

Interinstitutional File: 2016/0280(COD)

Brussels, 7 February 2019 (OR. en)

5893/19 ADD 1

**LIMITE** 

AUDIO 16 COMPET 86 CULT 18 EDUC 40 PI 23 RECH 64 TELECOM 36 CODEC 249 DIGIT 19

**NOTE** 

| From:           | Presidency   |
|-----------------|--|
| To:             | Permanent Representatives Committee  |
| No. prev. doc.: | 5138/19  |
| No. Cion doc.:  | 12254/16   |
| Subject:        | Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market |
|                 | - Update of negotiation mandate  |

Delegations will find in the ANNEX to this note the complete 4-column table of the above-mentioned proposal, with the Presidency suggestions submitted to COREPER in note 5893/19 included in the fourth column. In addition, at the end of recital (37), row 76, the following phrase was added, which had not been included in the COREPER note 5893/19:

"However, as contractual freedom is not affected by these provisions, the right holders should not be obliged to give an authorisation or to conclude licensing agreements."

Moreover, slight adaptations were made in the wording of recital (39a), row 87, and in Article 22(1a), new row 320A, to more correctly reflect the logic of the UGC provision and the review clause as proposed in note 5893/19.

The table also contains some minor adaptations in the recitals in rows 14, 23, 26, 69, 75 and 90 resulting from the latest technical meeting held with the EP on 16 January 2019.

5893/19 ADD 1 BM/rcg 1 ECOMP 3.B. **LIMITE**  For easy tracing, all changes compared to the text of the 4-culomn table set out in the Annex of document 5138/19 of 17 January 2019 are marked in blue.

# 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 1: CITATIONS AND RECITALS

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

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593 | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018 | COUNCIL TEXT<br>9134/18                      | POSSIBLE COMPROMISE<br>SOLUTION                 |
|-----|--|---|--|---|
|     | Proposal for a                         | Proposal for a                                  | Proposal for a                               | Proposal for a                                  |
|     | DIRECTIVE OF THE EUROPEAN              | DIRECTIVE OF THE<br>EUROPEAN PARLIAMENT         | DIRECTIVE OF THE<br>EUROPEAN PARLIAMENT      | DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE |
|     | PARLIAMENT AND OF THE COUNCIL          | AND OF THE COUNCIL                              | AND OF THE COUNCIL                           | COUNCIL   |
|     | on copyright in the Digital            | on copyright in the Digital Single Market       | on copyright in the Digital Single<br>Market | on copyright in the Digital Single Market       |
|     | Single Market                          | (Text with EEA relevance)                       | (Text with EEA relevance)                    | (Text with EEA relevance)                       |
|     | (Text with EEA relevance)              |   |  |   |

| 2. THE EUROPEAN PARLIAMENT AND THE PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  3. Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,  4. Having regard to the proposal from the European Commission, European Commission of the draft legislative act to the national parliaments,  6. After transmission of the European equipment of the European Economic and Social Committee 1,  7. Having regard to the opinion of the Committee  THE EUROPEAN UNION, UNION,  Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof, After transmission, After transmission of the draft legislative act to the national parliaments, parliaments,  Having regard to the opinion of the European Economic and Social Committee 1,  THE EUROPEAN UNION, UNION,  Article 114 thereof, After transmission of the draft legislative act to the national parliaments, parliaments,  Having regard to the opinion of the the I Social Committee 1,  THE EUROPEAN UNION, UNION,  Article 114 thereof, After Having regard to the proposal from from from from from Having regard to the opinion of the the I Social Committee 1,  THE EUROPEAN UNION, UNION,  Article 114 thereof, Article 114 t            | Row | COMMISSION<br>PROPOSAL<br>COM(2016)593   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE<br>SOLUTION   |
|---|-----|--|--|--|---|
| Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,  Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments,  Having regard to the opinion of the European Committee <sup>1</sup> ,  Having regard to the opinion of the Committee Opinion of the Committee  Having regard to the opinion of the Committee  Having regard to the opinion of the Committee of the Regions <sup>2</sup> ,   | ·   | THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,   | THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,   | THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,   | E<br>OPEAN  |
| Having regard to the proposal from the European Commission,  After transmission of the draft legislative act to the national parliaments,  Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  Having regard to the opinion of the Committee  Having regard to the opinion of the Committee  Committee Committee  Having regard to the opinion of the opinion of the Committee  Committee Committee  | 3.  | Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof, | Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof, | Having regard to the Treaty on the Functioning of the European Union, and in particular Article Articles 53(1), 62 and 114 thereof | Having regard to the Treaty on the pean Functioning of the European Union and in particular Article Articles 53(1), 62 and 114 thereof, |
| After transmission of the draft legislative act to the national parliaments,  Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  Having regard to the opinion of the Committee Committee opinion of the Committee opinion of the Opinion | 4.  | Having regard to the proposal from the European Commission,  | Having regard to the proposal from the European Commission,  | Having regard to the proposal from the European Commission,  | roposal<br>mmission,  |
| Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  Having regard to the opinion of the Committee Committee of the Regions <sup>2</sup> ,   | 5.  | After transmission of the draft legislative act to the national parliaments,                                 | After transmission of the draft legislative act to the national parliaments,                                 | After transmission of the draft legislative act to the national parliaments,   | the draft<br>ational  |
| Having regard to the opinion of the committee Committee of the Regions <sup>2</sup> ,   | 6.  | Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,                    | Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,                    | Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,  | opinion of<br>nic and   |
|   | 7.  | Having regard to the opinion of the Committee  | Having regard to the opinion of the Committee of the Regions <sup>2</sup> ,                                  | Having regard to the opinion of the Committee of the Regions <sup>2</sup> ,  | opinion of Regions <sup>2</sup> ,   |

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| 11.   | 10.   | 9.       | 8.  |                               | Row                                       |
|---|---|----------|---|-------------------------------|---|
| (2) The directives which have been adopted in the area of copyright and related rights provide for a high level of protection for                               | (1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives. | Whereas: | Acting in accordance with the ordinary legislative procedure, | of the Regions <sup>2</sup> , | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (2) The directives which have been adopted in the area of copyright and related rights contribute to the functioning of the internal market, provide for a      | establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives.                                 | Whereas: | Acting in accordance with the ordinary legislative procedure, |                               | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (2) The directives Directives which have been adopted in the area of copyright and related rights provide for a high level of protection for rightholders and   | (1) The Treaty provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives. | Whereas: | Acting in accordance with the ordinary legislative procedure, |                               | COUNCIL TEXT<br>9134/18                   |
| (2) The directives which have been adopted in the area of copyright and related rights contribute to the functioning of the internal market, provide for a high | establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Harmonisation of the laws of the Member States on copyright and related rights should contribute further to the achievement of those objectives.                                 | Whereas: | Acting in accordance with the ordinary legislative procedure, |                               | POSSIBLE COMPROMISE<br>SOLUTION           |

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COMMISSION

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EP TEXT

COUNCIL TEXT 9134/18

POSSIBLE COMPROMISE SOLUTION

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| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593           | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018     | COUNCIL TEXT<br>9134/18                              | POSSIBLE COMPROMISE<br>SOLUTION                                     |
|-----|--|---|--|---|
|     | action.  |   |  |   |
| 12. | (3) Rapid technological                          | (3) Rapid technological                       | (3) Rapid technological                              | (3) Rapid technological   |
|     | developments continue to transform the way works | transform the way works and other             | developments continue to transform the way works and | developments continue to transform the way works and other subject- |
|     | and other subject-matter                         | subject-matter are created,                   | other subject-matter are created,                    | matter are created, produced,                                       |
|     | are created, produced,                           | produced, distributed and                     | produced, distributed and                            | distributed and exploited. New                                      |
|     | distributed and exploited.                       | exploited, and relevant legislation           | exploited. New business models                       | business models and new actors                                      |
|     | New business models and                          | needs to be future proof so as not            | and new actors continue to                           | continue to emerge. <i>Relevant</i>                                 |
|     | new actors continue to                           | to restrict technological                     | emerge. The objectives and the                       | legislation needs to be future proof                                |
|     | emerge. The objectives and                       | development. New business                     | principles laid down by the Union                    | so as not to restrict technological                                 |
|     | the principles laid down by                      | models and new actors continue to             | copyright framework remain                           | development. The objectives and                                     |
|     | the Union copyright                              | emerge. The objectives and the                | sound. However, legal uncertainty                    | the principles laid down by the                                     |
|     | framework remain sound.                          | principles laid down by the Union             | remains, for both rightholders and                   | Union copyright framework remain                                    |
|     | However, legal uncertainty                       | copyright framework remain                    | users, as regards certain uses,                      | sound. However, legal uncertainty                                   |
|     | remains, for both                                | sound. However, legal uncertainty             | including cross-border uses, of                      | remains, for both rightholders and                                  |
|     | rightholders and users, as                       | remains, for both rightholders and            | works and other subject-matter in                    | users, as regards certain uses,                                     |
|     | regards certain uses,                            | users, as regards certain uses,               | the digital environment. As set out                  | including cross-border uses, of                                     |
|     | including cross-border                           | including cross-border uses, of               | in the Communication of the                          | works and other subject-matter in                                   |
|     | uses, of works and other                         | works and other subject-matter in             | Commission entitled 'Towards a                       | the digital environment. As set out                                 |
|     | subject-matter in the digital                    | the digital environment. As set out           | modern, more European copyright                      | in the Communication of the   |
|     | environment. As set out in                       | in the Communication of the                   | framework' <sup>3</sup> , in some areas it is        | Commission entitled 'Towards a                                      |
|     | the Communication of the                         | Commission entitled 'Towards a                | necessary to adapt and supplement                    | modern, more European copyright                                     |
|     | Commission entitled                              | modern, more European copyright               | the current Union copyright                          | framework' <sup>3</sup> , in some areas it is                       |
|     | 'Towards a modern, more                          | framework <sup>13</sup> , in some areas it is | framework- keeping a high level                      | necessary to adapt and supplement                                   |
|     | European copyright                               | necessary to adapt and supplement             | of protection of copyright and                       | the current Union copyright   |
|     | framework' <sup>3</sup> , in some areas          | the current Union copyright                   | related rights. This Directive                       | framework <i>keeping a high level of</i>                            |

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|  | Row                                       |
|--|---|
| supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of- commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on rights in publications, on the use of works and other subject-matter by online service providers storing and giving access to user uploaded content and on the transparency of   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning and fair marketplace for copyright, there should also be rules on rights in publications, on the exercise and enforcement of the use of works and other subject-matter by on online service providers storing and giving access to user uploaded content providers' platforms and on the transparency of authors' and operformers' contracts and of the exploitation of protected works in accordance with those contracts.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on rights in publications, on the use of works and other subject-matter by online service providers storing and giving access to user uploaded content and on the transparency of authors' and performers' contracts.   | COUNCIL TEXT 9134/18                      |
| rights. This Directive provides for rules to adapt certain exceptions and limitations to digital and crossborder environments, as well as measures to facilitate certain licensing practices notably but not only as regards the dissemination of out-of-commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. It also contains rules to facilitate the use of content in the public domain. In order to achieve a well-functioning and fair marketplace for copyright, there should also be rules on rights in publications, on the use of works and other subject-matter by online service providers storing and giving access to user uploaded content, on the transparency of authors' and performers' contracts, on authors' and performers' contracts, on authors' and performers' contracts, on authors' and performers of the rights that authors and performers fremuneration, as well as a mechanism for the revocation of the rights that authors and performers have | POSSIBLE COMPROMISE SOLUTION              |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018    | COUNCIL TEXT<br>9134/18                            | POSSIBLE COMPROMISE SOLUTION                    |
|-----|---|--|--|---|
|     | authors' and performers' contracts.     |  |  | transferred on an exclusive basis.              |
| 13. | (4) This Directive is                   | (4) This Directive is based upon,            | (4) This Directive is based                        | (4) This Directive is based upon,               |
|     | based upon, and                         | and complements, the rules laid              | upon, and complements, the rules                   | and complements, the rules laid                 |
|     | complements, the rules laid             | down in the Directives currently in          | laid down in the Directives                        | down in the Directives currently in             |
|     | down in the Directives                  | force in this area, in particular            | currently in force in this area, in                | force in this area, in particular               |
|     | currently in force in this              | Directive 96/9/EC of the European            | particular Directive 96/9/EC of the                | Directive 96/9/EC of the European               |
|     | area, in particular Directive           | Parliament and of the Council <sup>4</sup> , | European Parliament and of the                     | Parliament and of the Council <sup>4</sup> ,    |
|     | 96/9/EC of the European                 | Directive 2000/31/EC of the                  | Council <sup>4</sup> , Directive <b>2000/31/EC</b> | Directive 2000/31/EC of the                     |
|     | Parliament and of the                   | European Parliament and of the               | of the European Parliament and                     | European Parliament and of the                  |
|     | Council <sup>4</sup> , Directive        | Councif, Directive 2001/29/EC of             | of the Council <sup>5</sup> , Directive            | Councit <sup>5</sup> , Directive 2001/29/EC of  |
|     | 2001/29/EC of the                       | the European Parliament and of the           | 2001/29/EC of the European                         | the European Parliament and of the              |
|     | <b>European Parliament and</b>          | Council <sup>6</sup> , Directive 2006/115/EC | Parliament and of the Council <sup>6</sup> ,       | Council <sup>6</sup> , Directive 2006/115/EC    |
|     | of the Council <sup>6</sup> , Directive | of the European Parliament and of            | Directive 2006/115/EC of the                       | of the European Parliament and of               |
|     | 2006/115/EC of the                      | the Council <sup>7</sup> , Directive         | European Parliament and of the                     | the Council <sup>7</sup> , Directive 2009/24/EC |
|     | <b>European Parliament and</b>          | 2009/24/EC of the European                   | Council <sup>7</sup> , Directive 2009/24/EC of     | of the European Parliament and of               |
|     | of the Council <sup>7</sup> , Directive | Parliament and of the Council <sup>8</sup> , | the European Parliament and of                     | the Council <sup>8</sup> , Directive 2012/28/EU |

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20–28).

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.07.2000, p. 1–16).

copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28-35). Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to the information society (OJ L 167, 22.6.2001, p. 10-19). Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in

<sup>5.5.2009,</sup> p. 16–22). Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111,

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18   | POSSIBLE COMPROMISE SOLUTION   |
|-----|---|--|---|--|
|     | 2009/24/EC of the European Parliament and of the Council <sup>8</sup> , Directive 2012/28/EU of the European Parliament and of the Council <sup>9</sup> and Directive 2014/26/EU of | Directive 2012/28/EU of the European Parliament and of the Council <sup>9</sup> and Directive 2014/26/EU of the European Parliament and of the Council <sup>10</sup> . | the Council <sup>8</sup> , Directive 2012/28/EU of the European Parliament and of the Council <sup>9</sup> and Directive 2014/26/EU of the European Parliament and of the Council <sup>10</sup> . | of the European Parliament and of<br>the Council <sup>9</sup> and Directive<br>2014/26/EU of the European<br>Parliament and of the Council <sup>10</sup> . |
|     |   |  |   |  |
|     | eaı   | innovation, education and  | ка  | 9  |
|     | preservation of cultural  | preservation of cultural heritage,   | cultural heritage, digital  | preservation of cultural heritage,   |
|     | heritage, digital   | digital technologies permit new  | technologies permit new types of  | digital technologies permit new  |
|     | technologies permit new   | types of uses that are not clearly   | uses that are not clearly covered   | types of uses that are not clearly   |
|     | types of uses that are not  | covered by the current Union rules   | by the current Union rules on   | covered by the current Union rules   |
|     | clearly covered by the  | on exceptions and limitations. In  | exceptions and limitations. In  | on exceptions and limitations. In  |
|     | current Union rules on  | addition, the optional nature of   | addition, the optional nature of  | addition, the optional nature of   |
|     | exceptions and limitations.   | exceptions and limitations   | exceptions and limitations  | exceptions and limitations provided  |
|     | In addition, the optional   | provided for in Directives   | provided for in Directives  | for in Directives 2001/29/EC   |
|     | nature of exceptions and  | 2001/29/EC, 96/9/EC and  | 2001/29/EC, 96/9/EC and   | 96/9/EC and 2009/24/EC in these  |
|     | limitations provided for in   | 2009/24/EC in these fields may   | 2009/24/EC in these fields may  | fields may negatively impact the   |
|     | Directives 2001/29/EC,  | negatively impact the functioning  | negatively impact the functioning   | functioning of the internal market   |
|     | 96/9/EC and 2009/24/EC  | of the internal market. This is  | of the internal market. This is   | This is particularly relevant as   |

<sup>27.10.2012,</sup> p. 5–12). Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299,

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<sup>10</sup> Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (OJ L 84, 20.3.2014, p. 72–98).

## scientific research, or the limitation provided covered by the exceptions exceptions or limitations of cultural heritage should environment. Therefore, for in this Directive, the introduced. For uses not heritage should be for preservation of cultural the digital environment and field of scientific research, mining technologies in the for uses of text and data those new uses. Mandatory be reassessed in the light of teaching and preservation that are relevant for important in the digital becoming increasingly border uses, which are relevant as regards crossmarket. This is particularly functioning of the internal negatively impact the in these fields may illustration for teaching in limitations in Union law the existing exceptions and COMMISSION COM(2016)593 **PROPOSAL** should be introduced. For uses not digital environment and for illustration for teaching in the in the digital environment. continue to be available in fields should be allowed to functioning exceptions in those should continue to apply. covered by the exceptions or the technologies in the field of of text and data mining exceptions or limitations for uses should be reassessed in the light of scientific research, teaching and are relevant for innovation, and limitations in Union law that cross-border uses, which are particularly relevant as regards Therefore, existing welllimitation provided for in this preservation of cultural heritage innovation and scientific research, those new uses. Mandatory preservation of cultural heritage becoming increasingly important Member States, as long as they do limitations existing in Union law Directive, the exceptions and Therefore, the existing exceptions $P8\_TA-PROV(2018)0337$ A8-0245/2018 should continue to apply. should be introduced. For uses not or limitations for uses of text and are relevant for scientific research and limitations in Union law that covered by the exceptions or the preservation of cultural heritage digital environment and for data mining technologies in the new uses. Mandatory exceptions cultural heritage should be becoming increasingly important cross-border uses, which are particularly relevant as regards as they do not limit the scope of Directive, the The exceptions and limitation provided for in this illustration for teaching in the teaching and preservation of Therefore, the existing exceptions in the digital environment <u>preservation activities, as long</u> including to text and data field of scientific research, reassessed in the light of those mining, education and imitations existing in Union law he mandatory exceptions laid <u>lown in this Directive and on</u> COUNCIL TEXT 9134/18 should continue to apply, including or the limitation provided for in this and for preservation of cultural mandatory exceptions laid down in as they do not limit the scope of the and preservation activities, as long to text and data mining, education Directive, the The exceptions and uses not covered by the exceptions mining technologies in the field of reassessed in the light of those new of cultural heritage should be research, teaching and preservation relevant for *innovation*, scientific limitations in Union law that are the digital environment. Therefore, regards cross-border uses, which are their national law, <mark>and on</mark> implemented by Member States in limitations existing in Union law heritage should be introduced. <del>For</del> teaching in the digital environment uses. [Mandatory]\* exceptions or the existing exceptions and becoming increasingly important in this Directive, which need to be scientific research, illustration for limitations for uses of text and data POSSIBLE COMPROMISE

SOLUTION

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| Row | COMMISSION PROPOSAL COM(2016)593   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018   | COUNCIL TEXT  | POSSIBLE COMPROMISE SOLUTION  |
|-----|--|---|---|---|
|     | exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted.  | not restrict the scope of the exceptions or limitations provided for in this Directive. Directives 96/9/EC and 2001/29/EC should be adapted.  | condition that their application does not adversely affect nor circumvent the mandatory rules set out in this Directive.  Directives 96/9/EC and 2001/29/EC should be adapted.  | does not adversely affect nor eircumvent the mandatory rules set out in this Directive. Directives 96/9/EC and 2001/29/EC should be adapted.  *[possibly to be adapted depending on the outcome on Article 3a]  [Deletion of end of last part of the penultimate sentence provisionally agreed at TM of 16.01.2019, tbc at  |
| 15. | the limitation set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably | himitation limitations and the limitation limitations set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders. | (6) The exceptions and the limitation set outprovided for in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders. | limitations set outprovided for in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders. |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018   | COUNCIL TEXT<br>9134/18   | POSSIBLE COMPROMISE SOLUTION  |
|-----|--|---|---|---|
|     | prejudice the legitimate interests of the rightholders.                                  |   |   |   |
| 16. | (7) The protection of technological measures established in Directive 2001/29/EC remains | (7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the | (7) The protection of technological measures established in Directive 2001/29/EC remains essential to | (7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the |
|     | protection and the effective exercise of the rights granted to authors and to            | rights granted to authors and to other rightholders under Union law. This protection should be  | effective exercise of the rights granted to authors and to other rightholders under Union law.        | rights granted to authors and to other rightholders under Union law. This protection should be  |
|     | other rightholders under Union law. This protection                                      | maintained while ensuring that the use of technological measures does   | This protection should be maintained while ensuring that the  | maintained while ensuring that the use of technological measures does   |
|     | should be maintained while   | not prevent the enjoyment of the  | use of technological measures   | not prevent the enjoyment of the  |
|     | ensuring that the use of technological measures  | exceptions and the limitation established in this Directive, which  | does not prevent the enjoyment of<br>the exceptions and the limitation                                | exceptions and limitations established in this Directive, which   |
|     | does not prevent the   | are particularly relevant in the  | established in this Directive;  | are particularly relevant in the  |
|     | enjoyment of the   | online environment. Rightholders  | which are particularly relevant in  | online environment. Rightholders  |
|     | exceptions and the limitation established in   | should have the opportunity to ensure this through voluntary  | the online environment.  Rightholders should have the   | should have the opportunity to ensure this through voluntary  |
|     | this Directive, which are  | measures. They should remain free   | opportunity to ensure this through  | measures. They should remain free   |
|     | particularly relevant in the   | to choose the format and the  | voluntary measures. They should   | to choose the format and the  |
|     | online environment.  | modalities to provide the   | remain free to choose the <del>format</del>   | modalities to provideappropriate  |
|     | Rightholders should have   | beneficiaries of the exceptions and   | and the modalities to   | means of enabling the beneficiaries   |
|     | the opportunity to ensure  | the limitation established in this  | provideappropriate means of   | of the exceptions and limitations   |
|     | this through voluntary   | Directive with the means to benefit   | enabling the beneficiaries of the   | established in this Directive with  |
|     | measures. They should  | from them provided that such  | exceptions and the limitation   | the means to benefit from them  |
|     | remain free to choose the  | means are appropriate. In the   | established in this Directive with  | provided that such means are  |

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| 17.  |   | Row                                       |
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| (8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information to gain new knowledge and discover new trends.  | format and the modalities to provide the beneficiaries of the exceptions and the limitation established in this Directive with the means to benefit from them provided that such means are appropriate. In the absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC. | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow researchers to process Text and data mining allows the reading and analysis of large amounts of digitally stored information to gain new knowledge and data mining technologies are prevalent across                      | absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC.  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information with a view to gaingaining new knowledge and discoverdiscovering new trends. Whilst text and data mining technologies are prevalent across                            | the means-to benefit from them provided that such means are appropriate. In the absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC <sub>1</sub> including where works and other subject-matter are made available through on-demand services.                      | COUNCIL TEXT<br>9134/18                   |
| (8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Text and data mining allows the processing of large amounts of information with a view to gaining new knowledge and discovering new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread | appropriate. In the absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC, including where works and other subjectmatter are made available through on-demand services.   | POSSIBLE COMPROMISE<br>SOLUTION           |

BM/rcg LIMITE

## and/or by the sui generis other subject-matter and/or acts protected by copyrigh data mining may involve can perform text and data organisations such as so doing encourage and data mining can in acknowledgment that text widespread economy, there is the extraction of contents reproduction of works or database right, notably the certain instances, text and mining of content. In the extent to which they with legal uncertainty as to institutes are confronted universities and research the Union, research innovation. However, in research community and in particular benefit the prevalent across the digital mining technologies are Whilst text and data from a database. Where there is no exception or COMMISSION COM(2016)593 PROPOSAL subject-matter and/or the text and data mining can in copyright and in such instances no or data which are not protected by carried out in relation to mere facts and data mining may also be required from rightholders. Text undertake such acts would be applies, an authorisation to exception or limitation which database. Where there is no extraction of contents from a reproduction of works or other database right, notably the copyright and/or by the sui generis may involve acts protected by instances, text and data mining data mining of content. In certain which they can perform text and institutes are confronted with legal such as universities and research the Union, research organisations encourage innovation. However, in community and in so doing particular benefit the research widespread acknowledgment that uncertainty as to the extent to the digital economy, there is $P8\_TA-PROV(2018)0337$ A8-0245/2018 exception or limitation which organisations such as universities generis database right, notably the and well as cultural heritage encouragesupport innovation community and in so doing widespread acknowledgment that applies, an authorisation to database. Where there is no extraction of contents from a subject-matter and/or the reproduction of works or other copyright and/or by the sui may involve acts protected by data mining of content. In certain which they can perform text and uncertainty as to the extent to particular benefit the research text and data mining can in are confronted with legal technologies benefit research However, in the Union, These the digital economy, there is instances, text and data mining organisations and institutions context of their main activities. carry out research institutes in the <u>However, in the Union, such</u> <u>institutions, which may also</u> COUNCIL TEXT 9134/18 undertake such acts would applies, exception or and data mining. Where there is no and/or the extraction of contents works or other subject-matter right, notably the reproduction of mining of content. In certain uncertainty as to the extent to which are such organisations and institutions activities. However, in the Union, well as cultural heritage institutions, and other research organisations as mining can in particular benefit the acknowledgment that text and data required from rightholders. happens when the data is and/or by the sui generis database which may also carry out research technologies benefit universities normalised in the process of text they can perform text and data in the context of their main research community and in so doing involve acts protected by copyright instances, text and data mining may from a database, which for example POSSIBLE COMPROMISE confronted with SOLUTION innovation. authorisation limitation which

| 18.  |  | Row                                       |
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|  | limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required. | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  | authorisation would be required.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be is—required under copyright law. There may also be instances of text and data mining which do not involve acts of reproduction or where the reproductions made fall under the The new exception should be without prejudice to the existing mandatory exception for temporary acts of reproduction laid down in Article 5(1) of   | undertake such acts would be required from rightholders.  [Last phrase of recital (8) of the COM proposal was moved to new recital (8a) Council's text -see following row 18]  | COUNCIL TEXT<br>9134/18                   |
| (8a) Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation is required under copyright law. There may also be instances of text and data mining which do not involve acts of reproduction or where the reproductions made fall under the mandatory exception for temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29/EC, which should continue to apply to text and data mining techniques which do not involve the |  | POSSIBLE COMPROMISE<br>SOLUTION           |

| 19.   |   | Row                                       |
|---|---|---|
|   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (8a) For text and data mining to occur, it is in most cases necessary first to access information and then to reproduce it. It is generally only after that information is normalised that it can be processed through text and data mining. Once there is lawful access to information, it is when that information is being normalised that a copyright-protected use takes place, since this leads to a reproduction by changing the format of the information or by extracting it |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|   | Directive 2001/29/EC, which should continue to apply to text and data mining techniques which do not involve the making of copies beyond the scope of that exception.  [First phrase of new recital (8a) was taken from recital (8) (last phrase), second phrase of new recital (8a) was taken from recital (10) (second phrase)] | COUNCIL TEXT<br>9134/18                   |
| [deleted]   | making of copies beyond the scope of that exception.  | POSSIBLE COMPROMISE SOLUTION              |

| 20.   | Row                                       |
|---|---|
| (9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining.     | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (9) Union law already-provides for certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining. | COUNCIL TEXT                              |
| (9) Union law provides for certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining.         | POSSIBLE COMPROMISE<br>SOLUTION           |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE<br>SOLUTION   |
|-----|---|--|--|---|
|     | address the legal uncertainty for text and data mining.                                   |  |  |   |
| 21. | (10) This legal uncertainty should be addressed by providing for a mandatory exception to | (10) This legal uncertainty should be addressed by providing for a mandatory exception <i>for research organisations</i> to the right of | (10) This legal uncertainty should be addressed by providing for a mandatory exception to the <b>exclusive</b> right of reproduction | 10) This legal uncertainty should be addressed by providing for a mandatory exception for universities and other research |
|     | the right of reproduction and also to the right to  | reproduction and also to the right to prevent extraction from a  | and also to the right to prevent extraction from a database. The   | heritage institutions to the exclusive right of reproduction and also to the  |
|     | database. The new   | should be without prejudice to the   | prejudice to the existing  | right to prevent extraction from a  |
|     | exception should be   | existing mandatory exception on  | mandatory exception on   | European research policy, which   |
|     | existing mandatory  | down in Article 5(1) of Directive  | laid down in Article 5(1) of   | encourages universities and   |
|     | exception on temporary  | 2001/29, which should continue to  | Directive 2001/29, which should  | collaborations with the private   |
|     | acts of reproduction laid   | apply to text and data mining  | continue to apply to text and data   | sector, research organisations  |
|     | Directive 2001/29, which  | the making of copies going beyond  | involve the making of copies   | should also benefit from the  |
|     | should continue to apply to   | the scope of that exception.   | going beyond the scope of that   | activities are carried out in the   |
|     | text and data mining  | Research organisations should also benefit from the exception when   | existing Furgnesh research   | framework of public-private   |
|     | involve the making of   | they engage into public private  | policy, which encourages   | partnerships. While research  |
|     | copies going beyond the   | partnerships. Educational  | universities and research  | institutions should remain the  |
|     | scope of that exception.  | establishments and cultural  | institutes to develop  | heneficiaries of the excention they   |
|     | Research organisations  | heritage institutions that conduct   | collaborations with the private  | should be able to rely on their   |
|     | the exception when they   | covered by the text and data   | organisations should also benefit  | private partners for carrying out text  |
|     | engage into public-private  | mining exception, provided that  | from the exception when they   | alla data illillig, ilicinallig by using  |

| 22. (11) Research organisations across the Union encompass a wide   | partnerships.   | Row PROPOSAL COM(2016)593                 |
|---|---|---|
| (11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. Due to the diversity of such entities, it is | the results of the research do not benefit an undertaking exercising a decisive influence upon such organisations in particular. In the event that the research is carried out in the framework of a public-private partnership, the undertaking participating in the public-private partnership should also have lawful access to the works and other subject matter. The reproductions and extractions made for text and data mining purposes should be stored in a secure manner and in a way that ensures that the copies are only used for the purpose of scientific research. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. The term "scientific research" within the    | engage into their research activities are carried out in the framework of public-private partnerships. While research organisations and cultural heritage institutions should remain the beneficiaries of the exception, they should be able to rely on their private partners for carrying out text and data mining, including by using their technological tools.  [The second phrase of recital (10) of the COM proposal was moved to new recital (8a) - see row 18]   | COUNCIL TEXT<br>9134/18                   |
| (11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. The term "scientific research" within the    | their technological tools.  [as to the last sentence of the EP text, see recitals 11(c), row 25]  | POSSIBLE COMPROMISE<br>SOLUTION           |

## Such a public-interest structures, research exception. Despite situations such as their same time, organisations or public contracts. At the act either on a not for profit organisations across different legal forms and quality of shareholders or because of structural decisive influence allowing undertakings have a upon which commercial provisions in national laws funding or through be reflected through public mission may, for example, recognised by the State. public-interest mission basis or in the context of a Member States generally beneficiaries of the understanding of the have a common entities, it is important to members, which may result them to exercise control have in common that they COMMISSION COM(2016)593 **PROPOSAL** structural situations such as their time, organisations upon which States generally have in common considered research organisations the research, should not be preferential access to the results of members, which may result in quality of shareholders or to exercise control because of decisive influence allowing them commercial undertakings have a or public contracts. At the same through provisions in national laws reflected through public funding or mission may, for example, be by the State. Such a public-interest profit basis or in the context of a that they act either on a not for organisations across Member of the exception. Despite different for the purposes of this Directive. public-interest mission recognised legal forms and structures, research $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT decisive influence allowing them commercial undertakings have a organisations upon which same time Conversely, or through provisions in national State. Such a public-interest across the Member States structures, research organisations of the exception.research understanding of the beneficiaries diversity of such entities, it is mission may, for example, be they act either on a not for profit generally have in common that to exercise control because of laws or public contracts. At the reflected through public funding interest mission recognised by the basis or in the context of a public-Despite different legal forms and higher education institutions. carrying out research research institutes, hospitals important to have a common the human sciences. Due to the <u>university libraries, or other</u> <u>example cover entities such as</u> organisations. They should for <u>universities, including</u> COUNCIL TEXT 9134/18 organisations. They should for shareholders or members, which contracts. Conversely, organisations on a not for profit basis or in the structures, research organisations or other higher education diversity of such entities, it is may result in preferential access to situations such as their quality of control because of structural influence allowing them to exercise undertakings have a decisive upon which commercial provisions in national laws or public public funding or through example, be reflected through public-interest mission may, for recognised by the State. Such a context of a public-interest mission across the Member States generally entities such as research institutes. institutions and their libraries, also example cover, besides universities understanding of research important to have a common the results of the research, should have in common that they act either hospitals carrying out research. Despite different legal forms and POSSIBLE COMPROMISE SOLUTION

