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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL on copyright in the Digital Single Market  
- Preparation for the trilogue  
- 4-column document

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Delegations will find attached the first version of the 4-column table on the above proposal, setting out the text of the Commission proposal (12254/16) in the first column, the EP position as resulting from the vote on 12 September 2018 (see 11520/18) in the second column, and the Council negotiating mandate as approved by Coreper on 25 May 2018 (9134/18) in the third column.

<p><b>Proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market</b></p> <p><b>COM (2016) 593 final - 2016/0280 (COD)</b></p> <p><b><u><a href="#">PART I: CITATIONS AND RECITALS</a></u></b></p>
<p><u>Note:</u></p> <p><i>Differences between the EP's position and the Commission's proposal are highlighted in <b>Bold/Italics</b>. Deletions are marked with <del>strikethrough</del>.</i></p> <p><i>Differences between the Council's position and the Commission's proposal are highlighted in <b><u>Bold/Underlined</u></b>.</i></p> <p><i>Deletions are marked with <del>strikethrough</del>.</i></p>

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

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
2.	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,	
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 <u>Article 53(1), 62 and</u> 114 thereof	
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,	
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,	
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> ,	
7.	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> ,	Having regard to the opinion of the Committee of the Regions <sup>2</sup> ,	

<sup>1</sup> OJ C , p. . .

<sup>2</sup> OJ C , p. . .

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8.	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
9.	Whereas:	Whereas:	Whereas:	
10.	(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.	(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.	(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.	
11.	(2) The directives which have been adopted in the area of copyright and related rights provide for a high level of protection for rightholders and create a framework wherein the exploitation of works and other protected subject-matter can take place. This harmonised legal framework contributes to the good functioning of the internal market; it stimulates innovation, creativity, investment and	(2) The directives which have been adopted in the area of copyright and related rights <i>contribute to the functioning of the internal market</i> , provide for a high level of protection for rightholders, <i>facilitate the clearance of rights</i> and create a framework wherein the exploitation of works and other protected subject-matter can take place. This harmonised legal framework contributes to the	(2) The <del>directives</del> <b>Directives</b> which have been adopted in the area of copyright and related rights provide for a high level of protection for rightholders and create a framework wherein the exploitation of works and other protected subject-matter can take place. This harmonised legal framework contributes to the good functioning of the internal market; it stimulates innovation, creativity, investment and	

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	<p>production of new content, also in the digital environment. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.</p>	<p>good functioning of the <i>a truly integrated</i> internal market; it stimulates innovation, creativity, investment and production of new content, also in the digital environment, <i>with a view to avoiding fragmentation of the internal market</i>. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.</p>	<p>production of new content, also in the digital environment. The protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.</p>	
12.	<p>(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the</p>	<p>(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited, <i>and relevant legislation needs to be future proof so as not to restrict</i></p>	<p>(3) Rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the</p>	

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	<p>principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'<sup>3</sup>, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-commerce works and the online availability of audiovisual works with a view to ensuring wider</p>	<p><i>technological development.</i> New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'<sup>3</sup>, in some areas it is necessary to adapt and supplement the current Union copyright framework. This Directive provides for rules to adapt certain exceptions and limitations to digital and cross-border environments, as well as measures to facilitate certain licensing practices as regards the dissemination of out-of-</p>	<p>principles laid down by the Union copyright framework remain sound. However, legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment. As set out in the Communication of the Commission entitled 'Towards a modern, more European copyright framework'<sup>3</sup>, in some areas it is necessary to adapt and supplement the current Union copyright framework- <b><u>keeping a high level of protection of copyright and related rights.</u></b> 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</p>	

<sup>3</sup> COM(2015) 626 final.

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	<p>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.</p>	<p>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 <i>and fair</i> marketplace for copyright, there should also be rules on <del>rights in publications, on the</del> <i>exercise and enforcement of the</i> use of works and other subject-matter <i>by on</i> online service <del>providers storing and giving access to user uploaded content</del> <i>providers' platforms</i> and on the transparency of authors' and performers' contracts <i>and of the accounting linked with the exploitation of protected works in accordance with those contracts.</i></p>	<p>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.</p>	
13.	<p>(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of</p>	<p>(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of the</p>	<p>(4) This Directive is based upon, and complements, the rules laid down in the Directives currently in force in this area, in particular Directive 96/9/EC of</p>	

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	<p>the European Parliament and of the Council<sup>4</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>6</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>7</sup>, Directive 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 the Council<sup>10</sup>.</p>	<p>European Parliament and of the Council<sup>4</sup>, Directive <b>2000/31/EC of the European Parliament and of the Council<sup>5</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>6</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>7</sup>, Directive 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 the</b></p>	<p>the European Parliament and of the Council<sup>4</sup>, Directive <b>2000/31/EC of the European Parliament and of the Council<sup>5</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>6</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>7</sup>, Directive 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</b></p>	

<sup>4</sup> 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).

<sup>5</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, 17.07.2000, p. 1–16).**

<sup>6</sup> 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 the information society (OJ L 167, 22.6.2001, p. 10–19).

<sup>7</sup> 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 copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28–35).

<sup>8</sup> 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, 5.5.2009, p. 16–22).

<sup>9</sup> 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, 27.10.2012, p. 5–12).

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
14.	<p>(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, teaching and</p>	<p>European Parliament and of the Council<sup>10</sup>.</p> <p>(5) In the fields of research, <b>innovation</b>, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for <b>innovation</b>, scientific</p>	<p>2014/26/EU of the European Parliament and of the Council<sup>10</sup>.</p> <p>(5) In the fields of research, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the current Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 2001/29/EC, 96/9/EC and 2009/24/EC in these fields may negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, teaching and</p>	

<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).

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	<p>preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. Directives 96/9/EC and 2001/29/EC should be adapted.</p>	<p>research, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of <b>innovation and</b> scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. For uses not covered by the exceptions or the limitation provided for in this Directive, the exceptions and limitations existing in Union law should continue to apply. <i>Therefore, existing well-functioning exceptions in those fields should be allowed to continue to be available in Member States, as long as they do not restrict the scope of the exceptions or limitations provided for in this Directive.</i> Directives 96/9/EC and 2001/29/EC should be adapted.</p>	<p>preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies in the field of scientific research, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. <del>For uses not covered by the exceptions or the limitation provided for in this Directive,</del> <u>the</u> exceptions and limitations existing in Union law should continue to apply, <b>including to text and data mining, education and preservation activities, 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> Directives 96/9/EC and 2001/29/EC should be adapted.</p>	

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15.	<p>(6) The exceptions and the limitation set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders.</p>	<p>(6) The exceptions and the <del>limitation</del> <i>limitations</i> 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.</p>	<p>(6) The exceptions and the limitation <del>set out</del> <b>provided for</b> 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.</p>	
16.	<p>(7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the rights granted to authors and to other rightholders under Union law. This protection should be maintained while ensuring that the use of technological measures does not prevent the enjoyment of the exceptions and the limitation</p>	<p>(7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the rights granted to authors and to other rightholders under Union law. This protection should be maintained while ensuring that the use of technological measures does not prevent the enjoyment of the exceptions and the limitation</p>	<p>(7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the rights granted to authors and to other rightholders under Union law. This protection should be maintained while ensuring that the use of technological measures does not prevent the enjoyment of the exceptions and the limitation</p>	

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	<p>established in this Directive, which are particularly relevant in the online environment. Rightholders should have the opportunity to ensure this through voluntary measures. They should remain free to choose the 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.</p>	<p>established in this Directive, which are particularly relevant in the online environment. Rightholders should have the opportunity to ensure this through voluntary measures. They should remain free to choose the 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.</p>	<p>established in this Directive; <del>which are particularly relevant in the online environment.</del> Rightholders should have the opportunity to ensure this through voluntary measures. They should remain free to choose the format <del>and the modalities to provide</del> <u>appropriate means of enabling</u> the beneficiaries of the exceptions and the limitation established in this Directive <del>with the means to benefit from them provided that such means are appropriate.</del> 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, <u>including where works and other subject-matter are made available through on-demand services.</u></p>	
17.	<p>(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or</p>	<p>(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or</p>	<p>(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images</p>	

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	<p>or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the <i>swi generis</i> database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which</p>	<p>data, generally known as text and data mining. <del>These technologies allow researchers to process</del> <b><i>Text and data mining allows the reading and analysis of large amounts of digitally stored information to gain new knowledge and discover new trends.</i></b> Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the <i>swi generis</i> database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a</p>	<p>or data, generally known as text and data mining. Those technologies allow researchers to process large amounts of information <b><u>with a view to gaining new knowledge and discovering new trends.</u></b> Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage <b><u>support</u></b> innovation. <del>However, in the Union,</del> <b><u>These technologies benefit</u></b> research organisations <del>such as universities and</del> <b><u>as well as cultural heritage institutions, which may also carry out research institutes in the context of their main activities. However, in the Union, such organisations and institutions</u></b> are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data</p>	

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	<p>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.</p>	<p>database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.</p>	<p>mining may involve acts protected by copyright and/or by the <i>sui generis</i> database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders.</p> <p><i>[Last phrase of recital (8) of the COM proposal was moved to new recital (8a) Council's text -see following row 18]</i></p>	
18.			<p><b>(8a)</b> 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 <del>would be is</del>-required <b><u>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</u></b> <del>the new exception</del></p>	

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			<p>should be without prejudice to the existing 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 making of copies beyond the scope of that exception.</p> <p><i>[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)]</i></p>	
19.		<p><i>(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-</i></p>		

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		<p><i>protected use takes place, since this leads to a reproduction by changing the format of the information or by extracting it from a database into a format that can be subjected to text and data mining. The copyright-relevant processes in the use of text and data mining technology is, consequently, not the text and data mining process itself which consists of a reading and analysis of digitally stored, normalised information, but the process of accessing and the process by which information is normalised to enable its automated computational analysis, insofar as this process involves extraction from a database or reproductions. The exceptions for text and data mining purposes provided for in this Directive should be understood as referring to such copyright-relevant processes necessary to enable text and data mining. Where existing copyright law has been</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
20.	<p>(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</p>	<p><i>inapplicable to uses of text and data mining, such uses should remain unaffected by this Directive.</i></p> <p>(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</p>	<p>(9) Union law <del>already</del> provides <b>for</b> 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</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	mining.	mining.	mining.	
21.	<p>(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. Research organisations should also benefit from the exception when they engage into public-private partnerships.</p>	<p>(10) This legal uncertainty should be addressed by providing for a mandatory exception <i>for research organisations</i> to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. Research organisations should also benefit from the exception when they engage into public-private partnerships. <i>Educational establishments and cultural heritage institutions that conduct scientific research should also be covered by the</i></p>	<p>(10) This legal uncertainty should be addressed by providing for a mandatory exception to the <b>exclusive</b> right of reproduction and also to the right to prevent extraction from a database. <del>The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception.</del> <u>In line with the existing European research policy, which encourages universities and research institutes to develop collaborations with the private sector, Research research</u> organisations should also benefit from the exception when they</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p><i>text and data mining exception, provided that 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.</i></p>	<p><i>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.</i></p> <p><i>[The second phrase of recital (10) of the COM proposal was moved to new recital (8a) - see row 18]</i></p>		
22.	<p>(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</p>	<p>(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</p>	<p>(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. <b>The term "scientific research" within the</b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.</p>	<p>important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.</p>	<p><u>meaning of this Directive covers both the natural sciences and the human sciences.</u> Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the <del>exception</del> <u>research organisations. They should for example cover entities such as research institutes, hospitals carrying out research, universities, including university libraries, or other higher education institutions.</u> Despite different legal forms and structures, research organisations across <u>the</u> Member States generally have in common that they act either on a not for profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. <del>At the same time</del> <u>Conversely,</u> organisations upon which commercial undertakings have a</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.	
23.			<u>(11a) 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.</u>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
24.			<p><u>(11b) Research organisations and cultural heritage institutions, 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.</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
25.			<p><u>(11c) Research organisations and cultural heritage institutions may in certain cases, for example for subsequent verification of scientific research results, need to retain the copies made under the exception for the purposes of carrying out text and data mining. In such cases, the copies should be stored in a secure environment and not be retained for longer than necessary for the scientific research activities. Member States may determine, at national level and after discussions with relevant stakeholders, further concrete modalities for retaining the copies, including the possibility to appoint trusted bodies for the purpose of storing such copies. In order not to unduly restrict the application of the exception, these modalities should be proportionate and limited to what is needed for</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
26.	<p>(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</p>	<p>(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</p>	<p><u>retaining the copies in a safe manner and preventing unauthorised uses. Uses for the purpose of scientific research other than text and 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.</u></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.	exception.	<p><u>validation or user authentication.</u> <u>These measures should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system</u><u>however remain proportionate to the risks involved</u> and should not undermine the effective application of the exception<u>to prevent or make excessively difficult text and data mining carried out by researchers.</u></p>	
27.	<p>(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.</p>	<p>(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.</p>	<p>(13) <del>There is no need to</del><u>In view 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</u> provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive <del>given that in view of the nature and scope of</del></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			the exception the harm should be minimal.	
28.			<p><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, complex business decisions and the development of new applications or technologies. Rightsholders 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</u></p>	

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>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 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</u></p>	

