

Brussels, 12 October 2018

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**Interinstitutional files:  
2016/0280(COD)**

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**WK 12128/2018 INIT**

**LIMITE**

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**WORKING PAPER**

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**MEETING DOCUMENT**

From:	Presidency
To:	Delegations
N° prev. doc.:	12513/18
N° Cion doc.:	12254/16 + ADD1 + ADD2 + ADD3 + ADD4
Subject:	Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market - Presidency compromise suggestions on Articles 3 to 6, 14 to 16a and 17a

In preparation of the discussions at the Copyright Attachés meeting on 16 October 2018, delegations will find attached Presidency compromise suggestions on Articles 3 to 6, Article minus 14, Articles 14 to 16a, and Article 17a, as well as on recital (13a), of the above mentioned proposal. The definitions in Article 2 will be discussed together with the relevant Articles.

The Presidency suggestions are set out in the 4th column of the annexed table. Changes compared to the Council text set out in the 3rd column are indicated in **bold**. Moreover, comments and explanations are included in the 4th column in [ *italics*].

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WK 12128/2018 INIT

**LIMITE**

**EN**

# 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)

### Exploration of possible compromise solutions

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
105.		TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS	TITLE I GENERAL PROVISIONS
109.	Art. 2, title	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>
110.	Art. 2, introductory part	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:	For the purposes of this Directive, the following definitions shall apply:
111.	Art. 2, para 1, introductory part	(1) ‘research organisation’ means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research	(1) ‘research organisation’ means a university, <b><i>including its libraries</i></b> , a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific	(1) ‘research organisation’ means a university, a research institute or any other organisation <b><i>an entity</i></b> , the primary goal of which is to conduct scientific research or to conduct scientific	(1) ‘research organisation’ means <b>a university,</b> <b><i>including its libraries</i></b> , a <b>research institute or any other</b> entity the primary goal of which is to conduct scientific research or to <b>carry out educational</b>

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		and provide educational services:	research and provide educational services:	<del>research and provide educational services:</del> <b><u>involving also the conduct of scientific research:</u></b>	<b>activities</b> involving also the conduct of scientific research:
112.	Art. 2, para 1, point (a)	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or	(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or
113.	Art. 2, para 1, point (b)	(b) pursuant to a public interest mission recognised by a Member State;	(b) pursuant to a public interest mission recognised by a Member State;	(b) pursuant to a public interest mission recognised by a Member State;	(b) pursuant to a public interest mission recognised by a Member State;
114.	Art. 2, para 1, closing phrase	in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;	in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a <b>significant</b> influence upon such organisation;	in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;	in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;

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115.	Art. 2, para 2	(2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations;	(2) ‘text and data mining’ means any automated analytical technique <b><i>which analyses works and other subject matter</i></b> in digital form in order to generate information, <b><i>including, but not limited to</i></b> , patterns, trends and correlations.	(2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations;	(2) ‘text and data mining’ means any automated analytical technique aiming to analyse text and data in digital form in order to generate information, <b><i>including, but not limited to</i></b> , patterns, trends and correlations;
116.	Art. 2, para 3	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;	(3) ‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;
128.		TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- BORDER ENVIRONMENT	TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- BORDER ENVIRONMENT	TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- BORDER ENVIRONMENT	TITLE II MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS- BORDER ENVIRONMENT
129.	Art. 3, title	<i>Article 3 Text and data mining</i>	<i>Article 3 Text and data mining</i>	<i>Article 3 Text and data mining <b><u>for the purposes of scientific research</u></b></i>	<i>Article 3 Text and data mining for</i>

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					<i>the purposes of scientific research</i>
130.	Art. 3, para 1	1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have lawful access for the purposes of scientific research.	1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions <del>made by research organisations in order to carry out text and data mining of works or other subject-matter to which they have lawful access</del> <b><i>research organisations have lawful access and made in order to carry out text and data mining</i></b> for the purposes of scientific research <b><i>by such organisations.</i></b>  <b><i>Member States shall provide for educational establishments and</i></b>	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 <b><u>and cultural heritage institutions</u></b> in order to carry out text and data mining of works or other subject-matter to which they have lawful access, for the purposes of scientific research.	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 mining of works or other subject-matter to which they have lawful access for the purposes of scientific research.