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| 24.  | 23.  |   | Row                                       |
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|  |  | in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  |  |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (11b) Research organisations and cultural heritage               | institutions should be understood as covering publicly accessible libraries, museums and archives regardless of the type of works and other subject matter which they hold in their permanent collections, as well as film or audio heritage institutions. They should include, among others, national libraries and national archives.  They should also include educational establishments and public sector broadcasting organisations, as far as their archives and publicly accessible libraries are concerned.                         | structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive. | COUNCIL TEXT<br>9134/18                   |
| (11b) Research organisations and cultural heritage institutions, | should be understood as covering publicly accessible libraries, and museums and archives regardless of the type of works and other subject matter which they hold in their permanent collections, as well as archives film or audio heritage institutions. They should include, among others, national libraries and national archives. They should also include educational establishments, and public sector broadcasting organisations and research organisations afar as their archives and publicly accessible libraries are concerned. | not be considered research organisations for the purposes of this Directive.  | POSSIBLE COMPROMISE<br>SOLUTION           |

| 25.   |  | Row                                       |
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|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (11c) Research organisations<br>and cultural heritage<br>institutions may in certain cases,           | institutions, including the persons attached thereto, should be covered by the text and data mining exception regarding content to which they have lawful access should be understood as covering access to content based on open access policy or through contractual arrangements between rightholders and research organisations or cultural heritage institutions, or through other lawful means. For instance, in cases of subscriptions taken by research organisations or cultural heritage institutions, the persons attached thereto covered by these subscriptions would be deemed to have lawful access to content that is freely available online.   | COUNCIL TEXT<br>9134/18                   |
| (11c) Research organisations and cultural heritage institutions may in certain cases, for example for | including the persons attached thereto, should be covered by the text and data mining exception regarding content to which they have lawful access. Lawful access should be understood as covering access to content based on open access policy or through contractual arrangements between rightholders and research organisations or cultural heritage institutions, such as subscriptions, or through other lawful means. For instance, in cases of subscriptions taken by research organisations or cultural heritage institutions, the persons attached thereto covered by these subscriptions would be deemed to have lawful access. Lawful access also covers access to content that is freely available online. | POSSIBLE COMPROMISE<br>SOLUTION           |

BM/rcg LIMITE

| 26.   | Row                                       |
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| (12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security and integrity of the system or databases where the works or other subject-matter are hosted would be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| data mining, such as scientific peer review and joint research, should remain covered, where applicable, by the exception or limitation provided for in Article 5(3)(a) of Directive 2001/29/EC:  (12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where when there is a risk that the security and integrity of the systemtheir systems or databases where the works or other subject matter are hosted would could be jeopardised.  These Such measures could for example be used to ensure that only persons having lawful access to their data can access it, including through IP address validation or user authentication. These measures should not exceed what is necessary to pursue the objective of ensuring the security and | COUNCIL TEXT<br>9134/18                   |
| (12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures when there is a risk that the security and integrity of their systems or databases could be jeopardised. Such measures could for example be used to ensure that only persons having lawful access to their data can access it, including through IP address validation or user authentication. These Those measures should however remain proportionate and should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the   | POSSIBLE COMPROMISE<br>SOLUTION           |

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| (13a) In addition significance in the   | (13a) In addition to their significance in the context of  |  |  | 28. |
|---|--|--|--|-----|
| cope of the exception, which is limited to entities carrying out scientific research any potential harm to rightholders created through this exception should be minimal. Therefore, Member States should not provide for compensation for rightholders as regards uses under the text and data mining exceptions introduced by this Directive. | of the nature and scope of the exception, which is limited to entities carrying out scientific research any potential harm to rightholders created through this exception should be minimal. Therefore, Member States should not provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive-given that in view of the nature and scope of the exception the harm should be minimal. | (13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception the harm should be minimal. | (13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception the harm should be minimal. | 27. |
| exception to the risks involved and should not prevent or make excessively difficult text and data mining carried out by researchers.   | integrity of the systemhowever remain proportionate to the risks involved and should not undermine the effective application of the exceptionprevent or make exceptionprevent or make excessively difficult text and data mining carried out by researchers.   |  | exception.   |     |
| POSSIBLE COMPROMISE<br>SOLUTION   | COUNCIL TEXT<br>9134/18  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Row |

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|  | Row                                       |
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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| the public online, and insofar as the rightholders have not reserved the right to make reproductions and extractions for text and data mining, for example by agreement, unilateral declaration, including through the use of machine readable metadata or by the use of technical means.  Rightholders should be able to apply measures to ensure that their reservations in this regard exception or limitation should leave intact the mandatory exception for text and data mining for research purposes laid down in this Directive.  | COUNCIL TEXT<br>9134/18                   |
| subject-matter is accessed lawfully by the beneficiary, including when it has been made available to the public online, and insofar as the rightholders have not reserved the rights to make reproductions and extractions for text and data mining for example by agreement, unilateral declaration, including through the use of machine readable metadata or by the use of technical means.— in an appropriate manner. In the case of content that has been made publicly available online, it should only be considered appropriate to reserve the rights by other means, such as this may be appropriate to reserve the rights by other means, such as this may be expressed by contractual agreements or unilateral declaration,—as appropriate. Rightholders should be able to apply measures to ensure that their reservations in this regard are respected. This optional | POSSIBLE COMPROMISE<br>SOLUTION           |

| 30.  | 29.   |   | Row                                       |
|--|---|---|---|
| (14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to                           |   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or | also in the private sector, Member States should be able to provide for an exception going further than the mandatory exception, provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by machine readable means. |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or |   |   | COUNCIL TEXT<br>9134/18                   |
| (14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or | [deleted]   | exception or limitation should leave intact the mandatory exception for text and data mining for research purposes laid down in this Directive, as well as the existing exception for temporary acts of reproduction in Article 5(1) of Directive 2001/29/EC.  [wording to be adapted once decided whether Article 3a is optional or mandatory] | POSSIBLE COMPROMISE SOLUTION              |

# 5893/19 ADD 1 communication to the Moreover, the existing and thereby at a distance. would apply where exceptions or limitations clarity as to whether those addition, there is a lack of digital uses is unclear. In others, illustration for available to the public for framework does not teaching is provided online teaching. The scope of purpose of illustration for part of its contents for the the extraction or re-Directive 96/9/EC permit Articles 6(2)(b) and 9(b) of teaching. In addition, the sole purpose of, among public and making provide for a cross-border limitations as they apply to those exceptions or utilization of a substantial the use of a database and effect. This situation may hamper illustration for teaching. The scope 6(2)(b) and 9(b) of Directive establishments benefit from full to ensure that educational exception or limitation is necessary distance learning. Therefore, the supported teaching activities and the development of digitallydoes not provide for a cross-border Moreover, the existing framework online and thereby at a distance. apply where teaching is provided exceptions or limitations would of clarity as to whether those unclear. In addition, there is a lack as they apply to digital uses is of those exceptions or limitations utilization of a substantial part of 96/9/EC permit the use of a teaching. In addition, Articles among others, illustration for the public for the sole purpose of, its contents for the purpose of database and the extraction or reintroduction of a new mandatory situation may hamper the

database and the extraction er rewould apply where teaching is scope of those exceptions or 96/9/EC permit the use of a subject matter in such a way distance. Moreover, the existing is a lack of clarity as to whether uses is unclear. In addition, there 6(2)(b) and 9(b) of Directive to the public of works and other reproduction, communication to for a cross-border effect. This legal framework does not provide provided online and <del>thereby at</del> a those exceptions or limitations limitations as they apply to digital illustration for teaching. The its contents for the purpose of utilization of a substantial part of teaching. In addition, Articles <del>among others,</del> illustration for the public and -making available limitation to the rights of **public'),** for the sole purpose of, <u>them ('making available to the</u> access them from a place and a hat members of the public may <u>ime individually chosen by</u>

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reproduction,

limitation to the rights of

reproduction, communication to

the public and making available to

limitation to the rights of

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introduce an exception or

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situation may hamper the teaching. The scope of those a database and the extraction of a reproduction, communication to the development of digitally-supported distance. Moreover, the existing teaching is provided online and at a to whether those exceptions or addition, there is a lack of clarity as apply to digital uses is unclear. In exceptions or limitations as they substantial part of its contents for them from a place and a time public of works and other subject public and making available to the limitation to the rights of teaching activities and distance the purpose of illustration for Directive 96/9/EC permit the use of Articles 6(2)(b) and 9(b) of illustration for teaching. In addition, **public"),** for the sole purpose of members of the public may access matter in such a way that for a cross-border effect. This legal framework does not provide limitations would apply where ("making available to the individually chosen by them

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| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18   | POSSIBLE COMPROMISE<br>SOLUTION  |
|-----|---|--|---|--|
|     | effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders. | legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.  | development of digitally- supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject- matter in digital teaching activities, including online and across borders. | learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.  |
| 31. | learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for   | cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, | cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments                  | cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments recognised by a Member State, |

ECOMP 3.B. BM/rcg LIMITE 33 **EN** 

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34 **EN** 

## accessibility needs of should cover both uses of such activities. The context of teaching and should be only in the subject-matter under the covering the specific should be understood as authentication procedures. secure electronic network, educational establishment's exception or limitation during examinations, and establishments, including of educational out under the responsibility exception or limitation of the works or other persons with a disability in be protected, notably by the access to which should the classroom and online through digital means in necessary for the purpose be limited to what is learning activities carried the context of illustration uses through the The exception or limitation COMMISSION COM(2016)593 **PROPOSAL** educational establishment, for under the exception or limitation network environment, the access establishment's secure electronic establishment, and online uses responsibility of the educational the use is made under the heritage institutions, as long as example in libraries or cultural place outside the premises of the provided, including where it takes teaching activity is physically means in the classroom-where the cover both uses through digital exception or limitation should of educational establishments, carried out under the responsibility teaching and learning activities should be only in the context of *practicability.* The use of the out to be impossible for reasons of authors' name, unless that turns indicates the source, including the other subject-matter used the purpose of such activities. The be limited to what is necessary for including during examinations, and works or other subject-matter through the educational $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT activities. a disability in the context of substitute the purchase of accessibility needs of persons with understood to cover the specific subject-matter that may be used and in a balanced manner, the works or other subject-matter should remain free to specify, educational markets. When imply uses of parts or extracts illustration would therefore exception or limitation should be illustration for teaching. <del>The</del> proportion of a work or other limitation, Member States of works only, which should not Uses allowed under the for the sole purpose of for the different categories of implementing the exception or materials primarily intended for In most cases, the concept of including <del>the related</del> learning Illustration for teaching. COUNCIL TEXT 9134/18 a disability in the context of accessibility needs of persons with the purchase of materials uses of parts or extracts of works activities. or complement the teaching, illustration for teaching be understood to cover the specific teaching. The Uses allowed under purpose of illustration for of a work or other subject-matter other subject-matter and in a different categories of works or remain free to specify, for the limitation, Member States should educational markets. When primarily intended for only, which should not substitute illustration would therefore imply including the related learning the exception or limitation should balanced manner, the proportion In most cases, the concept of that may be used for the sole implementing the exception or POSSIBLE COMPROMISE SOLUTION

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| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593 | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018   | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE SOLUTION  |
|-----|--|---|--|---|
|     | for teaching.                          | to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching. | *[The second and third phrase of recital (16) of the COM proposal were moved to new recital (16a) Council's text - see row 33]   | *[The second and third phrase of recital (16) of the COM proposal were moved to new recital (16a) Council's text - see row 33] [provisionally agreed at trilogue 26/11/2018/03/12/2018]   |
| 33. |  |   | other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations or teaching activities taking place outside the premises of educational establishments, for example in a museum, library or another cultural heritage institution, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means of works and other subject matter made in the classroom and online uses | cher subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations or teaching activities taking place outside the premises of educational establishments, for example in a museum, library or another cultural heritage institution, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means of works and other subject matter made in the |

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| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18   | POSSIBLE COMPROMISE<br>SOLUTION  |
|-----|--|--|---|--|
| 34. |  | (16a) A secure electronic environment should be understood as a digital teaching and learning environment, access to which is limited through an appropriate authentication procedure to the educational establishment's teaching staff and to the pupils or students enrolled in a study programme.   |   | [to be confirmed by trilogue]  |
| 35. | arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of | (17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses | the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital | (17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation |

## States to build on the application of the availability of adequate subject the application of States could decide to concluded at national level. existing arrangements should allow Member cross-border uses. This exception or limitation or do not hamper the effective another, to the extent they digital uses and crossscope of the new essential to harmonise the fully or partially, to the the exception or limitation, In particular, Member from a Member State to implementation may differ border teaching activities. mandatory exception or education. Whereas it is the modalities of limitation in relation to COMMISSION COM(2016)593 **PROPOSAL** extended collective licensing Member States could decide to with rightholders. Such licenses having to negotiate individually avoid educational establishments negotiated collectively such as agreements and licences that are collective licensing agreements, adequate licences, covering. Such exception or limitation, fully or subject the application of the national level. In particular, existing arrangements concluded at Member States to build on the exception or limitation or cross effective application of the extent they do not hamper the Member State to another, to the implementation may differ from a activities, the modalities of and cross-border teaching "blanket licences", in order to licences can take the form of partially, to the availability of border uses. This should allow $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT availability of adequate licences, of the exception or limitation, concluded at national level. In exception or limitation or crosseffective application of the extent they do not hamper the Member State to another, to the activities, the modalities of exception. This Member States decide to subject the application allow Member States to build on uses and cross-border teaching <u>could notably use this</u> those allowed under the covering at least the same uses as fully or partially, to the particular, Member States could the existing arrangements respect moral rights of authors should for example remain free border uses. Member States implementation may differ from a and performers. This should and other subject matter should to require that the use of works COUNCIL TEXT 9134/18 border teaching States should ensure that where under the exception. Member the same uses as those allowed exception or limitation, fully or subject the application of the Member States could decide to existing arrangements concluded at the exception or limitation or crossanother, to the extent they do not differ from a Member State to modalities of implementation may in relation to digital uses and crossadequate licences covering at least partially, to the availability of national Member States to build on the respect moral rights of authors border uses. Member States hamper the effective application of and performers. This should allow other subject matter should require that the use of works and o the exception.—Member States ises allowed under the exception icenses cover only partially the hould for example remain free to the other uses remain subject POSSIBLE COMPROMISE level. In particular, SOLUTION activities,

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| 36.                        |   | Row                                       |
|----------------------------|---|---|
|                            |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|                            | [See Council's recital (17a) - row 36]  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (17a) Member States should |   | COUNCIL TEXT<br>9134/18                   |
| GREEN                      | aiming at ensuring the visibility of the existing licensing schemes could also be developed.  Such schemes could, for example, be based on collective licensing or on extended collective licensing in order to avoid educational establishments having to negotiate individually with rightholders. In order to guarantee legal certainty, Member States should specify under which conditions an educational establishment may use protected works or other subject-matter under a licensing scheme.  [provisionally agreed at Trilogue 26/11/2018; | POSSIBLE COMPROMISE<br>SOLUTION           |

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| 37.   |   | Row                                       |
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|   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (17 a) In order to guarantee legal certainty when a Member State decides to subject the application of the exception to the availability of adequate licences, it |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|   | remain free to provide that rightholders receive fair compensation for the digital uses of their works or other subject-matter under the exception or limitation for illustration for teaching provided for in this Directive. For the purposes of determining the possible level of fair compensation, due account should be taken, inter alia, of Member States' educational objectives and of the harm to rightholders.  | COUNCIL TEXT<br>9134/18                   |
| [moved under recital 17 (row 35)]   | free to provide that rightholders receive fair compensation for the digital uses of their works or other subject-matter under the exception or limitation for illustration for teaching provided for in this Directive. For the purposes of determining the possible level of fair compensation, due account should be taken, inter alia, of Member States' educational objectives and of the harm to rightholders. Member States deciding to provide for fair compensation should encourage the use of systems, which do not create administrative burden for educational establishments.  [provisionally agreed at Trilogue 26/11/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

| 38.  | Row                                       |
|--|---|
| (18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| is necessary to specify under which conditions an educational establishment may use protected works or other subject-matter under that exception and, conversely, when it should act under a licensing scheme.  (18) An act of preservation of a work or other subject-matter in the collection of a cultural heritage institution may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution and consequently require the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (18) An act of preservation may require a reproduction of a work or other subject-matter in the collection of a cultural heritage institution may require a reproduction and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow   | COUNCIL TEXT<br>9134/18                   |
| [the order of first and second sentence was inverted]  (18) Cultural heritage institutions are engaged in the preservation of their collections for future generations. An act of preservation of a work or other subject-matter in the collection of a cultural heritage institution may require a reproduction of a work or other subject matter in the collection of a cultural heritage institution and consequently require the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in   | POSSIBLE COMPROMISE<br>SOLUTION           |

| LIMITE | ECOMP 3.B. | ANNEX         |
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| 40.  | 39.   |   | Row                                       |
|--|---|---|---|
| (20) Member States should therefore be required to provide for an                              | in the Member States for acts of preservation by cultural heritage institutions hamper crossborder cooperation and the sharing of means of preservation by cultural heritage institutions in the internal market, leading to an inefficient use of resources.   | to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (20) Member States should therefore be required to provide for an exception to permit cultural | (19) Different approaches in the Member States for acts of reproduction for preservation by cultural heritage institutions hamper cross-border cooperation, and the sharing of means of preservation by cultural heritage institutions in the internal market, and the establishment of cross-border preservation networks in the internal market organisations that are engaged in preservation, leading to an inefficient use of resources. This can have a negative impact on the preservation of cultural heritage. | reproduction in order to allow those acts of preservation <i>by such institutions</i> .   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (20) Member States should therefore be required to provide for an exception to permit cultural | (19) Different approaches in the Member States for acts of preservation by cultural heritage institutions hamper cross-border cooperation and the sharing of means of preservation by eultural heritagesuch institutions in the internal market, leading to an inefficient use of resources.  | those acts of preservation.   | COUNCIL TEXT<br>9134/18                   |
| (20) Member States should therefore be required to provide for an exception to permit cultural | (19) Different approaches in the Member States for acts of reproduction for preservation by cultural heritage institutions hamper cross-border cooperation, and the sharing of means of preservation by cultural heritage institutions in the internal market, and the establishment of cross-border preservation networks in the institutions leading to an inefficient use of resources. This can have a negative impact on the preservation of cultural heritage.  | those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation by such institutions. | POSSIBLE COMPROMISE<br>SOLUTION           |

## supports. Such an subject-matter to the extent exception should allow for degradation of original obsolescence or the address technological collections for preservation cultural heritage preservation purposes only. produce a copy for required in order to number and at any point in technology, in the required preservation tool, means or the appropriate the making of copies by purposes, for example to matter permanently in their works and other subjectinstitutions to reproduce exception to permit the life of a work or other COMMISSION COM(2016)593 PROPOSAL institutions and therefore service broadcasting purposes only. The archives of organisations should be number, at any point in the life of a obsolescence or the degradation of publicly accessible galleries as to maintain provisions to treat purpose of this exception, be able Member States should, for the beneficiaries of this exception. considered cultural heritage produce a copy for preservation to the extent required in order to means or technology, in any allow for the making of copies by works. Such an exception should original supports or to insure to address technological preservation purposes, for example works and other subject-matter museums. research organisations or publicwork or other subject-matter *and* format or medium, in the required the appropriate preservation tool, permanently in their collections for heritage institutions to reproduce $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT enly. Acts of reproduction <del>copy</del> for preservation purposes subject-matter to the extent in the life of a work or other appropriate preservation tool exception should allow-for the original supports. Such an obsolescence or the degradation of example to address technological required in order to produce a required number and at any point making of copies by the for preservation purposes, for permanently in their collections provided for by Union law means or technology, in the works and other subject-matter heritage institutions to reproduce <u>exceptions or limitations</u> should remain subject to the and other subject-matter in <u>institutions for purposes other</u> <u>undertaken by cultural heritage</u> their permanent collections than the preservation of works uthorisation of rightholders. inless permitted by other COUNCIL TEXT 9134/18 obsolescence or the degradation of only. Acts of reproduction or other subject-matter and to the and other subject-matter. Such an to address technological a copy for preservation purposes extent required in order to produce and at any point in the life of a work medium, in the required number technology, in any format or making of copies by the appropriate exception should allow-for the original supports or to insure works preservation purposes, for example permanently in their collections for works and other subject-matter <u>exceptions or limitations provided</u> preservation tool, means or heritage institutions to reproduce <u>undertaken by cultural heritage</u> remain subject to the institutions for purposes other or by Union law <u>inless permitted by other</u> permanent collections should ind other subject-matter in their han the preservation of works uthorisation of rightholders. POSSIBLE COMPROMISE SOLUTION

| 42.  | 41.  | Row                                       |
|--|--|---|
| (21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies are owned or   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (21) For the purposes of this Directive, works and other subjectmatter should be considered to be permanently in the collection of a cultural heritage institution when copies <i>of such works or other subject matter</i> are owned or permanently held by the cultural                        |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies are owned or permanently held by the cultural heritage   | institutions do not necessarily have the technical means or expertise to undertake the acts required to preserve their collections themselves, particularly in the digital environment, and may therefore have recourse to the assistance of other cultural institutions and other third parties for that purpose. Under this exception, cultural heritage institutions should therefore be allowed to rely on third parties acting on their behalf and under their responsibility, including those that are based in other Member States, for the making of copies. | COUNCIL TEXT<br>9134/18                   |
| (21) For the purposes of this Directive, works and other subjectmatter should be considered to be permanently in the collection of a cultural heritage institution when copies of such works or other subject-matter are owned or permanently held by such institutions, for example as a result | institutions do not necessarily have the technical means or expertise to undertake the acts required to preserve their collections themselves, particularly in the digital environment, and may therefore have recourse to the assistance of other cultural institutions and other third parties for that purpose. Under this exception, cultural heritage institutions should therefore be allowed to rely on third parties acting on their behalf and under their responsibility, including those that are based in other Member States, for the making of copies. | POSSIBLE COMPROMISE<br>SOLUTION           |

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| 44.  | 43.  |   | Row                                       |
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|  |  | permanently held by the cultural heritage institution, for example as a result of a transfer of ownership or licence agreements.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (21b) Despite some overlap with existing exceptions or limitations, such as the ones for quotation | developments have given rise to information society services enabling their users to upload content and make it available in diverse forms and for various purposes, including to illustrate an idea, criticism, parody or pastiche. Such content may include short extracts of preexisting protected works or other subject-matter that such users might have altered, combined or otherwise transformed. | heritage institution, those organisations, for example as a result of a transfer of ownership of licence agreements, a legal deposit or a long-term loan. Works or other subject matter that cultural heritage institutions access temporarily via a third-party server are not considered as being permanently in their collections. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  |  | institutionsuch institutions, for example as a result of a transfer of ownership or licence agreements or permanent custody arrangements.   | COUNCIL TEXT<br>9134/18                   |
| [deleted and if need be to be replaced by text related to paragraph 5bis of Article 13             | [deleted and if need be to be replaced by text related to paragraph 5bis of Article 13 depending on final agreement]   | of a transfer of ownership or licence agreements, legal deposit obligations or permanent custody arrangements.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018]  | POSSIBLE COMPROMISE<br>SOLUTION           |

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|  | Row                                       |
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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| and parody, not all content that is uploaded or made available by a user that reasonably includes extracts of protected works or other subject-matter is covered by Article 5 of Directive 2001/29/EC. A situation of this type creates legal uncertainty for both users and rightholders. It is therefore necessary to provide a new specific exception to permit the legitimate uses of extracts of preexisting protected works or other subject-matter in content that is uploaded or made available by users. Where content generated or made available by a user involves the short and proportionate use of a quotation or of an extract of a protected work or other subject-matter for a legitimate purpose, such use should be protected by the exception provided for in this Directive. This exception should only be applied in certain special cases which do not conflict with normal exploitation of the work or other subject-matter concerned and do not unreasonably | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  | COUNCIL TEXT<br>9134/18                   |
| depending on final agreement]  | POSSIBLE COMPROMISE SOLUTION              |

| 45.   |  | Row                                       |
|---|--|---|
|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (21c) Information society service providers that fall within the scope of Article 13 of this Directive should not be able to invoke for their benefit the exception for the use of extracts from pre-existing works provided for in this Directive, for the use of quotations or extracts from protected works or other subjectmatter in content that is uploaded | prejudice the legitimate interests of the rightholder. For the purpose of assessing such prejudice, it is essential that the degree of originality of the content concerned, the length/extent of the quotation or extract used, the professional nature of the content concerned or the degree of economic harm be examined, where relevant, while not precluding the legitimate enjoyment of the exception. This exception should be without prejudice to the moral rights of the authors of the work or other subject-matter. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|   |  | COUNCIL TEXT<br>9134/18                   |
| [deleted and if need be to be replaced by text related to paragraph 5bis of Article 13 depending on final agreement]  |  | POSSIBLE COMPROMISE<br>SOLUTION           |

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| 45a.   |  | Row                                       |
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|  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  | or made available by users on those information society services, to reduce the scope of their obligations under Article 13 of this Directive. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  |  | COUNCIL TEXT<br>9134/18                   |
| The expiry of the term of protection of a work entails the entry of that work in the public domain and the expiry of the rights that Union copyright law provides to that work. In the field of visual arts, the circulation of faithful reproductions of works in the public domain contributes to the access to and promotion of culture (or access to cultural heritage). In the digital environment, the protection of these reproductions through copyright or related rights is inconsistent with the expiry of the copyright protection of works. In addition, differences between the national copyright laws governing the protection of these reproductions give rise to legal uncertainty and affect the cross-border |  | POSSIBLE COMPROMISE SOLUTION              |

| 46.   |   | Row                                       |
|---|---|---|
| institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or                |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of out-of-commerce works or other subject-matter: that are considered out of commerce for the purposes of this Directive. However, the particular characteristics of the collections of out-of-commerce works, together with the amount of works involved in mass   |   | COUNCIL TEXT<br>9134/18                   |
| (22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of works or other subjectmatter that are considered out of commerce for the purposes of this Directive. However, the particular characteristics of the collections of out-of-commerce works, together with the amount of works and other subject-matter involved in mass digitisation projects, mean that | dissemination of works of visual arts in the public domain.  Therefore, it should be clarified that certain reproductions of works of visual arts in the public domain should not be protected by copyright or related rights. This should not prevent cultural heritage institutions from selling reproductions, such as postcards.  [provisionaly agreed at trilogue of 13/12/2016] | POSSIBLE COMPROMISE<br>SOLUTION           |

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| (22a) Legal mechanisms should<br>therefore exist in all Member<br>States allowing for licences issued<br>by relevant and sufficiently |  | (22a) Several Member States have already adopted extended collective licencing regimes, legal mandates or legal presumptions |   | 47. |
|---|--|--|---|-----|
| [tentatively agreed at TM; confirmed at trilogue of 13/12/2018]   |  |  | IIIaI NCL   |     |
| agreements with cross border effect in the internal market.   |  |  | agreements with cross-<br>border effect in the internal |     |
| cultural heritage institutions. , and thereby to allow the conclusion of  | agreements with cross-border effect in the internal market.          |  | institutions and thereby to allow the conclusion of     |     |
| permanently in the collections of   | thereby to allow the conclusion of                                   |  | cultural heritage                                       |     |
| of-commerce works and other subject-matter that are   | permanently in the collections of cultural heritage institutions and |  | of-commerce works that are in the collections of        |     |
| eollective_licensing of rights in out-  | commerce works that are  | effect in the internal market.   | licensing of rights in out-                             |     |
| necessary to provide for measures to facilitate <b>certain uses of the</b>  | to facilitate the <u>collective</u> licensing of rights in out-of-   | thereby to allow the conclusion of agreements with cross-border  | necessary to provide for measures to facilitate the     |     |
| commercially. It is therefore   | necessary to provide for measures                                    | cultural heritage institutions and   | use. It is therefore                                    |     |
| never been exploited  | for commercial use. It is therefore                                  | that are in the collections of   | intended for commercial                                 |     |
| commercial use or that they have  | fact that they were never intended                                   | in-use of out-of-commerce works  | fact that they were never                               |     |
| commercial value or the fact that   | or other subject-matter, their                                       | necessary to provide for measures  | matter, their limited                                   |     |
| other subject-matter, their limited   | example, to the age of the works                                     | been in commerce. It is therefore  | the works or other subject-                             |     |
| example, to the age of the works or   | very difficult. This can be due, for                                 | commercial use or have never   | for example, to the age of                              |     |
| difficult. This can be due, for   | individual rightholders may be                                       | they were never intended for   | difficult. This can be due.                             |     |
| obtaining the prior consent of the  | digitisation projects, mean that                                     | other subject-matter, their limited  | of the individual                                       |     |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT<br>9134/18  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COMMISSION<br>PROPOSAL<br>COM(2016)593                  | Row |
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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| facilitating the licencing of out- of-commerce works. However considering the variety of works and other subject-matter in the collections of cultural heritage institutions and the variance between collective management practices across Member States and sectors of cultural production, such measures may not provide a solution in all cases, for example, because there is no practice of collective management for a certain type of work or other subject matter. In such particular instances, it is therefore necessary to allow cultural heritage institutions to make out-of- commerce works held in their permanent collection available online under an exception to copyright and related rights. While it is essential to harmonise the scope of the new mandatory exception in order to allow cross- border uses of out-of-commerce works, Member States should nevertheless be allowed to use or continue to use extended | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  | COUNCIL TEXT<br>9134/18                   |
| representative collective management organisations to cultural heritage institutions, for certain uses of out-of-commerce works and other subject matter, to also apply to the rights of rightholders that have not mandated a representative collective management organisation in that regard. It should be legally possible for those licences to cover all territories of the Union.  (22b) An adapted legal framework applicable to collective licensing may not provide a solution for all the cases where cultural heritage institutions encounter difficulties in obtaining all the necessary authorisations of right holders for the use of out-of-commerce works and other subject-matter, for example, because there is no practice of collective management for a certain type of works or other subject-matter or because the relevant collective   | POSSIBLE COMPROMISE<br>SOLUTION           |

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|    |                           |                           |               |               |
|    | cases where more than one | htholders in the relevant | <u>of rig</u> |               |

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|     |  |   | matter who have given a mandate allowing the licensing of the relevant type of use.  Member States should be free to establish specific rules applicable to cases where more than one collective management organisation is representative for the relevant works or other subject matter, requiring for example joint licences or an agreement between the relevant organisations.  | collective management organisation is representative for the relevant works or other subject matter, requiring for example joint licences or an agreement between the relevant organisations.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018]  |
| 49. | those licensing mechanisms, a rigorous and well-functioning collective management system is important. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as | (24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important and should be encouraged by the Member States. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional | licensing mechanisms, a rigorous and well-functioning collective management system is important. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who | (24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important. That system includes in particular rules of good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. |

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|     | provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all | appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such | should be given the opportunity to exclude the application of such mechanisms in relation to all their works or other subject-matter | safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of <b>the</b> sueh <b>licensing</b> |
|     | rightholders, who should<br>be given the opportunity to<br>exclude the application of               | <i>licensing</i> mechanisms <i>or of such exceptions</i> to their works or other subject-matter. Conditions attached                    | or to all licences, or in relation to particular works or other subject-matter or to particular                                      | mechanisms and the exception or limitation introduced by this Directive for the use of out-of-  |
|     | such mechanisms to their works or other subject-  | to those mechanisms should not affect their practical relevance for   | icences, at any time before or under the duration of the   | commerce works in relation to all their works or other subject-matter   |
|     | matter. Conditions attached to those mechanisms   | cultural heritage institutions.   | licence. Conditions attached to those mechanisms should not  | or in relation to all licences or all uses under the exception or   |
|     | should not affect their   |   | affect their practical relevance for   | limitation, or in relation to   |
|     | practical relevance for cultural heritage   |   | cultural heritage institutions. It is important that when a  | particular works or other subject-<br>matter or <b>in relation</b> to particular  |
|     | institutions.   |   |  | licences or uses under the  |
|     |   |   | application of such mechanisms to one or more of their works or  | <b>exception or limitation</b> , at any time before or under the duration of the  |
|     |   |   | other subject-matter, the informed collective management   | licence or the uses under the excention or limitation Conditions  |
|     |   |   | organisation does not continue   | attached to those licensing   |
|     |   |   | to issue licences covering the   | mechanisms should not affect their  |
|     |   |   | uses are terminated within a   | heritage institutions. It is important  |
|     |   |   | reasonable period. Such  | that when a rightholder excludes the  |
|     |   |   | exclusion by the rightholder   | application of such mechanisms or   |
|     |   |   | should not affect their claim to   | of such exception or limitation to  |
|     |   |   | of the work or other subject-  | subject-matter, the informed  |
|     |   |   |  | collective management organisation  |

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| Affect the possibility for Member States to determine the allocation of legal responsibility for the compliance of the licensing and the use of out-of-commerce works with the conditions set out in this Directive and for the parties with  | matter.  | COUNCIL TEXT<br>9134/18                   |
| (24a) This Directive does not affect the possibility for Member States to determine the allocation of legal responsibility for the compliance of the licensing and the use of out-of-commerce works with the conditions set out in this Directive and for the compliance of the parties with the terms of those licenses. | eovering the relevant uses and any ongoing uses are terminated within a reasonable period, and, in the case they take place under a collective licence, that the informed collective management organisation does not continue to issue licences covering the relevant uses. Such exclusion by the rightholders should not affect their claims to remuneration for the actual use of the work or other subject-matter under the licence.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

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|     |  |  | the terms of those licenses.  | [tentatively agreed at TM, confirmed at trilogue 13/12/2018]   |
| 51. | variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject- | works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, sound recordings and audiovisual works. In order to reflect the specificities of different categories of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms. The solutions on the | works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, software, phonograms, sound recordings and audiovisual works-and unique works of art, irrespective of whether they have ever been commercially available. Neverincements, leaflets, trench journals | works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms and the exception or limitation introduced by this Directive are available and can be used in practice for different types of works and other subject-matter, including photographs, software, phonograms, audiovisual works and unique works of art, irrespective of whether they have ever been commercially available. Never-in-commerce works may include posters, leaflets, trench iournals or amateur audiovisual |
|     | publication and distribution and to facilitate the   | introduced by this Directive, specific requirements and  | but also unpublished works or other subject-matter, without   | or other subject-matter, without prejudice to other applicable legal   |
|     | usability of those   | procedures may have to be  | prejudice to other applicable   | constraints, such as national rules  |
|     | mechanisms, specific requirements and  | established by Member States for the practical application of those  | legal constraints, such as national rules on moral rights.  | on moral rights. When a work is available in any of its different  |
|     | procedures may have to be  | licensing mechanisms. It is  | When a work is available in any   | versions, such as subsequent   |
|     | established by Member  | appropriate that Member States   | of its different versions, such as  | editions of literary works and   |