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>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 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.</u> Rightholders should be able to <u>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>	
29.		<p><i>(13a) To encourage innovation also in the private sector, Member States should be able to provide for an exception going</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<i>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.</i>		
30.	<p>(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is</p>	<p>(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public for the sole purpose of, among others, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction or re-utilization of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is</p>	<p>(14) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and -making available to the public <b><u>of works and other subject matter in such a way that members of the public may access them from a place and a time individually chosen by them ('making available to the public')</u></b>, for the sole purpose of, <del>among others</del>, illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction <del>or re-</del>utilization of a substantial part of its contents for the purpose of illustration for teaching. The</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.</p>	<p>provided online and thereby at a distance. Moreover, the existing framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.</p>	<p>scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and thereby at a distance. Moreover, the existing <b>legal</b> framework does not provide for a cross-border effect. This situation may hamper the development of digitally-supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject-matter in digital teaching activities, including online and across borders.</p>	
31.	<p>(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources</p>	<p>(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources</p>	<p>(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.</p>	<p>are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all educational establishments in primary, secondary, vocational and higher education to the extent they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.</p> <p><i>Where cultural heritage institutions pursue an educational objective and are involved in teaching activities, it should be possible for Member States to consider those institutions as an educational establishment under this exception in so far as their teaching activities are concerned.</i></p>	<p>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 <del>in</del> <b>recognised by a Member State, including</b> primary, secondary, vocational and higher education. <b>It should apply only</b> to the extent they <del>pursue their educational activity for a</del> <b>that the uses are justified by the non-commercial purpose of the particular teaching activity.</b> The organisational structure and the means of funding of an educational establishment <del>are</del> <b>should</b> not be the decisive factors to determine the non-commercial nature of the activity.</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
32.	<p>(16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means in the classroom and online uses through the educational establishment's secure electronic network, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the</p>	<p>(16) The exception or limitation should cover digital uses of works and other subject-matter such as the use of parts or extracts of works to support, enrich or complement the teaching, including the related learning activities. <i>The exception or limitation of use should be granted as long as the work or other subject-matter used indicates the source, including the authors' name, unless that turns out to be impossible for reasons of practicability.</i> The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations, and be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses through digital means in the classroom <del>in</del> <i>where the teaching</i></p>	<p>(16) The exception or limitation <b>for the sole purpose of illustration for teaching should ever be understood as covering</b> digital uses of works and other subject-matter <del>such as the use of parts or extracts of</del> works to support, enrich or complement the teaching, including <del>the related</del> learning activities.</p> <p>[...]*</p> <p><b>In most cases, the concept of illustration would therefore imply uses of parts or extracts of works only, which should not substitute the purchase of materials primarily intended for educational markets. When implementing the exception or limitation, Member States should remain free to specify, for the different categories of works or other subject-matter and in a balanced manner, the</b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>specific accessibility needs of persons with a disability in the context of illustration for teaching.</p>	<p><i>activity is physically provided, including where it takes place outside the premises of the educational establishment, for example in libraries or cultural heritage institutions, as long as the use is made under the responsibility of the educational establishment, and online uses through the educational establishment's secure electronic <del>network</del> environment, the access to which should be protected, notably by authentication procedures. The exception or limitation should be understood as covering the specific accessibility needs of persons with a disability in the context of illustration for teaching.</i></p>	<p><b>proportion of a work or other subject-matter that may be used for the sole purpose of illustration for teaching. The Uses allowed under the exception or limitation should be understood to cover the specific accessibility needs of persons with a disability in the context of illustration for teaching.</b></p> <p><i>*[The second and third phrase of recital (16) of the COM proposal were moved to new recital (16a) Council's text - see row 33]</i></p>	
33.			<p><b>(16a)</b> The use of the works or other subject-matter under the exception or limitation should be only in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations <b>or</b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p>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 or in other venues through digital means, for example electronic whiteboards or digital devices which may be connected to the Internet, as well as uses made at a distance through the educational establishment's secure electronic networks, such as online courses or access to teaching material complementing a given course. Secure electronic networks should be understood as digital teaching and learning environments the access to which should be protected-is limited to the educational</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p>establishment's teaching staff and to the pupils or students enrolled in a study programme, notably through appropriate authentication procedures, including password based authentication.</p> <p><i>[Phrases of new recital (16a) were taken from recital (16) (second and third phrase) of the COM proposal – see row 32]</i></p>	
34.		<p><i>(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.</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
35.	<p>(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular,</p>	<p>(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or cross-border uses. This should allow Member States to build on the existing arrangements concluded at national level. In particular,</p>	<p>(17) Different arrangements, based on the implementation of the exception provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject-matter. Such arrangements have usually been developed taking account of the needs of educational establishments and different levels of education. Whereas it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the modalities of implementation may differ from a Member State to another, to the extent they do not hamper the effective application of the exception or cross-border uses. <b><u>Member States should for example remain free to require that the use of works and other</u></b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that licensing schemes are aware of the existence of such licensing schemes.</p>	<p>Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. This mechanism would, for example, allow giving precedence to licences for materials which are primarily intended for the educational market, <i>or for teaching in educational establishments or sheet music</i>. In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States should adopt measures to ensure that <b>rightsholders make the</b> licensing schemes allowing</p>	<p><b>subject matter should respect moral rights of authors and performers.</b> This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of adequate licences, covering at least the same uses as those allowed under the exception. <b>This Member States could notably use this mechanism would, for example, allow giving to give precedence to licences for materials which are primarily intended for the educational market or for sheet music.</b> In order to avoid that such mechanism results in legal uncertainty or administrative burden for educational establishments, Member States adopting this approach should take concrete measures to ensure that <b>rightsholders make the</b> licensing schemes allowing</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p>adopting this approach should take concrete measures to ensure that <b>such</b> licensing schemes allowing digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes. <i>Member States should be able to provide for systems to ensure that there is fair compensation for rightholders for uses under those exceptions or limitations. Member States should be encouraged to use systems that do not create an administrative burden, such as systems that provide for one-off payments.</i></p> <p>[See Council's recital (17a) - row 36]</p>	<p>digital uses of works or other subject-matter for the purpose of illustration for teaching are easily available and that educational establishments are aware of the existence of such licensing schemes. <u>Such measures may include the development of licensing schemes tailored to the needs of educational establishments and the development of information tools aimed at ensuring the visibility of the existing licensing schemes.</u></p>	
36.			<p><u>(17a) Member States should remain free to provide that rightholders receive fair compensation for the digital uses of their works or other</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
37.		<i>(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 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.</i>	<u>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.</u>	
38.	(18) An act of preservation may require a reproduction of a work or other subject-matter in the	(18) An act of preservation of a work or other subject-matter in the collection of a cultural	(18) An act of preservation may require a reproduction of a work or other subject-matter in the	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>collection of a cultural heritage institution and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation.</p>	<p><i>heritage institution</i> may require a reproduction of a work or other subject matter in the collection of a cultural heritage institution and consequently <i>require</i> the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation <i>by such institutions</i>.</p>	<p>collection of a cultural heritage institution <u>may require a reproduction</u> and consequently the authorisation of the relevant rightholders. Cultural heritage institutions are engaged in the preservation of their collections for future generations. Digital technologies offer new ways to preserve the heritage contained in those collections but they also create new challenges. In view of these new challenges, it is necessary to adapt the current legal framework by providing a mandatory exception to the right of reproduction in order to allow those acts of preservation.</p>	
39.	<p>(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 cultural heritage institutions in the internal</p>	<p>(19) Different approaches in the Member States for acts of <i>reproduction for</i> preservation by cultural heritage institutions hamper cross-border cooperation and the sharing of means of preservation by cultural heritage</p>	<p>(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 <del>cultural heritage</del><u>such</u> institutions in the</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	market, leading to an inefficient use of resources.	<del>institutions in the internal market,</del> <i>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.</i>	internal market, leading to an inefficient use of resources.	
40.	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required in order to produce a	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, <del>for</del> example to address technological obsolescence or the degradation of original supports <i>or to insure works</i> . Such an exception should allow for the making of copies by the appropriate preservation tool, means or technology, <i>in any format or medium</i> , in the required number, at any point in the life of a work or other subject-matter <i>and</i> to the extent required	(20) Member States should therefore be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports. Such an exception should allow <del>for</del> the making of copies by the appropriate preservation tool, means or technology, in the required number and at any point in the life of a work or other subject-matter to the extent required <del>in order to produce a</del>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	copy for preservation purposes only.	in order to produce a copy for preservation purposes only. <i>The archives of research organisations or public-service broadcasting organisations should be considered cultural heritage institutions and therefore beneficiaries of this exception. Member States should, for the purpose of this exception, be able to maintain provisions to treat publicly accessible galleries as museums.</i>	copy for preservation purposes only. <u>Acts of reproduction undertaken by cultural heritage institutions for purposes other than the preservation of works and other subject-matter in their permanent collections should remain subject to the authorisation of rightholders, unless permitted by other exceptions or limitations provided for by Union law.</u>	
41.			<u>(20a) 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</u>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
42.	<p>(21) For the purposes of this Directive, works and other subject-matter should be considered to be permanently in the collection of a cultural heritage institution when copies are owned or permanently held by the cultural heritage institution, for example as a result of a transfer of ownership or licence agreements.</p>	<p>(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 <i>of such works or other subject matter</i> are owned or permanently held by the cultural heritage institution; <i>those organisations</i>, for example as a result of a transfer of ownership or licence agreements, <i>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.</i></p>	<p><u>acting on their behalf and under their responsibility, including those that are based in other Member States, for the making of copies.</u></p>	
43.		<p>(21a) <i>Technological developments have given rise to</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>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 pre-existing protected works or other subject-matter that such users might have altered, combined or otherwise transformed.</i></p>		
44.		<p><i>(21b) Despite some overlap with existing exceptions or limitations, such as the ones for quotation 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 pre-</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>existing 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 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,</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<i>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.</i>		
45.		<i>(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 subject-matter in content that is uploaded or made available by users on those information society services, to reduce the scope of their obligations under Article 13 of this Directive.</i>		
46.	(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination,	(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across	(22) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination,	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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 subject-matter, their limited commercial value or the fact that they were never intended for commercial use. It is therefore necessary to provide for measures to facilitate the licensing of rights in out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.</p>	<p>borders, of out-of-commerce works or other subject-matter. However, the particular characteristics of the collections of out-of-commerce works mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use <i>or have never been in commerce</i>. It is therefore necessary to provide for measures to facilitate the licensing of rights in out-of-commerce works that are in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.</p>	<p>including across borders, of out-of-commerce works or other subject-matter: <b>that are considered out of commerce for the purposes of this Directive.</b> However, the particular characteristics of the collections of out-of-commerce works, <b>together with the amount of works involved in mass digitisation projects</b>, mean that obtaining the prior consent of the individual rightholders may be very difficult. This can be due, for example, to the age of the works or other subject-matter, their limited commercial value or the fact that they were never intended for commercial use. It is therefore necessary to provide for measures to facilitate the <b>collective</b> licensing of rights in out-of-commerce works that are <b>permanently</b> in the collections of cultural heritage institutions and thereby to allow the conclusion of agreements with cross-border effect in the internal market.</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
47.		<p><i>(22a) Several Member States have already adopted extended collective licencing regimes, legal mandates or legal presumptions facilitating the licencing of out-of-commerce works. However considering the variety of works and other subject-matter in the collections of cultural heritage institutions and the variance between collective management practices across Member States and sectors of cultural production, such measures may not provide a solution in all cases, for example, because there is no practice of collective management for a certain type of 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</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>essential to harmonise the scope of the new mandatory exception in order to allow cross-border uses of out-of-commerce works, Member States should nevertheless be allowed to use or continue to use extended collective licencing arrangements concluded with cultural heritage institutions at national level for categories of works that are permanently in the collections of cultural heritage institutions The lack of agreement on the conditions of the licence should not be interpreted as a lack of availability of licensing-based solutions. Any uses under this exception should be subject to the same opt-out and publicity requirements as uses authorised by a licensing mechanism. In order to ensure that the exception only applies when certain conditions are fulfilled and to provide legal certainty, Member States should determine, in consultation with</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<i>rightholders, collective management organisations and cultural heritage organisations, and at appropriate intervals of time, for which sectors and which types of works appropriate licence-based solutions are not available, in which case the exception should apply.</i>		
48.	(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the collective management organisation, in accordance to their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.	(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism allowing for licences for out-of-commerce works to extend to the rights of rightholders that are not represented by the <i>relevant</i> collective management organisation, in accordance to <i>with</i> their legal traditions, practices or circumstances. Such mechanisms can include extended collective licensing and presumptions of representation.	(23) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of mechanism, <u>such as extended collective licensing or presumption of representation</u> , allowing for licences for out-of-commerce works to extend to the rights of rightholders that <del>are</del> <u>have</u> not represented by <del>the</del> <u>a</u> <u>representative</u> collective management organisation, in accordance <del>to</del> <u>with</u> their legal traditions, practices or circumstances. <del>Such mechanisms can include extended collective licensing and presumptions of representation.</del> <u>Member States</u>	

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>should also have flexibility in determining the requirements for collective management organisations to be sufficiently representative, as long as this is based on a significant number of rightholders in the relevant type of works or other subject-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.</u></p>	
49.	<p>(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</p>	<p>(24) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important <b>and should be encouraged by the Member States</b>. That system includes in particular rules of</p>	<p>(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</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such mechanisms to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.</p>	<p>good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such <i>licensing</i> mechanisms <i>or of such exceptions</i> to their works or other subject-matter. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions.</p>	<p>well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders, as provided for by Directive 2014/26/EU. Additional appropriate safeguards should be available for all rightholders, who should be given the opportunity to exclude the application of such mechanisms <u>in relation to all their works or other subject-matter or to all licences, or in relation to particular works or other subject-matter or to particular licences, at any time before or under the duration of the licence</u>. Conditions attached to those mechanisms should not affect their practical relevance for cultural heritage institutions. <u>It is important that when a rightholder excludes the application of such mechanisms to one or more of their works or other subject-matter, the informed collective management organisation does not continue to issue licences covering the relevant uses and</u></p>	

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>any ongoing uses are terminated within a reasonable period. Such exclusion by the rightholder should not affect their claim to remuneration for the actual use of the work or other subject-matter.</u></p>	
50.			<p><u>(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.</u></p>	
51.	<p>(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter,</p>	<p>(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter,</p>	<p>(25) Considering the variety of works and other subject-matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms introduced by this Directive are available and can be used in practice for different types of works and other subject-matter,</p>	