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			<i>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.</i>		
131.	Art. 3, para 1a		<i>1a. Reproductions and extractions made for text and data mining purposes shall be stored in a secure manner, for example by trusted bodies appointed for this purpose.</i>	<b><u>1a.Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and not be retained for longer than necessary for achieving the purposes of scientific research.</u></b>	1a. Copies of works or other subject-matter made in compliance with paragraph 1 shall be stored with an appropriate level of security <b>and may be retained for the purposes of scientific research.</b>

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					<i>[Trusted bodies are mentioned in recital (11c) of the Council text, row 25]</i>
132.	Art. 3, para 2	2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.	2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.  <i>[See Council's Article 6(1) (row 155)]</i>	2. <i>[Moved to Article 6(1)]</i>	<i>[Moved to Article 6(1), row 155, that deals with the question of contractual override in general]</i>
133.	Art. 3, para 3	3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.	3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.	3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.	3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.
134.	Art. 3, para 4	4. Member States shall encourage rightholders and research	4. Member States shall encourage rightholders and research organisations to	4. Member States shall encourage rightholders and research organisations <b>and cultural heritage</b>	4. Member States shall encourage rightholders, research organisations and cultural heritage

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.	<del>define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.</del> <i>may continue to provide text and data mining exceptions in accordance with point (a) of Article 5(3) of Directive 2001/29/EC.</i>	<u>institutions</u> to define commonly-agreed best practices concerning the application of the <u>obligation and</u> measures referred to <u>respectively</u> in paragraphs <u>1a and</u> 3.	institutions to define commonly-agreed best practices concerning the application of the obligation and measures referred to respectively in paragraphs 1a and 3. <i>[It is suggested that the relation between exceptions and limitations under this Directive and Directives 96/9/EC and 2001/29/EC is dealt with under Article 17a (along the lines of the language used in recital (5) of the Council text, row 14)]</i>
135.	Art. 3a, title		<u><i>Article 3a</i></u> <u><i>Optional exception or limitation for text and data mining</i></u>	<u><i>Article 3a</i></u> <u><i>Optional exception or limitation for text and data mining</i></u>	<u><i>Article 3a</i></u> <u><i>Optional exception or limitation for text and data mining</i></u>
136.	Art. 3a, para 1		1. <i>Without prejudice to Article 3 of this Directive, Member States</i>	<u>1. Without prejudice to Article 3 of this Directive Member States may provide for an</u>	1. Without prejudice to Article 3 of this Directive, Member States may



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			<i>may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining, provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders, including by machine readable means.</i>	<b><u>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.</u></b>	provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for <b>[TBD: temporary]</b> reproductions and extractions of lawfully accessible works and other subject-matter that form a part of the process of text and data mining.
137.	Art. 3a, para 2 (EP)		<b>2. Reproductions and extractions made pursuant to paragraph 1 shall not be</b>		<i>[The discussion on this row is linked to the discussion</i>

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			<i>used for purposes other than text and data mining.</i>		<i>of the “temporary” in row 136]</i>
138.	Art. 3a, para 2 (Council)			<p><b><u>2. The exception or limitation provided for in paragraph 1 shall apply provided that the use of works and other subject matter referred to therein has not been expressly reserved by their rightholders including by technical means.</u></b></p> <p><i>[See para.1 of EP text (row 136)]</i></p>	<p>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 <b>in an appropriate manner, such as machine readable means.</b></p> <p><i>[See also the explanation in recital (13a), row 28]</i></p>
139.	Art. 3a, para 3		<p><b><i>3. Member States may continue to provide text and data mining exceptions in accordance with point (a) of Article 5 (3) of Directive 2001/29/EC.</i></b></p>		<p><i>[It is suggested that the relation between exceptions and limitations under this Directive and Directives 96/9/EC and 2001/29/EC is dealt with under Article 17a (along the lines of the language</i></p>