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|     |                          |                                      | time period which needs to have been elapsed since the first | consult rightholders, cultural heritage institutionsusers and |
|     |                          |                                      | work. It is appropriate that  Member States consult          | organisations when doing so.                                  |
|     |                          |                                      | rightholders, users and collective                           | [tentatively agreed at TM,                                    |
|     |                          |                                      | management organisations when                                | confirmed at trilogue 13/12/2018]                             |
|     |                          |                                      | doing so.  |   |
| 52. |                          |                                      | (25a) When determining                                       | (25a) When determining whether                                |
|     |                          |                                      | whether works and other                                      | works and other subject-matter are                            |
|     |                          |                                      | subject-matter are out of                                    | out of commerce, a reasonable                                 |
|     |                          |                                      | should be required to assess                                 | their availability to the public in the                       |
|     |                          |                                      | their availability to the public in                          | customary channels of commerce                                |
|     |                          |                                      | the customary channels of                                    | taking into account the                                       |
|     |                          |                                      | commerce, taking into account                                | characteristics of the particular                             |
|     |                          |                                      | marticular work or set of works                              | States should be free to determine                            |
|     |                          |                                      | Member States should be free to                              | the allocation of responsibilities for                        |
|     |                          |                                      | determine the allocation of                                  | making the reasonable effort. The                             |
|     |                          |                                      | responsibilities for making the                              | reasonable effort should not have to                          |
|     |                          |                                      | reasonable effort. The                                       | be repeated over time but it should                           |
|     |                          |                                      | reasonable effort should not                                 | also take account of any easily                               |
|     |                          |                                      | have to be repeated over time                                | accessible evidence of upcoming                               |
|     |                          |                                      | but it should also take account                              | availability of works in the                                  |
|     |                          |                                      | of any easily accessible evidence                            | customary channels of commerce                                |
|     |                          |                                      | of upcoming availability of                                  | A work-by-work assessment should                              |

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|     |  |   | possibility to obtain a licence to a work should not be considered as availability to the public in the customary channels of commerce. | confirmed at trilogue 13/12/2018]   |
| 53. | (26) For reasons of international comity, the licensing mechanisms for | (26) For reasons of international comity, the licensing mechanisms <i>and the exception</i> for the | (26) For reasons of international comity, the licensing mechanisms for the digitisation and   | (26) For reasons of international comity, the licensing mechanism and the exception or limitation |
|     | dissemination of out-of-<br>commerce works provided                    | out-of-commerce works provided for in this Directive should not                                     | works provided for in this  Directive should not apply to   | the digitisation and dissemination of out-of-commerce works <del>provided</del>                   |
|     | not apply to works or other  | apply to works or other subject-<br>matter that are first published or, in                          | works or other subject matter that are first published or, in the   | for in this Directive should not apply to sets of out-of-commerce                                 |
|     | subject-matter that are first published or, in the                     | the absence of publication, first broadcast in a third country or, in                               | absence of publication, first broadcast in a third country or, in   | works or other subject-matter when there is available evidence to                                 |
|     | absence of publication, first broadcast in a third                     | the case of cinematographic or audiovisual works, to works the                                      | the case of cinematographic or audiovisual works, to works the  | presume that they predominantly consist of works or other subject-                                |
|     | cinematographic or   | producer of which has his headquarters or habitual residence  | producer of which has his headquarters or habitual residence  | matter of third countries, unless the concerned collective management                             |
|     | audiovisual works, to  | in a third country. Those   | in a third country. Those   | organisation is sufficiently representative for that third country                                |
|     | which has his headquarters   | to works or other subject-matter of   | to works or other subject matter  | for example via a representation  |
|     | or habitual residence in a third country. Those                        | third country nationals except when they are first published or in                                  | of third country nationals except when they are first published or  | agreement. This assessment can be hased on the evidence available                                 |
|     | mechanisms should also   | the absence of publication, first   | in the absence of publication, first  | following the reasonable effort to  |
|     | not apply to works or other  | broadcast in the territory of a   | broadcast in the territory of a   | determine the out-of-commerce   |
|     | country nationals except   | cinematographic or audiovisual  | cinematographic or audiovisual  | need to search for further evidence.  |

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| when they are first published or, in the absence of publication, first broadcast in the territory of a Member State or, in the case of cinematographic or audiovisual works, to works of which the producer's headquarters or habitual residence is in a Member State.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| works, to works of which the producer's headquarters or habitual residence is in a Member State.  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| works, to works of which the producer's headquarters or habitual residence is in a Member State sets of out-of-commerce works or other subject-matter when there is available evidence to presume that they predominantly consist of works or other subject-matter of third countries, unless the concerned collective management organisation is sufficiently representative for that third country, for example via a representation agreement. This assessment can be based on the evidence available following the reasonable effort to determine the out-of-commerce status of the works, without the need to search for further evidence. A work-by-work assessment of the origin of the out-of-commerce works should only be required insofar as it is also required for the reasonable effort to determine their commercial availability. | COUNCIL TEXT<br>9134/18                   |
| A work-by-work assessment of the origin of the out-of-commerce works should only be required insofar as it is also required for the reasonable effort to determine their commercial availability.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018]   | POSSIBLE COMPROMISE<br>SOLUTION           |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE SOLUTION   |
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| 54. | (27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them from generating reasonable revenues in order to cover the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence. | (27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them from generating reasonable revenues in order to cover and the costs of digitising and disseminating the works and other subject-matter covered by the licence. | cultural heritage institutions and collective management organisations should remain free to agree on the territorial scope of the licence, the licence fee and the allowed uses. Uses covered by such licence should not be for profit making purpose, including when copies are distributed by the cultural heritage institution, such as in the case of promotional material about an exhibition. At the same time, as the digitisation projectsof the collections of cultural heritage institutions, can entail significant investments-by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent themcultural heritage institutions from generating reasonable revenues in erder to coverfor the purposes of covering the costs of the licence and the costs of digitising and | heritage institutions and collective management organisations should remain free to agree on the territorial scope of the licence, including the possibility to cover all Member States, the licence fee and the allowed uses. Uses covered by such licence should not be for profit making purpose, including when copies are distributed by the cultural heritage institution, such as in the case of promotional material about an exhibition. At the same time, as the digitisation of the collections of cultural heritage institutions from investments, any licences granted under the mechanisms provided for in this Directive should not prevent cultural heritage institutions from generating reasonable revenues for the exclusive purposes of covering the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence. |

<sup>11</sup> Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1–6). Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal

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|  | appropriate to rely on that Office to establish and manage the European portal making such information available.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  | information available. In addition to making the information available through the portal, further appropriate publicity measures may need to be taken on a case-by-case basis in order to increase the awareness of affected rightholders, for example through the use of additional channels of communication to reach a wider public. The necessity, the nature and the geographic scope of the additional publicity measures should depend on the characteristics of the relevant out-of-commerce works or other subject-matter, the terms of the licences and the existing practices in Member States. Publicity measures should be effective without the need to inform each rightholder individually.                             | COUNCIL TEXT<br>9134/18                   |
| (-28a) In order to ensure that the licensing mechanisms established by this Directive for out-of-commerce works are relevant and | addition to making the information available through the portal, further appropriate publicity measures may need to be taken on a case-by-case basis in order to increase the awareness of affected rightholders, for example through the use of additional channels of communication to reach a wider public. The necessity, the nature and the geographic scope of the additional publicity measures should depend on the characteristics of the relevant out-of-commerce works or other subject-matter, the terms of the licences or the type of use under the exception or limitation, and the existing practices in Member States. Publicity measures should be effective without the need to inform each rightholder individually. | POSSIBLE COMPROMISE<br>SOLUTION           |

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|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
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| in this Directive to facilitate the collective licensing of rights in out-of-commerce works or other subject-matter that are permanently in the collections of cultural heritage institutions should be without prejudice to the use of such works or other subject-matter under exceptions or limitations provided for in Union law or under other licences with an extended effect, where such licensing is not   |  | COUNCIL TEXT<br>9134/18                   |
| this Directive to facilitate the collective licensing of rights in out-of-commerce works or other subject-matter that are permanently in the collections of cultural heritage institutions should be without prejudice to the use of such works or other subject-matter under exceptions or limitations provided for in Union law or under other licences with an extended effect, where such licensing is not based on the out-of-commerce status of the | function properly, that rightholders are adequately protected, that licences are properly publicised and that legal clarity is ensured with regard to the representativeness of collective management organisations and the categorisation of works, Member States should foster sector-specific stakeholder dialogue.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

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|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
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| ilicensing with an extended effect allow a collective management organisation to offer licences as a collective licensing body on behalf of rightholders irrespective of whether they have authorised the organisation to do so. Systems built on such mechanisms, such as extended collective licensing, legal mandates or presumptions of representation, are a well-established practice in several Member States and may be used in different areas. A functioning copyright framework that   | status of the covered works or other subject matter. These measures should also be without prejudice to national mechanisms for the use of out of commerce works based on licences between collective management organisation and users other than cultural heritage institutions.   | COUNCIL TEXT<br>9134/18                   |
| icensing with an extended effect allow a collective management organisation to offer licences as a collective licensing body on behalf of rightholders irrespective of whether they have authorised the organisation to do so. Systems built on such mechanisms, such as extended collective licensing, legal mandates or presumptions of representation, are a well-established practice in several Member States and may be used in different areas. A functioning copyright framework that works for all parties requires the availability | covered works or other subject matter. These measures should also be without prejudice to national mechanisms for the use of out of commerce works based on licences between collective management organisation and users other than cultural heritage institutions.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

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|  |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (28c) In the case of some uses, together with the usually large amount of works involved, the transaction cost of individual rights clearance with every concerned rightholder is prohibitively high and without effective collective licensing                    | works for all parties requires the availability of these proportionate, legal mechanisms for the licensing of works. Member States should therefore be able to rely on solutions, allowing relevant licensing organisations, which are owned or controlled by their rightholder members (or entities representing rightholders) or organised on a not for profit basis, to offer licences covering potentially large volumes of works or other subject-matter for certain types of use, and distribute the revenue received to rightholders.  | COUNCIL TEXT<br>9134/18                   |
| (28c) In the case of some uses, together with the usually large amount of works involved, the transaction cost of individual rights clearance with every concerned rightholder is prohibitively high and without effective collective licensing mechanisms all the | of these-proportionate, legal mechanisms for the licensing of works. Member States should therefore be able to rely on solutions, allowing relevant collective management licensing organisations, which are owned or controlled by their rightholder members (or entities representing rightholders) or organised on a not for profit basis, to offer licences covering potentially large volumes of works or other subject-matter for certain types of use, and distribute the revenue received to rightholders, in accordance with Directive 2014/26/EU.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

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| (28e) It is important that such mechanisms are only applied in well-defined areas of uses, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction, i.e. a licence that covers all the involved rightholders unlikely to occur due to the nature of the use or of the types of works concerned. It is equally important that the licensed use neither affects adversely the economic value of the relevant rights nor deprives rightholders of significant commercial benefits. Moreover, Member States should ensure that | nportant that such s are only applied in areas of uses, ining authorisations holders on an pasis is typically d impractical to a makes the required ansaction, i.e. a covers all the phtholders unlikely e to the nature of the e types of works It is equally hat the licensed use cts adversely the alue of the relevant leprives rightholders in commercial oreover, Member Id ensure that |

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| (28f) Specifically, to justify the extended effect of the mechanisms, the organisation should be, on the basis of authorisations from rightholders, sufficiently                                      | appropriate safeguards are in place to protect the legitimate interests of rightholders that are not represented by the organisation offering the licence.   | COUNCIL TEXT<br>9134/18                   |
| (28f) Specifically, to justify the extended effect of the mechanisms, the organisation should be, on the basis of authorisations from rightholders, sufficiently representative of the types of works | Ilicence, should not be on its own merits a reason to considermake the clearance of rights so onerous and impractical to justify the use of such mechanisms. It is equally important that the licensed use neither affects adversely the economic value of the relevant rights nor deprives rightholders of significant commercial benefits. Moreover, Member States should ensure that appropriate safeguards are in place to protect the legitimate interests of rightholders that are not represented by the organisation offering the licence which that apply in a non-discriminatory manner.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

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|   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| to their works or other subject- matter for all uses and works or other subject- matter, or for other subject-matter, or for specific uses and works or other subject-matter. In such cases, any ongoing uses should be terminated within a reasonable period. Member States may also decide that additional measures are appropriate to protect rightholders.  | COUNCIL TEXT<br>9134/18                   |
| all rightholders whose works are exploited under the licence as regards, including in particular as regards, including in particular as regards notably, access to information on the licensing and the distribution of remuneration. Publicity measures should be effective throughout the duration of the licence without imposing disproportionate administrative burdens on users, collective management organisations and rightholders and without the need to inform each rightholder individually. In order to ensure that rightholders can easily retain regain control of their works, and prevent any uses of their works, and prevent any uses of their works, and prevent application of such mechanisms to their works or other subject-matter for all uses and works or other subject-matter, at any time including before the conclusion of a licence and or the | POSSIBLE COMPROMISE<br>SOLUTION           |

| ANNEX | 5893/19 ADF |
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| 62.  |  | Row                                       |
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|  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (28g) Member States should<br>ensure that the purpose and<br>scope of any licence granted as a     |  | COUNCIL TEXT<br>9134/18                   |
| (28g) Member States should ensure that the purpose and scope of any licence granted as a result of | any ongoing uses should be terminated within a reasonable period. Such exclusion by the rightholders should not affect their claims to receive remuneration for the actual use of the work or other subject-matter under the licence. Member States may also decide that additional measures are appropriate to protect rightholders. This could include, for example, encouraging the exchange of information among collective management organisations and other interested parties across the Union to raise awareness about these mechanisms and the rightholders' possibility to exclude their works or other subject-matter from them.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

ECOMP 3.B. BM/rcg LIMITE 79 **EN** 

| 63.  |  | Row                                       |
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|  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (28h) Given the different traditions and experiences with extended collective licensing across Member States and their applicability to rightholders                       | result of these mechanisms, as well as the possible users, should always be carefully and clearly defined in national legislation or, if the underlying legislation is a general provision, in the licensing practices applied as a result of such general provisions, or in the licences granted. The ability to operate a licence under these mechanisms should also be limited to organisations which are either owned or controlled by their right holder members or which operate on a not for profit basis, regulated by national law implementing Directive 2014/26/EU.   | COUNCIL TEXT<br>9134/18                   |
| (28h) Given the different traditions and experiences with extended collective licensing across Member States and their applicability to rightholders irrespective of their | these mechanisms, as well as the possible users, should always be carefully and clearly defined in national legislation or, if the underlying legislation is a general provision, in the licensing practices applied as a result of such general provisions, or in the licences granted. The ability to operate a licence under these mechanisms should also be limited to collective rights management organisations which are either owned or controlled by their right holder members or which operate on a not for profit basis, regulated by national law implementing which are subject to national law | POSSIBLE COMPROMISE<br>SOLUTION           |

ECOMP 3.B. BM/rcg LIMITE

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| 64.   |   | Row   |
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|   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593          |
| (28a) In order to ensure that the licensing mechanisms established for out-of-commerce works are relevant and function properly, that rightholders are adequately protected under those mechanisms, that licences are |   | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018 |
|   | collective management organisations involved. Such information should be discussed with Member States in the contact committee referred to in Article 12(3) of Directive 2001/29) On/EC. The Commission should publish a report by 31 December 2020 on the use of such mechanisms in the Union and their impact on licensing and rightholders.  | COUNCIL TEXT<br>9134/18                         |
| [EP proposal covered as recital - 28a in line 55] [tentatively agreed at TM, confirmed at trilogue 13/12/2018]  | legislation, the scale of licensing and the collective management organisations involved. Such information should be discussed with Member States in the contact committee referred to in Article 12(3) of Directive 2001/29)  On/EC. The Commission should publish a report by 31 December 2020 10 April 2021 on the use of such mechanisms in the Union and their impact on licensing and rightholders, on the dissemination of cultural content and on the cross-border provision of services in the area of collective management of copyright and related rights, and competition.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION                 |

| Row | PROPOSAL<br>COM(2016)593  | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018   | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE SOLUTION   |
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|     |   | properly publicised and that legal clarity is ensured with regard to the representativeness of collective management organisations and the categorisation of works, Member States should foster sector-specific stakeholder dialogue.   |  |  |
| 65. | have the potential to play a decisive role in the dissemination of European works across the European Union. However, agreements on the online exploitation of such works may face difficulties related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the online exploitation of the work or where there are issues linked to the windows of exploitation. | (29) On-demand services have the potential to play a decisive role in the dissemination of European works across the European Union. However, agreements on the online exploitation of such works may face difficulties related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the online exploitation of the work or where there are issues linked to the windows of exploitation. | have the potential to play a decisive role in the dissemination of European audiovisual works across the-European Union. However, agreements the availability of those works, in particular European works, on video-on-demand services remains limited. Agreements on the online exploitation of such works may be difficult to conclude due to issues face difficulties-related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory is not interested in the has low economic incentive to exploit a work online exploitation of the | have the potential to play a decisive role in the dissemination of audiovisual works across the European Union. However, the availability of those works, in particular European works, on video-on-demand services remains limited. Agreements on the online exploitation of such works may be difficult to conclude due to issues related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory has low economic incentive to exploit a work online and does not license or holds back the online rights, which can lead to the unavailability of audiovisual works on video-on- |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE SOLUTION  |
|-----|--|--|--|---|
|     |  |  | work or where there are issues and does not license or holds back the online rights, which can lead to the unavailability of audiovisual works on video-on-demand services. Other issues may be linked to the windows of exploitation.   | demand services. Other issues may be linked to the windows of exploitation.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018]   |
| 66. | licensing of rights in audiovisual works to video-on-demand platforms, this Directive requires Member States to set up a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The body should meet with the parties and help with the negotiations by providing professional and external advice.  Against that background, Member States should decide on the conditions of the functioning of the | (30) To facilitate the licensing of rights in audiovisual works to video-on-demand platforms, this Directive requires Member States to should set up a negotiation mechanism, managed by an existing or newly established national body, allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The participation in this negotiation mechanism and the subsequent conclusion of agreements should be voluntary. Where a negotiation involves parties from different Member States, those parties should they decide to rely on the negotiation | rights in audiovisual works to video-on-demand platformsgervices, this Directive requires Member States to set upprovide for a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. The body or of one or more mediators. For that purpose, Member States may either create a new body or rely on an existing one that fulfils the conditions established by this Directive. Member States may designate one or more competent bodies or mediators.  The body or the mediators should meet with the parties and | rights in audiovisual works to video-on-demand services, this Directive requires Member States to provide for a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body or of one or more mediators. For that purpose, Member States may either create a new body or rely on an existing one that fulfils the conditions established by this Directive. Member States may designate one or more competent bodies or mediators. The body or the mediators should meet with the negotiations by providing professional, impartial and external |

ECOMP 3.B.

| 68.  |  | Row                                       |
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| (31) A free and pluralist press is essential to ensure         |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (31) A free and pluralist press is essential to ensure quality | with Union-related matters, but it should also be made available to Union citizens and future generations. The European Parliament Library, as the Library of the only Union institution directly representing Union citizens, should be designated as the Union depository library. In order not to create an excessive burden on publishers, printers and importers, only electronic publications, such as e-books, e-journals and e-magazines should be deposited in the European Parliament Library, which should make available for readers publications covered by the Union legal deposit at the European Parliament Library for the purpose of research or study and under the control of the European Parliament Library. Such publications should not be made available online externally. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (31) A free and pluralist press is essential to ensure quality |  | COUNCIL TEXT<br>9134/18                   |
| (31) A free and pluralist press is essential to ensure quality |  | POSSIBLE COMPROMISE SOLUTION              |

|   | Row                                       |
|---|---|
| quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. The increasing imbalance between powerful platforms and press publishers, which can also be news agencies, has already led to a remarkable regression of the media landscape on a regional level. In the transition from print to digital, publishers and news agencies of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and environment is often complex and inefficient.  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers The wide availability of press publications online has given rise to the emergence of new online services, such as news aggregators or media monitoring services, for which the reuse of press publications constitutes an important part of their business models and a source of revenues. Publishers of press publications are facing problems in licensing the online use of their publications are facing problems in being the providers of these kind of services, making it more difficult for them to recoup their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement of rights in press publications regarding online                               | COUNCIL TEXT<br>9134/18                   |
| information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. The wide availability of press publications online has given rise to the emergence of new online services, such as news aggregators or media monitoring services, for which the reuse of press publications constitutes an important part of their business models and a source of revenues. Publishers of press publications are facing problems in licensing the online use of their publications to the providers of these kind of services, making it more difficult for them to recoup their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement of rights in press publications regarding online uses by information society service providers in the digital environment are often complex and inefficient. | POSSIBLE COMPROMISE SOLUTION              |

| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publishers in producing press publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digitalonline uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other users. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press                                     | copyright for the reproduction and                                     | publications in respect of digital         | Private uses should be excluded           | respect of eigini uses.                |     |
|--|--|--|---|--|-----|
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digitalonline uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other users, including individual users. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the | guaranteed through the introduction, in Union law of rights related to | available to the public of press           | to obtain fair and proportionate          | press publications in                  |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digitalonline uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other users. Such protection should be effectively guaranteed through the introduction, in Union law, of   | protection should be effectively                                       | reproduction and making                    | in respect of digital uses in order       | available to the public of             |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digital online uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other users, including individual users. Such protection should be effectively guaranteed through the   | publications online. Such  | introduction, in Union law, of             | to the public of press publications       | reproduction and making                |     |
| wees by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gall protection for press publications in respect of digital online uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other users. Such protection should be   | publications by individual users,                                      | effectively guaranteed through the         | rights related to copyright for the       | to convright for the                   |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers ications and further recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digitalonline uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other   | commercial uses of press   | users. Such protection should be           | introduction, in Union law, of            | through the introduction, in           |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digitalonline uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of  | law applicable to private or non-                                      | press publications by other                | guaranteed through the                    | effectively guaranteed                 |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digitalonline uses by information society service providers, leaving unaffected current copyright rules in  | current copyright rules in Union                                       | Union law applicable to uses of            | protection should be effectively          | protection should be                   |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legallegal protection for press publications in respect of digitalonline uses by information society service providers, leaving unaffected  | providers, leaving unaffected  | current copyright rules in                 | Union for digital uses. Such              | digital uses. Such                     |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal protection for press publications in respect of digitalonline uses by information society service   | respect of <i>online</i> uses by                                       | providers, leaving unaffected              | harmonised legal protection for           | protection for press                   |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal e-gal protection for press publications in respect of digital pulses.   | protection for press publications in                                   | information society service                | provide at Union level a                  | harmonised legal                       |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legalle-gal   | at Union level a harmonised legal                                      | protection for press publications          | necessary for Member States to            | provide at Union level a               |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union  | It is therefore necessary to provide                                   | rever a narmonised <del>regarite-gar</del> | <i>information</i> . It is therefore      | therefore necessary to                 |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore  | availability of reliable information.                                  | necessary to provide at Union              | the availability of reliable              | publishing industry.It is              |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the  | industry and thereby to foster the                                     | publishing industry. It is therefore       | industry and thereby to guarantee         | sustainability of the                  |     |
| service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged   | sustainability of the publishing                                       | to ensure the sustainability of the        | sustainability of the publishing          | encouraged to ensure the               |     |
| wses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press publications needs to be   | encouraged to ensure the   | recognised and further encouraged          | encouraged to ensure the                  | be recognised and further              |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of publishers in producing press  | needs to be recognised and further                                     | publications needs to be                   | needs to be recognised and further        | press publications needs to            |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and financial contribution of  | in producing press publications  | publishers in producing press              | in producing press publications           | of publishers in producing             |     |
| uses by information society service providers in the digital environment isare often complex and inefficient.  1. (32) The organisational and (32)   | financial contribution of publishers                                   | inancial contribution of                   | financial contribution of publishers      | and financial contribution             |     |
| Uses by information society service providers in the digital environment is are often complex and inefficient.   | (32) The organisational and  | _  | (32) The organisational and               | (32) The organisational                | 69. |
| Uses by information society service providers in the digital   |  | and inefficient.                           |   |  |     |
| COUNCIL TEXT 9134/18   |  | service providers in the digital           |   |  |     |
| COUNCIL TEXT 9134/18   |  | uses by information society                |   |  |     |
|  | POSSIBLE COMPROMISE<br>SOLUTION  | COUNCIL TEXT<br>9134/18                    | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Row |

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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| the listing in a search engine should not be considered as fair and proportionate remuneration.  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council <sup>12</sup> . The legal protection for press publications provided for by this directive should only benefit publishers established in a Member State in the meaning of the Treaty of the functioning of the European Union, i.e. when they have their registered office, central administration or principal place of business within the Union.  | COUNCIL TEXT<br>9134/18                   |
| publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the European Parliament and of the Council <sup>12</sup> . The legal protection for press publications provided for by this Directive should only benefit publishers established in a Member State and having their registered office, central administration or principal place of business within the Union. [the following addition was provisionally agreed at trilogue 03/12/2018]  The concept of publisher of press publications should be understood as news publishers or news agencies, when they publish press | POSSIBLE COMPROMISE SOLUTION              |

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. 1–15).

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| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE<br>SOLUTION   |
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|     |   |  |  | publications within the meaning of this Directive.  |
| 70. | (33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical published for scientific or academic purposes, such as scientific | (33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute | (33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining in any media, including on paper, in the context of an economic activity which constitutes a provision of services under Union law. The press publications to be covered are those whose purpose is to inform the general public and which are periodically or regularly updated. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of | (33) For the purposes of this Directive, it is necessary to define the concept of press publications so that it only covers journalistic publications, published in any media, including on paper, in the context of an economic activity which constitutes a provision of services under Union law. The press publications to be covered would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest, including subscription based magazines, and news websites. Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably photographs and videos. Periodical publications published for scientific or academic purposes, such as |
|     | granted to press publications under this  | factual information which is reported in journalistic articles   | publications contain mostly literary works but increasingly  | press publications under this  Directive. <i>Neither should this</i>  |
|     | publications under this   | reported in journalistic articles  | literary works but increasingly  | Directive. <i>Neither should this</i>   |

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| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593   | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018   | COUNCIL TEXT<br>9134/18   | POSSIBLE COMPROMISE SOLUTION  |
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|     | Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public.  | from a press publication and will therefore not prevent anyone from reporting such factual information.   | and subject-matter, notably photographs and videos. Periodical publications wich are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute eommunication to the public.   | as blogs, that provide information as part of an activity which is not carried out under the initiative, editorial responsibility and control of service provider, such as a news publisher.  [provisionally agreed at TM on 04/12/2018, confirmed at trilogue 13/12/2018]  |
| 71. | (34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights | (34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They Member States should also be able to subject those rights to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for | publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital online uses are concerned. by information society service providers are concerned. They should not extend to acts of hyperlinking when they do not constitute communication to the public. They should also be subject to the same provisions on | publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as online uses by information society service providers are concerned.  The rights granted to the publishers of press publications should not extend to acts of hyperlinking. They should also not extend to the mere facts reported in the press publications. They should |

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| COMMISSION PROPOSAL PROPOSAL COM(2016)593 P8_TA-PROV(2018)0337 A8-0245/2018  provided for in Directive purposes such as criticism or excep review laid down in Article 5(3)(d) application and the rev | P8_TA-PROV(2018)0337 A8-0245/2018  purposes such as criticism or review laid down in Article 5(3)(d)  |
|--|---|
| s(3)(d)  | S(3)(d)   |
| <b>37</b> (5(3)(d)   | <b>37</b> (5(3)(d)  |
| 0 - 0 -  | vions and limitations as those able to the rights provided Directive 2001/29/EC <sub>2</sub> ling the exception on tion for purposes such as sm or review laid down in e 5(3)(d) of that Directive. |

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| 73.  |  | Row                                       |
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| (35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter              | creation of their authors, in accordance with the case law of the Court of Justice of the European Union. Therefore, it is appropriate to provide that the use of insubstantial parts of press publications should not fall within the scope of the rights provided for in this Directive. To determine the insubstantial nature of parts of press publications for the purposes of this Directive, Member States may take into account whether these parts are the expression of the intellectual creation of their authors or whether these parts are limited to individual words or very short excerpts, without independent economic significance, or both criteria. | COUNCIL TEXT<br>9134/18                   |
| publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated                                | short extracts of press publications should not fall within the scope of the rights provided for in this Directive.  | POSSIBLE COMPROMISE<br>SOLUTION           |

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| rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated.  Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other rightholders, on the other side, and authors and other rightholders, on the other rightholders, on the other rightholders, on the other side.   | COMMISSION<br>PROPOSAL<br>COM(2016)593          |
| extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for licensing of their work to the press publisher, authors whose work is incorporated in a press publication should be entitled to an appropriate share of the new additional revenues press publishers receive for certain | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018 |
| incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. or against other authorised users of the same works and other subject-matter. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.   | COUNCIL TEXT<br>9134/18                         |
| therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders or against other authorised users of the same works and other subject-matter. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. [above part of recital (35) provisionally agreed at TM of 16.01.2019, tbc at Trilogue]  Authors whose works are incorporated in a press publication should be entitled to an appropriate share of the revenues press publishers receive for the   | POSSIBLE COMPROMISE<br>SOLUTION                 |

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| 74.  |   | Row                                       |
|--|---|---|
| (36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements. In this context, publishers make an investment with a  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (36) Publishers, including those of press publications, books or scientific publications, often and music publications, operate on the basis of the transfer of authors' rights by means of contractual agreements with authors. In this context, publishers make an investment and acquire rights, in       | types of secondary use of their press publications by information society service provided for in Article 11(1) of this Directive. The amount of the compensation attributed to the authors should take into account the specific industry licensing standards regarding works incorporated in a press publication which are accepted as appropriate in the respective Member State; and the compensation attributed to authors should not affect the licensing terms agreed between the author and the press publisher for the use of the author's article by the press publisher. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the                        |   | COUNCIL TEXT<br>9134/18                   |
| (36) Publishers, including those of press publications, books or scientific publications and music publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the | information society service providers.  [red part to be discussed further at trilogue]  This is without prejudice to Member States' laws on ownership of rights in the context of employment contracts, provided that they are compliant with Union law.  | POSSIBLE COMPROMISE<br>SOLUTION           |

## situation and improve legal shared between authors compensate for the harm are systems in place to contributes with his works author has transferred or determine that, when an should be allowed to certainty for all concerned and publishers. In order to compensation for uses of Member States deprived of revenues caused by an exception or to a publication and there publisher or otherwise parties, Member States take account of this under those exceptions is reprography. In a number for private copying and under exceptions or where such works are used in some instances be the works contained in view to the exploitation of licensed his rights to a limitations such as the ones their publications and may COMMISSION COM(2016)593 **PROPOSAL** should be allowed to determine view to the exploitation of the within joint collective in place to compensate for the publication and there are systems contributes with his works to a a publisher or otherwise transferred or heensed his rights to that, when an author has concerned parties, Member States to improve legal certainty for all take account of this situation and authors and publishers. In order to those exceptions is shared between States compensation for uses under In a *large* number of Member used under exceptions or revenues where such works are themselves being deprived of instances be therefore also find publications and may in some works contained in their authors and publishers, with a management organisations of claim a share of compensation some fields including rights to harm caused by an exception or private copying and reprography limitations such as the ones for $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT situation and improve legal or limitations, such as the ones for works are used under exceptions deprived of revenues where such contained in their publications and exploitation of the works contributes with his works to a when an author has transferred or Member States should be allowed certainty for all concerned parties order to take account of this between authors and publishers. In States the compensation or private copying and reprography. may in some instances be or a collective management States, or under public lending publication and there are systems **publishers** or otherwise represents authors and organisation that jointly licensed his rights to a publisher **but not obliged** to determine that, <del>under those exceptions</del> is shared remuneration for such uses schemes. In a number of Member reprography in the Member existing national schemes for including the corresponding COUNCIL TEXT 9134/18 in their publications and may in sharing of compensation between allows Member States that have take account of this situation compensation for uses under those i) In several Member States and reprography, including the such as the ones for private copying such compensation-sharing to those Member States that had iii) This is particularly important maintain them. authors and publishers to all concerned parties, this Directive and to improve legal certainty for authors and publishers. In order to exceptions is shared between lending schemes. Member States, or under public schemes for reprography in the corresponding existing national under exceptions or limitations, revenues where such works are used some instances be deprived of exploitation of the works contained 2015 although in other Member in place existing schemes for the mechanisms before 12 November POSSIBLE COMPROMISE SOLUTION

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| ANNEX      | 5893/19 ADD 1 |  |
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| ECOMP 3.B. |               |  |
| LIMITE     | BM/rcg        |  |