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	<p>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, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.</p>	<p>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 these mechanisms, <i>the solutions on the use of out-of-commerce works introduced by this Directive</i>, specific requirements and procedures may have to be established by Member States for the practical application of those licensing mechanisms. It is appropriate that Member States consult rightholders, users <i>cultural heritage institutions</i> and collective management organisations when doing so.</p>	<p>including photographs, <u>software, phonograms, sound recordings and audiovisual works</u>—<u>and unique works of art, irrespective of whether they have ever been commercially available. Never-in-commerce works may include posters, leaflets, trench journals or amateur audiovisual works, but also unpublished works or other subject-matter, without prejudice to other applicable legal constraints, such as national rules on moral rights.</u> <u>When a work is available in any of its different versions, such as subsequent editions of literary works and alternate cuts of cinematographic works, or in any of its different manifestations, such as digital and printed formats of the same work, this work or other subject-matter should not be considered out of -commerce.</u> <u>Conversely, the commercial availability of adaptations, including other language</u></p>	

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>versions or audiovisual adaptations of a literary work, should not preclude the determination of the out-of-commerce status of a work in a given language.</u> In order to reflect the specificities of different <del>categories</del> <u>types</u> of works and other subject-matter as regards modes of publication and distribution and to facilitate the usability of those mechanisms, specific requirements and procedures may have to be established <del>by Member States</del> for the practical application of those licensing mechanisms, <u>such as a time period which needs to have been elapsed since the first commercial availability of the work.</u> It is appropriate that Member States consult rightholders, users and collective management organisations when doing so.</p>	
52.			<p><u>(25a) When determining whether works and other subject-matter are out of</u></p>	

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>commerce, a reasonable effort should be required to assess their availability to the public in the customary channels of commerce, taking into account the characteristics of the particular work or set of works. Member States should be free to determine the allocation of responsibilities for making the reasonable effort. The reasonable effort should not have to be repeated over time but it should also take account of any easily accessible evidence of upcoming availability of works in the customary channels of commerce. A work-by-work assessment should only be required when this is considered reasonable in view of the availability of relevant information, the likelihood of commercial availability and the expected transaction cost. The verification of availability should normally take place in the Member State where the cultural heritage institution is</u></p>	

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>established, unless verification across borders is considered reasonable, for example when there is easily available information that a literary work was first published in a given language version in another Member State. In many cases the out-of-commerce status of a set of works could be determined through a proportionate mechanism, such as sampling. The limited availability of a work, such as its availability in second-hand shops, or the theoretical possibility to obtain a licence to a work should not be considered as availability to the public in the customary channels of commerce.</u></p>	
53.	<p>(26) For reasons of international comity, the licensing mechanisms for the digitisation and dissemination of out-of-commerce works provided for in this Directive should not apply to works or other subject-matter that</p>	<p>(26) For reasons of international comity, the licensing mechanisms <i>and the exception</i> for the digitisation and dissemination of out-of-commerce works provided for in this Directive should not apply to works or other subject-</p>	<p>(26) For reasons of international comity, the licensing mechanisms for the digitisation and dissemination of out-of-commerce works provided for in this Directive should not apply to <del>works or other subject-matter that</del></p>	

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	<p>are first published or, in the absence of publication, first broadcast in a third country or, in the case of cinematographic or audiovisual works, to works the producer of which has his headquarters or habitual residence in a third country. Those mechanisms should also not apply to works or other subject-matter of third country nationals except when they are first published or, in the absence of publication, first broadcast in the territory of a Member State or, in the case of cinematographic or audiovisual works, to works of which the producer's headquarters or habitual residence is in a Member State.</p>	<p>matter that are first published or, in the absence of publication, first broadcast in a third country or, in the case of cinematographic or audiovisual works, to works the producer of which has his headquarters or habitual residence in a third country. Those mechanisms should also not apply to works or other subject-matter of third country nationals except when they are first published or, in the absence of publication, first broadcast in the territory of a Member State or, in the case of cinematographic or audiovisual works, to works of which the producer's headquarters or habitual residence is in a Member State.</p>	<p>are first published or, in the absence of publication, first broadcast in a third country or, in the case of cinematographic or audiovisual works, to works the producer of which has his headquarters or habitual residence in a third country. Those mechanisms should also not apply to works or other subject-matter of third country nationals except when they are first published or, in the absence of publication, first broadcast in the territory of a Member State or, in the case of cinematographic or audiovisual works, to works of which the producer's headquarters or habitual residence is in a Member State <u>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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
54.	<p>(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</p>	<p>(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 other disseminating the works and other subject-matter covered by the</p>	<p><u>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.</u></p>	
	<p>(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</p>	<p>(27) <del>As mass</del> <u>The contracting 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</u></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	licence.	licence.	<p><u>material about an exhibition. At the same time, as the digitisation projects of the collections of cultural heritage institutions</u> can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent <del>the</del><u>cultural heritage institutions</u> from generating reasonable revenues <del>in order to cover</del><u>for the purposes of covering</u> the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.</p>	
55.	<p>(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences to their</p>	<p>(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms <i>or of the exception</i> provided for in this Directive and the arrangements in place for all rightholders to exclude the application of</p>	<p>(28) Information regarding the future and ongoing use of out-of-commerce works and other subject-matter by cultural heritage institutions on the basis of the licensing mechanisms provided for in this Directive and the arrangements in place for all rightholders to exclude the application of licences to their</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council<sup>11</sup>, the European Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in</p>	<p>licences <i>or of the exception</i> to their works or other subject-matter should be adequately publicised. This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the cross-border use takes place. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council<sup>11</sup>, the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary measures, aiming at facilitating and supporting the activities of national authorities, the private</p>	<p>works or other subject-matter should be adequately publicised- <b><u>both before a licence is granted and during the operation of the licence as appropriate.</u></b> This is particularly important when uses take place across borders in the internal market. It is therefore appropriate to make provision for the creation of a single publicly accessible online portal for the Union to make such information available to the public for a reasonable period of time before the <del>cross-border</del> use takes place. <b><u>This portal should facilitate the possibility for rightholders to exclude the application of licences to their works or other subject-matter.</u></b> Under Regulation (EU) No 386/2012 of the European Parliament and of the Council<sup>11</sup>, the European Union Intellectual Property</p>	

<sup>11</sup> 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 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).

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.</p>	<p>sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available.</p>	<p>Office is entrusted with certain tasks and activities, financed by making use of its own budgetary <del>measures</del><u>means</u>, aiming at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the European portal making such information available. <u>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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
56.			<p><u>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.</u></p>	
			<p><u>(28a) The measures provided for 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 based on the out-of-commerce status of the covered works or other subject matter. These measures should</u></p>	

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>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.</u></p>	
57.			<p><u>(28b) Mechanisms of collective licensing 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</u></p>	

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>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.</u></p>	
58.			<p><u>(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 required transactions in these areas to enable the use of these works or</u></p>	

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>other subject matter are unlikely to take place. Extended collective licensing and similar mechanisms have made it possible to conclude agreements in areas affected by this market failure where traditional collective licensing does not provide an exhaustive solution for covering all works and other subject-matter to be used. These mechanisms serve as a complement to collective management based on individual mandates, by providing full legal certainty to users. At the same time, they provide a further opportunity to right holders to benefit from the legitimate use of their works.</u></p>	
59.			<p><u>(28d) Given the increasing importance of the ability to offer flexible licensing solutions in the digital age, and the increasing use of such schemes in Member States, it is beneficial to further clarify in</u></p>	

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>Union law the status of licensing mechanisms allowing collective management organisations to conclude licences, on a voluntary basis, irrespective of whether all rightholders have authorised the organisation to do so. Member States should have the ability to maintain and introduce such schemes in accordance with their legal traditions, practices or circumstances, subject to the safeguards provided for in this Directive and in full respect of Union law and their international obligations related to copyright. These schemes would only have effect in the territory of the Member State concerned, unless otherwise provided for in Union law. Member States should have flexibility in choosing the specific type of mechanism allowing licences for works or other subject-matter to extend to the rights of rightholders</u></p>	

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>that have not authorised the organisation that concludes the agreement, as long as it guarantees sufficient protection of the non-member rightholders. Such mechanisms may include extended collective licensing, legal mandate and presumptions of representation. The provisions of this Directive concerning collective licensing should not affect existing possibilities of Member States to apply mandatory collective management or other collective licensing mechanisms with an extended effect, such as the one included in Article 3 of Directive 93/83/EEC.</u></p>	
60.			<p><u>(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</u></p>	

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>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 appropriate safeguards are in place to protect the legitimate interests of rightholders that are not represented by the organisation offering the licence.</u></p>	
61.			<p><u>(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 or other subject-matter and of the rights which are the subject of the licence. To ensure</u></p>	

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>legal certainty and confidence in the mechanisms Member States may determine the allocation of legal responsibility for uses authorised by the licence agreement. Equal treatment should be guaranteed to all rightholders whose works are exploited under the licence 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 the need to inform each rightholder individually. In order to ensure that rightholders can easily retain control of their works, and prevent any uses of their works that would be prejudicial to their interests, rightholders must be given an effective opportunity to exclude the application of such mechanisms to their works or other subject-matter for all uses and works or other subject-matter, or for</u></p>	

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			<p><u>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.</u></p>	
62.			<p><u>(28g) Member States should ensure that the purpose and scope of any licence granted as a 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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
63.			<u>national law implementing Directive 2014/26/EU.</u>	
			<p><u>(28h) Given the different traditions and experiences with extended collective licensing across Member States and their applicability to rightholders irrespective of their nationality or their Member State of residence, it is important to ensure transparency and dialogue at Union level about the practical functioning of these mechanisms, including as regards the effectiveness of safeguards for rightholders, their usability and the potential need to lay down rules to give such schemes cross-border effect within the internal market. To ensure transparency, information about the use of such mechanisms under this Directive should be regularly published by the Commission. Member States that have introduced such mechanisms</u></p>	

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>should therefore inform the Commission about relevant national legislation and its application in practice, including scopes and types of licensing introduced on the basis of general 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) — O<sub>n</sub>/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.</u></p>	
64.		<p><i>(28a) In order to ensure that the licensing mechanisms established for out-of-commerce works are relevant and function properly, that rightholders are adequately protected under those mechanisms, that licences are properly publicised and that</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<i>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.</i>		
65.	<p>(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.</p>	<p>(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.</p>	<p>(29) <u>Video</u>-on-demand services have the potential to play a decisive role in the dissemination of <u>European audiovisual</u> works across the-European Union. However, <u>agreements-the availability of those works, in particular European works, on video-on-demand services remains limited. Agreements on</u> the online exploitation of such works may <u>be difficult to conclude due to issues face</u> <u>difficulties</u>-related to the licensing of rights. Such issues may, for instance, appear when the holder of the rights for a given territory <u>is not interested in-the has low economic incentive to exploit a work</u> <u>online exploitation-of-the work-of-where there-are-issues</u></p>	

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>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</u> linked to the windows of exploitation.</p>	
66.	<p>(30) To facilitate the 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 negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial</p>	<p>(30) To facilitate the licensing of rights in audiovisual works to video-on-demand <del>platforms</del><u>services</u>, this Directive requires Member States to set up <del>a</del><u>provide for</u> a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. <del>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</del> should meet with the parties and help with the negotiations by</p>	<p>(30) To facilitate the licensing of rights in audiovisual works to video-on-demand <del>platforms</del><u>services</u>, this Directive requires Member States to set up <del>a</del><u>provide for</u> a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body. <del>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</del> should meet with the parties and help with the negotiations by</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	burdens remain proportionate to guarantee the efficiency of the negotiation forum.	body should meet with the parties and help with the negotiations by providing professional, <i>impartial</i> and external advice. Against that background, Member States should decide on the conditions of the functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing <del>of</del> <i>division of the any costs arising, and the composition of such bodies</i> . Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation forum.	providing professional and external advice. <u>The body or the mediators could meet with the parties to facilitate the start of negotiations or in the course of the negotiations to facilitate the conclusion of an agreement.</u> <u>The use of and the participation in the negotiation mechanism should remain voluntary and should not affect the parties' contractual freedom.</u> Against that background, Member States should <u>be free to decide on the conditions of the concrete</u> functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation <del>forum</del> <u>mechanism</u> .	
67.		<i>(30a) The preservation of the Union's heritage is of the utmost importance and should be</i>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>strengthened for the benefit of future generations. This should be achieved notably through the protection of published heritage. To this end, a Union legal deposit should be created in order to ensure that publications concerning the Union, such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, and, thereby, the Union's intellectual record and future published heritage, are collected systematically. Not only should such heritage be preserved through the creation of a Union archive for publications dealing 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</i></p>		

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		<p><i>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.</i></p>		
68.	<p>(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their</p>	<p>(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. <b><i>The increasing imbalance between powerful platforms and press publishers, which can also be news agencies,</i></b></p>	<p>(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. <del>In the transition from print to digital, publishers</del> <b><u>The wide availability of press publications online has given</u></b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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.</p>	<p><i>has already led to a remarkable regression of the media landscape on a regional level.</i> In the transition from print to digital, publishers <i>and news agencies</i> 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.</p>	<p><u>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</u> of press publications are facing problems in licensing the online use of their publications <del>and</del> <u>these kind of services, making it more difficult for them to recoup</u> their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement <b>of rights in press publications regarding online uses by information society service providers</b> in the digital environment <del>is</del><u>are</u> often complex and inefficient.</p>	
69.	<p>(32) The organisational and financial contribution of publishers in producing press publications needs to be</p>	<p>(32) The organisational and financial contribution of publishers in producing press publications needs to be</p>	<p>(32) The organisational and financial contribution of publishers in producing press publications needs to be</p>	

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	<p>recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses.</p>	<p>recognised and further encouraged to ensure the sustainability of the publishing industry <i>and thereby to guarantee the availability of reliable information</i>. It is therefore necessary <i>for Member States</i> to provide at Union level a <del>harmonised</del> legal protection for press publications in respect of <i>the Union</i> for digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses <i>in order to obtain fair and proportionate remuneration for such uses. Private uses should be excluded from this reference. In addition, the listing in a search engine should not be considered as fair and proportionate remuneration.</i></p>	<p>recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised <del>legal</del> protection for press publications in respect of <del>digital</del> <u>online</u> uses <u>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</u>. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications <del>in respect of digital</del> <u>uses published by 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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
70.	<p>(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</p>	<p>(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</p>	<p><u>European Parliament and of the Council.</u><sup>12</sup> <u>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.</u></p>	

<sup>12</sup> 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).