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					<i>used in recital (5) of the Council text, row 14)]</i>
140.	Art. 4, title	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>	<i>Article 4 Use of works and other subject-matter in digital and cross-border teaching activities</i>
141.	Art. 4, para 1	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a), <b><u>(b), (d) and (e) and Article</u></b> 7(1) of Directive 96/9/EC, Article 4(1) <b><u>(a) and (b)</u></b> of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to	1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a), (b), (d) and (e) 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 in order to allow the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be

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		achieved, provided that the use:	achieved, provided that the use:	be achieved, provided that <del>the</del> <u>such</u> use:	achieved, provided that such use:
142.	Art. 4, para 1, point (a)	(a) takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;	(a) takes place on the premises of an educational establishment, <i>or in any other venue in which the teaching activity takes place under the responsibility of the educational establishment</i> , or through a secure electronic <del>network</del> <b>environment</b> accessible only by the educational establishment's pupils or students and teaching staff;	(a) takes place <del>on</del> <u>under</u> the <del>premises</del> <b>responsibility</b> of an educational establishment, <b>on its premises or other venues</b> , or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff; <b>and</b>	(a) takes place under the responsibility of an educational establishment, on its premises or other venues, or through a secure electronic <b>environment</b> accessible only by the educational establishment's pupils or students and teaching staff; and  [For explanation on “electronic environment” see recital (16a_ Council text, row 33)]
143.	Art. 4, para 1, point (b)	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible <i>for reasons of practicability</i> .	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.	(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

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144.	Art. 4, para 2, sub-para 1	2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising the acts described in paragraph 1 are easily available in the market.	2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, <b><i>such as material which is primarily intended for the educational market or sheet music</i></b> , to the extent that adequate licences <b><i>licencing agreements</i></b> authorising the acts described in paragraph 1 <b><i>and tailored to the needs and specificities of educational establishments</i></b> are easily available in the market.	2. <b><u>Notwithstanding Article 6(1)</u></b> , Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <b><u>uses or</u></b> types of works or other subject-matter, to the extent that <b><u>adequate licences covering the needs of educational establishments and</u></b> authorising the acts described in paragraph 1 are easily available in the market.	2. Notwithstanding Article 6(1), Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific uses or types of works or other subject-matter, <b><i>such as material which is primarily intended for the educational market or sheet music</i></b> , to the extent that <b><i>suitable</i></b> licences authorising the acts described in paragraph 1 covering the needs <b><i>and specificities</i></b> of educational establishments are easily available in the market.
145.	Art. 4, para 2, sub-para 2	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure that

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		appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.	appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.	<del>appropriate availability and visibility of that</del> <b>rightholders make</b> the licences authorising the acts described in paragraph 1 <b>available and visible</b> for educational establishments.	rightholders make the licences authorising the acts described in paragraph 1 available and visible for educational establishments.
146.	Art. 4, para 3	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic <del>networks</del> <b>environments</b> undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic networks undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.	3. The use of works and other subject-matter for the sole purpose of illustration for teaching through secure electronic <b>environments</b> undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.  <i>[For explanation on “electronic environment” see recital (16a) Council text, row 33]</i>

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147.	Art. 4, para 4	4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	4. Member States may provide for fair compensation <del>for the harm</del> incurred by the <del>to</del> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	4. Member States may provide for fair compensation to rightholders due to the use of their works or other subject-matter pursuant to paragraph 1. <i>[In the Council text the reference to "harm" was moved to recital (17a) of the Council text, row 36]</i>
148.	Art. 4, para 4a		<b><i>4a. Without prejudice to paragraph 2, any contractual provision contrary to the exception or limitation adopted pursuant to paragraph 1 shall be unenforceable. Member States shall ensure that rightholders have the right to grant royalty-free licences authorising the acts described in paragraph 1, generally or as regards specific types of works or</i></b>		<i>[Moved to Article 6(1), row 155 that deals with the question of contractual override in general]</i>  <i>[Council suggests discussing the issue of royalty-free licenses in a recital in the context of remuneration]</i>