## exceed what is required whereas the burden on the such compensation, entitled to claim a share of under the system in place. publisher to substantiate limitation, publishers are nis claim should not COMMISSION COM(2016)593 **PROPOSAL** to claim a share of such rights, the management of rights States concerning public lending the arrangements in the Member provision is without prejudice to before 12 November 2015. This operation in that Member State equivalent system that was in or set by Members States in law or behalf of authors and publishers, organisation acting jointly on the collective management the internal distribution rules of such compensation could be set in between authors and publishers of such a system was in operation in compensation-sharing system if provide an equivalent required under the system in place. claim should not exceed what is on the publisher to substantiate his compensation, whereas the burden Himitation, publishers are entitled not based on exceptions or regulation, in accordance with the November 2015. The share that Member State before 12 extended collective licensing limitations to copyright, such as $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT exceed what is required underfor substantiate his claim should not compensation, whereas. The same to <del>claim</del>-a share of such <del>place</del>accordance with their of this compensation or should remain free to determine should remain free to decide no remuneration between authors the systemcompensation or the burden on the publisher to in place to compensate for the <u>national systems</u> and publishers in <u>the conditions as to the sharing</u> remuneration and to lay down <u>remuneration. Member States</u> <u>to provide publishers with such</u> <u>lending, while Member States</u> <u>possibility should exist for</u> limitation, publishers are entitled harm caused by an exception or <u>remuneration for public</u> COUNCIL TEXT 9134/18 should apply in a nonand solely due to authors in with his works to a publication and publisher or otherwise contributes transferred or licensed his rights to a allowed but not obliged to All Member States should be remuneration rights, provided that management of rights and to arrangements related to the also leave untouched national regarding remuneration in the arrangements in Member States affect existing and future introduce them. It should not compensation-sharing schemes to not currently have such oblige those Member States that do States, it should respect the discriminatory way to all Member accordance with national cultural States, compensation is not shared there are systems in place to determine that, when an author has they comply with Union law. context of public lending. It should traditions in this area and not policies. While this Directive POSSIBLE COMPROMISE SOLUTION

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| 75.  |   | Row                                       |
|--|---|---|
|  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (36 a) Cultural and creative industries (CCIs) play a key role in reindustrialising Europe, are a driver for growth and are in a strategic position to trigger innovative spill-overs in other | schemes, or concerning remuneration rights on the basis of national law.  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  |   | COUNCIL TEXT<br>9134/18                   |
| [deleted]<br>[tbc at trilogue]   | compensate for the harm caused to them by an exception or limitation, including through collective management organisations that jointly represent authors and publishers, publishers are entitled to a share of such compensation.  Member States should remain free to determine the burden on the publisher to substantiate his claim for the compensation or remuneration and to lay down the conditions as to the sharing of this compensation or remuneration between authors and publishers in accordance with their national systems.  [provisionally agreed at TM 04/12/2018 and confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

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| 76.  |  | Row                                       |
|--|--|---|
| the functioning of the online content marketplace has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to content online. This affects rightholders' possibilities to   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (37) Over the last years, the functioning of the online content marketplace market has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to copyright protected content online. Online services are means of providing wider access to cultural and creative works and offer great opportunities for | industrial sectors. Furthermore CCIs are a driving force for innovation and development of ICT in Europe. Cultural and creative industries in Europe provide more than 12 million full-time jobs, which amounts to 7,5 % of the Union's work force, creating approximately EUR 509 billion in value added to GDP (5,3 % of the EU's total GVA). The protection of copyright and related rights are at the core of the CCI's revenue. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (37) Over the last years, the functioning of the online content marketplace has gained in complexity. Online <b>content sharing</b> services providing access to <b>a large amount of</b> copyright-protected content uploaded by their users without the involvement of right holders have become main sources of access to content online. This Legal uncertainty exists as to whether such services engage in   |  | COUNCIL TEXT<br>9134/18                   |
| functioning of the online content market has gained in complexity.  Online content sharing services providing access to a large amount of copyright protected content uploaded by their users have become main sources of access to content online. Online services are means of providing wider access to cultural and creative works and offer great opportunities for   |  | POSSIBLE COMPROMISE<br>SOLUTION           |

ECOMP 3.B. BM/rcg LIMITE 100 100

|  | Row                                       |
|--|---|
| determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it.  | COMMISSION PROPOSAL COM(2016)593          |
| develop new business models.  However, although they allow for diversity and ease of access to content, they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders. This affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it, since some user uploaded content services do not enter into licensing agreements on the basis that they claim to be covered by the "safe-harbour" exemption set out in Directive 2000/31/EC.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| copyright relevant acts and need to obtain authorisations from rightholders for the content uploaded by their users who do not hold the relevant rights in the uploaded content, without prejudice to the application of exceptions and limitations provided for in Union Law. This situation affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject matter are content is used as well as their possibilities to get an-appropriate remuneration for it. It is therefore important to foster the development of the licensing service providers. These licensing agreements should be fair and keep a reasonable balance for both parties.  Rightholders should receive an appropriate reward for the use of their works or other subject matter. | COUNCIL TEXT<br>9134/18                   |
| develop new business models.  However, although they allow for diversity and ease of access to content, they also generate challenges when copyright protected content is uploaded without prior authorisation from rightholders.  Legal uncertainty exists as to whether such services engage in copyright relevant acts and need to obtain authorisations from rightholders for the content uploaded by their users who do not hold the relevant rights in the uploaded content, without prejudice to the application of exceptions and limitations provided for in Union Law. This uncertainty affects rightholders' possibilities to determine whether, and under which conditions, their works and other subject-matter are used as   | POSSIBLE COMPROMISE SOLUTION              |

ECOMP 3.B.

| ANNEX | 5893/19 ADD |
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| 77.   |  | Row                                       |
|---|--|---|
|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| (37a) Certain information society services, as part of their normal use, are designed to give access to the public to copyright protected content or other subject- |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (37a) The definition of an online content sharing service provider under this Directive targets only online services which play an important role on the online     |  | COUNCIL TEXT<br>9134/18                   |
| [if recital (38a) as proposed by the Commission during the trilogue on 13/12/2018 (see row 82) is retained, the following sentence from recital                     | well as their possibilities to get an appropriate remuneration for it.  It is therefore important to foster the development of the licensing market between rightholders and online content sharing service providers.  These licensing agreements should be fair and keep a reasonable balance for both parties.  Rightholders should receive an appropriate reward for the use of their works or other subject matter.  However, as contractual freedom is not affected by these provisions, the right holders should not be obliged to give an authorisation or to conclude licensing agreements. | POSSIBLE COMPROMISE<br>SOLUTION           |

**E** 20

|   | Row                                       |
|---|---|
|   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| not apply to services the main purpose of which is to engage in or to facilitate copyright piracy.  | COUNCIL TEXT<br>9134/18                   |
| within the meaning of Directive 2018/1972 establishing the European Electronic Communications Code, as well as providers of business to-business cloud services and cloud services, which allow users to upload content for their own use, such as cyberlockers, or online marketplaces whose main activity is online retail and not giving access to copyright protected content. Providers of services such as open source software development and sharing platforms, not for profit scientific or educational repositories as well as not-for-profit online encyclopedias are also excluded from this definition.  IIF SMES ARE EXCLUDED Microenterprises and small sized enterprises within the meaning of | POSSIBLE COMPROMISE<br>SOLUTION           |

| ANNEX | 5893/19 ADD |
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| 78.   |  | Row                                       |
|---|--|---|
|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (37b) The assessment of whether an online content sharing service provider stores and gives             |  | COUNCIL TEXT<br>9134/18                   |
| (37b) The assessment of whether an online content sharing service provider stores and gives access to a | Recommendation 2003/361/EC should also be excluded from this definition since they are not considered as significantly affecting the online content market and do not compete with major licence-based online services. These enterprises remain subject to the possible application of the existing rules on copyright, in particular to Articles 3(1) and 3(2) of Directive 2019/29/EC as well as to of the provisions of Directive 2019/29/EC as well as to of the provisions of Directive 2000/31/EC.  Finally, in order to ensure a high level of copyright protection, the liability exemption mechanism provided for in Article 13 should not apply to service providers the main purpose of which is to engage in or to facilitate copyright piracy. | POSSIBLE COMPROMISE<br>SOLUTION           |

BM/rcg LIMITE

ECOMP 3.B.

106 EN

| 79. (38) Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of  |   | Row COMMISSION PROPOSAL COM(2016)593        |
|--|---|---|
| (38) Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of conclude licensing agreements with rightholders, are eligible for the liability are eligible for their users.  (38) Where information society Online content sharing service providers store and provide service providers store and provide works or other subject matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing perform an act of communication to the public, they are obliged to and therefore are responsible for their users, there information society Online content sharing service providers store and provide works or other subject matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing perform an act of communication to the public, they are obliged to and therefore conclude fair and appropriate licensing agreements with rightholders, unless they are eligible for their users, thereby going beyond the mere provision of physical facilities and performing perform an act of communication to the public, they are obliged to are obliged to should therefore conclude fair users, thereby going beyond the mere provision of physical facilities and provision of physical facilities and provision of physical facilities and provision to the public, they are obliged to communication to the public, they are obliged to communication to the public, they are obliged to and therefore conclude fair users, thereby are obliged to and therefore are public, they are obliged. |   | N EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| under which conditions the  where information society online content sharing service providers store and provide access to copyright protected works or other subject matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing are engaging in an act of communication to the public or making available to the public within the meaning of Article 3(1) and (2) of Directive 2001/29/EC they are obliged to   | access to a large amount of copyright-protected content needs to be made on a case-by-case basis and take account of a combination of elements, such as the audience of the service and the number of files of copyright-protected content uploaded by the users of the services. | COUNCIL TEXT<br>9134/18                     |
| online content sharing service providers engage in an act of communication to the public or making available to the public when they give the public access to copyright protected works or other protected subject matter uploaded by their users. Consequently, the online content sharing service providers should obtain an authorisation, including via a licencing agreement, from the relevant rightholders. This does not affect the concept of communication to the public or of  | large amount of copyright-protected content needs to be made on a case-by-case basis and take account of a combination of elements, such as the audience of the service and the number of files of copyright-protected content uploaded by the users of the services.             | POSSIBLE COMPROMISE SOLUTION                |

|   | Row                                       |
|---|---|
| 2000/31/EC of the European Parliament and of the Council <sup>13</sup> .  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| to the same extent and scope, the liability exemption provided in of users when they are acting in a non-commercial capacity. In accordance with Article 14 of Directive 2000/31/EC of the European Parliament and of the Council 11(2a) the responsibility of online content sharing providers pursuant to Article 13 does not extend to acts of hyperlinking in respect of press publications. The dialogue between stakeholders is essential in the digital world. They should define best practices to ensure the functioning of licensing agreements and cooperation between online content sharing service providers and rightholders. Those best practices should take into account the extent of the copyright infringing content on the service. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council. It does not change the concept of communication to the public or of making available to the public under Union law nor does it affect the possible application of Article 3(1) and (2) of Directive 2001/29/EC to other services using copyright-protected content.  | COUNCIL TEXT<br>9134/18                   |
| does it affect the possible application of Article 3(1) and (2) of Directive 2001/29/EC to other service providers using copyright-protected content [, including to the micro and small enterprises or other service providers which are excluded from the scope of this Directive].  [Uses being covered by licences is covered in recital 38(d)]   | POSSIBLE COMPROMISE<br>SOLUTION           |

<sup>13</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1–16).

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| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 | COUNCIL TEXT<br>9134/18   | POSSIBLE COMPROMISE<br>SOLUTION |
|-----|--|---|---|---------------------------------|
| .08 | In respect of Article 14, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subject-matter or promoting them, irrespective of the nature of the means used therefor.  | Deleted                                   | <b>Deleted,</b> partly moved to recital (37a) Council's text – see row 77 |                                 |
| .18 | In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users should take appropriate and proportionate measures to ensure protection of works or other subject-matter, such as implementing effective | Deleted                                   | <b>Deleted,</b> partly moved to recital (38c) Council's text – see row 84 |                                 |

| 82.   |   | Row                                       |
|---|---|---|
|   | technologies. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC. | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (38a) [Renumbered - in ST 9134/18 recital 38(b)]  When online content sharing service providers communicate to the public, they should not benefit from the limited liability provided for in Article 14 of Directive 2000/31/EC for the purposes of copyright relevant acts. This should not affect the possibility for the same online content sharing providers to benefit from such exemption of liability for other purposes than copyright when they are providing their services and host content at the request of their users in accordance with Article |   | COUNCIL TEXT<br>9134/18                   |
| [See comment in row 77, and comment on Article 13(3) in row 237A]  [Commission's text proposed at the trilogue 13/12/2018, to be further discussed]  "When online content sharing service providers are liable for acts of communication to the public or making available to the public under the conditions established under this Directive, Article 14(1) of Directive 2000/31/EC should not apply to the liability arising from Article 13 of this Directive. This should not affect the application of Article 14(1) of Directive                           |   | POSSIBLE COMPROMISE<br>SOLUTION           |

|   | Row                                       |
|---|---|
|   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| 14 of Directive 2000/31/EC.   | COUNCIL TEXT<br>9134/18                   |
| Article 13(4aa) applies to new online services. A similar provision is foreseen in Article 16(2) of Directive 2014/26/EU of 26 February 2014 on collective management of copyright and related rights and multiterritorial licensing of rights in musical works for online use in the internal market. This regulation is intended to take into account the specific case of start-up companies working with user uploads to develop new business models.  The modified regime applicable to new service providers with a small turnover and audience should benefit genuine new enterprises and should therefore cease to apply three years after they became first available online in the Union. It should not be abused by arrangements aiming at extending the benefit of this | POSSIBLE COMPROMISE<br>SOLUTION           |

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|   | 83.   | Row                                       |
|---|---|---|
|   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   |   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| Taking into account the fact that online content sharing service providers give access to content which is not uploaded by them but by their users, it is appropriate to provide that, for cases where no authorisation has been obtained by the services and, for the purpose of this Directive, they should not be liable for unauthorised acts in specific, well-defined circumstances, when they demonstrate that they have acted in a diligent manner with | (38b) [Renumbered - in ST   | COUNCIL TEXT<br>9134/18                   |
| Taking into account the fact that online content sharing service providers give access to content which is not uploaded by them but by their users, it is appropriate to provide for a specific liability mechanism for the purposes of this Directive for cases where no authorisation has been granted. This should be without prejudice to remedies under national law for cases other than liability for copyright infringements and to the                 | modified regime beyond the first three years. In particular, it should not apply to services newly created or to services provided under a new name but which are pursuing the activity of an already existing online content sharing service provider which could not or does not longer benefit from this regime. | POSSIBLE COMPROMISE SOLUTION              |

BM/rcg LIMITE

|   | Row                                       |
|---|---|
|   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| the objective to prevent such unauthorised acts, without prejudice to remedies under national law for cases other than liability for copyright infringements and to the possibility for national courts or administrative authorities of issuing injunctions. In particular, they should not be liable if some unauthorised content is available on their services despite their best efforts to prevent its availability by applying effective and proportionate measures based on the information provided by rightholders. In addition, for the online content sharing service providers not to be liable, they should also in any case, upon notification by rightholders of specific unauthorised works or other subject-matter, act expeditiously to remove or disable access to these and make their best efforts to prevent   | COUNCIL TEXT<br>9134/18                   |
| possibility for national courts or administrative authorities of issuing injunctions in compliance with Union law.  Where no authorisation has been granted to the services providers, they should make their best efforts in accordance with high industry standards of professional diligence to avoid the availability on their services of unauthorised works and other subject matter, as identified by the relevant rightholders. For that purpose rightholders should provide the service providers with necessary and relevant information data taking into account, among other factors, the size of rightholders and other subject matter. The steps taken by the online content sharing service providers in cooperation with right holders should not lead to the prevention of the availability of non-infringing content, including the use of works or other protected subject matter covered by a | POSSIBLE COMPROMISE                       |

|  | Row                                       |
|--|---|
|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| their future availability.   | COUNCIL TEXT<br>9134/18                   |
| licencing agreement, exception or limitation to copyright. Thereby it should not affect users who are using the online content sharing providers' services in order to lawfully upload and access information on these services.  The obligations established in Article 13 should also not lead to Member States imposing a general monitoring obligation.  When assessing whether an online content sharing service provider has made its best efforts according to the high industry standards of professional diligence, account should be taken of whether the service provider has taken all the steps that would be taken by a diligent operator to achieve the result of preventing the availability of unauthorised works or other subject matter on its website, taking into account best industry practices and the effectiveness of the steps taken in light of all relevant factors and developments. | POSSIBLE COMPROMISE<br>SOLUTION           |

ECOMP 3.B. BM/rcg LIMITE

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|   | Row                                       |
|---|---|
|   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|   | COUNCIL TEXT<br>9134/18                   |
| proportionality. For the purposes of this assessment, a number of elements should be considered, such as the size of the service, the evolving state of the art of existing means, including future developments. For avoiding the availability of different types of content and their cost for the services. Different means to avoid the availability of unauthorised copyright protected content may be appropriate and proportionate per type of content and it is therefore not excluded that in some cases unauthorised content may only be avoided upon notification of rightholders.  Any steps taken by the service providers should be effective with regard to the objectives sought but should not go beyond what is necessary to achieve the objective of avoiding and discontinuing the availability of unauthorised works and other subject matter. | POSSIBLE COMPROMISE SOLUTION              |

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| not excluded that in some cases unauthorised content may only be avoided upon notification of rightholders. In particular, small and micro enterprises as defined in Title I of the Annex to Commission Recommendation 2003/361/EC, should be expected to be subject to less burdensome obligations than larger service providers. Therefore, in specific cases it may not be proportionate to expect small and micro enterprises to apply preventive measures and in such eases these enterprises should only be expected to expeditiously remove specific unauthorised works and other subject matter upon notification by rightholders.]  If unauthorised works and other subject matter become available despite the best efforts made in cooperation with rightholders as required by this Directive, the online content sharing service providers should be liable in | POSSIBLE COMPROMISE<br>SOLUTION           |

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| relation to the specific works and other subject matter for which they have received the relevant and necessary information from rightholders, unless they demonstrate that they have made their best efforts pursuant to high industry standards of professional diligence.  In addition, where specific unauthorised works or other subject matter have become available on the services, including irrespective of whether despite the best efforts were made and regardless of whether right holders have made available the necessary information in advance, the online content sharing service providers should be liable for unauthorised acts of communication to the public of works and other subject matter, when upon receiving a sufficiently substantiated notice, they fail to act expeditiously to remove from their websites or disable access to the notified works and subject matter and if they fail to demonstrate that | POSSIBLE COMPROMISE<br>SOLUTION           |

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| prevent their future uploads of notified works, based on relevant and necessary information provided by rightholders.  When rightholders do not provide the service providers, with the necessary and relevant information other subject matter or when no notification concerning the removal or disabling access to specific unauthorised works or other subject matter has been provided by rightholders and, as a result, online content sharing service providers cannot make their best efforts to avoid on their services the availability of unauthorised content in accordance with the high standard of professional diligence, the service providers should not be liable for unauthorised acts of communication to the public or of making available to the public of these unidentified works and other subject matter. | POSSIBLE COMPROMISE<br>SOLUTION           |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593 | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 | COUNCIL TEXT<br>9134/18                                  | POSSIBLE COMPROMISE SOLUTION   |
|-----|--|---|--|--|
|     |  |   |  |  |
| 84. |  |   | (38c) [Renumbered - in ST                                | 38(c) The online content sharing service providers should be           |
|     |  |   | Appropriate collaboration                                | transparent towards rightholders with regard to the steps taken in the |
|     |  |   | carried out in good faith between online content sharing | context of the cooperation. As different actions may be undertaken     |
|     |  |   | service providers and                                    | by the online content sharing  |
|     |  |   | effective application of the                             | provide rightholders, at their   |
|     |  |   | measures by the online content                           | request, with adequate information                                     |
|     |  |   | service providers should be                              | and the way they are implemented.                                      |
|     |  |   | transparent towards                                      | Such information should be   |
|     |  |   | deployed measures. As different                          | enough transparency to   |
|     |  |   | measures may be used by the                              | rightholders, without prejudice to                                     |
|     |  |   | providers, they should provide                           | content sharing service providers.                                     |
|     |  |   | rightholders with appropriate                            | Service providers should however                                       |
|     |  |   | information on the type of                               | not be required to provide   |
|     |  |   | operate, including for example                           | individualised information for each                                    |
|     |  |   | information on the success rate                          | work and other subject matter  |
|     |  |   | information should be                                    | to contraction arrangements which                                      |
|     |  |   |  | may contain more specific  |

|  | Row                                       |
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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
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| rightholders and allow cooperation to ensure effective functioning of the measures, without prejudice to the business secrets of service providers. Service providers should however not be required to provide rightholders with detailed and individualised information for each work and other subject matter identified. This is without prejudice to contractual arrangements, which may contain more specific provisions on the information to be provided where agreements are concluded between service providers and rightholders. On the other hand, rightholders should provide the service providers with necessary and relevant data for the application of the measures to their specific unauthorised works or other subject matter taking also into account the size of rightholders and the type of their works and | COUNCIL TEXT<br>9134/18                   |
| provisions on the information to be provided where agreements are concluded between service providers and rightholders.  | POSSIBLE COMPROMISE SOLUTION              |

| 85.   |  | Row   |
|---|--|---|
|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593          |
|   |  | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018 |
| sharing service providers obtain authorisations, including via licensing agreements, for the use on the service of content uploaded by the users of the services, these authorisations should also cover the copyright relevant acts in respect of uploads by the users but only in cases where the users act in    | no data for the application of the measures or no notification concerning removal or disabling access to specific unauthorised works or other subject matter has been provided by rightholders and, as a result, online content sharing service providers cannot take the measures or expeditious action as set out in this Directive, these service providers should not be liable for unauthorised acts of communication to the public or of making available to the public. | COUNCIL TEXT<br>9134/18                         |
| [Commission's text proposed at the trilogue 13/12/2018, to be further discussed]  (38d) Where online content sharing service providers obtain authorisations, including via licensing agreements, for the use on the service of content uploaded by the users of the service, these should also cover the copyright |  | POSSIBLE COMPROMISE<br>SOLUTION                 |

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profit making purpose, or when the revenue generated by their uploads service providers, but only in cases

music or videos made for leisure or

service, the act of communication to the public *of the service should be* 

| 86.  |   | Row   |
|--|---|---|
| (39) Collaboration between information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593          |
| (39) Collaboration between information society Member States should provide that where right holders do not wish to conclude licensing agreements, online content sharing service providers storing and providing access to the public to large amounts of |   | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018 |
| (39) Moved up to recital (38c)[which was recital (38ca) in ST 9134/18]   | Recommendation 2003/361/EC, should be expected to be subject to less burdensome obligations than larger service providers.  Therefore, taking into account the state of the art and the availability of technologies and their costs, in specific cases it may not be proportionate to expect small and micro enterprises to apply preventive measures and that therefore in such cases these enterprises should only be expected to expeditiously remove specific unauthorised works and other subject matter upon notification by rightholders. | COUNCIL TEXT<br>9134/18                         |
|  |   | POSSIBLE COMPROMISE<br>SOLUTION                 |

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| functioning of technologies, such as content recognition technologies. In such cases, rightholders should provide the necessary data to allow the services to identify their content and the services should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. The services should in particular provide rightholders with information on the type of technologies used, the way they are operated and their success rate for the recognition of rightholders' content. Those technologies should also allow rightholders to get information society service  | COMMISSION PROPOSAL COM(2016)593 their users and rightholders |
| order to ensure that unauthorised protected works or other subject matter uploaded by, are not available on their users and rightholders is essential for the functioning of technologies, such as content recognition technologies. In such cases, rightholders should provide the necessary data to allow the services. Cooperation between online to identify their content and the services should be transparent towards rightholders with regard to the deployed technologies, to allow the assessment of their appropriateness. The services should in particular provide rightholders with information on the type of technologies used, the way they are operated and their success rate for the recognition of rightholders' content. Those technologies should also allow hightholders to get information from the information society service providers on the use of | P8_TA-PROV(2018)0337 A8-0245/2018 eepyright and right holders |
|   | COUNCIL TEXT<br>9134/18                                       |
|   | POSSIBLE COMPROMISE<br>SOLUTION                               |

| 87.   |   | Row                                       |
|---|---|---|
|   | providers on the use of their content covered by an agreement.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| ensure that online content sharing service providers referred to in paragraph I 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 should be processed without undue delay. Right holders should reasonably justify their decisions to avoid arbitrary dismissal of complaints. Moreover, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data                        | their centent and right holders should not lead to preventing the availability of non-infringing works or other protected subject matter, including those covered by an agreement exception or limitation to copyright. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| (39a) [Renumbered - in ST 9134/18 recital (39b)]  The measures taken by the online content sharing service providers should be without prejudice to the application of exceptions and limitations to copyright, including in particular those which guarantee the freedom of expression of users. For that purpose the service providers should put in place mechanisms allowing users to complain about the blocking or removal of uploaded content that could benefit from an exception or limitation to copyright. Replies   |   | COUNCIL TEXT<br>9134/18                   |
| (39a) The steps taken by the online content sharing service providers should be without prejudice to the application of exceptions and limitations to copyright, including in particular those which guarantee the freedom of expression of users.  Users acting for non-commercial purposes or users whose activities do not generate significant revenues shall be allowed to upload and make available content generated by themselves or by other users should not be prevented from uploading and making available content that they have produced and which includes that contains parts of |   | POSSIBLE COMPROMISE SOLUTION              |

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|   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| Protection Regulation, the cooperation should not lead to any identification of individual users nor the processing of their personal data. Member States should 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.  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| to the users' complaints should be provided in a timely manner.  To make these mechanisms function, cooperation from rightholders is needed, in particular with regard to the assessment of the complaints submitted and justifications for the removal of users' content.  Member States should remain free to put in place independent authorities for assessing the complaints submitted by users and making decisions on their validity. The redress mechanism should be without prejudice to the right of the parties to take action before a court.   | COUNCIL TEXT<br>9134/18                   |
| existing protected works or other protected subject matter for specific purposes such as of illustration or quotation.  criticism, review, caricature, parody or pastiche when these uses do not create significant harm to rightholders.  The online content sharing service providers should also put in place effective and expeditious complaint and redress mechanisms allowing users to complain on the steps taken with regard to their uploads, in particular when they could benefit from an exception or limitation to copyright in relation to an upload that is removed or to which access is disabled. Any complaint filed under such mechanisms should be processed without undue delay and be subject to a decision by a human. When rightholders request the services to take action against the uploads by users, such as disabling access to or removing content uploaded, the rightholders should duly justify their requests. | POSSIBLE COMPROMISE SOLUTION              |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593 | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018   | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE<br>SOLUTION   |
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|     |  |   |  | Moreover, in accordance with Directive 2002/58/EC <sup>14</sup> and Regulation (EU)2016/679 <sup>15</sup> , the cooperation should not lead to any identification of individual users nor the processing of their personal data. Member States should also ensure that users have access to outof-court redress mechanisms for the settlement of disputes. Such mechanisms should allow disputes to be settled impartially. Users should also have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules. |
| 88. |  | (39b) As soon as possible after the entry into force of this Directive, the Commission and the Member States should organise dialogues between stakeholders to harmonise and to define best | (39b) [Renumbered - in ST<br>9134/18 recital (39c)]  In order to foster best practices with regard to the measures to be taken by online content | (39b) As soon as possible after the entry into force of this Directive, the Commission, in collaboration with Member States, should organise dialogues between stakeholders to arrive to a uniform  |
|     |  | practices. They should issue  | sharing service providers to   | application of the obligation of  |

<sup>15</sup> ePrivacy-**Directive:** Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), *OJ L 201*, 31.7.2002, p. 37–47. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *OJ L* 119, 4.5.2016, p. 1–88.

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| 89.  |   | Row                                       |
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|  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| ensure that an intermediate mechanism exists enabling service providers and rightholders to find an amicable solution to any dispute arising from the terms of their cooperation agreements. To that end, Member States should | 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 works or other subject matter within the meaning of this Directive. When defining best practices, special account should be taken of fundamental rights, the use of exceptions and limitations. Special focus should also be given to ensuring that the burden on SMEs remains appropriate and that automated blocking of content is avoided.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  | avoid liability for unauthorised copyright acts, stakeholder dialogues should be encouraged by the Member States and the Commission. In order to give more clarity to the parties some guidance should also be provided by the Commission on the implementation of the measures including as to which measures could be considered to be proportionate for different types of content. For the purposes of the guidance the Commission should consult relevant stakeholders, including user organisations and technology providers, and take into account the developments on the market. | COUNCIL TEXT<br>9134/18                   |
|  | cooperation and to define best practices with regard to the appropriate industry standards of professional diligence. For this purpose the Commission should consult relevant stakeholders, including user organisations and technology providers, and take into account the developments on the market. User organisations should also have access to information on actions carried out by online content sharing service providers to manage content online.   | POSSIBLE COMPROMISE<br>SOLUTION           |

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| 90.   |   | Row                                       |
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|   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| should always receive fair and appropriate remuneration. Authors and performers who have concluded contracts with intermediaries, such as labels and producers, should receive fair and appropriate remuneration from them, either through individual agreements and/or collective bargaining agreements, collective management agreements or rules having a similar effect, for example joint remuneration rules. This remuneration should be mentioned explicitly in the contracts according to each mode of exploitation. Members States should look into the specificities of each sector and should be allowed to provide that remuneration is deemed fair and   | appoint an impartial body with all the relevant competence and experience necessary to assist the parties in the resolution of their dispute. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|   |   | COUNCIL TEXT<br>9134/18                   |
| Whole chapter to clarify that the provision applies to "exploitation contracts". The proposed text is based on already green recitals 40 and 40a – if this is kept here, the repetitions can be deleted from recitals 40 and 40a.]  (39x) Authors and performers tend to be in a weaker contractual position when they grant a licence or transfer their rights, including through their own companies, for the purposes of exploitation in return for remuneration, and these natural persons need eertain the protection provided for by this Directive to be able to fully benefit from their rights which are harmonised under Union law. This need does not arise when the contractual counterpart acts as end |   | POSSIBLE COMPROMISE<br>SOLUTION           |

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|   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| appropriate if it is determined in accordance with the collective bargaining or joint remuneration agreement.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|   | COUNCIL TEXT<br>9134/18                   |
| user and does not exploit the work or performance itself, which could among others be the case in some employment contracts.  [Commission's text proposed at the trilogue 13/12/2018, to be further discussed]  [39Y) The remuneration of authors and performers should be appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject-matter, the actual exploitation of the work and all other circumstances of the case, including such as market practices or the actual exploitation of the work. | POSSIBLE COMPROMISE SOLUTION              |

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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
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| A lump sum payment can constitute proportionate remuneration.  Member States should have the possibility, taking into account the specificities of each sector, to define specific cases for the application of lump sums, such as cases when determining the basis of a proportional remuneration is impossible in practice, or when the contribution of the author or performer is not significant having regard to the overall work or performance.  Members States should be free to implement the principle of appropriate and proportionate remuneration through different mechanisms, including collective bargaining and statutory mechanisms, provided that such mechanisms are in conformity with Union law. | POSSIBLE COMPROMISE SOLUTION              |

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|     |   |   |  | to consider a general/horizontal recital clarifying that free licences/ creative commons are not affected]   |
|     |   |   |  | [wording for such horizontal recital on free licences (suggested to be moved after recital 43a)]   |
|     |   |   |  | (43b) Nothing in this Directive should be interpreted as preventing holders of exclusive rights under Union copyright law from authorising the use of their works or |
|     |   |   |  | other subject-matter for free, including through non-exclusive free licences for the benefit of any users, when they consider it appropriate.                        |
|     |   |   |  | [To be further discussed at political level]   |
| 91. | (40) Certain rightholders such as authors and | (40) Certain rightholders such as authors and performers need | (40) Certain rightholders such as authors-Authors and performers | (40) Certain rightholders such as authors Authors and performers   |

## contractual counterparts or of transparency. Therefore compared to the value of their rights, contractual position when authors and performers or a transfer of rights in case where such economic value of their important for the their successors in title is information by their the sharing of adequate but they often face a lack remuneration received for the continued economic transfer their rights, they they grant licences or tend to be in a weaker return for remuneration. As rightholders grant a licence law. This is especially the harmonised under Union rights which are information to assess the performers need transparency and balance their licence or transfer, need information to assess COMMISSION COM(2016)593 **PROPOSAL** grant licences or transfer their performers tend to be in a weaker of exploitation, direct and indirect proportionate and cover all modes entitled to expect should be authors and performers are performers. The information that remuneration of authors and system that governs the title is important for the counterparts or their successors in comprehensive and relevant value of their rights, compared to assess the continued economic rights, they need information to contractual position when they transfer of rights in return tor rightholders grant a licence or a is especially the case where such harmonised under Union law. This value of their rights which are transparency and balance in the information by their contractual Therefore, the sharing of adequate face a lack of transparency. information to assess the economic licence or transfer, but they often the remuneration received for their remuneration. As authors and $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT of the COM proposal were moved a transfer of rights for the to new recital (40a) of Council's case where such rightholders which are harmonised under return for remuneration. **I his** economic value of their rights need information to assess the text - see following row 92] [Last two phrases of recital (40) <u>ceased, or when the author or</u> some employment contracts. <u>among others be the case in</u> <u>not exploit the work or</u> end user of the work and does contractual counterpart acts as purposes of exploitation in Union law. This is especially the remuneration. performer has granted licence Additionally, this need does not performance itself, which could <u>need does not arise when the</u> o the general public without arise when the exploitation has **natural persons** grant a licence or COUNCIL TEXT 9134/18 work and does not exploit the persons grant a licence or a transfer need information to assess the confirmed at trilogue 13/12/2018] Itentatively agreed at TM, remuneration. the general public without performer has granted licence to ceased, or when the author or arise when the exploitation has some employment contracts. could among others be the case in work or performance itself, which counterpart acts as end of the arise when the contractual remuneration. This need does not **exploitation** in return for ef rights for the purposes of which are harmonised under Union economic value of their rights Additionally, this need does not where such rightholders natural law. This is especially the case POSSIBLE COMPROMISE SOLUTION

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| Row | COMMISSION PROPOSAL COM(2016)593 in the system that governs            | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 revenue generated, including   | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE SOLUTION   |
|-----|--|--|--|--|
|     | in the system that governs the remuneration of authors and performers. | revenue generated, including revenues from merchandising, and the remuneration due. The information on the exploitation should also include information about the identity of any sublicensee or sub-transferee. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned. |  |  |
|     |  | [See Council's recital (40a) -row<br>92]   |  |  |
| 92. |  |  | (40a) As authors and petend to be in a weaker c position when they grar or transfer their rights, t information to assess th continued economic valrights, compared to the remuneration received f licence or transfer, but the face a lack of transparer Therefore, the sharing conformation by their concounterparts or their success. | (40a) As authors and performers tend to be in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing counterparts or their successors in counterparts or their successors in |