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public.</p>	<p>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 <del>which do not</del> constitute communication to the public. <i>The protection shall also not extend to factual information which is reported in journalistic articles from a press publication and will therefore not prevent anyone from reporting such factual information.</i></p>	<p><u>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.</u> Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. <u>Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably photographs and videos.</u> 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. <del>This protection does not extend to acts of hyperlinking which do not constitute</del></p>	

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71.	<p>(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 those provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.</p>	<p>(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. <del>They</del> <i>Member States</i> should <del>also</del> be <i>able to</i> subject <i>those rights</i> to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.</p>	<p><del>communication to the public:</del></p> <p>(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 <del>digital</del><u>online</u> uses are <del>concerned</del><u>by information society service providers are concerned. They should not extend to acts of hyperlinking when they do not constitute communication to the public.</u> They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC, including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.</p>	
72.			<p><b><u>(34a) Uses of press publications by information society service providers can consist of the use</u></b></p>	

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>of entire publications or articles but also of parts of press publications. Such uses of parts of press publications have also gained economic relevance. At the same time, where such parts are insubstantial, the use thereof by information society service providers may not undermine the investments made by publishers of press publications in the production of content. Furthermore, insubstantial parts of press publications are not usually the expression of the intellectual 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,</u></p>	

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>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.</u></p>	
73.	<p>(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual</p>	<p>(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual</p>	<p>(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders: <b><u>or against other authorised users of the same</u></b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.</p>	<p>arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. <i>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 types of secondary use of their press publications by information society service providers in respect of the rights 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</i></p>	<p><b>works and other subject-matter.</b> 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.</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>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.</i></p>		
74.	<p>(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 view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers.</p>	<p>(36) Publishers, including those of press publications, books or scientific publications, <del>often</del> <b>and music publications</b>, operate on the basis of the <del>transfer of</del> <b>authors' rights by means of</b> contractual agreements <b>with authors</b>. In this context, publishers make an investment <b>and acquire rights, in some fields including rights to claim a share of compensation within joint collective management organisations of authors and publishers</b>, with a view to the exploitation of the works <del>contained in their publications</del> and may in some instances be <b>therefore also find themselves</b></p>	<p>(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 exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations, such as the ones for private copying and reprography; <b>including the corresponding existing national schemes for reprography in the Member</b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>In order to take account of this situation and improve legal certainty for all concerned parties, Member States should be allowed to determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.</p>	<p><del>being</del> deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a <i>large</i> number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and <i>to</i> improve legal certainty for all concerned parties, Member States should be allowed to <del>determine</del> that, <del>when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.</del> <i>provide an equivalent compensation-sharing system if such a system was in</i></p>	<p><u>States, or under public lending schemes.</u> In a number of Member States <u>the compensation or remuneration for such</u> uses <del>under these exceptions</del> is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should be allowed <u>but not obliged</u> to determine that, when an author has transferred or licensed his rights to a publisher <u>or a collective management organisation that jointly represents authors and publishers</u> or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to <del>claim</del> a share of such compensation, <del>whereas,</del> <u>The same possibility should exist for remuneration for public lending, while Member States should remain free to decide not to provide publishers with such</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p><i>operation in that Member State before 12 November 2015. The share between authors and publishers of such compensation could be set in the internal distribution rules of the collective management organisation acting jointly on behalf of authors and publishers, or set by Members States in law or regulation, in accordance with the equivalent system that was in operation in that Member State before 12 November 2015. This provision is without prejudice to the arrangements in the Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.</i></p>	<p><u>remuneration. Member States should remain free to determine</u> the burden on the publisher to substantiate his claim <del>should not exceed what is required under for</del> <u>the system compensation or remuneration and to lay down the conditions as to the sharing of this compensation or remuneration between authors and publishers in</u> <del>place</del> <u>accordance with their national systems.</u></p>		
75.		<p><i>(36 a) Cultural and creative industries (CCIs) play a key role in reindustrialising Europe, are a driver for growth and are in a</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>strategic position to trigger innovative spill-overs in other industrial sectors. Furthermore CCI's 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.</i></p>		
76.	<p>(37) Over the last years, 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 determine</p>	<p>(37) Over the last years, the functioning of the online content marketplace <del>has</del> 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 <i>copyright protected</i> content online. <i>Online services are means of providing</i></p>	<p>(37) Over the last years, the functioning of the online content marketplace has gained in complexity. Online <u>content sharing</u> services providing access to a <b>large amount of copyright-</b>protected content uploaded by their users <del>without the involvement of right holders</del> have <u>flourished</u> and have become main sources of access to content online. <del>This</del> <b>Legal</b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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.</p>	<p><i>wider access to cultural and creative works and offer great opportunities for cultural and creative industries to 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.</i></p> <p>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, <i>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.</i></p>	<p><u>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 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 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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			of their works or other subject matter.	
77.		<p><i>(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-matter uploaded by their users. The definition of an online content sharing service provider under this Directive shall cover information society service providers one of the main purposes of which is to store and give access to the public or to stream significant amounts of copyright protected content uploaded / made available by its users, and that optimise content, and promote for profit making purposes, including amongst others displaying, tagging, curating, sequencing, the uploaded works or other subject-matter, irrespective of the means used therefor, and therefore act in an active way. As a consequence, they cannot benefit</i></p>	<p><u>(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 content market by competing with other online content services, such as online audio and video streaming services, for the same audiences. The services covered by this intervention are those the main or one of the main purposes of which is to provide access to a large amount of copyright-protected content uploaded by their users with the purpose of obtaining profit therefrom, either directly or indirectly, by organising it and promoting it in order to attract more audiences. Organising and promoting content involves for example indexing the content, presenting it in a certain manner and</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>from the liability exemption provided for in Article 14 of Directive 2000/31/EC. The definition of online content sharing service providers under this Directive does not cover microenterprises and small sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and service providers that act in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories. Providers of cloud services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within</i></p>	<p><u>categorising it, as well as using targeted promotion on it. The definition does not include services whose main purpose is not to provide access to copyright protected content with the purpose of obtaining profit from this activity. These include, for instance, electronic communication services within the meaning of Regulation 2015/2120/EU, including internet access providers, as well as providers of 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. Nor does this definition cover websites which store and provide access to content for non-for-profit purposes, such as online encyclopaedias, scientific or educational repositories or open source software developing platforms which do</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 <i>the meaning of this Directive.</i>	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
78.			<p><u>not store and give access to content for profit making purposes. In order to ensure the high level of copyright protection and to avoid the possible application of the liability exemption mechanism provided for in this Directive, this Directive should not apply to services the main purpose of which is to engage in or to facilitate copyright piracy.</u></p>	
79.	(38) Where information society service providers store and	(38) <del>Where information society <i>Online content sharing</i></del>	(37b) <u>The assessment of whether an online content sharing service provider stores and gives 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.</u>	
	(38) Where information society		(38) <u>This Directive clarifies under which conditions the</u>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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 communication to the public, they are obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council<sup>13</sup>.</p>	<p>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 <i>perform</i> an act of communication to the public, they are obliged to <i>and therefore are responsible for their content and should therefore</i> conclude <i>fair and appropriate</i> licensing agreements with rightholders, unless they are eligible for. <i>Where licensing agreements are concluded, they should also cover, 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</i></p>	<p>Where information society <u>online content sharing</u> 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 <u>are engaging in</u> an act of communication to the public or <u>making available to the public within the meaning of Article 3(1) and (2) of Directive 2001/29/EC</u> they are obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council. <u>It does not change the concept of communication to the public or of making available to the public under Union law nor</u></p>	

<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).

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>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.</i></p>	<p><u>does it affect the possible application of Article 3(1) and (2) of Directive 2001/29/EC to other services using copyright-protected content.</u></p>	
80.	<p>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.</p>	<p><i>Deleted</i></p>	<p><i>Deleted, partly moved to recital (37a) Council's text – see row 77</i></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
81.	<p>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 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.</p>	<i>Deleted</i>	<i>Deleted, partly moved to recital (38c) Council's text – see row 84</i>	
82.			<p><b>(38a)</b> [Renumbered - in ST 9134/18 recital 38(b)]</p> <p><b><u>When online content sharing service providers communicate to the public, they should not benefit from the limited liability</u></b></p>	

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>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 14 of Directive 2000/31/EC.</u></p>	
83.			<p><u>(38b) [Renumbered - in ST 9134/18 recital (38c)]</u></p> <p><u>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</u></p>	

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>in specific, well-defined circumstances, when they demonstrate that they have acted in a diligent manner with 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</u></p>	

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>expeditiously to remove or disable access to these and make their best efforts to prevent their future availability.</u></p>	
84.			<p><i>(38c) [Renumbered - in ST 9134/18 recital (38ca)]</i></p> <p><u>Appropriate collaboration carried out in good faith between online content sharing service providers and rightholders is essential for the effective application of the measures by the online content sharing service providers. These service providers should be transparent towards rightholders with regard to the deployed measures. As different measures may be used by the online content sharing service providers, they should provide rightholders with appropriate information on the type of measures used and the way they operate, including for</u></p>	

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>example information on the success rate of the measures.</u> Such information should be <u>sufficiently specific to provide enough transparency for 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.</u> <u>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</u></p>	

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>their specific unauthorised works or other subject matter taking also into account the size of rightholders and the type of their works and other subject matter. As long as 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.</u></p>	
85.			<p><u>(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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
86.	<p>(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 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 to identify their content and the services should be transparent towards rightholders with regard to the deployed</p>	<p>(39) Collaboration between information society Member States should provide that where rightholders do not wish to conclude licensing agreements, online content sharing service providers storing and providing access to the public to large amounts of copyright and right holders should cooperate in good faith in 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</p>	<p><u>(39)</u> Moved up to recital (38c)[which was recital (38ca) in ST 9134/18]</p>	<p><u>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 their private capacity and for non-commercial purposes, such as sharing their content without any profit making purpose.</u></p>

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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 from the information society service providers on the use of their content covered by an agreement.</p>	<p>technologies. In such cases, rightholders should provide the necessary data to allow the services. <i>Cooperation between online</i> 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 from the information society service providers on the use of their content <i>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.</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
87.		<p><i>(39a) Members States should ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such mechanisms 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 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</i></p>	<p><b><u>(39a) [Renumbered - in ST 9134/18 recital (39b)]</u></b></p> <p><b><u>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 to the users' complaints should be provided in a timely manner.</u></b></p> <p><b><u>To make these mechanisms function, cooperation from rightholders is needed, in particular with regard to the assessment of the complaints</u></b></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.</i></p>	<p><u>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.</u></p>	
88.		<p><i>(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 practices. They should issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this Directive. When defining best practices, special</i></p>	<p><i>(39b) [Renumbered - in ST 9134/18 recital (39c)]</i></p> <p><u>In order to foster best practices with regard to the measures to be taken by online content sharing service providers to 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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
89.		<p><i>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.</i></p>	<p><u>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.</u></p>	
90.		<p><i>(39c) Member States should 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 appoint an impartial body with all the relevant competence and experience necessary to assist the parties in the resolution of their dispute.</i></p> <p><i>(39d) As a principle, rightholders should always</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>receive fair and appropriate remuneration. Authors and performers who have concluded contracts with intermediaries, such as labels and producers, should receive fair and appropriate remuneration from them, either through individual agreements and/ or collective bargaining agreements, collective management agreements or rules having a similar effect, for example joint remuneration rules. This remuneration should be mentioned explicitly in the contracts according to each mode of exploitation, including online exploitation. Members States should look into the specificities of each sector and should be allowed to provide that remuneration is deemed fair and appropriate if it is determined in accordance with the collective bargaining or joint remuneration agreement.</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
91.	<p>(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers.</p>	<p>(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate <i>comprehensive and relevant</i> information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. <b><i>The information that</i></b></p>	<p>(40) <del>Certain rightholders such as authors</del> <b>Authors</b> and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where <del>such rightholders</del> <b>natural persons</b> grant a licence or a transfer of rights <b>for the purposes of exploitation</b> in return for remuneration. <b>This need does not arise when the contractual counterpart acts as end user of the work and does not exploit the work or performance itself, which could among others be the case in some employment contracts. Additionally, this need does not arise when the exploitation has ceased, or when the author or performer has granted licence to the general public without remuneration.</b></p> <p><i>[Last two phrases of recital (40) of the COM proposal were moved to new recital (40a) of Council's</i></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>authors and performers are entitled to expect should be proportionate and cover all modes of exploitation, direct and indirect revenues generated, including revenues from merchandising, and the remuneration due. The information on the exploitation should also include information about the identity of any licensee or sub-transferee. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned.</i></p> <p><i>[See Council's recital (40a) -row 92]</i></p>	<p><i>text - see following row 92]</i></p>	
92.			<p><b>(40a)</b> 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</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p>face a lack of transparency. Therefore, the sharing of adequate information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. <u>The information should be: timely to allow access to recent data; adequate to include information relevant to the exploitation of the work or performance in a manner that is comprehensible to the author or performer; and sufficient to assess the economic value of the rights in question.</u> As long as exploitation is ongoing, contractual counterparts of authors and performers should provide information available to them on all modes of exploitation and on all relevant revenues with a regularity which is appropriate in the relevant sector, but at least annually. The processing of personal data, such as</p>	