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			<i>other subject-matter that they may choose.</i> <i>[See Council's Article 6(1) (row 155)]</i>		
149.	Art. 5, title	<i>Article 5 Preservation of cultural heritage</i>	<i>Article 5 Preservation of cultural heritage</i>	<i>Article 5 Preservation of cultural heritage</i>	<i>Article 5 Preservation of cultural heritage</i>
150.	Art. 5, [para 1 (EP)]	Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other	<b>I.</b> Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole <del>purpose</del> <b>purposes</b> of preservation of such works	Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of the preservation of such works or other	Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 11(1) of this Directive, permitting cultural heritage institutions to make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for <b>purposes</b> of preservation of such works or other subject-



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		subject-matter and to the extent necessary for such preservation.	or other subject-matter and to the extent necessary for such preservation.	subject-matter and to the extent necessary for such preservation.	matter and to the extent necessary for such preservation.
151.	Art. 5, para 1a		<b><i>1a. Member States shall ensure that any material resulting from an act of reproduction of material in the public domain shall not be subject to copyright or related rights, provided that such reproduction is a faithful reproduction for purposes of preservation of the original material.</i></b>		<i>[Based on the explanation given by the EP at the first technical meeting, the provision on “public domain” is meant to address/regulate the following situation:  Where the term of protection of works of visual arts has expired, any faithful, non-creative photograph of such work made for preservation purposes shall not be granted new protection by copyright or related rights.]</i>
152.	Art. 5, para 1b		<b><i>1b. Any contractual provision contrary to the exception provided for in</i></b>		<i>[Moved to Article 6(1), row 155, that deals with the question of contractual override in general]</i>

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>paragraph 1 shall be unenforceable.</i> <i>[See Council's Article 6(1) (row 155)]</i>		
153.	Art. 6, title	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>	<i>Article 6 Common provisions</i>
154.	Art. 6, para 1 (EP)		<b>1. Accessing content covered by an exception provided for in this Directive shall not confer on users any entitlement to use it pursuant to another exception.</b>		<i>[To be discussed further]</i>
155.	Art. 6, para 1 (Council)			1. Any contractual provision contrary to the exceptions provided for in <b><u>Articles 3, 4(1) and 5</u></b> shall be unenforceable. <i>[See Article 3(2) of the COM proposal and Parliament's Articles 3(2) and 4(4a) and 5(1b)]</i>	1. Any contractual provision contrary to the exceptions provided for in Articles 3, 4 and 5 shall be unenforceable. <i>[See Parliament's Articles 3(2) and 4(4a) and 5(1b)]</i>

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
156.	Art. 6, para 2	Article 5(5) and the first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.	2. Article 5(5) and the first, third, <i>fourth</i> and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.	<del>2. Article 5(5) and the of Directive</del> <u>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</u> <u>Articles 3, 4(1) and the limitation provided for under</u> <u>5 of this Title</u> <u>Directive.</u>	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.
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
260.				<u>TITLE IV</u> <u>MEASURES TO</u> <u>ACHIEVE A WELL-</u> <u>FUNCTIONING</u>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<b><u>MARKETPLACE FOR COPYRIGHT</u></b>	
261.		CHAPTER 3 Fair remuneration in contracts of authors and performers	CHAPTER 3 Fair remuneration in contracts of authors and performers	CHAPTER 3 Fair remuneration in <b><u>exploitation</u></b> contracts of authors and performers	CHAPTER 3 Fair remuneration in exploitation contracts of authors and performers
262.	Art. -14, title		<i>Article -14</i>  <i>Principle of fair and proportionate remuneration</i>		<i>Article -14</i>  <i>Principle of fair and proportionate remuneration</i>
263.	Art. -14, para 1		<b>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</b>		<i>[Article -14 to be discussed at political level]</i>

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>remuneration mechanisms.</i>		
264.	Art. -14, para 2		<i>2. Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.</i>		
265.	Art. -14, para 3		<i>3. Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.</i>		
266.	Art. -14, para 4		<i>4. Contracts shall specify the remuneration applicable to each mode of exploitation.</i>		
267.	Art. 14, title	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
268.	Art. 14, para 1	1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.	1. Member States shall ensure that authors and performers receive on a regular basis, <b><i>not less than once a year</i></b> , and taking into account the specificities of each sector <b><i>and the relative importance of each individual contribution</i></b> , timely <del>adequate and sufficient</del> , <b><i>accurate, relevant and comprehensive</i></b> 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, <b><i>direct and indirect</i></b> revenues generated, and remuneration due.	1. Member States shall ensure that authors and performers receive on a regular basis, <b><u>at least once a year</u></b> , and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights <b><u>or their successors in title</u></b> , notably as regards modes of exploitation, revenues generated and remuneration due.	1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector <b>and the relative importance of each individual contribution</b> , timely, adequate and sufficient information on the exploitation of their works and performances 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.  [See recital (40a) of the Council text, row 92, for explanation on the criteria “timely, adequate and sufficient”]

