



07/03/2017

**AMENDMENTS: 73**

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

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**Amendments per language:**

*EN: 73*

# EUROPEAN PARLIAMENT

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*Committee on Legal Affairs*

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07/03/2017

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Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## **Amendment 1**

**Proposal for a directive**

**Recital 3**

*Text proposed by the Commission*

(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 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>26</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-

*Amendment*

(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 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>26</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 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.

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<sup>26</sup> COM(2015) 626 final.

commerce works and the online availability of audiovisual works on video-on-demand platforms with a view to ensuring wider access to content. In order to achieve a well-functioning marketplace for copyright, there should also be rules on ***the exercise of*** rights in publications, on the use of works and other subject-matter ***on*** online service providers' ***platforms that store and give*** access to user uploaded content and on the transparency of authors' and performers' contracts.

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<sup>26</sup> COM(2015) 626 final.

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Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## Amendment 2

**Proposal for a directive**

**Recital 4**

*Text proposed by the Commission*

(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 European Parliament and of the Council<sup>27</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>28</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>29</sup>, Directive 2009/24/EC of the European Parliament and of the Council<sup>30</sup>, Directive 2012/28/EU of the European Parliament and of the Council<sup>31</sup> **and** Directive 2014/26/EU of the European Parliament and of the Council<sup>32</sup>.

*Amendment*

<sup>(4)</sup> 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 European Parliament and of the Council<sup>27</sup>, Directive 2001/29/EC of the European Parliament and of the Council<sup>28</sup>, Directive 2006/115/EC of the European Parliament and of the Council<sup>29</sup>, Directive 2009/24/EC of the European Parliament and of the Council<sup>30</sup>, Directive 2012/28/EU of the European Parliament and of the Council<sup>31</sup>, Directive 2014/26/EU of the European Parliament and of the Council<sup>32</sup> **and Directive 2000/31/EC of the European Parliament and of the Council<sup>33</sup>**

***[33] Directive 2000/31 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 (Directive on electronic***

*commerce*).

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<sup>27</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>28</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>29</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>30</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>31</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).

<sup>32</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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<sup>27</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>28</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>29</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>30</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>31</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).

<sup>32</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).

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## Amendment 3

### Proposal for a directive

#### Recital 5

*Text proposed by the Commission*

(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 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

*Amendment*

(5) In the fields of **innovation**, 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 **innovation**, scientific 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 **innovation and** scientific research,

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.

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.

Or. en



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Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## **Amendment 4**

**Proposal for a directive**

**Recital 6**

*Text proposed by the Commission*

(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.

*Amendment*

(6) The exceptions and the **limitations** set out in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other. They can be applied only in certain special cases which do not conflict with the normal exploitation of the works or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders.

Or. en

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Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 5**

**Proposal for a directive**

**Recital 8**

*Text proposed by the Commission*

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. ***Those technologies allow researchers to process*** large amounts of information to gain new knowledge and discover new trends. ***Whilst*** text and data mining ***technologies are prevalent across the digital economy, there is widespread acknowledgment that*** text and data mining can ***in particular benefit the research community and in so doing encourage innovation. However, in the Union, research organisations such as universities and research institutes are confronted with legal uncertainty as to the extent to which they can perform text and data mining of content. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other***

*Amendment*

**(8)** New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. ***Text and data mining allows for the reading and analysis of*** large amounts of ***digitally stored*** information to gain new knowledge and discover new trends. ***For*** text and data mining ***to occur one first needs to access information and then to reproduce that information. It is generally only after that information is normalised that its processing through*** text and data mining can occur. ***Once there is lawful access to information, it is when that information is being normalised that a copyright protected use takes place since this leads to a reproduction by changing the format of the information itself or an extraction from a database into one that can be subjected to*** text and data mining. ***The copyright relevant processes in the use of***

*subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.*

*text and data mining technology is consequently not the text and data mining process itself which consists of a reading and analysis of digitally stored normalised information, but the process of access and the process by which information is normalised to enable its automated computational analysis. The process of access to information be it works or other subject matter protected by copyright is already regulated in the copyright related acquis.*

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## Amendment 6

**Proposal for a directive**

**Recital 9**

*Text proposed by the Commission*

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where **researchers have** lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining.

*Amendment*

(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 **there is** lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining. **Recognising the potential of text and data mining technologies in enabling new knowledge, innovation and discovery in all fields and the role that these technologies have towards the continuous development of the digital economy,**

*providing for an exception for reproductions and extractions of information to enable it to be submitted to text and data mining when there is lawful access becomes important. Access to[u1] information that is already normalised enables the rightholders to seek compensation but ought not preclude those who have lawful access to information to take it upon themselves to normalise it and themselves subject it to text and data mining analysis.*

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 7**

**Proposal for a directive**

**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9 a) Furthermore, there is widespread acknowledgment that access to normalised information in a format which enables it to be subjected to text and data mining can in particular benefit the research community in its entirety including to smaller research organisations especially when there is no lawful access to content, for example through subscriptions to publications or open access licences. In the Union, research organisations such as universities and research institutes are confronted with challenges to gain lawful access to the volume of digitally stored information required for new knowledge to be sought through the use of text and data mining.***

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 8**

#### **Proposal for a directive**

#### **Recital 10**

##### *Text proposed by the Commission*

(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.***

##### *Amendment*

(10) This legal uncertainty should be addressed by providing for a mandatory exception ***for research organisations to be provided with normalised information in a format that enables it to be text and data mined as long as this process is carried out by the research organisation. Rightholders may seek compensation related to the cost of the normalisation process. Research organisations should also benefit from the exception when they engage into public-private partnerships. These new exceptions*** 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.