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>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).</u></p>	
93.			<p><u>(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 contractor to other parties who exploit the rights, this Directive entitles authors and performers, in cases where the contractual partner has provided the information</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
94.	<p>(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered</p>	<p>(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered</p>	<p>available to them, but the <u>received information is not sufficient to assess the economic value of their rights, to request additional relevant information on the exploitation of the rights.</u> This can be ensured either <u>directly or through the contractual counterparts of authors and performers.</u> <u>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.</u></p>	
	<p>(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered</p>	<p>(41) When implementing transparency obligations, <b>Member States should take into account</b> the specificities of different content sectors <b>and, such as those</b> of the rights of the authors and performers in each <b>music</b> sector should be considered. Member States <del>should consult</del>, <b>the audiovisual sector and the publishing sector</b></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.</p>	<p>as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.</p>	<p><u>and</u> all relevant stakeholders <del>as that should help determine</del> <u>be involved when determining</u> such sector-specific requirements. <u>Where relevant, the significance of the contribution of authors and performers to the overall work or performance should also be considered.</u> Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency- <u>which should ensure authors and performers the same or higher level of transparency as the minimum requirements provided for in this Directive.</u> To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations <u>and independent management</u></p>	

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>entities or by other entities subject to the national rules implementing Directive 2014/26/EU</u> as those are already subject to transparency obligations under Directive 2014/26/EU.</p>	
95.	<p>(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the</p>	<p>(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the relevant <i>direct and indirect</i> revenues and the benefits derived from the exploitation of the work or the fixation of the performance,</p>	<p>(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title- <u>when the economic value of the rights turns out to be significantly higher than initially estimated</u>. Therefore, without prejudice to the law applicable to contracts in Member States, <del>there should be a</del> remuneration adjustment mechanism <u>should be provided</u> for cases where the remuneration originally agreed under a licence or a transfer of rights <del>is</del> <u>clearly becomes</u> disproportionately low</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. 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.</p>	<p>including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case, as well as of the specificities and practices of the different content sectors <i>as well as of the nature and the contribution to the work of the author or performer. Such a contract adjustment request could also be made by the organisation representing the author or performer on his or her behalf, unless the request would be detrimental to the interests of the author or performer.</i> Where the parties do not agree on the adjustment of the remuneration, the author or performer <i>or a representative organisation appointed by them should on request by the author or performer</i> be entitled to bring a claim before a court or other competent authority.</p>	<p>compared to the relevant revenues <del>and the benefits</del>-derived from the <u>subsequent</u> exploitation of the work or the fixation of the performance, <del>including in light of</del> <u>by the transparency ensured by this Directive</u>-<u>contractual counterpart of the author or performer.</u> The assessment of the situation should take account of the specific circumstances of each case, <u>including the contribution of the author or performer,</u> as well as of the specificities and <u>remuneration</u> practices of the different content sectors, <u>and whether the contract is based on a collective bargaining agreement.</u> 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. <u>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</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18  <u>subject to the national rules implementing Directive 2014/26/UE.</u>	POSSIBLE COMPROMISE SOLUTION
96.	<p>(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.</p>	<p>(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. <i>Representative organisations of authors and performers, including collective management organisations and trade unions, should be able to initiate such procedures at the request of authors and performers. Details about who initiated the procedure should remain undisclosed.</i></p>	<p>(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 <u>by authors and performers or their representatives on their behalf</u> related to obligations of transparency and the contract adjustment mechanism. <u>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 how the costs of the</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
97.		<p><i>(43a) When authors and performers license or transfer their rights, they expect their work or performance to be exploited. However, it happens that works or performances that have been licensed or transferred are not exploited at all. When these rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their work. In 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</i></p>	<p><u>dispute resolution procedure 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.</u></p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p><i>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 audiovisual 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</i></p>		

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<i>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.</i>		
98.		<i>(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.</i>		
99.			<b><u>(43a) The obligations laid down 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 contractual counterparts or in</u></b>	

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>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<sup>14</sup> 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.</u></p>	
100.	(44) The objectives of this Directive, namely the modernisation of certain aspects of the Union copyright	(44) The objectives of this Directive, namely the modernisation of certain aspects of the Union copyright	(44) The objectives of this Directive, namely the modernisation of certain aspects of the Union copyright	

<sup>14</sup> 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).

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	<p>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.</p>	<p>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.</p>	<p>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.</p>	
101.	<p>(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</p>	<p>(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</p>	<p>(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</p>	

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	accordance with those rights and principles.	accordance with those rights and principles.	accordance with those rights and principles.	
102.	<p>(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 compliance with</p> <p>Directive 95/46/EC of the European Parliament and of the Council<sup>15</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>16</sup>.</p>	<p>(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 compliance with <del>Directive 95/46/EC of the European Parliament and of the Council</del><sup>15</sup> <b>Regulation (EU) 2016/679</b> and Directive 2002/58/EC of the <del>European Parliament and of the Council</del><sup>16</sup> <b>The provisions of the</b></p>	<p>(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 compliance with Directive 95/46/EC of the European Parliament and of the Council<sup>15</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>16</sup>.</p>	

<sup>15</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 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).

<sup>16</sup> 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), called, as amended by Directives 2006/24/EC and 2009/136/EC, the “e-Privacy Directive”.

Row	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
103.		<p><i>General Data Protection Regulation, including the "right to be forgotten" should be respected.</i></p> <p><i>(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.</i></p>		
104.	<p>(47) In accordance with the Joint Political Declaration of 28 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</p>	<p>(47) In accordance with the Joint Political Declaration of 28 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</p>	<p>(47) In accordance with the Joint Political Declaration of 28 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</p>	

<sup>17</sup> OJ C 369, 17.12.2011, p. 14.

<b>Row</b>	<b>COMMISSION PROPOSAL COM(2016)593</b>	<b>EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018</b>	<b>COUNCIL TEXT 9134/18</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
	<p>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,</p>	<p>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,</p>	<p>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,</p>	

**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](#)**

**Note:**

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

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	
106.	Art.1, title	Article 1 <i>Subject matter and scope</i>	Article 1 <i>Subject matter and scope</i>	Article 1 <i>Subject matter and scope</i>	
107.	Art. 1, para 1	1. This Directive lays down rules which aim at further harmonising the Union law applicable to	1. This Directive lays down rules which aim at further harmonising the Union law applicable to copyright and	1. This Directive lays down rules which aim at further harmonising the Union law applicable 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
108.	Art. 1, para 2	copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject-matter.	
109.	Art. 2, title	2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.	2. Except in the cases referred to in Article 6, this Directive shall leave intact and shall in no way affect existing rules laid down in the Directives currently in force in this area, in particular Directives 96/9/EC, 2000/31/EC, 2001/29/EC, 2006/115/EC, 2009/24/EC, 2012/28/EU and 2014/26/EU.	2. Except in the cases referred to in Article 6 <del>17</del> , 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.	
		<i>Article 2 Definitions</i>	<i>Article 2 Definitions</i>	<i>Article 2 Definitions</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
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:	
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 and provide educational services:	(1) 'research organisation' means a university, <b>including its libraries</b> , a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:	(1) 'research organisation' means <del>a university, a research institute or any other organisation</del> <b>an entity</b> , the primary goal of which is to conduct scientific research or <del>to conduct scientific research and provide educational services</del> ; <b>involving also the conduct of scientific research</b> ;	
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	
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;	
114.	Art. 2, para 1, closing phrase	in such a way that the access to the results generated by the scientific research cannot be	in such a way that the access to the results generated by the scientific research cannot be	in such a way that the access to the results generated by the scientific research cannot be	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;	enjoyed on a preferential basis by an undertaking exercising a <i>significant</i> influence upon such organisation;	enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;	
115.	Art. 2, para 2	(2) 'text and data mining' means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations;	(2) 'text and data mining' means any automated analytical technique <i>which analyses works and other subject matter</i> in digital form in order to generate information, <i>including, but not limited to</i> , patterns, trends and correlations.	(2) 'text and data mining' means any automated analytical technique aiming to analyse text and data in digital form in order to generate information such as patterns, trends and correlations;	
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;	
117.	Art. 2, para 4	(4) 'press publication' means a fixation of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item	(4) 'press publication' means a fixation <i>by publishers or news agencies</i> of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and	(4) 'press publication' means a <del>fixation of a</del> collection <u>composed mainly</u> of literary works of a journalistic nature; <del>which;</del> <i>[remaining part of this</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
		<p>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.</p>	<p>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. <b><i>Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition;</i></b></p>	<p><i>paragraph was split up in points (a) to (d) - see following rows 118-121]</i></p>	
118.	Art. 2, para 4, point (a)			<p><b>(a)</b> <u>may also <del>embrace</del> include</u> other works or subject-matter<del>and</del>;</p> <p><i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i></p>	
119.	Art. 2, para 4,			<p><b>(b)</b> <u>constitutes an individual item</u> within a</p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	point (b)			periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine; [See Article 2(4) of COM proposal and of EP text (row I17)]	
120.	Art. 2, para 4, point (c)			(c) <del>has having</del> the purpose of providing <b>the general public with</b> information related to news or other topics; and [See Article 2(4) of COM proposal and of EP text (row I17)]	
121.	Art. 2, para 4, point (d)			(d) <b>is</b> published in any media under the initiative, editorial responsibility and control of a service provider; [See Article 2(4) of COM proposal and of EP text (row I17)]	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
122.	Art. 2, para 4a, introductory part		(4a) 'out of commerce work' means:		
123.	Art. 2, para 4a, point (a)		(a) an entire work or other subject matter in any version or manifestation that is no longer available to the public in a Member State through customary channels of commerce;		
124.	Art. 2, para 4a, point (b)		(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;		
125.	Art. 2, para 4b (EP)/para 5 (Council)		(4b) 'online content sharing service provider' means a provider of an information society service one of the main purposes of which is to store and give	(5) <u>'online content sharing service provider' means a provider of an information society service whose main or one of the main purposes is to store</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
			<p><i>access to the public to a significant amount of copyright protected works or other protected subject-matter uploaded by its users, which the service optimises and promotes for profit making purposes. Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories, shall not be considered online content sharing service providers within the meaning of this Directive. Providers of cloud</i></p>	<p><u>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-making purposes.</u></p> <p><u>Providers of services such as non-for-profit online encyclopaedias, non-for-profit educational and scientific repositories, non-for-profit open source software developing platforms, as well as internet access service providers, online marketplaces and providers of cloud services which allow users, including businesses for their internal purposes, to upload content for their own use shall not be considered online content sharing service providers within the meaning of this Directive;</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
126.	Art. 2, para 4c (EP)/para 6 (Council)		<p><i>services for individual use which do not provide direct access to the public, open source software developing platforms, and online market places whose main activity is online retail of physical goods, should not be considered online content sharing service providers within the meaning of this Directive;</i></p> <p><i>(4c) ‘information society service’ means a service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council<sup>1a</sup>,</i></p> <p>_____</p> <p><i><sup>1a</sup> 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</i></p>		
				<p><b><u>(6) ‘information society service’ means a service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535.</u></b></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
127.	Art. 2, para 4d		<i>technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).</i>  <i>(4d) 'automated image referencing service' means any online service which reproduces or makes available to the public for indexing and referencing purposes graphic or art works or photographic works collected by automated means via a third-party online service.</i>		
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	
129.	Art. 3, title	Article 3 Text and data mining	Article 3 Text and data mining	Article 3 Text and data mining <u>for the purposes of scientific research</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
130.	Art. 3, para 1	<p>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.</p>	<p>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 <del>in order to carry out text and data mining of</del> works or other subject-matter to which they have lawful <del>access</del> <i>research organisations have lawful access and made in order to carry out text and data mining</i> for the purposes of scientific research by such organisations.</p> <p><i>Member States shall provide for educational establishments and cultural heritage institutions conducting scientific research within the meaning of point (1)(a) or (1)(b) of</i></p>	<p>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>and cultural heritage institutions</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.</p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
131.	Art. 3, para 1a		<p><i>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></p> <p><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></p>	<p><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></p>	
132.	Art. 3, para 2	<p>2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.</p>	<p>2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.</p>	<p>2. <i>[Moved to Article 6(1)]</i></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
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.	<i>[See Council's Article 6(1) (row 155)]</i> 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 organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.	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. <i>may continue to provide exceptions in accordance with point (a) of Article 5(3) of Directive 2001/29/EC.</i>	4. Member States shall encourage rightholders and research organisations and <b><u>cultural heritage institutions</u></b> to define commonly-agreed best practices concerning the application of the <b><u>obligation</u></b> and measures referred to <b><u>respectively</u></b> in paragraphs <b><u>1a</u></b> and <b><u>3</u></b> .	
135.	Art. 3a, title		<b><u>Article 3a</u></b>	<b><u>Article 3a</u></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
136.	Art. 3a, para 1		<u>Optional exception or limitation for text and data mining</u>  1. <i>Without prejudice to Article 3 of this Directive, Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) 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>	<u>Optional exception or limitation for text and data mining</u>  1. <u>Without prejudice to Article 3 of this Directive Member States may provide for an exception or a limitation to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for 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>	
137.	Art. 3a, para 2		2. <i>Reproductions and</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
	(EP)		<i>extractions made pursuant to paragraph 1 shall not be used for purposes other than text and data mining.</i>		
138.	Art. 3a, para 2 (Council)			<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> <i>[See para.1 of EP text (row 136)]</i>	
139.	Art. 3a, para 3		<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>		
140.	Art. 4, title	<i>Article 4 Use of works and other subject-matter in digital and</i>	<i>Article 4 Use of works and other subject-matter in digital and</i>	<i>Article 4 Use of works and other subject-matter in digital and</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
141.	Art. 4, para 1	<i>cross-border teaching activities</i> 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:	<i>cross-border teaching activities</i> 1. Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC and Article 11(1) of this Directive in order to allow for the digital use of works and other subject-matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, provided that the use:	<i>cross-border teaching activities</i> 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 <b>Article 7(1)</b> of Directive 96/9/EC, Article 4(1) <b>(a) and (b)</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 be achieved, provided that <b>the</b> 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	(a) takes place on the premises of an educational establishment, <b>or in any other venue in which the teaching activity takes place under the responsibility of</b>	(a) takes place <del>on</del> <b>under</b> the premises <del>responsibility</del> of an educational establishment, <b>on its premises or other venues</b> , or through a secure electronic network accessible	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		pupils or students and teaching staff;	<i>the educational establishment</i> , or through a secure electronic <del>network</del> <i>environment</i> accessible only by the educational establishment's pupils or students and teaching staff;	only by the educational establishment's pupils or students and teaching staff; <b>and</b>	
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.	
144.	Art. 4, para 2, sub-para 1	2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, to the extent that adequate licences authorising the acts described in paragraph 1 are easily available in the market.	2. Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific types of works or other subject-matter, <i>such as material which is primarily intended for the educational market or sheet music</i> , to the extent that adequate <del>licences</del> <i>licensing agreements</i> authorising the acts described in paragraph 1 <i>and tailored to</i>	2. <b>Notwithstanding Article 6(1)</b> , Member States may provide that the exception adopted pursuant to paragraph 1 does not apply generally or as regards specific <b>uses or</b> types of works or other subject-matter, to the extent that <del>adequate</del> <b>licences covering the needs of educational establishments and</b> authorising the acts described in paragraph 1 are easily	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
145.	Art. 4, para 2, sub-para 2	Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.	<i>the needs and specificities of educational establishments</i> are easily available in the market. Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability and visibility of the licences authorising the acts described in paragraph 1 for educational establishments.	available in the market. Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure <del>appropriate availability and visibility</del> <b>of that right</b> holders make the licences authorising the acts described in paragraph 1 <b>available and visible</b> 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	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	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	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
147.	Art. 4, para 4	established. 4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	establishment is established. 4. Member States may provide for fair compensation for the harm incurred by the rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	established. 4. Member States may provide for fair compensation <del>for the harm incurred by the</del> <b>to</b> rightholders due to the use of their works or other subject-matter pursuant to paragraph 1.	
148.	Art. 4, para 4a		<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 other subject-matter that they may choose.</i> [See Council's Article 6(1)]		