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
269.	Art. 14, para 1a		<i>1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.</i>	<b><u>1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed to another party, authors and performers may, at their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart of the author or the performer.</u></b>	1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed to another party, authors and performers may, at their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart of the author or the performer.

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
270.	Art. 14, para 1a, sub- para 2		<i>The main licensee or transferee shall pass all the information referred to in the first subparagraph on to the author or performer. That information shall be unchanged, except in the case of commercially sensitive information as defined by Union or national law, which, without prejudice to Articles 15 and 16a, may be subject to a non-disclosure agreement, for the purpose of preserving fair competition. Where the main licensee or transferee does not provide the information as referred to in this subparagraph in a timely manner, the author or performer shall be entitled to request that information</i>		



Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>directly from the sub- licensee.</i>  <i>[See Council's Article 14(1a) (row 269)]</i>		
271.	Art. 14, para 2	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate <b>a high</b> level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate <b>a high</b> level of transparency.	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. <del>However, in those</del> <b>Member States may provide that in duly justified</b> cases where the administrative burden resulting from the obligation <b>in paragraph 1</b> would <del>be</del> <b>become</b> disproportionate in view of the revenues generated by the exploitation of the work or performance, <del>Member States may adjust the obligation in paragraph 1, provided that</del> <b>is limited to</b> the obligation remains effective <del>types</del> and ensures	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure a <b>high</b> level of transparency in every sector. Member States may provide that in duly justified cases where the administrative burden resulting from the obligation in paragraph 1 would become 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.

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<del>an appropriate level of transparency.</del> <b><u>information that can reasonably be expected in such cases.</u></b>	
272.	Art. 14, para 3	3. Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.	<i>Deleted</i>	3. Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.	3. Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.
273.	Art. 14, para 3a			<b><u>3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions</u></b>	3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions adopted

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<b><u>adopted in conformity with the requirements of paragraphs 1 to 3.</u></b>	in conformity with the requirements of paragraphs 1 to 3.  [To be read in context with the EP text in Article 14(4), row 274]
274.	Art. 14, para 4	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU <b><i>or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2.</i></b>	4. Paragraph 1 shall not be applicable to <b><u>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.</u></b>	4. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules implementing Directive 2014/26/EU.
275.	Art. 15, title	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>	<i>Article 15 Contract adjustment mechanism</i>

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
276.	Art. 15, [para 1 (Council)]	Member States shall ensure that authors and performers are entitled to request 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.	Member States shall ensure, <i>in the absence of collective bargaining agreements providing for a comparable mechanism, or any representative organisation acting on their behalf</i> are entitled to <del>request</del> <i>claim</i> additional, appropriate <i>and fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances.  [See Council's Article 15(1a) (row277)]	<u>1.</u> <del>Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights</del> <u>or their successors in title,</u> when the remuneration originally agreed <del>is</del> <u>turns out to be</u> disproportionately low compared to the <del>subsequent relevant revenues and benefits</del> derived from the <u>actual</u> exploitation of the works or performances.	1. Member States shall ensure, <b>in the absence of an applicable collective bargaining agreement providing for a comparable mechanism,</b> that authors and performers <b>or any representative organisation acting at the specific request of one or more authors or performers</b> are entitled to <b>claim</b> additional, appropriate <b>and fair</b> remuneration from the party with whom they entered into a contract for the exploitation of the rights or their successors in title, when the remuneration originally agreed turns out to be disproportionately low compared to the subsequent relevant revenues <b>and benefits</b> derived from the

