 16a (Council), title |                                     |  | <b><u>Article 16a</u></b><br><b><u>Contractual provisions</u></b>  | <b><u>Article 16a</u></b><br><b><u><del>Contractual</del> Common provisions</u></b>  |
| 283. | Art. 16a (Council)        |                                     |  | <b><u>Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Directive</u></b>  | <b><u>Member States shall ensure that any contractual provision which prevents the compliance with the provisions in <del>Articles 14 and 15 of this Chapter</del>(*) Directive shall be</u></b> |

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|      |                       |                                     |   | <b><u>shall be unenforceable in relation to authors and performers.</u></b> | <b><u>unenforceable in relation to authors and performers.</u></b><br><br><i>[(*) 'Chapter' refers to Articles 14,15 and 16, ie the provisions of the initial Commission proposal]</i><br><br><i>[provisionally agreed at TM. tbc by trilogue]</i> |
| 284. | Art. 16a (EP), title  |                                     | <b><i>Article 16 a<br/>Right of revocation</i></b>  |   | <i>[Article 16a to be further discussed at political level;<br/>Preparatory work to be done at technical level]</i>  |
| 285. | Art. 16a (EP), para 1 |                                     | <b><i>1. Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject-matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject</i></b> |   |  |

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|      |                       |                                     | <i>matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i>                     |                              |                              |
| 286. | Art. 16a (EP), para 2 |                                     | <i>2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of</i> |                              |                              |

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|      |                       |                                     | <i>that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the rights. Where a work or other subject-matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.</i> |                              |                              |
| 287. | Art. 16a (EP), para 3 |                                     | <i>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</i>   |                              |                              |

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|      |                            |  | <i>can be reasonably expected to remedy.</i>  |  |  |
| 288. | Art. 16a (EP), para 4      |  | <b>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.</b> |  |  |
| 289. |                            | TITLE V<br>FINAL PROVISIONS                                  | TITLE V<br>FINAL PROVISIONS   | TITLE V<br>FINAL PROVISIONS                                  | TITLE V<br>FINAL PROVISIONS                                  |
| 290. | Art. 17, title             | <i>Article 17<br/>Amendments to other directives</i>         | <i>Article 17<br/>Amendments to other directives</i>  | <i>Article 17<br/>Amendments to other directives</i>         | <i>Article 17<br/>Amendments to other directives</i>         |
| 291. | Art. 17, para 1            | 1. Directive 96/9/EC is amended as follows:                  | 1. Directive 96/9/EC is amended as follows:   | 1. Directive 96/9/EC is amended as follows:                  | 1. Directive 96/9/EC is amended as follows:                  |
| 292. | Art. 17, para 1, point (a) | (a) In Article 6(2), point (b) is replaced by the following: | (a) In Article 6(2), point (b) is replaced by the following:  | (a) In Article 6(2), point (b) is replaced by the following: | (a) In Article 6(2), point (b) is replaced by the following: |

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| 293. | Art. 17, para 1, point (a) | "(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | "(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | "(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];" | "(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];"<br><br><i>[ provisionally agreed at technical meeting of 13.11.2018]</i> |
| 294. | Art. 17, para 1, point (b) | (b) In Article 9, point (b) is replaced by the following:  | (b) In Article 9, point (b) is replaced by the following:  | (b) In Article 9, point (b) is replaced by the following:   | (b) In Article 9, point (b) is replaced by the following:  |
| 295. | Art. 17, para 1, point (b) | "(b) in the case of extraction for the purposes of illustration for teaching or  | "(b) in the case of extraction for the purposes of illustration for teaching or scientific   | "(b) in the case of extraction for the purposes of illustration for teaching or   | "(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent  |

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|      |                            | scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];" | justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <del>Articles 3 and 4</del> of Directive [this Directive];"<br><br><i>[provisionally agreed at technical meeting of 13.11.2018]</i> |
| 296. | Art. 17, para 2            | 2. Directive 2001/29/EC is amended as follows:  | 2. Directive 2001/29/EC is amended as follows:   | 2. Directive 2001/29/EC is amended as follows:   | 2. Directive 2001/29/EC is amended as follows:   |
| 297. | Art. 17, para 2, point (a) | (a) In Article 5(2), point (c) is replaced by the following:  | (a) In Article 5(2), point (c) is replaced by the following:   | (a) In Article 5(2), point (c) is replaced by the following:   | (a) In Article 5(2), point (c) is replaced by the following:   |
| 298. | Art. 17, para 2, point (a) | "(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives,  | "(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by   | "(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by   | "(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or   |

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|      |                            | which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"   | archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"  | archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the <del>exceptions and the limitation</del> <u>exception</u> provided for in <b>Article 5 of</b> Directive [this Directive];"   | indirect economic or commercial advantage, without prejudice to the exception <del>and the limitations</del> provided for in <b>Article 5 of</b> Directive [this Directive];"<br><i>[provisionally agreed at technical meeting of 13.11.2018]</i>   |
| 299. | Art. 17, para 2, point (b) | (b) In Article 5(3), point (a) is replaced by the following:   | (b) In Article 5(3), point (a) is replaced by the following:  | (b) In Article 5(3), point (a) is replaced by the following:   | (b) In Article 5(3), point (a) is replaced by the following:  |
| 300. | Art. 17, para 2, point (b) | "(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the | "(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the | "(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the | "(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the |