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|   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
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| performances should be carried out by those who need to comply with the transparency obligation on the basis of Article 6(1)(c) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (General Data Protection Regulation).  | COUNCIL TEXT<br>9134/18                   |
| should allow the effective assessment of the economic value of the rights in question. The transparency obligation should nevertheless apply only where concerned. The processing of personal data, such as contact details and information on remuneration, that are necessary to keep authors and performers informed on the exploitation of their works and performances should be carried out by those who need to comply with the transparency obligation on the basis of Article 6(1)(c) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data (General Data Protection Regulation).  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE<br>SOLUTION           |

| 93.  | Row                                       |
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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| exploitation-related information is duly provided to authors and performers also in cases where the rights have been sublicensed by the first contractor to other parties who exploit the rights, this Directive entitles authors and performers, in cases where the contractual partner has provided the information available to them, but the received information is not sufficient to assess the economic value of their rights, to request additional relevant information on the exploitation of the rights. This can be ensured either directly or through the contractual counterparts of authors and performers.  Member States should have the option, in compliance with Union law, to provide for further measures through national provisions to ensure transparency for authors and performers.   | COUNCIL TEXT<br>9134/18                   |
| (40b) In order to ensure that exploitation-related information is duly provided to authors and performers also in cases where the rights have been sublicensed by the first contractual counterpart parties who exploit the rights, this Directive entitles authors and performers, in cases where the first contractual counterpart partner has provided the information available to them, but the received information is not sufficient to assess the economic value of their rights, to request additional relevant information on the exploitation of the rights. This can be ensured either directly from sub-licensees or through the contractual counterparts of authors and performers. Authors and performers and their contractual counterparts may agree to keep the shared information confidential. but authors and performers should always have the possibility to use the shared information for | POSSIBLE COMPROMISE SOLUTION              |

| Row | COMMISSION<br>PROPOSAL<br>COM(2016)593 | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 | COUNCIL TEXT<br>9134/18                  | POSSIBLE COMPROMISE<br>SOLUTION   |
|-----|--|---|--|---|
|     |  |   |  | Directive. Member States should have the option, in compliance with Union law, to provide for further measures through national provisions to ensure transparency for authors and performers.  [provisionally agreed at TM, Confirmed at trilogue 13/12/2018] |
| 94. | (41) When implementing                 | (41) When implementing                    | (41) When implementing                   | (41) When implementing  |
|     | the specificities of different         | specificities of different content        | Member States should take into           | States should take into account   |
|     | content sectors and of the             | sectors and of the rights of the          | account the specificities of             | the specificities of different content  |
|     | rights of the authors and              | authors and performers in each            | different content sectors—and, such      | sectors-and, such as those of the   |
|     | should be considered.                  | Member States should consult all          | authors and performers in                | in each music sector-should be  |
|     | Member States should                   | relevant stakeholders as that             | eachmusic sector-should be               | considered. Member States should  |
|     | stakeholders as that should            | specific requirements. Collective         | eonsult, the audiovisual sector          | the publishing sector and all   |
|     | help determine sector-                 | bargaining should be considered as        | and the publishing sector and all        | relevant stakeholders as that should  |
|     | specific requirements.                 | an option to reach an agreement           | relevant stakeholders <del>as that</del> | help determinebe involved when  |
|     | Collective bargaining                  | between the relevant stakeholders         | should help determine be involved        | determining such sector-specific  |
|     | should be considered as an             | regarding transparency. To enable         | when determining such sector-            | requirements. Where relevant, the   |
|     | option to reach an                     | the adaptation of current reporting       | specific requirements. Where             | significance of the contribution of   |
|     | agreement between the                  | practices to the transparency             | relevant, the significance of the        | authors and performers to the   |
|     | relevant stakeholders                  | obligations, a transitional period        | contribution of authors and              | overall work or performance   |

| Row | COMMISSION PROPOSAL COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018   | COUNCIL TEXT 9134/18   | POSSIBLE COMPROMISE<br>SOLUTION   |
|-----|---|---|--|---|
|     | regarding transparency. To enable the adaptation of current reporting practices | should be provided for. The transparency obligations do not need to apply to agreements | performers to the overall work or performance should also be considered. Collective bargaining | <b>should also be considered.</b> Collective bargaining should be considered as an option to reach an |
|     | to the transparency obligations, a transitional                                 | management organisations as those   | should be considered as an option to reach an agreement between the                            | agreement between the relevant stakeholders regarding   |
|     | period should be provided   | are already subject to transparency   | relevant stakeholders regarding  | transparency: which should ensure   |
|     | for. The transparency   | obligations under Directive   | transparency: which should   | authors and performers the same   |
|     | apply to agreements   | 2014/26/EU.   | the same or higher level of  | or higher level of transparency as the minimum requirements   |
|     | concluded with collective   |   | transparency as the minimum  | provided for in this Directive. To  |
|     | management organisations  |   | requirements provided for in   | enable the adaptation of current  |
|     | to transparency obligations   |   | adaptation of current reporting  | transparency obligations, a   |
|     | under Directive   |   | practices to the transparency  | transitional period should be   |
|     | 2014/26/EU.   |   | obligations, a transitional period   | provided for. The transparency  |
|     |   |   | should be provided for. The  | obligations do not need to apply in   |
|     |   |   | need to apply to agreements  | hetween rightholders and collective   |
|     |   |   | concluded with collective  | management organisations  |
|     |   |   | management organisations and   | independent management entities or  |
|     |   |   | independent management   | other entities subject to the national  |
|     |   |   | entities or by other entities  | rules implementing Directive  |
|     |   |   | subject to the national rules  | 2014/26/EU as those organisations   |
|     |   |   | implementing Directive   | or entities are already subject to  |
|     |   |   | 2014/26/EU as those are already  | transparency obligations under  |
|     |   |   | subject to transparency  | Article 18 of Directive 2014/26/EU  |
|     |   |   | obligations under Directive  | Article 18 of Directive 2014/26/EU  |
|     |   |   | 2014/26/EU.  | applies to organisations which  |
|     |   |   |  | manage copyright or related rights  |

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|     |   |  |  | on behalf of more than one rightholder for the collective benefit of those rightholders. <i>However</i> , individually negotiated agreements concluded between rightholders and their contractual partners who act in their own interest and <i>should be</i> subject to the transparency obligation provided for in this Directive. |
|     |   |  |  | [provisionaly agreed at trilogue of 03/12/2018]  |
| 95. | (42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, | (42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for | (42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities | (42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors   |
|     | offering few possibilities for authors and performers to renegotiate them with                        | authors and performers to renegotiate them with their contractual counterparts or their  | for authors and performers to renegotiate them with their contractual counterparts or their                                      | and performers to renegotiate them with their contractual counterparts or their successors in title: when the  |
|     | their contractual counterparts or their   | without prejudice to the law   | successors in title-when the economic value of the rights  | economic value of the rights turns out to be significantly higher than   |
|     | successors in title.  | applicable to contracts in Member  | turns out to be significantly  | initially estimated. Therefore   |
|     | Therefore, without prejudice to the law   | States, there should be a remuneration adjustment  | higher than initially estimated. Therefore, without prejudice to   | without prejudice to the law applicable to contracts in Member   |
|     | applicable to contracts in  | mechanism for cases where the  | the law applicable to contracts in   | States, there should be a  |
|     | Member States, there  | remuneration originally agreed   | Member States, there should be a   | remuneration adjustment  |
|     | should be a remuneration  | under a licence or a transfer of   | remuneration adjustment  | mechanism <b>should be provided</b> for  |

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## adjustment of the sectors. Where the parties specificities and practices compared to the relevant entitled to bring a claim of the different content as well as of the circumstances of each case account of the specific situation should take exploitation of the work or derived from the disproportionately low transfer of rights is agreed under a licence or a cases where the adjustment mechanism for performer should be remuneration, the author or do not agree on the The assessment of the ensured by this Directive. light of the transparency the fixation of the revenues and the benefits remuneration originally before a court or other performance, ıncludıng ın COMMISSION COM(2016)593 **PROPOSAL** adjustment of the remuneration, situation should take account of the rights is disproportionately low appointed by them should on representative organisation be detrimental to the interests of author or performer on his or her organisation representing the request could also be made by the Such a contract adjustment work of the author or performer. nature and the contribution to the content sectors as well as of the and practices of the different case, as well as of the specificities specific circumstances of each transparency ensured by this exploitation of the work or the benefits derived from the and indirect revenues and the compared to the relevant *direct* request by the author or the author or performer or a *the author or performer*. Where behalf, unless the request would including in light of the the parties do not agree on the fixation of the performance, Directive. The assessment of the $P8\_TA-PROV(2018)0337$ A8-0245/2018 EP TEXT bring a claim before a court or different content sectors, and situation should take account of this Directive.contractual and the benefits-derived from the compared to the relevant revenues or a transfer of rights <del>isclearly</del> originally agreed under a licence not agree on the adjustment of the mechanism should be provided other competent authority. This performer should be entitled to remuneration, the author or agreement. Where the parties do whether the contract is based on remuneration practices of the well as of the specificities and of the author or performer, as case, including the contribution the specific circumstances of each counterpart of the author or <u>by</u> the <del>transparency ensured by</del> performance<del>, including in light of</del> work or the fixation of the subsequent exploitation of the **becomes** disproportionately low for cases where the remuneration performer. The assessment of the collective bargaining COUNCIL TEXT 9134/18 a transfer of rights isclearly originally agreed under a licence or situation should take account of the authors and performers duly agreement. Representatives of is based on a collective bargaining sectors, and whether the contract author or performer, as well as of specific circumstances of each case, of the author or performer. *The* Directive.contractual counterpar by the <del>transparency ensured by this</del> performance, including in light of work or the fixation of the subsequent exploitation of the and the benefits derived from the compared to the relevant revenues becomes disproportionately low cases where the remuneration mandated in accordance with practices of the different content revenues. The assessment of the revenues which should be taken the specificities and remuneration relevant to the case, including, including the contribution of the where applicable, merchandising nto account for the assessment of he disproportion are all revenues POSSIBLE COMPROMISE SOLUTION

|   | Row                                       |
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| competent authority.  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| performer be entitled to bring a claim before a court or other competent authority.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| mechanism should not apply to contracts 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/UE.   | COUNCIL TEXT<br>9134/18                   |
| national law, in compliance with Unions law, should have the possibility to provide assistance to one or more authors or performers in requesting the adjustment of the contracts, also taking into account the interests of other authors or performers when relevant. Those representatives should protect the identity of the represented authors and performers for as long as this is possible. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority. This mechanism should not apply to contracts 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/UE.  [provisionally agreed at TM 07/12/2018, confirmed at trilogue 13/12/2018] | POSSIBLE COMPROMISE SOLUTION              |

| 96. (43) Authors and performers are often reluctant to enforce their rights against their contractual partners befo a court or tribunal.  Member States should therefore provide for an alternative dispute resolution procedure that   | Row COMN  |  |
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| e their s before ould our an re that elated to sparency fjustment   | COMMISSION<br>PROPOSAL<br>COM(2016)593          |  |
| (43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism.  Representative organisations of authors and performers, including collective management organisations and trade unions, should be able to initiate such procedures at the request of authors and performers. Details about who initiated the procedure   | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018 |  |
| (43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims by authors and performers or their representatives on their behalf related to obligations of transparency and the contract adjustment mechanism. For that purpose, Member States may either create a new body or mechanism or rely on an existing one that fulfils the conditions established by this Directive-irrespective of whether these are industry-led  | COUNCIL TEXT<br>9134/18                         |  |
| often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims by authors and performers or their representatives on their behalf related to obligations of transparency and the contract adjustment mechanism. For that purpose, Member States may either create a new body or mechanism or rely on an existing one that fulfils the conditions established by this Directive irrespective of whether these are industry-led or public, including when incorporated in the national judiciary system. Member States should have flexibility in deciding | POSSIBLE COMPROMISE<br>SOLUTION                 |  |

| 97.  |  | Row                                       |
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|  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| performers license or transfer their rights, they expect their work or performance to be exploited. However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In such a case, and after a reasonable period of time has lapsed, authors and performers should have a right of revocation allowing them to transfer or license their right to another person. Revocation should also be                                 |  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  | should be allocated. This alternative dispute resolution procedure should be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court. | COUNCIL TEXT<br>9134/18                   |
| performers license or transfer their rights, they expect their work or performance to be exploited. However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In such a case, and after a reasonable period of time has elapsed, authors and performers should be able to benefit from a mechanism for the revocation of rights allowing them to transfer or license their rights to another person. Revocation should | without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.  [provisionally agreed at TM, to be confirmed at trilogue]                   | POSSIBLE COMPROMISE<br>SOLUTION           |

|  | Row                                       |
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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| licensee has not complied with his or her reporting/transparency obligation provided for in Article 14 of this Directive. The revocation should only be considered after all the steps of alternative dispute resolution have been completed, particularly with regard to reporting. As exploitation of works can vary depending on the sectors, specific provisions could be taken at national level in order to take into account the specificities of the sector, or of the works and the anticipated exploitation periods, notably providing for time limits for the right of revocation. In order to prevent abuses and take into account that a certain amount of time is needed before a work is actually exploited, authors and performers should be able to exercise the right of revocation only after a certain period of time following the conclusion of the license or of the transfer   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|  | COUNCIL TEXT<br>9134/18                   |
| also be possible when the transferee or licensee has not complied with his or her reporting transparency obligation provided for in Article 14 of this Directive. The revocation should only be considered after all the steps of alternative dispute resolution have been completed, particularly with regard to reporting. As exploitation of works can vary depending on the sectors, specific provisions could be taken at national level in order to take into account the specificities of the sectors, such as the audio-visual sector, or of the works, notably providing for time frames for the right of revocation. In order to protect the legitimate interests of licensees and transferees of rights and to prevent abuses, and taking into account that a certain amount of time is needed before a work is actually exploited, authors and performers should be able to exercise the right of revocation in accordance with certain procedural requirements and only | POSSIBLE COMPROMISE<br>SOLUTION           |

| 99.  | 98.   |   | Row                                       |
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|  |   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|  | (43b) To support the effective application across Member States of the relevant provisions of this Directive, the Commission should, in cooperation with Member States, encourage the exchange of best practices and promote dialogue at Union level. | agreement. National law should regulate the exercise of the right of revocation in the case of works involving a plurality of authors or performers, taking into account the relative importance of the individual contributions.   | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| in Articles 14 and 15 of this Directive should be of a mandatory nature and parties should not be able to derogate from these contractual provisions, whether included in the contracts between authors, performers and their  |   |   | COUNCIL TEXT<br>9134/18                   |
| (43a) The obligations laid down in Articles 14, 15 <u>and 16</u> of this Directive should be of a mandatory nature and parties should not be able to derogate from these contractual provisions, whether included in the contracts between authors, performers and their contractual counterparts or | [ <del>To be</del> deleted]   | after a certain period of time following the conclusion of the license or of the transfer agreement. National law should regulate the exercise of the right of revocation in the case of works involving a plurality of authors or performers, taking into account the relative importance of the individual contributions. | POSSIBLE COMPROMISE<br>SOLUTION           |

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| Row  | COMMISSION<br>PROPOSAL<br>COM(2016)593            | EP TEXT<br>P8_TA-PROV(2018)0337<br>A8-0245/2018   | COUNCIL TEXT<br>9134/18   | POSSIBLE COMPROMISE SOLUTION   |
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|      |   |   | contractual counterparts or in agreements between those counterparts and third parties such as non-disclosure agreements. As a consequence, the rules set out in Article 3(4) of the Regulation (EC) No 593/2008 of the European Parliament and of the Council 4 should apply to the effect that where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of Articles 14 and 15, as implemented in the Member State of the forum. | in agreements between those counterparts and third parties such as non-disclosure agreements. As a consequence, the rules set out in Article 3(4) of the Regulation (EC) No 593/2008 of the European Parliament and of the Council 6 should apply to the effect that where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of Articles 14, 15 and 16, as implemented in the Member Stat of the forum.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018] |
|      |   |   | time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of Articles 14 and 15, as implemented in the Member State of the forum.  | States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of Articles 14, 15 and 16, as implemented in the Member State of the forum.  [tentatively agreed at TM, confirmed at trilogue 13/12/2018]  |
| 100. | (44) The objectives of this Directive, namely the | (44) The objectives of this Directive, namely the | (44) The objectives of this Directive, namely the   | (44) The objectives of this Directive, namely the modernisation  |

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6–16). 148 **EZ** 

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| aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and crossborder dimension, be better achieved at Union level. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
| the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.           | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
| of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and crossborder dimension, be better achieved at Union level.  Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.                     | COUNCIL TEXT<br>9134/18                   |
| copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level. Therefore, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.                     | POSSIBLE COMPROMISE<br>SOLUTION           |

| Row  | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018  | COUNCIL TEXT<br>9134/18  | POSSIBLE COMPROMISE<br>SOLUTION   |
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| 101. | respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.  Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.                                       | (45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.   | (45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.   | (45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.  |
| 102. | (46) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in | data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council <sup>15</sup> | data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council <sup>17</sup> | data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC Regulation (EU) 2016/679 of the European |

<sup>17</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31–50). This Directive is repealed with effect from 25 May 2018 and shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the

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| 103. | 1  |   | R   |
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|      |  | compliance with  Directive 95/46/EC of the European Parliament and of the Council <sup>16</sup> and Directive 2002/58/EC of the European Parliament and of the Council <sup>17</sup> .                                  | COMMISSION<br>PROPOSAL<br>COM(2016)593    |
|      | (46 a) It is important to stress the importance of anonymity, when handling personal data for commercial purposes.  Additionally, the "by default" not sharing option with regards to personal data while using online platform interfaces should be promoted. | Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council to The provisions of the General Data Protection Regulation, including the "right to be forgotten" should be respected. | EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 |
|      |  | and Directive 2002/58/EC of the European Parliament and of the Council <sup>16</sup> .  | COUNCIL TEXT<br>9134/18                   |
|      | [deleted]  | Parliament and of the Council and Directive 2002/58/EC of the European Parliament and of the Council <sup>18</sup> .  | POSSIBLE COMPROMISE SOLUTION              |

protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

18 47), called, as amended by Directives 2006/24/EC and 2009/136/EC, the "e-Privacy Directive". protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37– Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the

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|-----|--|--|--|--|
|     | September 2011 of Member States and the Commission on explanatory documents <sup>17</sup> , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this | and the Commission on explanatory documents <sup>17</sup> , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified, | and the Commission on explanatory documents <sup>17</sup> , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified, | and the Commission on explanatory documents <sup>19</sup> , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified, |
|     | With regard to this Directive, the legislator considers the transmission of such documents to be justified,  |  |  |  |

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OJ C 369, 17.12.2011, p. 14.

## 5893/19 ADD 1 ANNEX

## 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

|          |      | Location       | COMMISSION<br>PROPOSAL<br>COM(2016)593  |  | EP TEXT  | EP TEXT COUNCIL TEXT  doc. 9134/18                           |
|----------|------|----------------|---|--|--|--|
| 1        | 105. |                | TITLE I<br>GENERAL PROVISIONS   | TITLE I<br>GENERAL PROVISIONS  | TITLE I<br>GENERAL PROVISIONS  | SI   |
| <u> </u> | 106. | Art.1, title   | Article 1<br>Subject matter and scope   | Article 1<br>Subject matter and scope  | Article I<br>Subject matter and scope  | d scope  |
| 1        | 107. | Art. 1, para 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 | 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 | 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 | ive lays aim at ng the able to ated rights of the aking into |

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| 2. Except in the cases referred to in Article 617, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2000/31/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU. |
|---|
| 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.               |
| COUNCIL TEXT doc. 9134/18   |

| GREEN  | (a) on a non-for-profit basis or by reinvesting all the profits in its scientific  | (a) on a non-for-profit basis or by reinvesting all   | (a) on a non-for-profit basis or by reinvesting all the  | Art. 2, para<br>1, point (a)      | 112. |
|--|--|---|--|-----------------------------------|------|
| (1) 'research organisation' means a university, including its libraries, a research institute or any other entity the primary goal of which is to conduct scientific research or to carry out educational activities involving also the conduct of scientific research:  [provisionally agreed at Trilogue 25/10/2018] | means a university, a research institute or any other organisationan entity. the primary goal of which is to conduct scientific research or to eonduct scientific research or to eonduct scientific esearch and provide educational services: involving also the conduct of scientific research: | (1) 'research organisation' means a university, including its libraries, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services: | (1) 'research organisation' means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services: | Art. 2, para 1, introductory part | 111. |
| GREEN  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:   | Art. 2, introductory part         | 110. |
| Article 2<br>Definitions   | Article 2<br>Definitions   | Article 2<br>Definitions  | Article 2<br>Definitions   | Art. 2, title                     | 109. |
| change of cross-reference,<br>confirmed by trilogue<br>03/12/2018]   |  |   |  |                                   |      |
| POSSIBLE COMPROMISE<br>SOLUTION  | COUNCIL TEXT doc. 9134/18  | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Location                          |      |

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| [provisionally agreed at   |   |   |   |                              |      |
|--|---|---|---|------------------------------|------|
| enjoyed on a preferential basis by an undertaking exercising a <b>significant</b> decisive influence upon such organisation; | exercising a decisive influence upon such organisation;                                   | exercising a significant influence upon such organisation;                          | exercising a decisive influence upon such organisation;                         |                              |      |
| in such a way that the access<br>to the results generated by the<br>scientific research cannot be                            | the scientific research cannot<br>be enjoyed on a preferential<br>basis by an undertaking | the scientific research cannot be enjoyed on a preferential basis by an undertaking | scientific research cannot be enjoyed on a preferential basis by an undertaking | phrase                       |      |
| GREEN  | in such a way that the access to the results generated by                                 | in such a way that the access to the results generated by                           | in such a way that the access to the results generated by the                   | Art. 2, para 1, closing      | 114. |
| [provisionally agreed at<br>Trilogue 25/10/2018]   |   |   |   |                              |      |
| (b) pursuant to a public interest mission recognised by a Member State;  | by a Member State;  | by a Member State;  | a Member State;   |                              |      |
| GREEN  | (b) pursuant to a public interest mission recognised                                      | (b) pursuant to a public interest mission recognised                                | (b) pursuant to a public interest mission recognised by                         | Art. 2, para<br>1, point (b) | 113. |
| [provisionally agreed at<br>Trilogue 25/10/2018]   |   |   |   |                              |      |
| (a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or                               | research; or  | the profits in its scientific research; or  | profits in its scientific research; or  |                              |      |
| SOLUTION   | doc. 9134/18  |   | COM(2016)593  |                              |      |
| POSSIBLE COMPROMISE  | COUNCIL TEXT  | EP TEXT   | COMMISSION  | Location                     |      |

| GREEN  (4) 'press publication' means a collection composed mainly of  | (4) 'press publication' means a fixation of a collection composed mainly of literary works of a                                 | (4) 'press publication' means a fixation by publishers or news agencies of a collection of literary                          | (4) 'press publication' means a fixation of a collection of literary works of a journalistic nature, which                      | Art. 2, para 4 | 117. |
|---|---|--|---|----------------|------|
| [provisionally agreed at<br>Trilogue 25/10/2018]  |   |  |   |                |      |
| institution' means a publicly accessible library or museum, an archive or a film or audio heritage institution;   | accessible library or museum, an archive or a film or audio heritage institution;   | accessible library or museum, an archive or a film or audio heritage institution;  | accessible library or museum, an archive or a film or audio heritage institution;   |                |      |
| GREEN   | (3) 'cultural heritage institution' means a publicly  | (3) 'cultural heritage institution' means a publicly   | (3) 'cultural heritage institution' means a publicly  | Art. 2, para 3 | 116. |
| [provisionally agreed at<br>Trilogue 25/10/2018]  |   |  |   |                |      |
| analyse text and data in digital form in order to generate information, <i>including</i> , <i>but not limited to</i> , patterns, trends and correlations; | generate information such as patterns, trends and correlations;   | form in order to generate information, <i>including</i> , <i>but not limited to</i> , patterns, trends and correlations.     | generate information such as patterns, trends and correlations;   |                |      |
| GREEN  (2) 'text and data mining' means any automated analytical technique aiming to  | (2) 'text and data mining' means any automated analytical technique aiming to analyse text and data in digital form in order to | (2) 'text and data mining' means any automated analytical technique which analyses works and other subject matter in digital | (2) 'text and data mining' means any automated analytical technique aiming to analyse text and data in digital form in order to | Art. 2, para 2 | 115. |
| SOLUTION  | doc. 9134/18  |  | PROPOSAL<br>COM(2016)593  |                |      |
| POSSIBLE COMPROMISE   | COUNCIL TEXT  | EP TEXT  | COMMISSION  | Location       |      |

ECOMP 3.B. BM/rcg LIMITE

| 118.   |  |  |
|--|--|--|
| Art. 2, para<br>4, point (a)                                   |  | Location                               |
|  | 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.  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|  | 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. Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition; | EP TEXT                                |
| (a) may also eompriseinclude other works or subject-matter-and | journalistic nature; which: [remaining part of this pargraph was split up in points (a) to (d) - see following rows 118-121]   | COUNCIL TEXT doc. 9134/18              |
| GREEN  (a) may also include other works or subject matter;     | literary works of a journalistic nature which:  [provisionally agreed at trilogue on 03/12/2018]   | POSSIBLE COMPROMISE SOLUTION           |

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| (c) has the purpose of providing the general public(*) with information related to news or other topics; and [provisionally agreed at trilogue on 03/12/2018; (*) to be read in conjunction with the clarifications in recital (33). | c) has having the purpose of providing the general public with information related to news or other topics; and [See Article 2(4) of COM proposal and of EP text (row 117)]   |         |  | Art. 2, para<br>4, point (c) | 120. |
|--|---|---------|--|------------------------------|------|
| b) 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; [provisionally agreed at trilogue on 03/12/2018]         | individual item within a periodical or regularly- updated publication under a single title, such as a newspaper or a general or special interest magazine, 2. [See Article 2(4) of COM proposal and of EP text (row 117)] |         |  | Art. 2, para<br>4, point (b) | 119. |
| [provisionally agreed at<br>trilogue on 03/12/2018]  | [See Article 2(4) of COM proposal and of EP text (row 117)]   |         |  |                              |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18   | EP TEXT | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location                     |      |

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| 121. | Location  Location  Art. 2, para  4, point (d) | COMMISSION<br>PROPOSAL<br>COM(2016)593 | EP TEXT   | d d is p media un editorial | doc. 9134/18  doc. 9134/18  is published in any a under the initiative, rial responsibility and  |
|------|--|--|---|-----------------------------|--|
| 121. | Art. 2, para<br>4, point (d)                   |  |   |                             | (d) is published in any media under the initiative, editorial responsibility and control of a service provider.  Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be considered as press publications for the purposes of this Directive.  [provisionally agreed at trilogue on 03/12/2018] |
| 122. | Art. 2, para 4a, introductory part             |  | (4a) 'out of commerce<br>work' means:             |                             | (deleted)  |
| 123. | Art. 2, para<br>4a, point (a)                  |  | (a) an entire work or other subject matter in any |                             | (deleted)  |

ECOMP 3.B.

5893/19 ADD 1 ANNEX

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| 125.   | 124.   |  |  |
|--|--|--|--|
| Art. 2,<br>para 4b<br>(EP)/para 5<br>(Council)   | Art. 2, para<br>4a, point (b)  |  | Location                               |
|  |  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 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-  | (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; | version or manifestation that is no longer available to the public in a Member State through customary channels of commerce; | EP TEXT                                |
| sharing service provider?  sharing service 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 for profit- |  |  | COUNCIL TEXT doc. 9134/18              |
| service provider' means a provider of an information society service whose main or one of the main purposes is to store and enable user to upload and give the public access to share a large(*) amount of eopyright protected works or other protected subject-matter                   | (deleted)  |  | POSSIBLE COMPROMISE SOLUTION           |

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| ANNE | 5893/1           |
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| 126.   |   |  |
|--|---|--|
| Art. 2,<br>para 4c<br>(EP)/para 6<br>(Council)   |   | Location                               |
|  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| (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 European Parliament of the European Parliament and of the Council of 9  September 2015 laying | 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; | EP TEXT                                |
| (6) 'information society service' means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535.   |   | COUNCIL TEXT doc. 9134/18              |
| [6) 'information society service' means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and   | not be considered online content sharing service providers within the meaning of this Directive.  [(*) COM to provide recital on "large amount"; exclusion of Micro- and SMEs to be further discussed]  | POSSIBLE COMPROMISE SOLUTION           |

ECOMP 3.B. LIMITE

| ANNEX | 5893/19 A |
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|       | ADD       |

| 128.  | 127.  |   |  |
|---|---|---|--|
|   | Art. 2, para<br>4d  |   | Location                               |
| TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- |   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- | (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. | 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).   | EP TEXT                                |
| TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- |   |   | COUNCIL TEXT doc. 9134/18              |
| TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- |   | 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). | POSSIBLE COMPROMISE SOLUTION           |

| 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 and cultural heritage institutions in order to carry out text and data | 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 and cultural heritage institutions in order to carry out text and data mining of works or | provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining-of works or other subject-matter to which they | provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have lawful access for the nurposes of | Air. 5, para i | 130. |
|--|--|--|---|----------------|------|
| Article 3 Text and data mining for the purposes of scientific research [provisionally agreed at Trilogue 25/10/2018]   | Article 3 Text and data mining for the purposes of scientific research   | Article 3 Text and data mining   | Article 3 Text and data mining  | Art. 3, title  | 129. |
| BORDER ENVIRONMENT   | BORDER ENVIRONMENT   | BORDER ENVIRONMENT   | BORDER ENVIRONMENT  |                |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18  | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location       |      |

| 131.   |  |   |  |
|--|--|---|--|
| Art. 3, para<br>1a   |  |   | Location                               |
|  |  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| Ia. Reproductions and extractions made for text and data mining purposes shall be stored in a secure | 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 able to benefit from the exception provided for in this Article. | mining for the purposes of scientific research by such organisations.           | EP TEXT                                |
| 1a.Copies of works or other subject-matter made in compliance with paragraph 1 shall                 |  | scientific research.  | COUNCIL TEXT doc. 9134/18              |
| GREEN  Ia. Copies of works or other subject-matter made in   |  | purposes of scientific research.  [provisionally agreed at Trilogue 25/10/2018] | POSSIBLE COMPROMISE SOLUTION           |

ECOMP 3.B. BM/rcg LIMITE 166 **EN** 

|      | Location       | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT   | COUNCIL TEXT doc. 9134/18  | POSSIBLE COMPROMISE SOLUTION   |
|------|----------------|---|---|--|--|
|      |                |   | manner, for example by<br>trusted bodies appointed for<br>this purpose.       | be stored with an appropriate level of security and not be retained for longer than necessary for achieving the purposes of scientific research. | compliance with paragraph I 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. |
|      |                |   |   |  | [provisionally agreed at Trilogue 25/10/2018]  |
| 132. | Art. 3, para 2 | 2. Any contractual provision contrary to the                                  | 2. Any contractual provision contrary to the                                  | 2. [Moved to Article 6(1)]   | GREEN  |
|      |                | exception provided for in paragraph 1 shall be unenforceable.                 | exception provided for in paragraph 1 shall be unenforceable.                 |  | [Moved to Article 6(1)] [provisionally agreed at Trilogue 25/10/2018]  |
|      |                |   | [See Council's Article 6(1) (row 155)]  |  |  |
| 133. | Art. 3, para 3 | 3. Rightholders shall be allowed to apply measures to ensure the security and | 3. Rightholders shall be allowed to apply measures to ensure the security and | 3. Rightholders shall be allowed to apply measures to ensure the security and  | GREEN  3. Rightholders shall be  |
|      |                | integrity of the networks and databases where the works or                    | integrity of the networks and databases where the works                       | integrity of the networks and databases where the works  | allowed to apply measures to ensure the security and   |
|      |                | other subject-matter are hosted. Such measures shall                          | or other subject-matter are hosted. Such measures shall                       | or other subject-matter are hosted. Such measures shall  | integrity of the networks and databases where the works or   |
|      |                | not go beyond what is   | not go beyond what is   | not go beyond what is  | other subject-matter are   |

| 134.  |   |  |
|---|---|--|
| Art. 3, para 4  |   | Location                               |
| 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.  | necessary to achieve that objective.  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 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-may continue to provide text and data mining exceptions in accordance with point (a) of Article 5(3) of Directive 2001/29/EC.   | necessary to achieve that objective.  | EP TEXT                                |
| 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.   | necessary to achieve that objective.  | COUNCIL TEXT doc. 9134/18              |
| 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.  [provisionally agreed at Trilogue 26 November] [the relation with existing exceptions under InfoSoc Directive under Article 17a | hosted. Such measures shall not go beyond what is necessary to achieve that objective.  [provisionally agreed at Trilogue 25/10/2018] | POSSIBLE COMPROMISE SOLUTION           |

| 1. Without prejudice to Article 3 of this Directive, Member States may/shall 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, 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 that form a part of the process for the purposes of text and data | Article 3 of this Directive  Member States may  provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for temporary reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining. | Article 3 of this Directive, Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining, provided that the use of works and |  | Art. 3a, para<br>1 | 136. |
|---|--|--|--|--------------------|------|
| Article 3a  Optional exception or limitation for text and data mining   | Article 3a Optional exception or limitation for text and data mining   | Article 3a  Optional exception or limitation for text and data mining  |  | Art. 3a, title     | 135. |
| (see row 306)]  |  |  |  |                    |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18  | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location           |      |

| NNEX | 893/19 |
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| 139.  | 138.   |             |  |
|---|--|-------------|--|
| Art. 3a, para<br>3  | Art. 3a, para<br>2 (Council)   |             | Location                               |
|   |  |             | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 3. Member States may continue to provide text and data mining exceptions in |  |             | EP TEXT                                |
|   | 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.  [See para. 1 of EP text (row 136)]   |             | COUNCIL TEXT doc. 9134/18              |
| 3. This Article shall not affect the application of                         | 2. The exception or limitation provided for in paragraph I 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 for the content made publicly available online.  [provisionally agreed at Trilogue 26/11/2018 in conjunction with wording of recital (13a) (row 28)] | 26/11/2018J | POSSIBLE COMPROMISE SOLUTION           |