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018 (row 155)]	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
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>	
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 subject-matter and to the extent necessary for such preservation.	<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 <del>sole purpose</del> <b>purposes</b> of preservation of such works or other subject-matter and to the extent necessary for such preservation.	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 <del>sole purpose</del> of the preservation of such works or other subject-matter and to the extent necessary for such preservation.	
151.	Art. 5, para 1a		<b>Ia.</b> <i>Member States shall ensure that any material</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
152.	Art. 5, para 1b		<i>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>		
153.	Art. 6, title	<i>Article 6 Common provisions</i>	<i>1b. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable. [See Council's Article 6(1) (row 155)]</i>	<i>Article 6 Common provisions</i>	
154.	Art. 6, para 1 (EP)		<i>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.</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
155.	Art. 6, para 1 (Council)			<p>1. Any contractual provision contrary to the exceptions provided for in <b>Articles 3, 4(1) and 5</b> shall be unenforceable.</p> <p><i>[See Article 3(2) of the COM proposal and Parliament's Articles 3(2) and 4(4a) and 5(1b)]</i></p>	
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.	<p><del>2.</del> Article 5(5) <del>and the of</del> <b>Directive 2001/29/EC shall apply to the exceptions and the limitation provided for under this Title.</b> The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exceptions <b>Articles 3, 4(1) and the limitation provided for under 5 of this Title Directive.</b></p>	
157.		TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER	TITLE III MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		ACCESS TO CONTENT	ACCESS TO CONTENT	ACCESS TO CONTENT	
158.		CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works	CHAPTER 1 Out-of-commerce works	
159.	Art. 7, title	<i>Article 7</i> <i>Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7</i> <i>Use of out-of-commerce works by cultural heritage institutions</i>	<i>Article 7</i> <i>Use of out-of-commerce works by cultural heritage institutions</i>	
160.	Art. 7, para 1, introductory part	1. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those	1. Member States shall provide that when a collective management organisation, on behalf of its members, concludes a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation, distribution, communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those	1. Member States shall provide that <del>when</del> a collective management organisation, <del>on behalf of its members,</del> <del>concludes</del> <del>a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the digitisation,</del> <del>communication to the public or making available of out-of-commerce works or other subject-matter permanently in the collection of the institution, such a non-exclusive licence may be extended or presumed to apply to rightholders of the same category as those</del> <b>in accordance with its members,</b> <del>concludes</del> <b>mandates, may conclude</b> a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the <del>digitisation,</del> <b>reproduction,</b> distribution, communication to the public or making available <b>to the public</b> of out-of-commerce works or other subject-matter permanently in the collection of the institution, <del>such a non-exclusive licence may be</del>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		covered by the licence who are not represented by the collective management organisation, provided that:	covered by the licence who are not represented by the collective management organisation, provided that:	extended or presumed to apply to rightholders of the same category as those <b>irrespective of whether all rightholders</b> covered by the licence <del>who are not represented by</del> <b>have mandated</b> the collective management organisation, provided that:	
161.	Art. 7, para 1, point (a)	(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-matter and of the rights which are the subject of the licence;	(a) the collective management organisation is, on the basis of mandates from rightholders, broadly representative of rightholders in the category of works or other subject-matter and of the rights which are the subject of the licence;	(a) the collective management organisation is, on the basis of mandates from rightholders, <del>broadly</del> <b>sufficiently</b> representative of rightholders in the category <del>of</del> <b>relevant type</b> of works or other subject-matter and of the rights which are the subject of the licence;	
162.	Art. 7, para 1, point (b)	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
163.	Art. 7, para 1, point (c)	(c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.	(c) all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the licence to their works or other subject-matter.	(c) all rightholders may at any time object to <u>exclude the possibility for collective management organisations to license</u> their works or other subject-matter being deemed to be out of commerce and <u>in accordance with this Article, either in general or in specific cases, or</u> exclude the application of <u>the any</u> licence <u>granted in accordance with this Article</u> to their works or other subject-matter.	
164.	Art. 7, para 1a		1a. <i>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</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
165.	Art. 7, para 1a, point (a)		<i>heritage institutions to make copies available online of out-of-commerce works that are located permanently in their collections for not-for-profit purposes, provided that:</i>		
166.	Art. 7, para 1a, point (b)		(a) <i>the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible;</i>  (b) <i>all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude the application of the exception to their works or other subject-matter.</i>		
167.	Art. 7, para 1b		<i>1b. Member States shall provide that the exception adopted pursuant to paragraph 1a does not apply in sectors or for types of works where appropriate</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
168.	Art. 7, para 2, sub-para 1	<p>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.</p>	<p><i>licensing-based solutions, including but not limited to solutions provided for in paragraph 1, are available. Member States shall, in consultation with authors, other rightholders, collective management organisations and cultural heritage institutions, determine the availability of extended collective licensing-based solutions for specific sectors or types of works.</i></p>	<p>2. A work or other subject-matter shall be deemed to be out-of-commerce when <b>it can be presumed in good faith that</b> the whole work or other subject-matter, <del>in all its translations, versions and manifestations;</del> is not available to the public through customary channels of commerce <del>and cannot be reasonably expected to become so.</del> <b>after a</b></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
169.	Art. 7, para 2, sub-para 2	Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are	<p><i>whether a work previously commercialised is deemed to be out of commerce.</i></p> <p><i>[See definition of out-of-commerce work in Parliament's Article 2(4a) (rows 122-126)]</i></p>	<u>reasonable effort is made to determine such availability.</u>	
		Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 <b>or used in accordance with paragraph 1a</b> 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	Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the <u>may provide for specific</u> requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 <del>do</del> . <u>Such requirements shall</u> not extend beyond what is necessary and reasonable, and <del>shall</del> not preclude the possibility to determine the out-of-commerce status of a collection <del>as a</del> <u>set of works or other subject-matter as a</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
		out of commerce.	all works or other subject-matter in the collection are out of commerce.	whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.	
170.	Art. 7, para 3, introductory part	3. Member States shall provide that appropriate publicity measures are taken regarding:	3. Member States shall provide that appropriate publicity measures are taken regarding:	3. [ <i>Moved to new Article 8a(2)</i> ]	
171.	Art. 7, para 3, point (a)	(a) the deeming of works or other subject-matter as out of commerce;	(a) the deeming of works or other subject-matter as out of commerce;		
172.	Art. 7, para 3, point (b)	(b) the licence, and in particular its application to unrepresented rightholders;	(b) <b>the any</b> licence, and in particular its application to unrepresented rightholders;		
173.	Art. 7, para 3, point (c)	(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1;	(c) the possibility of rightholders to object, referred to in point (c) of paragraph 1 <b>and point (b) of paragraph 1a;</b>		
174.	Art. 7, para 3, closing phrase	including during a reasonable period of time before the works or other subject-matter are digitised, distributed,	including during a <del>reasonable</del> period of <del>time</del> <b>at least six months</b> before the works or other subject-matter are		