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
					<del>actual</del> -exploitation of the works or performances.
277.	Art. 15, para 1a			<b><u>1a. Members States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.</u></b>	<i>[Deleted/incorporated into paragraph 1, row 276]</i>
278.	Art. 15, para 2			<b><u>2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules</u></b>	2. Paragraph 1 shall not be applicable to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to the national rules

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<u>implementing Directive 2014/26/EU.</u>	implementing Directive 2014/26/EU.
279.	Art. 16, title	<i>Article 16 Dispute resolution mechanism</i>	<i>Article 16 Dispute resolution mechanism</i>	<i>Article 16 Dispute resolution <del>mechanism</del><u>procedure</u></i>	<i>Article 16 Dispute resolution procedure</i>
280.	Art. 16, [para 1 (Council)]	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. <b><i>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.</i></b>	<b><u>1.</u></b> Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. <b>Member States shall ensure that representative organisations of authors and performers including collective management organisations may initiate such procedures at the <u>specific</u> request of one or</b>

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>[See Council's Article 16(2) (row 281)]</i>		<b>more authors and performers.</b>  <i>[Merged with Council's Article 16(2), row 281]</i>
281.	Art. 16, para 2		<i>[See Parliament's Article 16 last phrase (row 280)]</i>	<b><u>2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.</u></b>	<i>[Deleted/incorporated into paragraph 1, row 280]</i>
282.	Art. 16a (Council), title			<b><u>Article 16a</u></b> <b><u>Contractual provisions</u></b>	<i>Article 16a</i> <b><i>Contractual Common provisions</i></b>
283.	Art. 16a (Council)			<b><u>Member States shall ensure that any contractual provision which prevents the compliance with the</u></b>	Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 to

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<u>provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.</u>	16 of this Directive shall be unenforceable in relation to authors and performers.
284.	Art. 16a (EP), title		<i>Article 16 a</i> <i>Right of revocation</i>		<i>Article 16a</i> <i>Right of revocation</i>
285.	Art. 16a (EP), para 1		1. <i>Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject-matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking</i>		<i>[Article 16a of the EP text to be discussed at political level]</i>



Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i>		
286.	Art. 16a (EP), para 2		<i>2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the rights. Where a work or other subject-</i>		

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.</i>		
287.	Art. 16a (EP), para 3		<i>3. Paragraphs 1 and 2 shall not apply if the non-exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.</i>		
288.	Art. 16a (EP), para 4		<i>4. Contractual or other arrangements derogating from the right of revocation shall be</i>		

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<i>lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.</i>		
289.		TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS
290.	Art. 17, title	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>	<i>Article 17 Amendments to other directives</i>
291.	Art. 17, para 1	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:	1. Directive 96/9/EC is amended as follows:
292.	Art. 17, para 1, point (a)	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:	(a) In Article 6(2), point (b) is replaced by the following:
293.	Art. 17, para 1, point (a)	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the	"(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	"(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	"(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

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	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];"	extent 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];"
294.	Art. 17, para 1, point (b)	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:	(b) In Article 9, point (b) is replaced by the following:
295.	Art. 17, para 1, point (b)	"(b) in the case of extraction for the purposes of illustration for teaching or 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	"(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	"(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>	"(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 Articles 3 and 4 of

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		in Directive [this Directive];"	in Directive [this Directive];"	Directive [this Directive];"	Directive [this Directive];"
296.	Art. 17, para 2	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:	2. Directive 2001/29/EC is amended as follows:
297.	Art. 17, para 2, point (a)	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:	(a) In Article 5(2), point (c) is replaced by the following:
298.	Art. 17, para 2, point (a)	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, 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 <del>exceptions and the limitation</del> <b>exception</b> provided for in <b>Article 5 of</b> 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 provided for in Article 5 of Directive [this Directive];"

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
299.	Art. 17, para 2, point (b)	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:	(b) In Article 5(3), point (a) is replaced by the following:
300.	Art. 17, para 2, point (b)	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];"	"(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Articles 3 and 4 of Directive [this Directive];"
301.	Art. 17, para 2, point (c)	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:	(c) In Article 12(4), the following points are added:

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
302.	Art. 17, para 2, point (c)	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;	"(e) to examine the impact of the transposition of Directive [this Directive] on the functioning of the internal market and to highlight any transposition difficulties;
303.	Art. 17, para 2, point (c)	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];	(f) to facilitate the exchange of information on the relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to implement Directive [this Directive];
304.	Art. 17, para 2, point (c)	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."	(g) to discuss any other questions arising from the application of Directive [this Directive]."