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| 141.   | 140.  |   |  |
|--|---|---|--|
| Art. 4, para 1   | Art. 4,<br>title  |   | Location                               |
| 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,                | Article 4 Use of works and other subject-matter in digital and cross-border teaching activities |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive                            | Article 4 Use of works and other subject-matter in digital and cross-border teaching activities | accordance with point (a) of Article 5 (3) of Directive 2001/29/EC.   | EP TEXT                                |
| 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). | Article 4 Use of works and other subject-matter in digital and cross-border teaching activities |   | COUNCIL TEXT doc. 9134/18              |
| 1. Member States shall provide for an exception or limitation to the rights  | Article 4 Use of works and other subject-matter in digital and cross-border teaching activities | Article 3 of this Directive.  [This phrase replaces the 'Without prejudice'-clarification previously contained in paragraph 1.  [provisionaly agreed at Trilogue 26/11/2018]  Agreed at Trilogue 25/10/2018 to introduce the relation with existing exceptions under InfoSoc Directive under Article 17a (see row 306)] | POSSIBLE COMPROMISE SOLUTION           |

D<sub>1</sub> ECOMP 3.B. BM/rcg LIMITE

| 5893/19 ADD 1<br>ANNEX |
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| (a) takes place <i>under the</i>  | E 17   | premises of an educational establishment, <i>or in any</i> | premises of an educational establishment or through a     | 1, point (a) | 142. |
|---|--|--|---|--------------|------|
| CREEN   | (a) takes place enunder                                    |  |   | Art A nara   | 142  |
| [provisionally agreed at Trilogue 26/11/2018; reference to Directive 2009/24/EC agreed provided that it is clarified in a recital that distribution of software allowed under the exception is limited to digital transmission of software] |  |  |   |              |      |
| by the non-commercial purpose to be achieved, provided that <i>such</i> use:  | be achieved, provided that thesuch use:                    | be achieved, provided that the use:                        | use:  |              |      |
| purpose of illustration for teaching, to the extent justified   | the extent justified by the non-commercial purpose to      | the extent justified by the non-commercial purpose to      | commercial purpose to be achieved, provided that the      |              |      |
| in order to allow the digital use of works and other  | and other subject-matter for<br>the sole purpose of        | and other subject-matter for<br>the sole purpose of        | sole purpose of illustration for teaching, to the extent  |              |      |
| Article 11(1) of this Directive   | Directive in order to allow for the digital use of works   | Directive in order to allow for the digital use of works   | the digital use of works and other subject-matter for the |              |      |
| Articles 5(a), (b), (d) and (e) and 7(1) of Directive 96/9/EC,  | Article 4(1)(a) and (b) of Directive 2009/24/EC and        | 96/9/EC, Article 4(1) of Directive 2009/24/EC and          | and Article 11(1) of this                                 |              |      |
| provided for in Articles 2 and 3 of Directive 2001/29/EC,   | (b), (d) and (e) and Article<br>7(1) of Directive 96/9/EC, | and 7(1) of Directive                                      | Articles 5(a) and 7(1) of Directive 96/9/EC, Article      |              |      |
| POSSIBLE COMPROMISE SOLUTION  | doc. 9134/18   |  | PROPOSAL<br>COM(2016)593                                  |              |      |
|   | COUNCIL TEXT   | EP TEXT  | COMMISSION  | Location     |      |

BM/reg LIMITE

| 2. Notwithstanding Article  | may provide mar me                                       | adopted pursuant to                                    | adopted pursuant to paragraph                    |                               |      |
|---|--|--|--|-------------------------------|------|
| GREEN   | 2. Notwithstanding  Article 6(1), Member States          | 2. Member States may provide that the exception        | 2. Member States may provide that the exception  | Art. 4, para<br>2, sub-para 1 | 144. |
| [provisionally agreed at<br>Trilogue 25/10/2018]  |  |  |  |                               |      |
| including the author's name, unless this turns out to be impossible.                    | impossible.  | impossible for reasons of practicability.              | impossible.                                      |                               |      |
| (b) is accompanied by the indication of the source                                      | including the author's name, unless this turns out to be | including the author's name,                           | including the author's name,                     | 1, рош (в)                    |      |
| GREEN   | (b) is accompanied by the indication of the source,      | (b) is accompanied by the                              | (b) is accompanied by the                        | Art. 4, para                  | 143. |
| [provisionally agreed at Trilogue 26/11/2018 together with text on recital 16a, row 33] |  |  |  |                               |      |
| and   | Kaciiiig saii, <b>aiid</b>                               | establishment's pupils or students and teaching staff; |  |                               |      |
| establishment's pupils or   | pupils or students and                                   | environment accessible only                            |  |                               |      |
| <i>environment</i> accessible only by the educational                                   | accessible only by the educational establishment's       | establishment, or through a secure electronic network  | teaching staff;                                  |                               |      |
| or through a secure electronic  | or through a secure electronic network                   | under the responsibility of<br>the educational         | pupils or students and                           |                               |      |
| responsibility of an educational establishment, on                                      | establishment, on its premises or other venues,          | other venue in which the teaching activity takes place | secure electronic network accessible only by the |                               |      |
| SOLUTION  | doc. 9134/18   |  | COM(2016)593                                     |                               |      |
| POSSIBLE COMPROMISE   | COUNCIL TEXT   | EP TEXT  | COMMISSION                                       | Location                      |      |
|   |  |  |  |                               |      |

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| Member States availing themselves of the provision of   | themselves of the provision of the first subparagraph shall take the necessary | themselves of the provision of the first subparagraph shall take the necessary | themselves of the provision of<br>the first subparagraph shall<br>take the necessary measures | Air. 4, para<br>2, sub-para 2 | 143. |
|---|--|--|---|-------------------------------|------|
| CRFFN   | Member States availing   | Member States availing   | Member States availing  | Art / nara                    | 1/15 |
| [provisionally agreed at Trilogue 25/10/2018 / 26/11/2018 together with text on recitals (16) and (17), rows 32 and 35 tbc by trilogue] |  |  |   |                               |      |
| educational establishments are easily available in the market.  |  | are easily available in the market.  |   |                               |      |
| in paragraph 1 covering the needs and specificities of  | market.  | and specificities of educational establishments                                |   |                               |      |
| authorising the acts described  | described in paragraph 1 are easily available in the                           | acts described in paragraph 1 and tailored to the needs                        |   |                               |      |
| market or sheet music, to the   | authorising the acts   | agreements authorising the   |   |                               |      |
| material which is primarily intended for the educational  | the needs of educational   | the extent that adequate   |   |                               |      |
| subject-matter, such as   | matter, to the extent that adequate licences covering                          | market or sheet music, to  | described in paragraph 1 are easily available in the market.                                  |                               |      |
| as regards specific uses or   | works or other subject-  | material which is primarily  | licences authorising the acts   |                               |      |
| adopted pursuant to paragraph 1 does not apply generally or   | apply generally or as regards specific <b>uses or</b> types of                 | specific types of works or other subject-matter, such as                       | works or other subject-matter, to the extent that adequate                                    |                               |      |
| provide that the exception  | to paragraph 1 does not  | generally or as regards  | as regards specific types of  |                               |      |
| 6(1) Memher States may  | exception adopted pursuant   | naraoranh 1 does not anniv   | 1 does not apply generally or   |                               |      |
| SOLUTION  | doc. 9134/18   |  | COM(2016)593  |                               |      |
| POSSIBLE COMPROMISE   | COUNCIL TEXT   | EP TEXT  | COMMISSION  | Location                      |      |

BM/rcg LIMITE

| 146.   |   |  |
|--|---|--|
| Art. 4, para 3   |   | Location                               |
| other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.  | availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| other subject-matter for the sole purpose of illustration for teaching through secure electronic networks environments undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.   | appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.   | EP TEXT                                |
| other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.  | appropriate availability and visibility of that rightholders make the licences authorising the acts described in paragraph 1 available and visible for educational establishments.  | COUNCIL TEXT doc. 9134/18              |
| 3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic <i>environments</i> undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established. <i>[provisionally agreed at Trilogue 25/10/2018 /</i> | take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.  [provisionally agreed at Trilogue 26/11/2018 together with text on recital (17) and (17a), rows 35 and 36] | POSSIBLE COMPROMISE SOLUTION           |

| 148.  | 147.  |  |
|---|---|--|
| Art. 4, para<br>4a  | Art. 4, para 4  | Location                               |
|   | 4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subjectmatter pursuant to paragraph 1.  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to paragraph I shall be unenforceable. Member States shall ensure that rightholders have the right to grant royalty-free licences authorising the acts | 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.   | EP TEXT                                |
|   | 4. Member States may provide for fair compensation for the harm incurred by theto rightholders due to the use of their works or other subjectmatter pursuant to paragraph 1.  | COUNCIL TEXT doc. 9134/18              |
| [provisionally agreed at trilogue 25/10/2018 to deal with contractual override under Article 6(1)] [Commission to provide a general recital on royalty free licences]   | 26/11/2018 together with text on recital 16a, row 33]  GREEN  4. Member States may provide for fair compensation for the harm incurred by the to rightholders due to the use of their works or other subjectmatter pursuant to paragraph 1.  [provisionally agreed at Trilogue 25/10/2018 / 26/11/2018 together with text on recital (17a), row 36] | POSSIBLE COMPROMISE SOLUTION           |

| 150. Art. 1 (E   | 149. Art.   |   | L                                      |
|--|---|---|--|
| Art. 5, [para<br>1 (EP)]   | Art. 5, title                                     |   | Location                               |
| Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or | Article 5<br>Preservation of cultural<br>heritage |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies of any works or other subject-matter that are permanently in their  | Article 5<br>Preservation of cultural<br>heritage | described in paragraph 1, generally or as regards specific types of works or other subject-matter that they may choose.  [See Council's Article 6(1) (row 155)] | EP TEXT                                |
| Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions; to make copies of any works or other subject-matter that are permanently in their collections in any format or  | Article 5 Preservation of cultural heritage       |   | COUNCIL TEXT doc. 9134/18              |
| 1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies of any works or other subject-matter that are  | Article 5 Preservation of cultural heritage       |   | POSSIBLE COMPROMISE SOLUTION           |

| 151.   |   |  |
|--|---|--|
| Art. 5, para<br>1a   |   | Location                               |
|  | works or other subject-matter and to the extent necessary for such preservation.  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| Ia. 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.   | purposes of preservation of such works or other subject-matter and to the extent necessary for such preservation.   | EP TEXT                                |
|  | of the preservation of such works or other subject-matter and to the extent necessary for such preservation.  | COUNCIL TEXT doc. 9134/18              |
| provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work shall not be subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.  [provisionaly agreed at trilogue of 13/12/2018 together with deletion of Article 6(1), row 154, and in conjuction with new recital in | medium, for <i>purposes</i> of preservation of such works or other subject-matter and to the extent necessary for such preservation.  [provisionally agreed at trilogue 25/10/2018] | POSSIBLE COMPROMISE SOLUTION           |

| ANNEX | 5893/19 |
|-------|---------|
|       | ADD     |

| GREEN  Deleted   |                                | 1. Accessing content covered by an exception provided for in this  Directive shall not confer               |  | Art. 6, para 1<br>(EP) | 154. |
|--|--------------------------------|---|--|------------------------|------|
| Article 6<br>Common provisions   | Article 6<br>Common provisions | Article 6<br>Common provisions  | Article 6<br>Common provisions         | Art. 6, title          | 153. |
|  |                                | [See Council's Article 6(1)<br>(row 155)]   |  |                        |      |
| [provisionally agreed at trilogue 25/10/2018 to deal with contractual override under Article 6(1)]           |                                | 1b. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable. |  | Art. 5, para<br>1b     | 152. |
|  |                                |   |  |                        |      |
| row 45a.] [To be decided whether to place paragraph Ia outside Article 5, as this is not about an exception] |                                |   |  |                        |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18      | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location               |      |

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| 156.   | 155.  |   |  |
|--|---|---|--|
| Art. 6, para 2   | Art. 6, para 1<br>(Council)   |   | Location                               |
| 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.  |   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 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.  |   | on users any entitlement to use it pursuant to another exception. | EP TEXT                                |
| 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 of this Title Directive.  | 1. Any contractual provision contrary to the exceptions provided for in Articles 3, 4(1) and 5 shall be unenforceable.  [See Article 3(2) of the COM proposal and Parliament's Articles 3(2) and 4(4a) and 5(1b)] |   | COUNCIL TEXT doc. 9134/18              |
| 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.  [EP agrees to drop reference to the fourth subparagraph of Article 6(4) of Directive | 1. Any contractual provision contrary to the exceptions provided for in <i>Articles 3, 4 and 5</i> shall be unenforceable.  [provisionally agreed at trilogue 25/10/2018]   | [provisionally agreed at<br>trilogue 13/12/2018]                  | POSSIBLE COMPROMISE SOLUTION           |

| $\geq$                 | 58               |
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| I. Member States shall provide that a collective management organisation, in accordance with its mandates, may conclude a non-exclusive | 1. Member States shall provide that when-a collective management organisation, on behalf of in accordance with its members, eoneludes mandates, may conclude a non-exclusive | 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 | 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 | Art. 7, para 1, introductory part | 160. |
|---|--|---|--|-----------------------------------|------|
| Article 7 Use of out-of-commerce works by cultural heritage institutions  | Article 7 Use of out-of-commerce works by cultural heritage institutions   | Article 7 Use of out-of-commerce works by cultural heritage institutions  | Article 7 Use of out-of-commerce works by cultural heritage institutions   | Art. 7, title                     | 159. |
| CHAPTER 1 Out-of-commerce works   | CHAPTER 1<br>Out-of-commerce works   | CHAPTER 1 Out-of-commerce works   | CHAPTER 1 Out-of-commerce works  |                                   | 158. |
| MEASURES TO IMPROVE<br>LICENSING PRACTICES<br>AND ENSURE WIDER<br>ACCESS TO CONTENT   | TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT   | TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT  | TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT   |                                   | 157. |
| 2001/29/EC;  TM 07.12: general reference to exceptions to be made in second sentence; to be finalised at technical level]               |  |   |  |                                   |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18  | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Location                          |      |

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| on the basis of mandates from rightholders, sufficiently | representative of                  | rightholders in the category  | representative of rightholders<br>in the category of works or |              |      |
|--|------------------------------------|-------------------------------|---|--------------|------|
| management organisation is,                              | broadlysufficiently                | from rightholders, broadly    | rightholders, broadly   |              |      |
| (a) the collective                                       | on the basis of mandates           | on the basis of mandates      | on the basis of mandates from                                 | +            |      |
|  | management organisation is,        | na                            | na  | 1, point (a) | 101. |
| CREEN  | (a) the collective                 | (a) the collective            | (a) the collective  | Art 7 nara   | 161  |
|  | provided that:                     |                               |   |              |      |
|  | management organisation.           |                               |   |              |      |
| Trilogue 26/11/2018J                                     | mandated the collective            |                               |   |              |      |
| [provisionally agreed at                                 | represented by have                |                               |   |              |      |
|  | licence who are not                |                               |   |              |      |
|  | <b>rightholders</b> covered by the | organisation, provided that:  |   |              |      |
|  | irrespective of whether all        | collective management         | organisation, provided that:                                  |              |      |
| provided that:   | same category as those             | are not represented by the    | collective management   |              |      |
| management organisation,                                 | apply to rightholders of the       | covered by the licence who    | are not represented by the                                    |              |      |
| mandated the collective                                  | be extended or presumed to         | same category as those        | covered by the licence who                                    |              |      |
| covered by the licence have                              | non-exclusive licence may          | apply to rightholders of the  | same category as those  |              |      |
| of whether all rightholders                              | of the institution, such a         | extended or presumed to       | apply to rightholders of the                                  |              |      |
| of the institution, irrespective                         | permanently in the collection      | exclusive licence may be      | extended or presumed to                                       |              |      |
| permanently in the collection                            | other subject-matter               | institution, such a non-      | exclusive licence may be                                      |              |      |
| works or other subject-matter                            | out-of-commerce works or           | in the collection of the      | institution, such a non-                                      |              |      |
| public of out-of-commerce                                | available <b>to the public</b> of  | subject-matter permanently    | the collection of the   |              |      |
| or making available to the                               | to the public or making            | commerce works or other       | subject-matter permanently in                                 |              |      |
| communication to the public                              | distribution, communication        | available of out-of-          | commerce works or other                                       |              |      |
| reproduction, distribution,                              | digitisation reproduction,         | to the public or making       | or making available of out-of-                                |              |      |
| heritage institution for the                             | heritage institution for the       | distribution, communication   | communication to the public                                   |              |      |
| purposes with a cultural                                 | purposes with a cultural           | for the digitisation,         | digitisation, distribution,                                   |              |      |
| licence for non-commercial                               | licence for non-commercial         | cultural heritage institution | heritage institution for the                                  |              |      |
| SOLUTION   | doc. 9134/18                       |                               | COM(2016)593  |              |      |
| POSSIBLE COMPROMISE                                      | COUNCIL IEAI                       | EF IEAI                       | PROPOSAL  | Location     |      |
|  |                                    |                               | COMMISSION  | I postion    |      |
|  |                                    |                               |   |              |      |

| 163.   | 162.   |  |  |
|--|--|--|--|
| Art. 7, para<br>1, point (c)   | Art. 7, para<br>1, point (b)   |  | Location                               |
| (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.   | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence; | other subject-matter and of<br>the rights which are the<br>subject of the licence;   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| (c) all rightholders may at any time object to their works or other subjectmatter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.  | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence; | of works or other subject-<br>matter and of the rights<br>which are the subject of the<br>licence;   | EP TEXT                                |
| c) all rightholders may at any time ebject toexclude the possibility for collective management organisations to license their works or other subject-matter being deemed to be out of eommerce and in accordance with this Article, either in general or in specific cases, or exclude the application of theany licence granted in accordance with this Article to their works or | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence; | rightholders in the eategoryrelevant type of works or other subjectmatter and of the rights which are the subject of the licence;  | COUNCIL TEXT doc. 9134/18              |
| GREEN [This point is moved to new paragraph 1b below – row 167] [provisionaly agreed at Trilogue 26/11/2018]   | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence. | representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence;  [provisionaly agreed at Trilogue 26/11/2018] | POSSIBLE COMPROMISE SOLUTION           |

| other  1a. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of and 7(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:  | GREEN   |                       | (a) the name of the author or any other                     |              | Art. 7, para<br>1a, point (a) | 165. |
|--|---|-----------------------|---|--------------|-------------------------------|------|
| the text doc. 9134/18  doc. 9134/18  doc. 9134/18  doc. 9134/18  other subject-matter.  la. 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, 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:  | [Council provisionally agreed at trilogue, provided that Council Article 9a is adopted] |                       |   |              |                               |      |
| the text of the rights  I.a. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Article 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of 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 numbers.  | commercial purposes, provided that:   |                       | pm poses, provuen mun.                                      |              |                               |      |
| the text to the rights    Council lext   | other subject-matter that are permanently in their collections for non-                 |                       | located permanently in their collections for not-for-profit |              |                               |      |
| doc. 9134/18  doc. 9134/18  doc. 9134/18  doc. 9134/18  other subject-matter.  1a. 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, permitting cultural heritage institutions to make copies   | out-of-commerce works or  |                       | commerce works that are                                     |              |                               |      |
| the lexit and lexi | allow cultural heritage   |                       | institutions to make copies                                 |              |                               |      |
| doc. 9134/18  la. 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  | of this Directive, in order to  |                       | Directive, permitting cultural heritage                     |              |                               |      |
| doc. 9134/18  la. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of Directive 2009/24/EC, and 7(1) of Directive 2009/24/EC, and   | Article 4(1) of Directive   |                       | Article 11(1) of this                                       |              |                               |      |
| the 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  | Articles 5(a), (b), (d) and (e) and 7(1) of Directive 96/9/EC,                          |                       | 96/9/EC, Article 4(1) of Directive 2009/24/FC, and          |              |                               |      |
| doc. 9134/18  la. 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)   | 3 of Directive 2001/29/EC,  |                       | and 7(1) of Directive                                       |              |                               |      |
| doc. 9134/18  la. Member States shall provide for an exception or limitation to the rights provided for in Articles 2  | provided for in Articles 2 and  |                       | and 3 of Directive 2001/29/FC, Articles 5(a)                |              |                               |      |
| doc. 9134/18  la. Member States shall provide for an exception or limitation to the rights   | provide for an exception or   |                       | provided for in Articles 2                                  |              |                               |      |
| doc. 9134/18  la. Member States shall  OUNCIL TEXT  doc. 9134/18   |   |                       | provide for an exception or limitation to the rights        |              | la                            |      |
| doc. 9134/18  other subject-matter.  | GREEN   |                       | 1a. Member States shall                                     |              | Art. 7, para                  | 164. |
| doc. 9134/18   |   | other subject-matter. |   |              |                               |      |
| EP LEXT COUNCIL LEXT   | SOLUTION  | doc. 9134/18          |   | COM(2016)593 |                               |      |
|  | POSSIBLE COMPROMISE   | COUNCIL TEXT          | EP TEXT   | COMMISSION   | Location                      |      |

| ANNEX | 5893/19 ADD |
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| 1b. Member States shall provide that the exception or  |              | provide that the exception adopted pursuant to paragraph Ia does not                                      |                          | 10                         |      |
|--|--------------|---|--------------------------|----------------------------|------|
| GREEN  |              | 1b. Member States shall   |                          | Art. 7, para               | 167. |
| [Text of EP covered in new paragraph 1b below – row 167;see also comment in row 164]                                   |              |   |                          |                            |      |
| [provisionally agreed at trilogue 03/12/2018]  |              | the exception to their works or other subject-matter.   |                          |                            |      |
| (b) such works or other subject-matter are made available on non-commercial websites.                                  |              | works or other subject-<br>matter being deemed to be<br>out of commerce and<br>exclude the application of |                          | ì                          |      |
| GREEN  |              | (b) all rightholders may at any time object to their  |                          | Art. 7, para 1a, point (b) | 166. |
| [provisionally agreed at trilogue 03/12/2018;see also comment in row 164]  |              |   |                          |                            |      |
| (a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible; |              | identifiable rightholder is indicated, unless this turns out to be impossible;                            |                          |                            |      |
| SOLUTION   | doc. 9134/18 |   | PROPOSAL<br>COM(2016)593 |                            |      |
| DOSCIDI E COMBDOMICE   | COUNCIL TEXT | EP TEXT   | COMMISSION               | Location                   |      |

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|  | Location                               |
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|  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| apply in sectors or for types of works where appropriate licensing-based solutions, including but not limited to solutions provided for in paragraph 1, are available. Member States shall, in consultation with authors, other rightholders, collective management organisations and cultural heritage institutions, determine the availability of extended collective licensing-based solutions for specific sectors or types of works.  | EP TEXT                                |
|  | COUNCIL TEXT doc. 9134/18              |
| limitation referred to in the previous paragraph only applies to types of works or other subject-matter for which no collective management organisation exists that fulfils the conditions referred to in point (a) of paragraph 1.  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.  [provisionaly agreed at Trilogue 26/11/2018;see also comment in row 164] | POSSIBLE COMPROMISE SOLUTION           |

| ANNEX | 5893/19 ADD 1 |
|-------|---------------|
|       |               |

| 169.  | 168.  |  |
|---|---|--|
| Art. 7, para<br>2, sub-para 2   | Art. 7, para<br>2, sub-para 1   | Location                               |
| Member States shall, in consultation with rightholders, collective management organisations and cultural heritage                               | 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.  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| Member States shall, in consultation with rightholders, collective management organisations and cultural heritage                               | 2. A work or other subject matter shall be deemed to be out of commerce when the whole work or other subject matter, in all its translations, versions and manifestations, is not available to the public through customary channels of commerce and cannot be reasonably expected to become so. Member States may provide a cut-off date in relation to determining whether a work previously commercialised is deemed to be out of commerce.  [See definition of out-of-commerce work in Parliament's Article 2(4a) (rows 122-126)] | EP TEXT                                |
| Member States shall, in eonsultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the | 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, 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-after a reasonable effort is made to determine such availability.   | COUNCIL TEXT doc. 9134/18              |
| GREEN  Member States may provide for specific requirements, such as a cut-off date, to determine  | 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.  [provisionally agreed at Trilogue 26/11/2018]  | POSSIBLE COMPROMISE SOLUTION           |

| 3. [Moved to new Article<br>8a(2)]   | 3. [Moved to new Article<br>8a(2)]   | 3. Member States shall provide that appropriate publicity measures are taken regarding:   | 3. Member States shall provide that appropriate publicity measures are taken regarding:   | Art. 7, para 3, introductory part | 170. |
|--|--|---|---|-----------------------------------|------|
| whether works and other subject-matter can be licensed in accordance with paragraph 1 or used under the exception or limitation referred to in paragraph 1a. 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.  [provisionaly agreed at Trilogue 26/11/2018;see also comment in row 164] | requirements used-to determine whether works and other subject-matter can be licensed in accordance with paragraph 1-do. Such requirements shall not extend beyond what is necessary and reasonable, and deshall not preclude the possibility to determine the out-of-commerce status of a collection as set of works or other subject-matter in the collection are out-of-commerce. | institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 or used in accordance with paragraph 1a do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce. | 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. |                                   |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18  | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location                          |      |

| 4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that | 4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the | 4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the                     | 4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the  | Art. 7, para 4, introductory part / Art. 7, para 4 (Council) | 175. |
|--|--|--|---|--|------|
|  |  | including during a reasonable period of time at least six months before the works or other subjectmatter are digitised, distributed, communicated to the public or made available. | including during a reasonable period of time before the works or other subject-matter are digitised, distributed, communicated to the public or made available. | Art. 7, para<br>3, closing<br>phrase                         | 174. |
|  |  | (c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 and point (b) of paragraph Ia;  | (c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;   | Art. 7, para<br>3, point (c)                                 | 173. |
|  |  | (b) the <i>any</i> licence, and in particular its application to unrepresented rightholders;   | (b) the licence, and in particular its application to unrepresented rightholders;   | Art. 7, para 3, point (b)                                    | 172. |
|  |  | (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;  | Art. 7, para 3, point (a)                                    | 171. |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18  | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location   |      |

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| (a) works or other subject-matter first published or, in the absence of publication, first broadcast in a third country, except for cinematographic or audiovisual works;  | (a) the works or other subject-matter phonograms were-first published or, in the absence of publication, where they were-first broadcast in a third country, except for cinematographic andor    | (a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and audiovisual works; | (a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and audiovisual works; | Art. 7, para 4, point (a) (EP)/ Art. 7, para 5, point (a) (Council) | 177. |
|--|--|--|--|---|------|
| 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:  [provisionally agreed at Trilogue 26/11/2018] | 25. 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: |  |  | Art. 7, para 5, introductory part (Council)                         | 176. |
| is representative for the Member State where the cultural heritage institution is established.  [provisionally agreed at Trilogue 26/11/2018]  | Member State where: the cultural heritage institution is established.  | Member State where:  | Member State where:  |   |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18  | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Location  |      |

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| 179.   | 178.  |  |  |
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| Art. 7, para 4, point (c) (EP) /Art. 7, para 5, point (c) (Council)  | Art. 7, para 4, point (b) (EP)/ Art. 7, para 5, point (b) (Council)   |  | Location                               |
| (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).   | (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| (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).   | (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or   |  | EP TEXT                                |
| c) the cultural heritage institution is established, works or other subjectmatter of third country nationals when a Member State or a third country could not be determined, after a reasonable efforts effort, according to points (a) and (b)-1: | (b) <u>cinematographic or</u> <u>audiovisual works</u> , the producers of the producers of the workswhich have their headquarters or habitual residence, for einematographic and audiovisual works in a third country; or | audiovisual works;                               | COUNCIL TEXT doc. 9134/18              |
| 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);  [provisionally agreed at Trilogue 26/11/2018]             | (b) cinematographic or audiovisual works, the producers of which have their headquarters or habitual residence in a third country; or [provisionally agreed at Trilogue 26/11/2018]                                       | [provisionally agreed at<br>Trilogue 26/11/2018] | POSSIBLE COMPROMISE<br>SOLUTION        |

| 180. Art. 7, para 5 5. Paragraphs 1, 2 and 3 a |
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| Location COMMISSION EP TEXT COUNCIL TEXT POSSIBLE COMPROMISE COM(2016)593 COM(2016) |

|      | Location       | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT   | COUNCIL TEXT doc. 9134/18       | POSSIBLE COMPROMISE SOLUTION  |
|------|----------------|---|---|---------------------------------|---|
|      |                |   |   | StatesState.                    | 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. |
|      |                |   |   |                                 | [provisionally agreed at<br>Trilogue 26/11/2018; see also<br>comment in row 164]  |
| 183. | Art. 8, para 2 | 2. Member States shall ensure that information that allows the identification of the works or other subjectmatter covered by a licence granted in accordance with Article 7 and information about the possibility of rightholders to object referred to in Article 7(1)(c) are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member | 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 point (c) of Article 7(1a) are made public y permanently, easily and effectively accessible in a public single online portal for at least six months before the works or other subject- | 2. [Moved to new Article 8a(I)] | 2. [Moved to new Article 8a(1)] [provisionally agreed at Trilogue 26/11/2018]   |

| GREEN  Article 8a  Publicity measures  [provisionally agreed at  Trilogue 26/11/2018]                    | <u>Article 8a</u><br>Publicity measures                |   |  | Art. 8a, title | 185. |
|--|--|---|--|----------------|------|
| GREEN  3. [Moved to new Article 8a(1) second subparagraph] [provisionally agreed at Trilogue 26/11/2018] | 3. [Moved to new Article<br>8a(1) second subparagraph] | 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. | Art. 8, para 3 | 184. |
|  |  | matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, or in the cases covered by Article 7(1a), where the cultural heritage institution is established and for the whole duration of the licence. | States other than the one where the licence is granted, and for the whole duration of the licence.   |                |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18                              | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Location       |      |

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| from at least six months before the works or other subject- | granted, and for the whole              |         |                        |               |      |
|---|---|---------|------------------------|---------------|------|
| public single online portal                                 | the one where the licence is            |         |                        |               |      |
| and effectively accessible in a                             | in Member States other than             |         |                        |               |      |
| is made permanently, easily                                 | the public or made available            |         |                        |               |      |
| territories and the allowed uses                            | distributed, communicated to            |         |                        |               |      |
| the licence, the covered                                    | matter are <del>digitised,</del>        |         |                        |               |      |
| information on the parties to                               | works or other subject-                 |         |                        |               |      |
| and where relevant,   | at least six months before the          |         |                        |               |      |
| and, as soon as it is available                             | single online portal for from           |         |                        |               |      |
| referred to in Article 7(1c),                               | publicly accessible in a                |         |                        |               |      |
| possibilities of rightholders                               | the allowed uses is made                |         |                        |               |      |
| well as information about the                               | the covered territories and             |         |                        |               |      |
| referred to in Article 7(1a) as                             | the parties to the licence,             |         |                        |               |      |
| exception or limitation                                     | available, information on               |         |                        |               |      |
| 7(1) or used under the                                      | are), and, as soon as it is             |         |                        |               |      |
| in accordance with Article                                  | referred to in Article $7(1)(c)$        |         |                        |               |      |
| covered by a licence granted                                | rightholders <del>-to-object</del>      |         |                        |               |      |
| or other subject-matter                                     | <del>possibility</del> possibilities of |         |                        |               |      |
| of the out-of-commerce works                                | about the                               |         |                        |               |      |
| purposes of the identification                              | and as well as information              |         |                        |               |      |
| public authorities for the                                  | accordance with Article 7               |         |                        |               |      |
| organisations or relevant                                   | licence granted in                      |         |                        |               |      |
| collective management                                       | subject-matter <del>covered by a</del>  |         |                        |               |      |
| cultural heritage institutions,                             | of-commerce works or other              |         |                        |               |      |
| ensure that information from                                | the identification of the <b>out-</b>   |         |                        |               |      |
| 1. Member States shall                                      | allowsfor the purposes of               |         |                        | 1, 300-para 1 |      |
|   | ensure that information that            |         |                        | 1 sub-para 1  | 100. |
| CREEN   | 1. Member States shall                  |         |                        | Art &a nara   | 186  |
| SOLUTION  | doc. 9134/18                            |         | COM(2016)593           |               |      |
| POSSIBLE COMPROMISE   | COUNCIL TEXT                            | EP TEXT | COMMISSION<br>PROPOSAL | Location      |      |
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| [provisionally agreed at                               |   |         |              |               |      |
|--|---|---------|--------------|---------------|------|
| [Article 8(3) of the COM proposal, amended]            | 386/2012. [Article 8(3) of the COM proposal, amended] |         |              |               |      |
| Regulation (EU) No 386/2012.                           | Regulation (EU) No                                    |         |              |               |      |
| Union Intellectual Property  Office in accordance with | Intellectual Property Office                          |         |              |               |      |
| and managed by the European                            | the European Union                                    |         |              |               |      |
| The portal shall be established                        | established and managed by                            |         |              | 1, sub-para 2 |      |
| GREEN  | 3.—The portal referred to                             |         |              | Art. 8a, para | 187. |
| comment in row 164]                                    |   |         |              |               |      |
| may cover one, several or all                          |   |         |              |               |      |
| recital (27) that the licence                          |   |         |              |               |      |
| Trilogue 26/11/2018,                                   |   |         |              |               |      |
| [provisionally agreed at                               |   |         |              |               |      |
| proposal, amended]                                     |   |         |              |               |      |
| [Article 8(2) of the COM                               |   |         |              |               |      |
| limitation.  | proposat, amenaeaj                                    |         |              |               |      |
| accordance with the licence or                         | [Article 8(2) of the COM                              |         |              |               |      |
| made available to the public in                        | licence.  |         |              |               |      |
| communicated to the public or                          | accordance with the                                   |         |              |               |      |
| matter are distributed                                 | duration ofto the nublic in                           |         |              |               |      |
| SOLUTION   | doc. 9134/18  |         | COM(2016)593 |               |      |
| POSSIBLE COMPROMISE                                    | COUNCIL TEXT  | EP TEXT | COMMISSION   | Location      |      |
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| Art. 8a, para 2   |                      | Location                               |
|---|----------------------|--|
|   |                      | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   |                      | EP TEXT                                |
| 2. Member States shall provide that, if necessary for the general awareness of rightholders, further appropriate publicity measures are taken regarding:-(a) the deeming of works or other subject-matter as out of commerce; (b) the licence, and in particular its application to unrepresented rightholders; the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7. the licences granted and (e) the possibilities to object of rightholders referred to in point (e) of paragraph 1 Article 7(1)(c):  Including during a reasonable period of time before the works or other subject matter are digitised,      |                      | COUNCIL TEXT doc. 9134/18              |
| 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, the uses under the exception or limitation referred to in Article 7(1a) and the possibilities of rightholders referred to in Article 7(1c).  The additional appropriate publicity measures shall be taken in the Member State where the licence is sought in accordance to Article 7(1) or, for uses under the exception or limitation referred to in Article 7(1a), where the | Trilogue 26/11/2018] | POSSIBLE COMPROMISE SOLUTION           |

| ANNEX | 5893/19 ADD |
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| 189.                              |  |  |
|-----------------------------------|--|--|
| Art. 9, title                     |  | Location                               |
| Article 9<br>Stakeholder dialogue |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| Article 9<br>Stakeholder dialogue |  | EP TEXT                                |
| Article 9<br>Stakeholder dialogue | the public or made available.  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 shall also cover those Member States and third countries.  [Article 7(3) of the COM proposal, amended] | COUNCIL TEXT doc. 9134/18              |
| Article 9<br>Stakeholder dialogue | cultural heritage institution is established. 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.  [Article 7(3) of the COM proposal, amended]  [provisionally agreed at Trilogue 26/11/2018; see also comment in row 164]                    | POSSIBLE COMPROMISE SOLUTION           |