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175.	Art. 7, para 4, introductory part / Art. 7, para 4 (Council)	communicated to the public or made available.	digitised, distributed, communicated to the public or made available.		
176.	Art. 7, para 5, introductory part (Council)	4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:	4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where:	4. Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where: <b><u>the cultural heritage institution is established.</u></b>	
177.	Art. 7, para 4, point (a) (EP)/ Art. 7, para 5, point (a) (Council)	(a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and	(a) the works or phonograms were first published or, in the absence of publication, where they were first broadcast, except for cinematographic and	5. <b><u>This Article shall not apply to sets of out-of-commerce if, following the reasonable effort to determine commercial availability, there is evidence that such sets predominantly consist of:</u></b>  (a) <del>the</del> works or <b><u>other subject-matter phonograms</u></b> were first published or, in the absence of publication, <del>where</del> they were first broadcast <b><u>in a third country</u></b> , except for	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
178.	Art. 7, para 4, point (b) (EP)/ Art. 7, para 5, point (b) (Council)	audiovisual works;  (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or	audiovisual works;  (b) the producers of the works have their headquarters or habitual residence, for cinematographic and audiovisual works; or	cinematographic <del>and</del> or audiovisual works;  (b) <u>cinematographic or audiovisual works</u> , the producers of <del>the works</del> <u>which</u> have their headquarters or habitual residence, <del>for cinematographic and audiovisual works</del> <u>in a third country</u> ; or	
179.	Art. 7, para 4, point (c) (EP) /Art. 7, para 5, point (c) (Council)	(c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b).	(c) the cultural heritage institution is established, when a Member State or a third country could not be determined, after reasonable efforts, according to points (a) and (b).	(c) the cultural heritage institution is established, <u>works or other subject-matter of third country nationals</u> when a Member State or a third country could not be determined, after <del>a</del> reasonable <del>efforts</del> <u>effort</u> , according to points (a) and (b); <del>;</del>	
180.	Art. 7, para 5 (EP)/ Art. 7, para 5, closing phrase (Council)	5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of	5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of	5. <del>Paragraphs 1, 2 and 3 shall not apply to</del> <u>unless</u> the <del>works or other subject-matter</del> <u>collective management organisation is sufficiently representative</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
		paragraph 4 apply.	paragraph 4 apply.	of <u>right</u> holders of <u>that</u> third country nationals except where <u>points in the meaning of point (a) and (b)</u> of paragraph 4 apply <u>1</u> .	
181.	Art. 8, title	<i>Article 8</i> <i>Cross-border uses</i>	<i>Article 8</i> <i>Cross-border uses</i>	<i>Article 8</i> <i>Cross-border uses</i>	
182.	Art. 8, para 1	1. Works or other subject-matter covered by a licence granted in accordance with Article 7 may be used by the cultural heritage institution in accordance with the terms of the licence in all Member States.	1. <del>Works</del> <b>Out-of-commerce works</b> or other subject-matter covered by a licensee granted in accordance with Article 7 <b>may be</b> used by the cultural heritage institution in accordance with the terms of the licensee <del>that</del> <b>Article</b> in all Member States.	1. <del>Works or other subject-matter covered by a</del> licence granted in accordance with Article 7 <b>may be used</b> <u>allow the use of out-of-commerce works or other subject-matter</u> by the cultural heritage institution in accordance with the terms of the licensee in <del>all</del> <b>any</b> Member States <u>State</u> .	
183.	Art. 8, para 2	2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by a licence granted in accordance with Article 7 and information about the possibility of	2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by a licensee granted in accordance with Article 7 and information about the possibility of	2. [ <i>Moved to new Article 8a(1)</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
		<p>rightholders to object referred to in Article 7(1)(c) are made publicly accessible in a single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of the licence.</p>	<p>rightholders to object referred to in <i>point (c) of Article 7(1) and point (b) of Article 7(1a)</i> are made <del>publicly</del> <i>permanently, easily and effectively</i> accessible in a <i>public</i> single online portal for at least six months before the works or other subject-matter are digitised, distributed, communicated to the public or made available in Member States other than the one where the licence is granted, <i>or in the cases covered by Article 7(1a), where the cultural heritage institution is established</i> and for the whole duration of the licence.</p>		
184.	Art. 8, para 3	<p>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.</p>	<p>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.</p>	<p>3. <i>[Moved to new Article 8a(1) second subparagraph]</i></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
185.	Art. 8a, title			<u>Article 8a</u> <u>Publicity measures</u>	
186.	Art. 8a, para 1, sub-para 1			<p><u>1.</u> Member States shall ensure that information that <del>allows</del><b>for the purposes of</b> the identification of the <u>out-of-commerce</u> works or other subject-matter covered by a licence granted in accordance with Article 7 and <u>as well as</u> information about the <del>possibility</del><b>possibilities</b> of rightholders to object referred to in Article 7(1)(c) <del>are</del><b>, and, as soon as it is available, information on the parties to the licence, the covered territories and the allowed uses is made</b> publicly accessible in a single online portal <del>for</del><b>from</b> at least six months before the works or other subject-matter are <del>digitised</del><b>distributed,</b></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
187.	Art. 8a, para 1, sub-para 2			<p>communicated to the public or made available in Member States other than the one where the licence is granted, and for the whole duration of <u>the public in accordance with</u> the licence.</p> <p><i>[Article 8(2) of the COM proposal, amended]</i></p> <p>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.</p> <p><i>[Article 8(3) of the COM proposal, amended]</i></p>	
188.	Art. 8a, para 2			<p>2. Member States shall provide that, <u>if necessary for the general awareness of rightholders, further</u> appropriate publicity measures are taken regarding:</p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<p>(a) the <del>deeming of works of</del> other subject matter as out of commerce; (b) the licensee, and in particular its application to unrepresented rightsholders; <u>the possibility for collective management organisations to license works or other subject-matter in accordance with Article 7, the licences granted and (e) the</u> possibilities to object of rightsholders referred to in point (e) of paragraph 1 Article 7(1)(c)-;</p> <p>Including during a reasonable period of time before the works or other subject matter are digitised, distributed, communicated to the public or made available.</p> <p><u>The additional appropriate publicity measures shall be taken in the Member State where the licence is sought. If there is evidence, such as</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
189.	Art. 9, title	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>	<i>Article 9 Stakeholder dialogue</i>	<i>Article 7(3) of the COM proposal, amended]</i>
190.	Art 9	Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1), ensure the effectiveness of the	Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) <b>and the exception referred to in</b>	Member States shall <del>ensure</del> <b>consult rightholders, collective management organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 7(2), and encourage</b> a regular dialogue between representative users' and rightholders' organisations,	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).	<i>Article 7(1a)</i> , ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).	<u>including collective management organisations</u> , and any other relevant stakeholder organisations, <del>to</del> on a sector-specific basis, <u>to</u> foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) <del>and to</del> ensure the effectiveness of the safeguards for rightholders referred to in this Chapter; <del>notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2);</del>	
191.				<b><u>CHAPTER 1a</u></b>  <b><u>Measures to facilitate collective licensing</u></b>	
192.	Art. 9a, title			<b><u>Article 9a</u></b>  <b><u>Collective licensing with an</u></b>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18 <i>extended effect</i>	POSSIBLE COMPROMISE SOLUTION
193.	Art. 9a, para 1			<p><u>1. Member States may provide, as far as the use within their national territory is concerned and subject to safeguards provided for in this Article, that when a collective management organisation, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised the organisation to represent them by way of assignment, licence or any other contractual arrangement; or, with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
194.	Art. 9a, para 2			<p><u>authorised the organisation accordingly.</u></p> <p>2. <u>Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely due to the nature of the use or of the types of works or other subject-matter concerned and that such mechanism safeguards the legitimate interests of rightholders.</u></p>	
195.	Art. 9a, para 3			<p>3. <u>The safeguards referred to in paragraph 1 must ensure that:</u></p>	
196.	Art. 9a, para			<p>(a) <u>the organisation is, on the basis of mandates from</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
	3, point (a)			<u>rightholders, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence for the relevant Member State;</u>	
197.	Art. 9a, para 3, point (b)			<u>(b) equal treatment is guaranteed to all rightholders in relation to the terms of the licence;</u>	
198.	Art. 9a, para 3, point (c)			<u>(c) rightholders who have not authorised the organisation operating the licence may at any time easily and effectively exclude their works or other subject-matter from the licensing mechanism established in accordance with this Article;</u>	
199.	Art. 9a, para 3, point (d)			<u>(d) appropriate publicity measures are taken to raise the awareness of rightholders regarding the</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
200.	Art. 9a, para 4			<p><u>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.</u></p>	
				<p><u>4. The rules provided for in this Article are without prejudice to the application of collective licensing mechanisms with an extended effect in conformity with other provisions of Union law, including those which allow exceptions or limitations, and shall not apply to mandatory collective</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
201.	Art. 9a, para 5			<u>management of rights.</u>	
				<p><u>5. Where the law of a 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.</u></p>	
202.	Art. 9a, para 6			<p><u>6. Based on the information received pursuant to paragraph 5 and on the discussions in the contact committee referred to in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 31 December 2020, submit to</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<p><u>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 establishment of the requirements referred to in the second subparagraph of Article 7(2), the cross-border effect of such national schemes.</u></p>	
203.		CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	CHAPTER 2 Access to and availability of audiovisual works on video-on-demand platforms	
204.	Art. 10, title	Article 10 <i>Negotiation mechanism</i>	Article 10 <i>Negotiation mechanism</i>	Article 10 <i>Negotiation 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
205.	Art. 10, sub-para 1	Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of rights, they may rely on the assistance of an impartial body with relevant experience. That body shall provide assistance with negotiation and help reach agreements.	Member States shall ensure that where parties wishing to conclude an agreement for the purpose of making available audiovisual works on video-on-demand platforms face difficulties relating to the licensing of <b>audiovisual</b> rights, they may rely on the assistance of an impartial body with relevant experience. <del>That body</del> <b>The impartial body created or designated by the Member State for the purpose of this Article</b> shall provide assistance <b>to the parties</b> with negotiation and help <b>them to</b> reach agreement.	Member States shall ensure that where parties <del>wishing to</del> <b>related to the licensing of rights when seeking to</b> conclude an agreement for the purpose of making available audiovisual works on video-on-demand <del>platforms face difficulties relating to the licensing of rights, they</del> <b>services</b> , may rely on the assistance of an impartial body with relevant experience. <del>That</del> <b>of mediators. The body or mediators</b> shall provide assistance <b>to the parties</b> with <del>negotiation</del> <b>their negotiations</b> and help <b>them</b> reach agreements, <b>including, where appropriate, by submitting proposals to the parties.</b>	
206.	Art. 10, sub-para 2	No later than [date mentioned in Article 21(1)] Member States shall notify to the	No later than [date mentioned in Article 21(1)] Member States shall <del>notify to</del> <b>inform</b>	No later than [date mentioned in Article 21(1)] Member States shall notify 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
207.	Art. 10, sub-para 3	Commission the body referred to in paragraph 1.	the Commission <i>of</i> the body referred to in paragraph 1. <del>they create or designate pursuant to the first paragraph.</del>	Commission the body <u>or mediators</u> , referred to in paragraph 1 <u>no later than [date mentioned in Article 21(1)]. In cases where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the entrusted mediators can be found.</u>	
208.			<i>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.</i>		
			<i>CHAPTER 2a Access to Union publications</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
209.	Art. 10a, title		<i>Article 10 a Union Legal Deposit</i>		
210.	Art. 10a, para 1		<i>1. Any electronic publication dealing with Union-related matters such as Union law, Union history and integration, Union policy and Union democracy, institutional and parliamentary affairs, and politics, that is made available to the public in the Union shall be subject to a Union Legal Deposit.</i>		
211.	Art. 10a, para 2		<i>2. The European Parliament Library shall be entitled to delivery, free of charge, of one copy of every publication referred to in paragraph 1.</i>		
212.	Art. 10a, para 3		<i>3. The obligation set out in paragraph 1 shall apply to publishers, printers and importers of publications for the works they publish, print</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
213.	Art. 10a, para 4		<p><i>or import in the Union.</i></p> <p><i>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.</i></p>		
214.	Art. 10a, para 5		<p><i>5. The Commission shall adopt acts to specify the modalities relating to the delivery to the European Parliament Library of publications referred to in paragraph 1.</i></p>		

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
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	
216.		CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	
217.	Art. 11, title	<i>Article 11</i> <i>Protection of press publications concerning digital uses</i>	<i>Article 11</i> <i>Protection of press publications concerning digital uses</i>	<i>Article 11</i> <i>Protection of press publications concerning <del>digital</del> uses</i>	
218.	Art. 11, para 1	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.	1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC <i>so that they may obtain fair and proportionate remuneration</i> for the digital use of their press publications <i>by information society service providers</i> .	1. Member States shall provide publishers of press publications <b>established in a Member State</b> with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the <del>digital</del> use of their press publications <b>by information society service providers</b> .	
219.	Art. 11, para 1, sub-para 2			<b><u>The rights referred to in the first subparagraph shall not</u></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
220.	Art. 11, para 1a		<i>1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.</i>	<u>apply in respect of uses of insubstantial parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</u>	
221.	Art. 11, para 2	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-	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-	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-	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p>matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.</p>	<p>matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.</p>	<p>matter incorporated in a press publication. <del>Sæ#</del>The rights <u>referred to in paragraph 1</u> may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.</p>	
222.	Art. 11, para 2, sub-para 2			<p><u>When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users.</u>  <u>The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
223.	Art. 11, para 2a		<i>2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by individual words.</i>	<u>has expired.</u>	
224.	Art. 11, para 3	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	
225.	Art. 11, para 4	4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.	4. The rights referred to in paragraph 1 shall expire <del>20</del> 5 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. <i>The right referred to in paragraph 1 shall not apply with retroactive effect.</i>	4. The rights referred to in paragraph 1 shall expire <del>20</del> <u>1 year</u> after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.	
226.	Art. 11, para		<i>4a. Member States shall ensure that authors receive</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
	4a		<i>an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers</i>		
227.	Art. 11, para 5			<b>5. Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].</b>	
228.	Art. 12, title	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>	<i>Article 12 Claims to fair compensation</i>	
229.	Art. 12, sub-para 1 (EP)/ Art. 12, introductory part (Council)]	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 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.	Member States <i>with compensation-sharing systems between authors and publishers for exceptions and limitations</i> may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the	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 publisher to <del>claim</del> <b>be entitled</b> to a share of:  <i>[remaining part of this paragraph of the COM proposal was moved to new point (a) (see row 230)]</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
			transferred or licensed right, <i>provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015.</i>		
230.	Art. 12, point (a)			<b>(a)</b> the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right; <b>;</b> <b>and</b> <i>[See Parliament's sub-paragraph 1 of Article 12 (row 229)]</i>	
231.	Art. 12, point (b)			<b>(b)</b> <u>the remuneration for public lending provided for in Article 6(1) of Directive 2006/115/EC.</u>	
232.	Art. 12, sub-para 2		<i>The first paragraph shall be without prejudice to the arrangements in Member States concerning public lending rights, the management of rights not based on exceptions or</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
233.			<i>limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law.</i>		
234.	Art. 12a, title		<b>CHAPTER 1a</b> <i>Protection of sport event organizers</i>		
235.	Art. 12a		<b>Article 12a</b> <i>Protection of sport event organizers</i>		
236.		<b>CHAPTER 2</b> Certain uses of protected content by online services	<i>Member States shall provide sport event organizers with the rights provided for in Article 2 and Article 3 (2) of Directive 2001/29/EC and Article 7 of Directive 2006/115/EC.</i>	<b>CHAPTER 2</b> Certain uses of protected content by online services	
237.	Art. 13, title	<b>Article 13</b> <i>Use of protected content by</i>	<b>Article 13</b> <i>Use of protected content by</i>	<b>Article 13</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
		<p><i>information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users</i></p>	<p><del>information society</del> <b>online content sharing</b> service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users</p>	<p><i>Use of protected content by <del>information society</del> <b>online content sharing</b> service providers storing</i></p>	
238.	Art. 13, para 1	<p>1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition</p>	<p>1. <b>Without prejudice to Article 3(1) and (2) of Directive 2001/29/EC, online content sharing</b> information society service providers that store and provide <b>perform an act of communication</b> to the public access to large amounts of works or other subject-matter uploaded by their users. <b>They</b> 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</p>	<p>1. <b>Member States shall provide that an online content sharing service provider performs an act of communication to the public or an act of making available to the public when it gives the public access to copyright protected works or other protected subject matter uploaded by its users.</b></p> <p><b>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</b></p>	

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

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239.	Art. 13, para 2 (EP)		<p>2. Member States shall ensure that the <i>Licensing agreements which are concluded by online content sharing</i> service providers <i>with right holders for the acts of communication</i> referred to in paragraph 1 <del>put in place complaints and</del> redress mechanisms that are available to users in case of <del>disputes over the application of the measures referred to in</del> paragraph 1., <i>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,</i></p>	<p><u>Directive 2001/29/EC when they are not acting on a commercial basis.</u></p> <p><i>[Last two sentences of COM proposal were moved to Council's paragraphs 5 and 6 respectively]</i></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
			<p><i>provided that such users do not act for commercial purposes.</i></p> <p><i>[See Council's paragraph 1, subparagraph 3 (row 238)]</i></p>		
240.	Art. 13, para 2a (EP)		<p><i>2a. Member States shall provide that where right holders do not wish to conclude licensing agreements, online content sharing service providers and right holders shall cooperate in good faith in order to ensure that unauthorised protected works or other subject matter are not available on their services. Cooperation between online content service providers and right holders shall not lead to preventing the availability of non-infringing works or other protected subject matter, including those covered by an exception or</i></p>		