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|      |                            | exceptions and the limitation provided for in Directive [this Directive];"   | limitation provided for in Directive [this Directive];"  | exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];"  | limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];"<br><i>[provisionally agreed at technical meeting of 13.11.2018]</i>                                   |
| 301. | Art. 17, para 2, point (c) | (c) In Article 12(4), the following points are added:  | (c) In Article 12(4), the following points are added:  | (c) In Article 12(4), the following points are added:  | (c) In Article 12(4), the following points are added:  |
| 302. | Art. 17, para 2, point (c) | "(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties; | "(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties; | "(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties; | "(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;                 |
| 303. | Art. 17, para 2, point (c) | (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by  | (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by  | (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by  | (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to |

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|      |                            | Member States to implement Directive [this Directive];  | Member States to implement Directive [this Directive];   | Member States to implement Directive [this Directive];  | implement Directive [this Directive];   |
| 304. | Art. 17, para 2, point (c) | (g) to discuss any other questions arising from the application of Directive [this Directive]." | (g) to discuss any other questions arising from the application of Directive [this Directive]."  | (g) to discuss any other questions arising from the application of Directive [this Directive]." | (g) to discuss any other questions arising from the application of Directive [this Directive]."   |
| 305. | Art. 17a, title            |   | <i>Article 17 a</i>  |   | <i>Article 17 a</i>   |
| 306. | Art. 17a                   |   | <i>Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations existing in Union law, for uses covered by the exceptions or the limitation provided for in this Directive.</i> |   | <i>Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations set out in Directives 96/9/EC and 2001/29/EC, for uses or fields covered by the exceptions or limitations provided for in this Directive and on condition that their application does not adversely affect nor circumvent the mandatory rules set out in this Directive.</i> |

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|      |                 |   |   |   | <i>[provisional agreement at trilogue 25/10/2018 on the principle; wording of Article provisionally agreed at TM; a recital should clarify that Article 17a does not allow MS to not implement the mandatory exceptions under this Directive]</i> |
| 307. | Art. 18         | <i>Article 18<br/>Application in time</i>   |
| 308. | Art. 18, para 1 | 1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)]. | 1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)]. | 1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)]. | 1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].                                 |
| 309. | Art. 18, para 2 | 2. The provisions of Article 11 shall also apply to press publications published before [the date   | <i>Deleted</i>  | 2. <i>[Deleted]</i>   | <i>(Deleted)</i>  |

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|      |                 | mentioned in Article 21(1)].   |  |  |  |
| 310. | Art. 18, para 3 | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].  | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].  | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].  | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].  |
| 311. | Art. 19, title  | <i>Article 19<br/>Transitional provision</i>   | <i>Article 19<br/>Transitional provision</i>   | <i>Article 19<br/>Transitional provision</i>   | <i>Article 19<br/>Transitional provision</i>   |
| 312. | Art. 19         | Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)]. | Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)]. | Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)]. | Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)]. |
| 313. | Art. 20, title  | <i>Article 20<br/>Protection of personal data</i>  |

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| 314. | Art. 20                     | The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.  | The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.  | The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.  | The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC. |
| 315. | Art. 21, title              | <i>Article 21<br/>Transposition</i>   | <i>Article 21<br/>Transposition</i>   | <i>Article 21<br/>Transposition</i>   |  |
| 316. | Art. 21, para 1             | 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions. | 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions. | 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ <del>12</del> <b>24</b> months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions. |  |
| 317. | Art. 21, para 1, sub-para 2 | When Member States adopt those provisions, they shall contain a reference to this Directive   | When Member States adopt those provisions, they shall contain a reference to this Directive   | When Member States adopt those provisions, they shall contain a reference to this Directive   |  |

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|      |                 | or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.  | or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.  | or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.  |  |
| 318. | Art. 21, para 2 | 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.   | 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.   | 2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.   |  |
| 319. | Art. 22, title  | <i>Article 22 Review</i>  | <i>Article 22 Review</i>  | <i>Article 22 Review</i>  | <i>Article 22 Review</i>   |
| 320. | Art. 22, para 1 | 1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council | 1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council | 1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council | 1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European |

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|      |                 | and the European Economic and Social Committee.   | and the European Economic and Social Committee.   | and the European Economic and Social Committee.   | Economic and Social Committee.  |
| 321. | Art. 22, para 2 | 2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.          | 2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.          | 2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.          | 2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.          |
| 322. | Art. 23, title  | <i>Article 23<br/>Entry into force</i>  |
| 323. | Art. 23         | This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . | This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . | This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . | This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . |
| 324. | Art. 24, title  | <i>Article 24<br/>Addressees</i>  | <i>Article 24<br/>Addressees</i>  | <i>Article 24<br/>Addressees</i>  | <i>Article 24<br/>Addressees</i>  |
| 325. | Art. 24         | This Directive is addressed to the Member States.   | This Directive is addressed to the Member States.   | This Directive is addressed to the Member States.   | This Directive is addressed to the Member States.   |