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
305.	Art. 17a, title		<i>Article 17 a</i>		<i>Article 17 a</i>
306.	Art. 17a		<i>Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations existing in Union law, for uses covered by the exceptions or the limitation provided for in this Directive.</i>		<b>TBD: 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 covered by the exceptions or the limitation provided for in this Directive as long as they do not limit the scope of the mandatory exceptions laid down in this Directive and on condition that their application does not adversely affect nor circumvent the mandatory rules set out in this Directive.</b>



Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
					<i>[Based on the language used in recital (5) of the Council text, row 14]</i>

### RECITAL 13a

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
28.			<b><u>(13a) In addition to their significance in the context of scientific research, text and data mining techniques are widely used both by private and public entities to analyse large amounts of data in different areas of life and for various purposes, including for government services,</u></b>	(13a) In addition to their significance in the context of scientific research, text and data mining techniques are widely used both by private and public entities to analyse large amounts of data in different areas of life and for various purposes, including for government services, complex

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><u>complex business decisions and the development of new applications or technologies. Rightholders should remain able to license the uses of their works and other subject-matter falling outside the scope of the mandatory exception provided for in this Directive and the existing exceptions and limitations provided for in Directive 2001/29/EC. At the same time, consideration should be given to the fact that users of text and data mining techniques may be faced with legal uncertainty as to whether temporary reproductions and extractions which are a part of the process of text and data mining may be carried out on publicly available and lawfully accessed works and other subject-matter, in particular when the</u></p>	<p>business decisions and the development of new applications or technologies. Rightholders should remain able to license the uses of their works and other subject-matter falling outside the scope of the mandatory exception provided for in this Directive and the existing exceptions and limitations provided for in Directive 2001/29/EC. At the same time, consideration should be given to the fact that users of text and data mining techniques may be faced with legal uncertainty as to whether temporary reproductions and extractions which are a part of the process of text and data mining may be carried out on publicly available and lawfully accessed works and other subject-matter, in particular when the reproductions or extractions made for the purposes of the technical</p>

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<u>reproductions or extractions made for the purposes of the technical process may not fulfil all the conditions of the existing exception for temporary acts of reproduction in Article 5(1) of Directive 2001/29/EC. In order to provide for more legal certainty in such cases, this Directive should enable the Member States to provide under certain conditions for an exception or limitation for temporary reproductions and extractions of works and other subject-matter, insofar as these form a part of the text and data mining process and the copies made are not kept beyond that process. This optional exception or limitation should only apply when the work or other subject-matter is accessed lawfully by the beneficiary, including when it has been</u>	<p>process may not fulfil all the conditions of the existing exception for temporary acts of reproduction in Article 5(1) of Directive 2001/29/EC. In order to provide for more legal certainty in such cases <b>and to encourage innovation also in the private sector</b>, this Directive should enable the Member States to provide under certain conditions for an exception or limitation for temporary reproductions and extractions of works and other subject-matter, insofar as these form a part of the text and data mining process and the copies made are not kept beyond that process. This optional exception or limitation should only apply when the work or other subject-matter is accessed lawfully by the beneficiary, including when it has been made available to the public online, and insofar as</p>

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			<p><u>made available to 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 are respected. This optional exception or limitation should leave intact the mandatory exception for text and data mining for research purposes laid down in this Directive.</u></p>	<p>the rightholders have not reserved the rights to make reproductions and extractions for text and data mining <del>for</del> <u>for example by agreement, unilateral declaration, including through the use of machine readable metadata or by the use of technical means.</u> <b>In an appropriate manner. In the case of content that has been made publicly available online, it should be considered appropriate to reserve the rights by the use of machine readable metadata. In other cases this may be expressed by contractual agreements or unilateral declaration as appropriate.</b> Rightholders should be able to apply measures to ensure that their reservations in this regard are respected. This optional exception or limitation should leave intact the mandatory</p>

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				exception for text and data mining for research purposes laid down in this Directive.