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241.	Art. 13, para 2 / para 2b (EP)	<p>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.</p>	<p><i>limitation to copyright.</i></p> <p><b>2b. Member States shall ensure that online content sharing service providers referred to in paragraph 1 put in place effective and expeditious complaints and redress mechanisms that are available to users in case the cooperation referred to in paragraph 2a leads to unjustified removals of their content. Any complaint filed under such mechanisms shall be processed without undue delay and be subject to human review. Right holders shall reasonably justify their decisions to avoid arbitrary dismissal 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</b></p>	<p><i>[Paragraph 2 of the COM proposal was moved to new paragraph 7 of Council's text]</i></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
242.	Art. 13, para 3 (EP)	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	<i>processing of their personal data. Member States shall also ensure that users have access to an independent body for the resolution of disputes as well as to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright rules.</i> <i>[See Council's Article 13(7) (row 252)]</i>		
		3. Member States shall facilitate where appropriate, the cooperation <i>organise dialogues</i> between the information society service providers and rightholders through stakeholder dialogues <i>stakeholders to harmonise and</i> to define best practices, such as appropriate and proportionate content recognition technologies;	3. <i>As of [date of entry into force of this directive], the Commission and the</i> Member States shall facilitate where appropriate, the cooperation <i>organise dialogues</i> between the information society service providers and rightholders through stakeholder dialogues <i>stakeholders to harmonise and</i> to define best practices, such as appropriate and proportionate content recognition technologies;	<i>[See new paragraph 8 of Council's text]</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
		technological developments.	<p>taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments. <i>and issue guidance to ensure the functioning of licensing agreements and on cooperation between online content sharing service providers and right holders for the use of their works or other subject matter within the meaning of this Directive. When defining best practices, special account shall be taken of fundamental rights, the use of exceptions and limitations as well as ensuring that the burden on SMEs remains appropriate and that automated blocking of content is avoided.</i></p>		
243.	Art. 13, para 3 (Council)			<p><b><u>3. When an online content sharing service provider performs an act of</u></b></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<p><u>communication to the public or an act of making available to the public, it shall not be eligible for the exemption of liability provided for in Article 14 of Directive 2000/31/EC for unauthorised acts of communication to the public and making available to the public, without prejudice to the possible application of Article 14 of Directive 2000/31/EC to those services for purposes other than copyright relevant acts.</u></p>	
244.	Art. 13, para 4, introductory part			<p><u>4. In the absence of the authorisation referred to in the second subparagraph of paragraph 1, Member States shall provide that an online content sharing service provider shall not be liable for acts of communication to the public or making available</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
245.	Art. 13, para 4, point (a)			to the public within the meaning of this Article when:	
246.	Art. 13, para 4, point (b)			(a) it demonstrates that it has made best efforts to prevent the availability of specific works or other subject matter by implementing effective and proportionate measures, in accordance with paragraph 5, to prevent the availability on its services of the specific works or other subject matter identified by rightholders and for which the rightholders have provided the service with relevant and necessary information for the application of these measures; and  (b) upon notification by rightholders of works or other subject matter, it has	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
247.	Art. 13, para 5, introductory part			<p><u>acted expeditiously to remove or disable access to these works or other subject matter and it demonstrates that it has made its best efforts to prevent their users' future availability through the measures referred to in point (a).</u></p>	
248.	Art. 13, para 5, point (a)			<p><u>5. The measures referred to in point (a) of paragraph 4 shall be effective and proportionate, taking into account, among other factors:</u></p> <p><u>(a) the nature and size of the services, in particular whether they are provided by a microenterprise or a small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC, and their</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
249.	Art. 13, para 5, point (b)			<u>audience;</u>	
250.	Art. 13, para 5, point (c)			(b) <u>the amount and the type of works or other subject matter uploaded by the users of the services;</u>  (c) <u>the availability and costs of the measures as well as their effectiveness in light of technological developments in line with the industry best practice referred to in paragraph 8.</u>	
251.	Art. 13, para 6			<u>6. Member States shall ensure that online content sharing service providers and rightholders cooperate with each other in a diligent manner to ensure the effective functioning of the measures referred to in point (a) of paragraph 4 over time. Online content sharing service providers shall provide rightholders, at their request, with adequate information on</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
252.	Art. 13, para 7			<p><u>the deployment and functioning of these measures to allow the assessment of their effectiveness, in particular information on the type of measures used and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.</u></p>	
				<p><u>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 <del>the</del> paragraph 1 shall put in place a complaints and redress mechanisms that are</u></p>	

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				<p>is available to users of the service in case of disputes over the application of the measures referred to in paragraph 1 to their content.</p> <p><u>Complaints submitted under this mechanism shall be processed by the online content sharing service provider in cooperation with relevant rightholders within a reasonable period of time. Rightholders shall duly justify the reasons for their requests to remove or block access to their specific works or other subject matter. Member States shall endeavour to put in place independent bodies to assess complaints related to the application of the measures.</u></p> <p><i>[Paragraph 2 of the COM proposal, amended]</i></p>	
253.	Art. 13, para 8			<p><u>8. The Commission and the Member States shall</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
				<p><u>encourage stakeholder dialogues to define best practices for the measures referred to in point (a) of paragraph 4. Member States shall also endeavour to establish mechanisms to facilitate the assessment of the effectiveness and proportionality of these measures and provide the Commission regularly with information on those mechanisms. The Commission shall, in consultation with online content sharing service providers, rightholders and other relevant stakeholders and taking into account the results of the stakeholder dialogues and the national mechanisms, issue guidance on the application of the measures referred to in point (a) of paragraph 4.</u></p> <p><i>[Paragraph 3 of the COM</i></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
254.	Art. 13a, title		<i>Article 13a</i>	<i>proposal, reworded]</i>	
255.	Art. 13a, sub-para 1		<i>Member States shall provide that disputes between successors in title and information society services regarding the application of Article 13(1) may be subject to an alternative dispute resolution system.</i>		
256.	Art. 13a, sub-para 2		<i>Member States shall establish or designate an impartial body with the necessary expertise, with the aim of helping the parties to settle their disputes under this system.</i>		
257.	Art. 13a, sub-para 3		<i>The Member States shall inform the Commission of this body no later than (date mentioned in Article 21(1)).</i>		
258.	Art. 13b, title		<i>Article 13b</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
259.	Art. 13b		<p><i>Use of protected content by information society services providing automated image referencng</i></p> <p><i>Member States shall ensure that information society service providers that automatically reproduce or refer to significant amounts of copyright-protected visual works and make them available to the public for the purpose of indexing and referencng conclude fair and balanced licensing agreements with any requesting rightholders in order to ensure their fair remuneration. Such remuneration may be managed by the collective management organisation of the rightholders concerned.</i></p>		
260.				<p><b><u>TITLE IV</u></b></p> <p><b><u>MEASURES TO</u></b></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
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>exploitation</b> contracts of authors and performers	
262.	Art. -14, title		<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>		

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
264.	Art. -14, para 2		<i>remuneration mechanisms.</i>  <b>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.</b>		
265.	Art. -14, para 3		<b>3. Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.</b>		
266.	Art. -14, para 4		<b>4. Contracts shall specify the remuneration applicable to each mode of exploitation.</b>		
267.	Art. 14, title	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	<i>Article 14 Transparency obligation</i>	
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	1. Member States shall ensure that authors and performers receive on a regular basis, <b>not less than once a year</b> , and taking into	1. Member States shall ensure that authors and performers receive on a regular basis, <b>at least once a year</b> , and taking into account	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p>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.</p>	<p>account the specificities of each sector <i>and the relative importance of each individual contribution</i>, timely adequate <del>and sufficient</del>, <i>accurate, relevant and comprehensive</i> information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, <i>direct and indirect</i> revenues generated, and remuneration due.</p>	<p>the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights <u>or their successors in title</u>, notably as regards modes of exploitation, revenues generated and remuneration due.</p>	
269.	Art. 14, para 1a		<p><i>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 with the licensee or transferee.</i></p>	<p><u>Ia. 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</u></p>	

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		<p><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</i></p>	<p><u>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></p>	

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

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		<p>paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.</p>	<p>paragraph 1, provided that the obligation remains effective and ensures an appropriate <i>high</i> level of transparency.</p>	<p>of the work or performance, Member States may adjust the obligation in paragraph 1, provided that <u>is limited to</u> the obligation remains effective and ensures an appropriate level of transparency. <u>information that can reasonably be expected in such cases.</u></p>	
272.	Art. 14, para 3	<p>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.</p>	<i>Deleted</i>	<p>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.</p>	
273.	Art. 14, para 3a			<p><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</u></p>	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
274.	Art. 14, para 4	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU <i>or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2.</i>	they meet the <u>minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.</u>  4. Paragraph 1 shall not be applicable to <del>agreements to the transparency</del> <b>concluded by</b> entities subject to <del>obligations established by</del> <b>(b) of Directive 2014/26/EU; or by other entities subject to the national rules implementing Directive 2014/26/EU.</b>	
275.	Art. 15, title	<i>Article 15</i> <i>Contract adjustment mechanism</i>	<i>Article 15</i> <i>Contract adjustment mechanism</i>	<i>Article 15</i> <i>Contract adjustment mechanism</i>	
276.	Art. 15, [para 1 (Council)]	Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party	Member States shall ensure, <i>in the absence of collective bargaining agreements providing for a comparable mechanism</i> , that authors and	<b>1.</b> Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		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.	performers <i>or any representative organisation acting on their behalf</i> are entitled to request <i>claim</i> additional, appropriate <i>and fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances. <i>[See Council's Article 15(1a) (row277)]</i>	from the party with whom they entered into a contract for the exploitation of the rights <u>or their successors in title</u> , when the remuneration originally agreed <u>is turns out to be</u> disproportionately low compared to the subsequent relevant revenues <del>and</del> <u>benefits-</u> derived from the <u>actual</u> exploitation of the works or performances.	
277.	Art. 15, para 1a			<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</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
278.	Art. 15, para 2			<u>remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.</u>	
279.	Art. 16, title	Article 16 <i>Dispute resolution mechanism</i>	Article 16 <i>Dispute resolution mechanism</i>	Article 16 <i>Dispute resolution mechanism</i> <del><i>procedure</i></del>	
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	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.	1. 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	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		dispute resolution procedure.	<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> <i>[See Council's Article 16(2) (row 281)]</i>	resolution procedure.	
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>	
282.	Art. 16a (Council), title			<b><u>Article 16a</u></b> <b><u>Contractual provisions</u></b>	
283.	Art. 16a (Council)			<b><u>Member States shall ensure that any contractual provision which prevents the compliance with the</u></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
284.	Art. 16a (EP), title		Article 16 a <i>Right of revocation</i>	<u>provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.</u>	
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 into account the specificities of</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
286.	Art. 16a (EP), para 2		<p><i>different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i></p> <p><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-matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of</i></p>		

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
287.	Art. 16a (EP), para 3		<p><i>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></p> <p><b>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.</b></p>		
288.	Art. 16a (EP), para 4		<p><b>4. Contractual or other arrangements derogating from the right of revocation shall be lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.</b></p>		

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
289.		TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	TITLE V FINAL PROVISIONS	
290.	Art. 17, title	Article 17 <i>Amendments to other directives</i>	Article 17 <i>Amendments to other directives</i>	Article 17 <i>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:	
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:	
293.	Art. 17, para 1, point (a)	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"	"(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of</b> Directive [this Directive];"	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
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:	
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 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 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 non-commercial purpose to be achieved, without prejudice to the exceptions and the limitation provided for in <b>Articles 3 and 4 of Directive</b> [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:	
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:	
298.	Art. 17, para 2, point (a)	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational	"(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		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];"	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];"	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 <b>Article 5</b> of Directive [this Directive];"	
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:	
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	"(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	"(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</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
		Directive [this Directive];"	Directive];"	<b>and 4 of Directive</b> [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:	
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;	
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];	
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]."	

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>		
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>		
307.	Art. 18	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>	<i>Article 18 Application in time</i>	
308.	Art. 18, para 1	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	1. This Directive shall apply in respect of all works and other subject-matter which are protected by the Member States' legislation in the field of copyright on or after [the date mentioned in Article 21(1)].	
309.	Art. 18, para 2	2. The provisions of Article 11 shall also apply to press publications published	<i>Deleted</i>	2. <i>[Deleted]</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
		before [the date mentioned in Article 21(1)].			
310.	Art. 18, para 3	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	3. This Directive shall apply without prejudice to any acts concluded and rights acquired before [the date mentioned in Article 21(1)].	
311.	Art. 19, title	<i>Article 19</i> <i>Transitional provision</i>	<i>Article 19</i> <i>Transitional provision</i>	<i>Article 19</i> <i>Transitional provision</i>	
312.	Art. 19	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation in Article 14 as from [one year after the date mentioned in Article 21(1)].	
313.	Art. 20, title	<i>Article 20</i> <i>Protection of personal data</i>	<i>Article 20</i> <i>Protection of personal data</i>	<i>Article 20</i> <i>Protection of personal data</i>	
314.	Art. 20	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.	The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directives 95/46/EC and 2002/58/EC.	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
315.	Art. 21, title	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>	<i>Article 21 Transposition</i>	
316.	Art. 21, para 1	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ <del>12</del> 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 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.	
318.	Art. 21, para 2	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	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
319.	Art. 22, title	main provisions of national law which they adopt in the field covered by this Directive.	main provisions of national law which they adopt in the field covered by this Directive.	main provisions of national law which they adopt in the field covered by this Directive.	
320.	Art. 22, para 1	1. No sooner than [five years after the date mentioned in Article 21(1)], the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.	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.	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.	
321.	Art. 22, para 2	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.	
322.	Art. 23, title	<i>Article 23</i> <i>Entry into force</i>	<i>Article 23</i> <i>Entry into force</i>	<i>Article 23</i> <i>Entry into force</i>	
323.	Art. 23	This Directive shall enter into	This Directive shall enter into	This Directive shall enter into	

Row	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION
		force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
324.	Art. 24, title	Article 24 <i>Addressees</i>	Article 24 <i>Addressees</i>	Article 24 <i>Addressees</i>	
325.	Art. 24	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	