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| [provisionally agreed at<br>Trilogue 26/11/2018] | measures, and, where applicable, assist in the           |   |                                 |          |      |
|--|--|---|---------------------------------|----------|------|
|  | safeguards for rightholders referred to in this Chapter, |   |                                 |          |      |
| referred to in this Chapter.                     | the effectiveness of the                                 | the second subparagraph of Article 7(2) |                                 |          |      |
| to ensure the effectiveness of                   | Article 7(1+) and to ensure                              | requirements referred to in             | Article $7(2)$ .                |          |      |
| referred to in Article 7(1) and                  | usability of the licensing                               | establishment of the                    | second subparagraph of          |          |      |
| the licensing mechanisms                         | foster the relevance and                                 | applicable, assist in the               | requirements referred to in the |          |      |
| the relevance and usability of                   | sector-specific basis, to                                | measures and where                      | applicable, assist in the       |          |      |
| stakeholder organisations, on a                  | organisations, to-on a                                   | referred to in this Chapter,            | measures, and, where            |          |      |
| and any other relevant                           | relevant stakeholder                                     | safeguards for rightholders             | notably as regards publicity    |          |      |
| management organisations,                        | management   | effectiveness of the                    | referred to in this Chapter,    |          |      |
| including collective                             | including collective                                     | Article $7(1a)$ , ensure the            | safeguards for rightholders     |          |      |
| rightholders' organisations,                     | rigninoiders organisations,                              | exception referred to in                | effectiveness of the            |          |      |
| representative users' and                        | representative users and                                 | Article 7(1) and the                    | Article $7(1)$ , ensure the     |          |      |
| a regular dialogue between                       | a regular dialogue between                               | mechanisms referred to in               | mechanisms referred to in       |          |      |
| to Article 7(2), and encourage                   | Article 7(2), and encourage                              | usability of the licensing              | usability of the licensing      |          |      |
| specific requirements pursuant                   | requirements pursuant to                                 | foster the relevance and                | foster the relevance and        |          |      |
| each sector before establishing                  | establishing specific                                    | to, on a sector-specific basis,         | on a sector-specific basis,     |          |      |
| cultural heritage institutions in                | each sector before                                       | stakeholder organisations,              | stakeholder organisations, to,  |          |      |
| management organisations and                     | heritage institutions in                                 | and any other relevant                  | and any other relevant          |          |      |
| rightholders, collective                         | organisations and cultural                               | rightholders' organisations.            | rightholders' organisations.    |          |      |
| Member States shall consult                      | collective management                                    | representative users' and               | representative users' and       |          |      |
|  | consult rightholders,                                    | a regular dialogue between              | regular dialogue between        |          |      |
| GREEN  | Member States shall ensure                               | Member States shall ensure              | Member States shall ensure a    | Art 9    | 190. |
| SOLUTION   | doc. 9134/18   |   | COM(2016)593                    |          |      |
| POSSIBLE COMPROMISE                              | COUNCIL TEXT   | EP TEXT                                 | COMMISSION<br>PROPOSAL          | Location |      |
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| 193.  |   | 192.   | 191.   |   |  |
|---|---|--|--|---|--|
| Art. 9a, para<br>1  |   | Art. 9a, title   |  |   | Location                               |
|   |   |  |  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   |   |  |  |   | EP TEXT                                |
| 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 |   | Article 9a Collective licensing with an extended effect  | CHAPTER 1a Measures to facilitate collective licensing   | establishment of the requirements referred to in the second subparagraph of Article 7(2). | COUNCIL TEXT doc. 9134/18              |
| 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 | [Article 9a provisionally agreed at trilogue 03/12/2018; final wording as set out in rows 193 - 202 (i.e. with technical clarifications from COM and related recitals (28a)-(28h), as set out in rows 56 - 63, to be confirmed by trilogue] | Article 9a  Collective licensing with an extended effect | CHAPTER 1a  Measures to facilitate collective  licensing |   | POSSIBLE COMPROMISE<br>SOLUTION        |

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|   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   | EP TEXT                                |
| 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, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.   | COUNCIL TEXT doc. 9134/18              |
| which is subject to the national rules implementing Article 2 of Directive 2014/26/EU, applies and which, 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 that collective management 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 represent rightholders who have not authorised the organisation accordingly.  [see comment in rows 192 and 164] | POSSIBLE COMPROMISE<br>SOLUTION        |

| 195.  | 194.   |  |
|---|--|--|
| Art. 9a, para<br>3  | Art. 9a, para 2  | Location                               |
|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   |  | EP TEXT                                |
| 3. The safeguards referred to in paragraph 1 must ensure that:              | 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 the legitimate interests of rightholders.   | COUNCIL TEXT doc. 9134/18              |
| 3. The safeguards referred to in paragraph 1 must ensureshall provide that: | 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 licensing mechanism safeguards the legitimate interests of rightholders.  [see comment in rows 192 and 164] | POSSIBLE COMPROMISE SOLUTION           |

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| [see comment in rows 192 and 164]  (c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively   | (c) rightholders who have not authorised the organisation operating the licence may at any time  |         |  | Art. 9a, para<br>3, point (c) |
|---|--|---------|--|-------------------------------|
| [see comment in rows 192 and 164]  (b) equal treatment is guaranteed to all rightholders, including in relation to the  | (b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence.   |         |  | Art. 9a, para<br>3, point (b) |
| 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 for the relevant Member State; | (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; |         |  | Art. 9a, para<br>3, point (a) |
| [see comment in rows 192 and 164]   |  |         |  |                               |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18  | EP TEXT | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location                      |

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| 199.   |  |  |
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| Art. 9a, para<br>3, point (d)  |  | Location                               |
|  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|  |  | EP TEXT                                |
| 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 measures should be effective without the need to inform each rightholder individually.                                 | easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;             | COUNCIL TEXT doc. 9134/18              |
| measures are taken to raise the awareness of inform rightholders regarding the possibility for the collective management 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 measures should be effective without the need to inform each rightholder individually. | exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;  [see comment in rows 192 and 164] | POSSIBLE COMPROMISE SOLUTION           |

| 200.  |                                   |  |
|---|-----------------------------------|--|
| Art. 9a, para<br>4  |                                   | Location                               |
|   |                                   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   |                                   | EP TEXT                                |
| 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.  |                                   | COUNCIL TEXT doc. 9134/18              |
| 4. The rules provided for in this Article are without prejudice does not affect to the application of collective licensing mechanisms with an extended effect in conformity with other existing provisions of Union law, including those provisions or limitations.  This article shall not apply to mandatory collective management of rights.  Article 7 of Directive 2014/26/EU shall apply to the licensing mechanism provided for in this Article.  [see comment in row 192 and 164] | [see comment in rows 192 and 164] | POSSIBLE COMPROMISE SOLUTION           |

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|      |                    | PROPOSAL<br>COM(2016)593 |         | doc. 9134/18  | SOLUTION SOLUTION  |
| 201. | Art. 9a, para 5    |                          |         | Member State provides 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. | Member State provides 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, and the way in which information on the licensing and the possibilities of rightholders referred to in point (c) of paragraph 3 can be obtained. The Commission shall publish this information.  [see comment in row 192 and 164] |
| 202. | Art. 9a, para<br>6 |                          |         | 6. Based on the information received pursuant to paragraph 5  | 6. Based on the information received pursuant to paragraph   |

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|   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   | EP TEXT                                |
| 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 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 as regards publicity measures, and, where applicable, assist in the second subparagraph of Article 7(2), the cross-border effect of such national schemes.   | COUNCIL TEXT doc. 9134/18              |
| 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 10 April 2021, submit to the European Parliament and to the Council a report on the use of such mechanisms referred to in paragraph 1 in the EU_1_and their impact on licensing and rightholders, including right holders who are not members and/or who are not members and for resident in, another Member State, their effectiveness to facilitate the dissemination of cultural content, and the impact on the internal market, including the cross—border provision of services and competition. The Commission's report shall be accompanied, if appropriate, by a legislative proposal, including as regards the cross—border effect of such national | POSSIBLE COMPROMISE SOLUTION           |

| 205.   | 204.                                | 203.  |   |  |
|--|-------------------------------------|---|---|--|
| Art. 10, subpara 1   | Art. 10, title                      |   |   | Location                               |
| 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.                             | Article 10<br>Negotiation mechanism | CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of audiovisual rights, they may rely on the assistance of an impartial body with relevant experience. That body The impartial body created or designated by the Member State for the purpose of this | Article 10<br>Negotiation mechanism | CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms  |   | EP TEXT                                |
| Member States shall ensure that where parties wishingfacing 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 platforms face difficulties relating to the licensing of rights, theyservices, may rely on the assistance of an impartial body with relevant experience. Thator of                      | Article 10<br>Negotiation mechanism | CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms  |   | COUNCIL TEXT doc. 9134/18              |
| 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 impartial body created or designated by the Member State for the  | Article 10<br>Negotiation mechanism | CHAPTER 2  Access to and availability of audiovisual works on video-on-demand platforms | schemes. [see comment in row 192 and 164] | POSSIBLE COMPROMISE SOLUTION           |

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| 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. | Mo later than [date mentioned in Article 21(1)] 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 | No later than [date mentioned in Article 21(1)] Member States shall notify to inform the Commission of the body referred to in paragraph 1: they create or designate pursuant to the first paragraph. | No later than [date mentioned in Article 21(1)] Member States shall notify to the Commission the body referred to in paragraph 1. | Art. 10, subpara 2 | 206. |
|---|---|---|---|--------------------|------|
| purpose of this Article 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.  [provisionally agreed at Trilogue 26/11/2018]   | mediators. The body or mediators shall provide assistance to the parties with negotiations and help them reach agreements, including, where appropriate, by submitting proposals to the parties.  | Article shall provide assistance to the parties with negotiation and help them to reach agreement.  |   |                    |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT  | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location           |      |

| [it is the Presidency's understanding of the outcome of the trilogues on 26/11/2018 / 03/12/2018 that it was provisionally agreed that this provision would be removed | GREEN  Deleted                          | [provisionally agreed at Trilogue on 26/11/2018 to insert part of the EP mandate of this row into a recital (not in Article) along the following lines: Member States should encourage dialogue between representative organisations, without it being an obligation for Member States] | [provisionally agreed at<br>Trilogue 26/11/2018] | POSSIBLE COMPROMISE<br>SOLUTION        |
|--|---|---|--|--|
|  |   |   | the entrusted mediators can be found.            | COUNCIL TEXT doc. 9134/18              |
|  | CHAPTER 2a Access to Union publications | To encourage the availability of audiovisual works on video-on-demand platforms, Member States shall foster dialogue between representative organisations of authors, producers, video-on-demand platforms and other relevant stakeholders.   |  | EP TEXT                                |
|  |   |   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|  |   | Art. 10, subpara 3  |  | Location                               |
|  | .802                                    | 207.  |  |  |

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| GREEN                                     |                           | 3. The obligation set out  |  | Art. 10a,           | 212. |
|---|---------------------------|--|--|---------------------|------|
| GREEN  Deleted  [see comments in row 208] |                           | 2. The European Parliament Library shall be entitled to delivery, free of charge, of one copy of every publication referred to in paragraph 1.   |  | Art. 10a,<br>para 2 | 211. |
| GREEN  Deleted  [see comments in row 208] |                           | I. 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. |  | Art. 10a,<br>para 1 | 210. |
| GREEN  Deleted  [see comments in row 208] |                           | Article 10 a<br>Union Legal Deposit  |  | Art. 10a, title     | 209. |
| from the Directive]                       |                           |  |  |                     |      |
| POSSIBLE COMPROMISE SOLUTION              | COUNCIL TEXT doc. 9134/18 | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location            |      |



| Deleted                                   |                           | modalities relating to the delivery to the European   |  | para 5              |      |
|---|---------------------------|---|--|---------------------|------|
| GREEN                                     |                           | 5. The Commission shall   |  | Art. 10a,           | 214. |
| GREEN  Deleted  [see comments in row 208] |                           | 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 purpose of research or study by accredited researchers and under the control of the European Parliament Library. |  | Art. 10a,<br>para 4 | 213. |
| <b>Deleted</b> [see comments in row 208]  |                           | in paragraph I shall apply to publishers, printers and importers of publications for the works they publish, print or import in the Union.  |  | para 3              |      |
| POSSIBLE COMPROMISE SOLUTION              | COUNCIL TEXT doc. 9134/18 | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location            |      |

|      | Location           | COMMISSION  | ЕР ТЕХТ   | COUNCIL TEXT   | POSSIBLE COMPROMISE  |
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|      |                    | COM(2016)593  |   | doc. 9134/18   | SOLUTION   |
|      |                    |   | Parliament Library of publications referred to in paragraph 1.  |  | [see comments in row 208]  |
| 215. |                    | TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT   | TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT   | TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT  | TITLE IV 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  | CHAPTER 1 Rights in publications   |
| 217. | Art. 11, title     | Article 11 Protection of press publications concerning digital uses   | Article 11 Protection of press publications concerning digital uses   | Article 11 Protection of press publications concerning digitalonline uses  | Article 11 Protection of press publications concerning online uses [to be confirmed at trilogue]   |
| 218. | Art. 11, para<br>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 so that they may obtain fair and proportionate remuneration for the digital use of their press publications by | provide publishers of press publications <u>established in a Member State</u> with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the <u>digitalonline</u> use of their press publications <u>by information society service providers.</u> | 1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by |

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| RED   RED     RED | 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 |   |                          | Art. 11, para<br>1, sub-para 2 | 219. |
|-------------------|---|---|--------------------------|--------------------------------|------|
|                   |   |   |                          |                                |      |
|                   |   |   |                          |                                |      |
|                   |   |   |                          |                                |      |
|                   |   | information society service<br>providers. |                          |                                |      |
| doc. 9134/18      | doc. 91   |   | PROPOSAL<br>COM(2016)593 |                                |      |
| COUNCIL TEXT      | COUNCI  | EP TEXT                                   | COMMISSION               | Location                       |      |

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| [integrated into paragraph 1, row 218; to be confirmed at trilogue]  GREEN  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. | whether these parts are the intellectual creation of the their authors, or whether these parts are individual words or very short excerpts, or both criteria.  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 The rights | Ia. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.  2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press | 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 subjectmatter incorporated in a press publication. Such rights may | Art. 11, para 1a Art. 11, para 2 | 220. |
|--|---|---|---|----------------------------------|------|
| 19   | parts of press publications taking into account   |   |   |                                  |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18   | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location                         |      |

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| 222.  |   |  |
|---|---|--|
| Art. 11, para 2, sub-para 2   |   | Location                               |
|   | deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   | 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.   | EP TEXT                                |
| 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 or other subject- matter whose protection has expired. | 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.   | COUNCIL TEXT doc. 9134/18              |
| 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 or other subject matter whose protection has expired.   | 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.  [provisionally agreed at trilogue 03/12/2018] | POSSIBLE COMPROMISE SOLUTION           |

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| 225.   | 223.   |  |
|--|--|--|
| Art. 11, para<br>4   | Art. 11, para 2a Art. 11, para 3   | Location                               |
| 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       | 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.   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 4. The rights referred to in paragraph 1 shall expire 20 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     | 2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by individual words.  3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.  | EP TEXT                                |
| 4. The rights referred to in paragraph 1 shall expire 20 years 1 year 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 | 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.   | COUNCIL TEXT doc. 9134/18              |
| 4. The rights referred to in paragraph 1 shall expire 20 years [1 year] [2 years] [5 years] after the publication of the press publication. This term shall be calculated from                                     | [provisionally agreed at trilogue 03/12/2018]  GREEN  [integrated into paragraph 1, row 218, as provisionally agreed at trilogue 03/12/2018]  GREEN  3. Articles 5 to 8 of Directive 2001/29/EC and Directives 2012/28/EU and (EU) 2017/1564 shall apply mutatis mutandis in respect of the rights referred to in paragraph 1. | POSSIBLE COMPROMISE SOLUTION           |

| 226. Art. 11, para 4a  |  | Location                         |
|--|--|----------------------------------|
| para   | publication.   | COMMISSION PROPOSAL COM(2016)593 |
| 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   | publication. The right referred to in paragraph 1 shall not apply with retroactive effect.   | EP TEXT                          |
|  | publication.   | COUNCIL TEXT doc. 9134/18        |
| 4a. Member States shall provide that authors of the works incorporated in a press publication receive an appropriate share of the additional revenues press publishers receive for the use of their press publications by information society service providers. | the first day of January of the year following the date o publication.  [term of protection to be further discussed at trilogue]  Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].  [last sentence provisionally agreed at trilogue 03/12/2018] | POSSIBLE COMPROMISE SOLUTION     |

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| Member States 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  Member States with compensation-sharing that where an author has transferred or licensed a right to a publisher, such a transfer exceptions and limitations may provide that where an sufficient legal basis for the may provide that where an sufficient legal descriptions are sufficient legal states may provide that where an author has transferred or licensed a right constitutes a sufficient legal states may provide that where an author has transferred or licensed a right constitutes a sufficient legal that where an author has transferred or licensed a right to a publisher, such a transfer to a publisher, such a transfer that where an author has transferred or licensed a right to a publisher, such a transfer transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher states may provide that where an author has transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher states may provide that where an author has transferred or licensed a right to a publisher, such a transferred or licensed a right to a publisher states may provide that where an author has transferred or licensed a right to a publisher states may pr | Article 12 Article 12 Article 12 Article 12 Article 12 Claims to fair compensation Claims to fair compensation Claims to fair compensation | 5. Paragraph 1 shall not apply to press publications first published before [integrated into pargarph 4; see last sentence in row 225 as Directive].  Contact of the provisionally agreed at trilogue 03/12/2018] | [Remuneration of journalists (authors of the works contained in a press publication) to be discussed further at trilogue, possibly in context of the remuneration chapter] [see also recital (35) in row 73] | COMMISSION EP TEXT COUNCIL TEXT POSSIBLE COMPROMISE COM(2016)593  EP TEXT COUNCIL TEXT POSSIBLE COMPROMISE SOLUTION |
|--|--|---|--|---|
| Member States may prove that where an author has transferred or licensed a to a publisher, such a tract or a licence constitutes a sufficient legal basis for  | Arı<br>Claims to fa  |   |  | COM<br>PRC<br>COM   |
| Art. 12, sub-<br>para 1 (EP)/<br>Art. 12,<br>introductory<br>part  | Art, 12, title   | Art. 11, para<br>5  |  | Location  |
| 229.   | 228.   | 227.  |  |   |

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| GREEN  | (b) the remuneration for public lending provided for   |   |   | Art. 12, point     | 231. |
|--|--|---|---|--------------------|------|
| GREEN [integreated into row 229] [provisionally agreed at trilogue 03/12/2018]   | the uses of the work made under an exception or limitation to the transferred or licensed right: and [See Parliament's subparagraph 1 of Article 12 (row 229)] |   |   | Art. 12, point (a) | 230. |
| or a licence constitutes a sufficient legal basis for the publisher to be entitled to a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.  [provisionally agreed at trilogue 03/12/2018]  [to be read in conjunction with recital (36), as provisionally agreed at TM 04/12/2018, tbc at trilogue - see row 74] | basis for the publisher to elaimbe entitled to a share of:  [remaining part of this paragraph of the COM proposal was moved to new point (a) (see row 230)]    | author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right, provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015. | 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. | (Council)]         |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18  | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location           |      |

| <u>in Article 6(1) of Directive 2006/115/EC.</u> |
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|       |  |  |  |   |  |  |   | Location                               |
| GREEN | [text provisionally agreed at trilogue 13/12/2018] | GREEN An online content sharing s in Article 3(1) and (2) of Di communicate or make avail  | [text provisionally agreed at trilogue 13/12/2018] | GREEN  1. Member States shall provid the public or an act of maki access to copyright protecte  | [text provisionally agreed at trilogue 13/12/2018] | GREEN  Use of fatoring and giving acceptains.  | access to large amounts of<br>works and other subject-<br>matter uploaded by their<br>users                   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|       | tt trilogue 13/12/2018J                            | An online content sharing service provider shall therefore obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of Directive 2001/29/EC, {for instance by concluding a licencing agreement}, in order to communicate or make available to the public works or other subject matter. | t trilogue 13/12/2018J                             | GREEN  1. 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 for the purposes of this directive when it gives the public access to copyright protected works or other protected subject matter uploaded by its users. | at trilogue 13/12/2018]                            | N  Article 13  Use of protected content by <u>online content sharing</u> service providers  fstoring and giving access to large amounts of works and other subject matter uploaded by their usersf | providers storing and giving access to large amounts of works and other subjectmatter uploaded by their users | EP TEXT                                |
|       |  | btain an authorisation from the ce by concluding a licencing agr subject matter.   |  | service provider performs an a<br>e purposes of this directive whe<br>ect matter uploaded by its users  |  | 13<br><b>ntent sharing</b> service providers<br><del>nd other subject matter upload</del>  |   | COUNCIL TEXT                           |
|       |  | e rightholders referred to greement], in order to  |  | act of communication to en it gives the public s.   |  | s<br><del>led by their users]</del>  | latest compromise text<br>proposal in row 237AJ   | POSSIBLE COMPROMISE SOLUTION           |

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| Location | COMMISSION  | EP TEXT   | COUNCIL TEXT  | POSSIBLE COMPROMISE  |
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|          | COM(2016)593  |   | doc. 9134/18  | SOLUTION   |
|          | 2. Member States shall provide that when an authori an online content sharing service provider, this au services falling within Article 3 of Directive 200 activity does not generate significant revenues  | 2. 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 carried out by users of the services falling within Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis or their activity does not generate significant revenues.  | been obtained, including via a in shall also cover acts carried other they are not acting on a cor                                      | licensing agreement, by at by users of the mmercial basis or their                         |
|          | [provisionally agreed at trilogue 03/12/2018]   | logue 03/12/2018J   |   |  |
|          | ["not generate significar   | ["not generate significant revenues" to be clarified in a recital: see proposal for recital in row 85]  | recital: see proposal for recital   | in row 85]   |
|          | YELLOW  |   |   |  |
|          | 3. When an online content sharing service provider p making available to the public, under the condition established in Article 14(1) of Directive 2000/31/E shall not affect the <b>possible</b> application of Article 1 purposes falling outside the scope of this Directive | 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, under the conditions established under this Directive, the limitation of liability established in Article 14(1) of Directive 2000/31/EC shall not apply to the situations covered by this Article. This shall not affect the <b>possible</b> application of Article 14(1) of Directive 2000/31/EC to these service providers for purposes falling outside the scope of this Directive. | an act of communication to the shed under this Directive, the linot apply to the situations cover Directive 2000/31/EC to these s       | public or an act of imitation of liability red by this Article. This service providers for |
|          | [text agreed at trilogue of I<br>or in a recital]   | [text agreed at trilogue of 13/12/2018; to be further discussed whether this issue should be dealt with in the Article<br>or in a recital]  | sed whether this issue should be  | e dealt with in the Article  |
|          | 4. If no authorisation is grante communication to the public rightholders have provided the   | If no authorisation is granted, online content sharing service providers shall be liable for unauthorised acts of communication to the public of specific copyright protected works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information or submitted a notice,  | providers shall be liable for unauthorised actions and other subject matter for which the standard necessary information or submitted a | orised acts of which the bmitted a notice,   |
|          | f(a) made best efforts to obtain an authorisation f, and  | un an authorisation <mark>‡, and</mark>   |   |  |
|          | (b) made, in accordance wit   | (b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the  | sional diligence, best efforts to ens   | sure the   |

|   | Location                               |
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| unavailability of specific wor providers with the relevant at (c) acted expeditiously, upon rec their websites or to disable as their future uploads in accord 4a. In determining whether the ser principle of proportionality the (a) the type, the audience and tas small sized enterprise with 2003/361/EC (Role of SME, see Article 2(5), row 1251; (b) the number and type of wo (c) the availability of suitable at the publicable to the conditions applicable to the compliance with the letter substantiated notice, to repare to the publicable access to them. [*Please s  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information, and in any event  (c) acted expeditiously, upon receiving a sufficiently substantiated notice by the rightholders, to remove from their websites or to disable access to the notified works and subject matters, and made best efforts to prevent their future uploads in accordance with paragraph (b).  4a. In determining whether the service has complied with its obligations under paragraph 4, in the light of the principle of proportionality the following shall, should, among others be taken into account:  (a) the type, the audience and the size of the service fineluding whether they are provided by a microenterprise of a small sized enterprise within the meaning of Title 1 of the Annex to Commission Recommendation 2003/361/EC (Role of SMEs to be discussed in relation to the scope—discussion is still open on this point see Article 2(5), tran 125H;  (b) the number and type of works or other subject matter uploaded by the users of the service;  (c) the availability of suitable and effective means—and their cost for service providers whose services have been available to the public in the Union for less than three years and which have an annual turnover below EUR 10 million* within the meaning of the Commission recommendation 2003/361/EC, the conditions applicable to them under the liability regime set out in paragraph 4 are limited to the compliance with the letter (a)** above and to acting expeditiously, upon receiving a sufficiently substantiated notice, to remove the notified works and subject matters from its website or to disable access to them. [**Please see suggested addition in the review clause of Article 22][**refers to point (a) of | EP TEXT                                |
| orks and other subject matter for which the rightholders have provided the service and necessary information, and in any event ecciving a sufficiently substantiated notice by the rightholders, to remove from access to the notified works and subject matters, and made best efforts to prevent ordance with paragraph (b).  It is complied with its obligations under paragraph 4, in the light of the refollowing shall, should, among others be taken into account:  If the size of the service fineluding whether they are provided by a microenterprise or thin the meaning of Title 1 of the Annex to Commission Recommendation (15x to be discussed in relation to the scope—discussion is still open on this point (15x to be discussed in relation to the scope—discussion is still open on this point (15x to be discussed in relation to the scope—discussion is still open on this point (15x to be discussed in relation to the scope—discussion is still open on this point (15x to be discussed in relation to the scope—discussion is still open on this point (15x to be discussed in relation to the scope—discussion is still open on this point (15x to be discussed in relation to the scope—discussion is still open on this point (25x to be discussed in relation to the scope discussion recommendation 2003/361/EC, the them under the liability regime set out in paragraph 4 are limited to the ter (a)** above and to acting expeditiously, upon receiving a sufficiently see suggested addition in the review clause of Article 22][***refers to point (a) of  | COUNCIL TEXT doc. 9134/18              |
| ightholders, to remove from and made best efforts to prevent baragraph 4, in the light of the en into account:  **A are provided by a microenterprise or mannission Recommendation seussion is still open on this point*  **Service providers whose services have and which have an annual turnover recommendation 2003/361/EC, the in paragraph 4 are limited to the usly, upon receiving a sufficiently tters from its website or to disable of Article 22][**refers to point (a) of  | POSSIBLE COMPROMISE SOLUTION           |

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| Where the average number of calculated on the basis of the lefforts to prevent further up rightholders have provided relevantly of works or other subjection including where such works or subjectincluding where such works or subjectincluding which includes parts of, equotation, criticism, review, caricature (deleted/merged into paragraph 4)   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| Where the average number of monthly unique visitors of these service providers exceeds 5 million, calculated on the basis of the last calendar year, they shall also demonstrate that they have made best efforts to prevent further uploads of the notified works and other subject matter for which the rightholders have provided relevant and necessary information.  5. The cooperation between online content service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users which do not infringe copyright and related rights, including where such works or subject matter are covered by an exception or limitation.  Users shall be allowed to upload and make available content that they have generated by themselves or by other users and which includes parts of, existing protected works and subject matter for purposes of illustration, quotation, criticism, review, caricature, parody or pastiche.  6. (deleted/merged into paragraph 4) | EP TEXT                                |
| sitors of these service providers exceeds 5 millioners shall also demonstrate that they have made bed works and other subject matter for which the formation.  Information.  Information infringe copyright and related rights, by an exception or limitation.  In that they have generated by themselves or by other is and subject matter for purposes of illustration.   | COUNCIL TEXT doc. 9134/18              |
| at they have made best matter for which the in the prevention of the right and related rights, themselves or by other es of illustration,   | POSSIBLE COMPROMISE<br>SOLUTION        |

| 5893/19 ADD 1<br>ANNEX |  |
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## Location 8. Member States shall provide that an online sharing service provider puts in place an effective and expeditious 7. The application of the provisions in this article shall not lead to any general monitoring obligation as defined in GREEN GREEN duly justify the reasons for their requests. Complaints submitted under this mechanism shall be processed without blocking or disabling access to of works or other subject matter uploaded by them complaint and redress mechanism that is available to users of the service in case of disputes over the removal of er Article 15 of Directive 2000/31/EC national procedural rules in place to allow users to assert their rights before a court undue delay and decisions to remove or disable access to uploaded content shall be subject to human review. [transparency/reporting obligations provisionally agreed at trilogue 03/12/2018] information on the use of content covered by the agreements in paragraph 4 and, where licensing agreements are concluded between service providers and rightholders, request, with adequate information on the functioning of their practices with regard to the cooperation referred to Member States shall provide that online content sharing service providers shall provide rightholders, at their disputes. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the When rightholders request to remove or disable access to their specific works or other subject matter, they shall judicial remedies, users have access to an independent body for the resolution of disputes and that there are legal protection afforded by national law, without prejudice to the rights of users to have recourse to efficient Member States shall also ensure that *out-of-court redress mechanisms are available for the settlement of* COMMISSION COM(2016)593 **PROPOSAL** EP TEXT COUNCIL TEXT doc. 9134/18 POSSIBLE COMPROMISE SOLUTION

E 228

| 238.  |  |  |
|---|--|--|
| Art. 13, para   |  | Location                               |
| Information society     service providers that store  | This Directive shall in no v Union law, and shall not le in accordance with Directiv  Online content sharing sen other subject matter under  Online content sharing sen other subject matter under  Online content sharing sen other subject matter under  9. As of [date of entry into fo organise stakeholder dialog service providers and rightl providers, rightholders, use stakeholder dialogues, issu to in paragraph 4. When d into account. For the purpo information from online co paragraph 4.  [provisionally agreed at tra trilogue of 13/12/2018]   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 1. Without prejudice to Article 3(1) and (2) of       | This Directive shall in no way affect legitimate uses, such as uses under exceptions and limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of their personal data, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation.  **YELLOW**  Online content sharing service providers shall inform the users about the possibility for them to use works and other subject matter under exceptions or limitations to copyright and related rights provided for in Union law.  GREEN  GREEN  GREEN  Online content sharing service providers shall inform the users about the possibility for them to use works and other subject matter under exceptions or limitations to copyright and related rights provided for in Union law.  GREEN  As of [date of entry into force of this Directive] the Commission in cooperation with the Member States shall organise stakeholder dialogues to discuss best practices for the cooperation between the online content sharing service providers, rightholders, users associations and other relevant stakeholders and taking into account the results of the stakeholder dialogues, issue guidance on the application of Article 13 in particular regarding cooperation referred to in paragraph 4. When discussing the best practices, the need to balance the fundamental rights shall be taken into account. For the purpose of this stakeholders dialogue, users associations shall have access to adequate information from online content sharing service providers on the functioning of their practices with regard to in paragraph 4. When discussing the best practices, the need to balance the fundamental rights shall be taken into account. For the purpose of this stakeholders dialogue, users associations shall have access to adequate information from online content sharing service providers on the functioning of their practices with regard to in paragraph 4. When di | EP TEXT                                |
| 1. Member States shall provide that an online         | as uses under exceptions and limitations provided for i idual users nor to the processing of their personal data, EC and the General Data Protection Regulation.  Example:  EC and the General Data Protection Regulation.  EC and the General Data Protection Regulation in cooperation with the Member States shall awa.  Example:  EC and the General Data Protection Regulation.  EC and the General Data Protection Regul | COUNCIL TEXT doc. 9134/18              |
| [Article 13 to be further discussed at trilogue - see | withem to use works and ided for in Regulation.  Them to use works and ided for in Union law.  Aember States shall nline content sharing service account the results of the ng cooperation referred al rights shall be taken cess to adequate tices with regard to in  TM, confirmed at  | POSSIBLE COMPROMISE SOLUTION           |

5893/19 ADD 1 ANNEX

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|  | Location                               |
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| 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 with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| noline content sharing Information society service providers that store and provide perform an act of communication to the public access to large amounts of works or other subject matter uploaded by their ecoperation 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 ecoperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be therefore conclude fair and appropriate and  | EP TEXT                                |
| content sharing service provider performs an act of making available to the public when it gives the public access to copyright protected works or other protected works or other uploaded by its users.  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 obtained, the service provider shall prevent the availability on its service of those works and other subject-matter uploaded by  | COUNCIL TEXT doc. 9134/18              |
| latest compromise text in row 237A]  | POSSIBLE COMPROMISE<br>SOLUTION        |

| [Article 13 to be further discussed at trilogue - see latest compromise text in row |   | 2. Member States shall ensure that the Licensing agreements which are  |  | Art. 13, para 2 (EP) | 239. |
|---|---|--|--|----------------------|------|
|   | 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. 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 when they are not acting on a commercial basis.  [Last two sentences of COM proposal were moved to Council's paragraphs 5 and 6 respectively] | proportionate. The service providers shall provide infaltholders 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: licensing agreements with right holders. | recognition and use of the works and other subject-matter. |                      |      |
| POSSIBLE COMPROMISE<br>SOLUTION   | COUNCIL TEXT doc. 9134/18   | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593                     | Location             |      |

BM/rcg ECOMP 3.B. LIMITE

| 240.  |  |  |
|---|--|--|
| Art. 13, para<br>2a (EP)  |  | Location                               |
|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 2a. Member States shall provide that where right holders do not wish to conclude licensing agreements, online content | sharing service providers with right holders for the acts of communication 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., shall cover the liability for works uploaded by the users of such online content sharing services in line with the terms and conditions set out in the licensing agreement, provided that such users do not act for commercial purposes.  [See Council's paragraph 1, subparagraph 3 (row 238)] | EP TEXT                                |
|   |  | COUNCIL TEXT doc. 9134/18              |
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]                             | 237AJ  | POSSIBLE COMPROMISE SOLUTION           |

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| 241.  |   |  |
|---|---|--|
| Art. 13, para<br>2 / para 2b<br>(EP)  |   | Location                               |
| 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.           |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| ensure that online content sharing service providers referred to in paragraph I 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 | 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 preventing the availability of non-infringing works or other protected subject matter, including those covered by an exception or limitation to copyright. | EP TEXT                                |
| [Paragraph 2 of the COM proposal was moved to new paragraph 7 of Council's text]  |   | COUNCIL TEXT doc. 9134/18              |
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]   |   | POSSIBLE COMPROMISE SOLUTION           |

| Location | COMMISSION<br>PROPOSAL<br>COM(2016)593 | EP TEXT   | COUNCIL TEXT doc. 9134/18 | POSSIBLE COMPROMISE SOLUTION |
|----------|--|---|---------------------------|------------------------------|
|          |  | 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 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 |                           |                              |

| Location  | COMMISSION<br>PROPOSAL<br>COM(2016)593   | EP TEXT  | COUNCIL TEXT doc. 9134/18               | POSSIBLE COMPROMISE SOLUTION   |
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|   |  | rules.   |   |  |
|   |  | [See Council's Article 13(7) (row 252)]  |   |  |
| 242. Art. 13, para 3 (EP) t t t t t t t t t t t t t t t t t t t | 3. Member States shall facilitate, where appropriate, the 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. | 3. As of Idate of entry into force of this directive], the Commission and the Member States shall facilitate where appropriate, the cooperation organise dialogues between the information society service providers and rightholders through stakeholder dialogues stakeholder dialogues stakeholder dialogues stakeholders to harmonise and 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 technological developments. and issue guidance to | [See new paragraph 8 of Council's text] | [stakeholder dialogues were moved to row 253, now paragraph 8 in row 237A] [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A] |

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| 243.   |  |  |
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| Art. 13, para<br>3 (Council)   |  | Location                               |
|  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|  | licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their 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. | EP TEXT                                |
| 23. 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 |  | COUNCIL TEXT doc. 9134/18              |
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]  |  | POSSIBLE COMPROMISE SOLUTION           |

| [Article 13 to be further discussed at trilogue - see                                     | it has made best efforts to prevent the availability of  |         |  | Art. 13, para<br>4, point (a)      | 245. |
|---|--|---------|--|------------------------------------|------|
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A] | 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: |         |  | Art. 13, para 4, introductory part | 244. |
|   | unauthorised acts of communication to the public and making 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.  |         |  |                                    |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18  | EP TEXT | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location                           |      |

ECOMP 3.B. BM/rcg LIMITE

| ANNEX | 5893/19 |
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D<sub>1</sub> ECOMP 3.B. BM/rcg LIMITE 238 **EN** 

| ECOMP 3.B. | ANNEX         |
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|            | 5893/19 ADD 1 |

| [Article 13 to be further   | (c) the availability and costs of the measures as   |         |  | Art. 13, para                      | 250. |
|---|---|---------|--|------------------------------------|------|
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A] | (b) the amount and the type of works or other subject matter uploaded by the users of the services;                                     |         |  | Art. 13, para 5, point (b)         | 249. |
|   | within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC, and their audience;                                |         |  |                                    |      |
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A] | (a) the nature and size of the services, in particular whether they are provided by a microenterprise or a small-sized enterprise       |         |  | Art. 13, para 5, point (a)         | 248. |
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A] | 5. The measures referred to in point (a) of paragraph 4 shall be effective and proportionate, taking into account, among other factors: |         |  | Art. 13, para 5, introductory part | 247. |
|   | measures referred to in point (a).  |         |  |                                    |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18   | EP TEXT | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location                           |      |

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|   | 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 |         |  |                    |      |
|---|--|---------|--|--------------------|------|
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A] | 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   |         |  | Art. 13, para<br>6 | 251. |
| discussed at trilogue - see<br>latest compromise text in row<br>237A]                     | well as their effectiveness in light of technological developments in line with the industry best practice referred to in paragraph 8.   |         |  | 5, point (c)       |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18  | EP TEXT | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location           |      |

| 252.  |  |
|---|--|
| Art. 13, para<br>7  | Location                               |
|   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   | EP TEXT                                |
| rightholders, information on the use of content covered by the agreements.  7. Member States shall ensure that the measures referred to in paragraph 4 are implemented by the online content sharing service provider without prejudice to the possibility for their users to benefit from exceptions or limitations to copyright. For that purpose, the service providers referred to in paragraph 1 shall put in place a complaints and redress mechanisms that are is available to users of the service in case of disputes over the application of the measures reffered to in paragraph 1 to their content. Complaints submitted under this mechanism shall be processed by the online | COUNCIL TEXT doc. 9134/18              |
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]   | POSSIBLE COMPROMISE<br>SOLUTION        |

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| 253. Art. 13, para 8  |  | Location C(                  |
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|   |  | PROPOSAL<br>COM(2016)593     |
|   |  | EP TEXT                      |
| 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 | 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 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.  [Paragraph 2 of the COM proposal, amended] | COUNCIL TEXT doc. 9134/18    |
| [Article 13 to be further discussed at trilogue - see latest compromise text in row 237A]   |  | POSSIBLE COMPROMISE SOLUTION |

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|--|-------------|---|---|-----------------|----------|--------|------------|-----------------|----------|

|                              |   | Member States shall provide that disputes between successors in title and information society services regarding the application of |  | Art. 13a,<br>sub-para 1 | 255. |
|------------------------------|---|---|--|-------------------------|------|
|                              |   | Article 13a   |  | Art. 13a, title         | 254. |
|                              | measures and provide the measures and provide the Commission regularly with information on those mechanisms. The Commission shall, in consultation with online 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.  [Paragraph 3 of the COM proposal, reworded] |   |  |                         |      |
| POSSIBLE COMPROMISE SOLUTION | COUNCIL TEXT doc. 9134/18   | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location                |      |

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| parties to settle their disputes under this system.  The Member States shall inform the Commission of the establishment of this body no later than (date mentioned in Article 21(1)).  Article 13b  Use of protected content by information society services providing automated image referencing |                          | Art. 13a, sub-para 3 Art. 13b, title | 257.<br>258.<br>259. |
|--|--------------------------|--------------------------------------|----------------------|
| Article 13(1) may be subject to an alternative dispute resolution system.  Member States shall establish or designate an impartial body with the necessary expertise, with the aim of helping the  | PROPOSAL<br>COM(2016)593 | Art. 13a,<br>sub-para 2              | 256.                 |

| [exploitation] contracts of     | authors and performers  | performers  | or manners mine borrowners  |          |      |
|---------------------------------|---|---|---|----------|------|
| CHAPTER 3  Fair remuneration in | CHAPTER 3 Fair remuneration in exploitation_contracts of          | CHAPTER 3  Fair remuneration in   | CHAPTER 3  Fair remuneration in contracts of authors and performers |          | 261. |
| (deleted)                       | MEASURES TO ACHIEVE A WELL- FUNCTIONING MARKETPLACE FOR COPYRIGHT |   |   |          | 260. |
|                                 |   | 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. |   |          |      |
| SOLUTION                        | doc. 9134/18  |   | FROPOSAL<br>COM(2016)593  |          |      |
| POSSIBLE COMPROMISE             | COUNCIL TEXT  | EP TEXT   | COMMISSION  | Location |      |

| 1. Member States shall ensure that when authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter they are entitled to receive appropriate and proportionate remuneration. |                           | 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 remuneration |  | Art14, para<br>1 | 263. |
|--|---------------------------|--|--|------------------|------|
| RED  Article -14  Principle of [fair] [appropriate and proportionate] remuneration [Article -14 to be further discussed at trilogue]   |                           | Article -14  Principle of fair and proportionate remuneration  |  | Art14, title     | 262. |
| POSSIBLE COMPROMISE SOLUTION  [to be discussed at political level]   | COUNCIL TEXT doc. 9134/18 | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location         |      |

| ANNEX | 5893/19 ADD 1 |
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| RED   |                           | 3. Member States shall take account of the  |  | Art14, para 3 | 265. |
|---|---------------------------|---|--|---------------|------|
| [to be further discussed at trilogue]   |                           |   |  |               |      |
| 2. In the implementation of this principle into national law, Member States shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests.  [recitals to clarify that the principle of fair remuneration does not prevent authors and performers from granting a license/transferring their rights for free, nor from concluding licensing agreements for a lump sum remuneration; see elements for recital language in row 90] |                           | 2. Paragraph I shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge. |  | Art14, para 2 | 264. |
| trilogue]   |                           | mechanisms.   |  |               |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18 | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location      |      |

| 268.   | 267.                                  |                                       | 266.   |  |  |
|--|---------------------------------------|---------------------------------------|--|--|--|
| Art. 14, para<br>1   | Art. 14, title                        |                                       | Art14, para<br>4   |  | Location                               |
| 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                     | Article 14<br>Transparency obligation |                                       |  |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 1. Member States shall ensure that authors and performers receive on a regular basis, not less than once a year, and taking into account the specificities of each sector and the relative importance of each individual contribution, timely adequate and   | Article 14<br>Transparency obligation |                                       | 4. Contracts shall specify the remuneration applicable to each mode of exploitation. | specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers. | EP TEXT                                |
| 1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances                                    | Article 14<br>Transparency obligation |                                       |  |  | COUNCIL TEXT doc. 9134/18              |
| 1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector and the relative importance of each individual contribution timely, [adequate and sufficient up to date, relevant and comprehensive | Article 14 Transparency obligation    | [to be further discussed at trilogue] | <b>RED</b> Deleted   | Deleted  [to be further discussed at trilogue]   | POSSIBLE COMPROMISE SOLUTION           |

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| 269. Art. 12<br>1a  |   | Loc                                    |
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| Art. 14, para<br>1a   | ර සි ල ත රා   | Location                               |
|   | or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| Ia. 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   | and comprehensive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, direct and indirect revenues generated, and remuneration due.  | EP TEXT                                |
| 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  | from those to whom they have licensed or transferred their rights or their successors in title, notably as regards modes of exploitation, revenues generated and remuneration due.  | COUNCIL TEXT doc. 9134/18              |
| la. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed, authors and performers <i>or their representatives shall</i> , at their request, receive <i>from sub-licencees</i> additional information if their first | 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.  [(*) explicit reference to 'merchandising' as example of a possible form of covered revenues in the recitals (see recital (40a), row 92, and recital (42), row 95)] | POSSIBLE COMPROMISE SOLUTION           |

BM/rcg LIMITE

| 270.  |  |  |
|---|--|--|
| Art. 14, para<br>1a, sub-<br>para 2   |  | Location                               |
|   |  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 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 | with the licensee or transferee.   | EP TEXT                                |
|   | 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 of the author or the performer.  | COUNCIL TEXT doc. 9134/18              |
| Deleted [integrated into row 219, provisionally agreed at Trilogue of 13/12/2018]   | contractual counterpart does not hold all the information that would be necessary for the purposes of paragraph 1.  Where this information is requested, the first contractual counterpart of authors and performers shall provide information on the identity of those sublicensees.  Member States may provide that any such request to those sub-licensees is made directly or indirectly through the contractual counterpart of the author or the performer.  [provisionally agreed at trilogue of 13/12/2018] | POSSIBLE COMPROMISE SOLUTION           |

BM/rcg ECOMP 3.B. **LIMITE** 

| 2. The obligation in paragraph 1 shall be proportionate and effective and shall to ensure an appropriate a high level of | 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 Member | 2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate <i>a high</i> level of transparency in every sector. However, in those cases  | 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 | Art. 14, para<br>2 | 271. |
|--|---|---|--|--------------------|------|
|  |   | 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 to request that information directly from the sub-licensee.  [See Council's Article [See Council's Article] |  |                    |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18   | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Location           |      |

| 272. Art. 14, para 3  |  | Location                              |
|---|--|---------------------------------------|
| para  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.     | where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.   | tion COMMISSION PROPOSAL COM(2016)593 |
| Deleted  in  y  ne o  | where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate a high level of transparency.  | EP TEXT                               |
| 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.           | States may provide that in duly justified cases where the administrative burden resulting from the obligation in paragraph 1 would be become 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 is limited to the obligation remains effective types and ensures an appropriate level of transparency-information that can reasonably be expected in such cases. | COUNCIL TEXT doc. 9134/18             |
| 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, unless the author or performer | Member States may provide that in duly justified cases where the administrative burden resulting from the obligation in paragraph 1 would bebecome disproportionate in view of the revenues generated by the exploitation of the work or performance, -the obligation is limited to the types and level of information that can reasonably be expected in such cases.  [provisionally agreed at Trilogue 26/11/2018]   | POSSIBLE COMPROMISE SOLUTION          |

| 273.  |   |  |
|---|---|--|
| Art. 14, para<br>3a   |   | Location                               |
|   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   |   | EP TEXT                                |
| 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.                                       |   | COUNCIL TEXT doc. 9134/18              |
| 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 | the information for exercising his rights under Article 15(1) and requests the information for that purpose.  [provisionally agreed at trilogue 13/12/2018; "demonstrates": EN equivalent for DE "darlegen"/"bescheinigen"] | POSSIBLE COMPROMISE SOLUTION           |

| GREEN 1. Member States shall ensure, in the absence of an   | 1. Member States shall ensure that authors and performers are entitled to   | Member States shall ensure, in the absence of collective bargaining agreements   | Member States shall ensure that authors and performers are entitled to request  | Art. 15, [para 1 (Council)] | 276. |
|---|---|--|---|-----------------------------|------|
| Article 15<br>Contract adjustment<br>mechanism  | Article 15<br>Contract adjustment<br>mechanism  | Article 15<br>Contract adjustment<br>mechanism   | Article 15<br>Contract adjustment<br>mechanism  | Art. 15, title              | 275. |
| [provisionally agreed at<br>Trilogue 03/12/2018/, together<br>with related wording of recital<br>(41), row 94]  |   |  |   |                             |      |
| paragraphs I to 3.  [provisionally agreed at rilogue 26/11/2018]  GREEN  4. When Article 18 of Directive 2014/26/EU is applicable, the obligation laid down in paragraph 1 shall not apply in respect of 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. | 4. Paragraph 1 shall not be applicable to agreements concluded by entities subject to the transparency obligations established by 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. | 4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2. | 4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU. | Art. 14, para<br>4          | 274. |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18   | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location                    |      |

ECOMP 3.B. BM/rcg LIMITE

| ANNEX | 5893/19 ADD |
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| [Article 15(1a) Council's text deleted/incorporated into paragraph 1]  | 1a. Members States may provide that for agreements subject to or based on collective bargaining agreements the  |  |   | Art. 15, para<br>1a | 277. |
|--|---|--|---|---------------------|------|
| applicable collective bargaining agreement providing for a comparable mechanism, that authors and performers or their representatives are entitled to claim additional, appropriate and fair_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 all the subsequent relevant revenues and derived from the exploitation of the works or performances.  [provisionally agreed at Trilogue 03/12/2018; as to revenues, see comment on Article 14(1), row 268] | appropriate 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 isturns out to be disproportionately low compared to the subsequent relevant revenues and benefits-derived from the actual exploitation of the works or performances. | providing for a comparable mechanism, that authors and performers or any representative organisation acting on their behalf are entitled to request claim additional, appropriate and fair remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant direct or indirect revenues and benefits derived from the exploitation of the works or performances.  [See Council's Article 15(1a) (row277)] | additional, appropriate 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 revenues and benefits derived from the exploitation of the works or performances. |                     |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18   | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location            |      |

ECOMP 3.B. BM/rcg LIMITE

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| [provisionally agreed at                                 |   |            |                             |                |      |
|--|---|------------|-----------------------------|----------------|------|
| Dispute resolution procedure                             |   |            |                             |                |      |
| Article 16   | mechanismprocedure                                  | mechanism  | Dispare resonation meenumsm |                |      |
| GREEN  | Article 16 Dispute resolution                       | Article 16 | Article 16                  | Art. 16, title | 279. |
| [provisionally agreed at trilogue 13/12/2018]            |   |            |                             |                |      |
| rules implementing Directive 2014/26/EU.                 | <u>implementing Directive</u><br><u>2014/26/EU.</u> |            |                             |                |      |
| other entities which are already subject to the national | entities subject to the                             |            |                             |                |      |
| in Article 3(a) and (b) of Directive 2014/26/EU or by    | 3(a) and (b) of Directive                           |            |                             |                |      |
| concluded by entities defined                            | agreements concluded by                             |            |                             | 1              |      |
| 2. Paragraph 1 shall not be                              | 2. Paragraph 1 shall not be applicable to           |            |                             | Art. 15, para  | 278. |
|  | adjustment mechanism.                               |            |                             |                |      |
|  | national provisions implementing the contract       |            |                             |                |      |
|  | applicable instead of the                           |            |                             |                |      |
|  | adjustment of                                       |            |                             |                |      |
| trilogue 03/12/2018]                                     | collective bargaining agreement for the             |            |                             |                |      |
| Formation aller accord at                                | rules of the relevant                               |            |                             |                |      |
| SOLUTION   | doc. 9134/18  |            | COM(2016)593                |                |      |
| POSSIBLE COMPROMISE                                      | COUNCIL TEXT  | EP TEXT    | COMMISSION                  | Location       |      |
|  |   |            |                             |                |      |

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| tive deleted/incorporated into  | 2. Member States shall ensure that representative organisations of authors and performers, including  | [See Parliament's Article 16<br>last phrase (row 280)]  |   | Art. 16, para<br>2          | 281. |
|---|---|---|---|-----------------------------|------|
| all  GREEN  Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors and performers.  [provisionally agreed at Trilogue 26/11/2018] | 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.  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.  [See Council's Article 16(2) (row 281)] | 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. | Art. 16, [para 1 (Council)] | 280. |
| Trilogue 26/11/2018J  |   |   |   |                             |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18   | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location                    |      |

ECOMP 3.B. BM/rcg LIMITE

| ANNE     | 5893/1 |
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| <b>,</b> | ADD    |

| 283.   | 282.  |   |  |
|--|---|---|--|
| Art. 16a<br>(Council)  | Art. 16a<br>(Council),<br>title   |   | Location                               |
|  |   |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|  |   |   | EP TEXT                                |
| Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.  | Article 16a<br>Contractual provisions   | organisations, may initiate such disputes on behalf of one or more authors and performers at their request. | COUNCIL TEXT doc. 9134/18              |
| (1) Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Chapter(*)  Directive shall be unenforceable in relation to authors and performers.  [(*) 'Chapter' refers to Articles 14,15 and 16, ie the provisions of the initial Commission | Article 16a  Contractual Common provisions  [provisionally agreed at Trilogue 26/11/2018] | Trilogue 26/11/2018]  | POSSIBLE COMPROMISE<br>SOLUTION        |

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|   | Location                               |
|   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   | EP TEXT                                |
|   | COUNCIL TEXT doc. 9134/18              |
| [provisionally agreed at Trilogue 26/11/2018]  [2) [Exclusion of software developers]  Member States shall provide that Articles -14 to 16a of this Directive do not apply to authors of a computer program in the sense of Article 2 of Directive  2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of the Council of 23 April 2009 on the legal protection of the Council of 23 April 2009 on the legal protection of computer programs (Codified version), OJL 111, 5.5.2009. | POSSIBLE COMPROMISE SOLUTION           |

| ANNEX | 5893/19 |
|-------|---------|
|       | ADD     |

| 285.   | 284.  |  |
|--|---|--|
| Art. 16a<br>(EP),<br>para 1  | Art. 16a<br>(EP), title   | Location                               |
|  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 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 matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions                    | Article 16 a<br>Right of revocation   | EP TEXT                                |
|  |   | COUNCIL TEXT doc. 9134/18              |
| I. Member States shall ensure [may provide] 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 may revoke in whole or in part the licence or the transfer of rights where there is a lack of exploitation of the work or other protected subject-matter [EP: or where there is a continuous lack of regular reporting in accordance with | RED  Article 16 a  Right of revocation  [Article 16a to be further discussed at trilogue] | POSSIBLE COMPROMISE SOLUTION           |

| ANNEX | 5893/19 |
|-------|---------|
|       | ADD     |

|  | Location                               |
|--|--|
|  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 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.   | EP TEXT                                |
|  | COUNCIL TEXT doc. 9134/18              |
| relative importance of the individual contributions and the legitimate interests of all authors and performers affected by the exercise of the revocation mechanism by an individual author or performer. Member States may exclude works or other subject matter from the application of the mechanism if such works or subject matter usually contain contributions of a plurality of authors or performers.  Member States may provide that the revocation mechanism shall be exercised only within a specific time frame, where this is duly justified by the specificities of the sector, type of work or protected subject matter concerned.  Member States may provide that that authors or performers may terminate the exclusivity of the contract instead of | POSSIBLE COMPROMISE SOLUTION           |

| 287.   |   |  |
|--|---|--|
| Art. 16a<br>(EP),<br>para 3  |   | Location                               |
|  |   | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 3. Paragraphs I and 2 shall not apply if the non-exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.  |   | EP TEXT                                |
|  |   | COUNCIL TEXT doc. 9134/18              |
| 3. Member States may provide that the revocation provided for in paragraph 1 may be exercised only after a reasonable time after the conclusion of the licence or transfer agreement. The author or performer shall notify the person to whom the rights have been licensed or transferred and set an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the license or the transfer. | revoking the rights.  [to be further discussed at trilogue] | POSSIBLE COMPROMISE SOLUTION           |

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| Location COMMISSION PROPOSAL COUNCIL TEXT PROPOSAL COM(2016)593  4. Contractual or other arrangements derogating from the right of revocation shall be longful only if concluded by means of an agreement which is based on a collective bargaining agreement.  RED  RED  A. Contractual or other trilogue  from the right of revocation agreement which is based on a collective bargaining agreement.  RED  RED  1 to be further discussed at trilogue    Possible Compromise at trilogue | [to be further discussed at trilogue]  |                           |  |  |                             |              |
|---|--|---------------------------|--|--|-----------------------------|--------------|
| COMMISSION EP TEXT COUNCIL TEXT PROPOSAL COM(2016)593 doc. 9134/18  | RED  [EP: 4. Paragraph apply if the non-exrights is predomina circumstances whi author or the perforeasonably expectatemedy.]  [EP: 5. Member Statement of the provide that any comprovide |                           | 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. |  | Art. 16a<br>(EP),<br>para 4 | <b>28</b> 8. |
| COMMISSION EP TEXT COUNCIL TEXT PROPOSAL doc. 9134/18   | [to be further disc<br>trilogue]   |                           |  |  |                             |              |
|   | POSSIBLE CON<br>SOLUT  | COUNCIL TEXT doc. 9134/18 | EP TEXT  | COMMISSION<br>PROPOSAL<br>COM(2016)593 | Location                    |              |

|      | Location                      | COMMISSION PROPOSAL  | EP TEXT  | COUNCIL TEXT  | POSSIBLE COMPROMISE   |
|------|-------------------------------|--|--|---|---|
| 280  |                               | TITI E V   | TITLE V  | TITIEV  | TITIEV  |
| 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                | Article 17<br>Amendments to other<br>directives  | Article 17 Amendments to other directives  | Article 17<br>Amendments to other<br>directives   | Article 17<br>Amendments to other<br>directives   |
| 291. | Art. 17, para                 | 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<br>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:  |
| 293. | Art. 17, para<br>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];" | "(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 noncommercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];" |

| (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:   | Art. 17, para<br>2, point (a) | 297. |
|---|--|---|--|-------------------------------|------|
| 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:   | Art. 17, para<br>2            | 296. |
| "(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 justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <i>Articles 3 and 4</i> of Directive [this Directive];"  [provisionally agreed at technical meeting of 13.11.2018] | "(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 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) 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 justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | "(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 justified by the noncommercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | Art. 17, para<br>1, point (b) | 295. |
| (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:  | Art. 17, para 1, point (b)    | 294. |
| technical meeting of<br>13.11.2018J   |  |   |  |                               |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18  | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Location                      |      |

|      | Location                      | COMMISSION  | EP TEXT   | COUNCIL TEXT   | POSSIBLE COMPROMISE   |
|------|-------------------------------|---|---|--|---|
| 298. | Art. 17, para<br>2, point (a) | "(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 indirect economic or commercial advantage, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | "(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 indirect economic or commercial advantage, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];" | "(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 indirect economic or commercial advantage, without prejudice to the exceptions and the limitation exception provided for in Article 5 of Directive [this Directive];" | "(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 indirect economic or commercial advantage, without prejudice to the exception and the limitations provided for in Article 5 of Directive [this Directive];"  [provisionally agreed at technical meeting of |
| 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<br>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  | "(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,  | "(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  | "(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,  |

| 303.   | 302.  | 301.  |   |  |
|--|---|---|---|--|
| Art. 17, para<br>2, point (c)  | Art. 17, para<br>2, point (c)   | Art. 17, para 2, point (c)                            |   | Location                               |
| (f) to facilitate the exchange of information on the relevant developments in legislation and case law as                          | "(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;                | (c) In Article 12(4), the following points are added: | 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 limitation provided for in Directive [this Directive];"  | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| (f) to facilitate the exchange of information on the relevant developments in legislation and case law                             | "(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;                | (c) In Article 12(4), the following points are added: | unless this turns out to be impossible and to the extent justified by the noncommercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"   | EP TEXT                                |
| (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical | "(e) to examine the impact of<br>the transposition of Directive<br>[this Directive] on the<br>functioning of the internal<br>market and to highlight any<br>transposition difficulties; | (c) In Article 12(4), the following points are added: | justified by the non- commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];"  | COUNCIL TEXT doc. 9134/18              |
| (f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the           | "(e) to examine the impact of<br>the transposition of Directive<br>[this Directive] on the<br>functioning of the internal<br>market and to highlight any<br>transposition difficulties; | (c) In Article 12(4), the following points are added: | unless this turns out to be impossible and to the extent justified by the noncommercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <i>Articles 3 and 4 of</i> Directive [this Directive];"  [provisionally agreed at technical meeting of 13.11.2018] | POSSIBLE COMPROMISE SOLUTION           |

| GREEN  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 |   | 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. |  | Art. 17a                      | 306. |
|--|---|---|--|-------------------------------|------|
| GREEN  Article 17 a  |   | Article 17 a  |  | Art. 17a, title               | 305. |
| (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]."                      | Art. 17, para<br>2, point (c) | 304. |
| practical application of the measures taken by Member States to implement Directive [this Directive];  | application of the measures taken by Member States to implement Directive [this Directive];     | as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];   | well as on the practical application of the measures taken by Member States to implement Directive [this Directive]; |                               |      |
| POSSIBLE COMPROMISE SOLUTION   | COUNCIL TEXT doc. 9134/18   | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593   | Location                      |      |

| (Deleted)   | 2. [Deleted]  | Deleted   | 2. The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)].  | Art. 18, para<br>2 | 309. |
|---|---|---|---|--------------------|------|
| 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)]. | Art. 18, para<br>1 | 308. |
| Article 18 Application in time  | Article 18<br>Application in time   | Article 18 Application in time  | Article 18 Application in time  | Art. 18            | 307. |
| this Directive.  [provisional agreement at trilogue 25/10/2018 / 26/11/2018; a recital should clarify that Article 17a does not allow MS to not implement the mandatory exceptions under this Directive]          |   |   |   |                    |      |
| POSSIBLE COMPROMISE SOLUTION  | COUNCIL TEXT doc. 9134/18   | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location           |      |

| 314. Art. 20   | 313. Art                                  | 312. Art. 19   | 311. Art                             | 310. Art.   |  |
|--|---|--|--------------------------------------|---|--|
| . 20   | Art. 20, title                            | . 19   | Art. 19, title                       | Art. 18, para<br>3  | Location                               |
| 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. | Article 20<br>Protection of personal data | 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)]. | Article 19<br>Transitional provision | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)]. | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
| 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. | Article 20 Protection of personal data    | 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)]. | Article 19<br>Transitional provision | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)]. | EP TEXT                                |
| 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. | Article 20<br>Protection of personal data | 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)]. | Article 19<br>Transitional provision | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)]. | COUNCIL TEXT doc. 9134/18              |
| 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. | Article 20<br>Protection of personal data | 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)]. | Article 19<br>Transitional provision | 3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)]. | POSSIBLE COMPROMISE SOLUTION           |

|      | Location                       | COMMISSION<br>PROPOSAL<br>COM(2016)593  | EP TEXT   | COUNCIL TEXT doc. 9134/18  | POSSIBLE COMPROMISE SOLUTION   |
|------|--------------------------------|---|---|--|--|
| 315. | Art. 21, title                 | Article 21<br>Transposition   | Article 21<br>Transposition   | Article 21<br>Transposition  | Article 21<br>Transposition  |
| 316. | Art. 21, para<br>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 [1224] 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][24]] months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions. |
| 317. | Art. 21, para<br>1, sub-para 2 | When Member States adopt those provisions, they shall contain a reference to this Directive 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.                          | When Member States adopt those provisions, they shall contain a reference to this Directive 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.                          | When Member States adopt those provisions, they shall contain a reference to this Directive 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.                             | When Member States adopt those provisions, they shall contain a reference to this Directive 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. Member States shall communicate to the Commission the text of the  | 2. Member States shall communicate to the Commission the text of the  | 2. Member States shall communicate to the Commission the text of the   | 2. Member States shall communicate to the Commission the text of the   |

| 320A  | 320.  | 319.                 |  |  |
|---|---|----------------------|--|--|
|   | Art. 22, para<br>1  | Art. 22, title       |  | Location                               |
|   | 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 Economic and Social Committee. | Article 22<br>Review | main provisions of national law which they adopt in the field covered by this Directive. | COMMISSION<br>PROPOSAL<br>COM(2016)593 |
|   | 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 Economic and Social Committee. | Article 22<br>Review | main provisions of national law which they adopt in the field covered by this Directive. | EP TEXT                                |
|   | 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 Economic and Social Committee. | Article 22<br>Review | main provisions of national law which they adopt in the field covered by this Directive. | COUNCIL TEXT doc. 9134/18              |
| The Commission shall, by [three years after the end of transposition deadline set out in Article 21(1)], assess the impact of the specific liability regime of Article 13 applicable to online content sharing service providers which have an annual | 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 Economic and Social Committee. | Article 22<br>Review | main provisions of national law which they adopt in the field covered by this Directive. | POSSIBLE COMPROMISE<br>SOLUTION        |

| LIMITE | ECOMP 3.B. | ANNEX         |
|--------|------------|---------------|
| BM/rcg |            | 5893/19 ADD 1 |
|        |            |               |

|   | Article 24  | Article 24  | Article 24  | Art. 24, title     | 324. |
|---|---|---|---|--------------------|------|
| , | 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> . | Art. 23            | 323. |
|   | Article 23 Entry into force   | Article 23 Entry into force   | Article 23 Entry into force   | Art. 23, title     | 322. |
| , | 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.          | Art. 22, para<br>2 | 321. |
|   |   |   |   |                    |      |
|   | COUNCIL TEXT doc. 9134/18   | EP TEXT   | COMMISSION<br>PROPOSAL<br>COM(2016)593  | Location           |      |