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 9**

**Proposal for a directive**

**Recital 13**

*Text proposed by the Commission*

(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.**

*Amendment*

(13) There is **a** need to provide for compensation for rightholders as regards **the exception which provides research organisations who do not have lawful access to information, with access to normalised data suitable for text and data mining but only in so far as this compensation is proportionate to the cost of the normalisation of data process.**

Or. en



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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 10**

**Proposal for a directive**

**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13 a) Protection of rightholders against the use of datasets obtained only for the purpose of text and data mining is needed to ensure against abuse of the exception and obligation established in this Directive. Yet, in the field of scientific research availability of those datasets may be required beyond the finalisation of the text and data mining process for verifiability of research results. The retention of relevant datasets where it cannot be assured that the re-normalisation and repeated text and data mining process will produce identical results is to be regulated. For this purpose, Member States must have facilities for storing the relevant datasets to allow verifiability of research results that may become necessary at a later stage.***

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 11**

#### **Proposal for a directive**

#### **Recital 15**

##### *Text proposed by the Commission*

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used at all education levels, in particular to improve and enrich the learning experience. The exception or limitation provided for in this Directive should therefore benefit all **educational establishments in primary, secondary, vocational and higher education** to the extent **they pursue their educational activity for a non-commercial purpose. The organisational structure and the means of funding of an educational establishment are not the decisive factors to determine the non-commercial nature of the activity.**

##### *Amendment*

(15) While distance learning and cross-border education programmes are mostly developed at higher education level, digital tools and resources are increasingly used **in education** 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 **teaching activities provided by establishments irrespective of their organisational structure and means of funding** to the extent **that such establishments are either themselves recognised or accredited as educational establishments or offer an educational programme that is recognised or accredited by the relevant national authority** of the **Member State**.

Or. en

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Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## **Amendment 12**

### **Proposal for a directive**

#### **Recital 16**

*Text proposed by the Commission*

(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 specific accessibility needs of

*Amendment*

(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 ***establishments recognised or accredited by the relevant national authority as educational establishments or within an educational programme that is recognised or accredited by the relevant national authority of the Member State.*** The exception or limitation should cover both uses through digital means ***where the teaching activity is physically provided, including where it takes place outside the premises of the establishment,*** and online uses through the establishment's secure

persons with a disability in the context of illustration for teaching.

electronic network, 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.

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## **Amendment 13**

**Proposal for a directive**

**Recital 21**

*Text proposed by the Commission*

(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.

*Amendment*

(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 **or compulsory deposit.**

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 14**

**Proposal for a directive**

**Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25 a) Considering that variances between collective management practices across Member States and creative and cultural sectors exist, a solution needs to be provided for those instances where licencing mechanisms are not effective solutions. This could result from a lack of practice of collective licensing or where no collective management organisation has been able to achieve recognition in a Member State or for a sector. In such instances where licensing mechanisms are for whatever reason lacking, it is necessary to provide for an exception that allows cultural heritage institutions to make out of commerce works held in their collection available online on their own secure technology networks. Yet in doing so, it also becomes necessary to provide authors with the possibility to provide licenses or to form a collective management organisation as well as to involve them in the determination of***

***whether such licences are available or not. Rightholders may also object to the inclusion of their work on such secure technology networks.***

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## **Amendment 15**

### **Proposal for a directive**

#### **Recital 27**

*Text proposed by the Commission*

(27) As mass digitisation projects can entail significant investments by cultural heritage institutions, any licences granted under the mechanisms provided for in this Directive should not prevent them from generating reasonable revenues in order to **cover** the costs of the licence and the costs of digitising and disseminating the works and other subject-matter covered by the licence.

*Amendment*

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

Or. en



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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 16**

**Proposal for a directive**

**Recital 31**

*Text proposed by the Commission*

(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 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.

*Amendment*

(31) **An open internet and** a free and pluralist press **are** essential to ensure quality journalism and citizens' access to information. **They provide** 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 **establishing their standing for the purposes of asserting the rights they hold by law or by way of assignment, licence or any other contractual arrangement**. In the absence of recognition of publishers of press publications as **benefitting from a presumption that they can assert the rights in the different contributions to their press publications**, licensing and enforcement in the digital environment is often complex and inefficient.

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 17**

**Proposal for a directive**

**Recital 32**

*Text proposed by the Commission*

(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal 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.

*Amendment*

(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of ***a presumption that publishers of press publications are entitled to defend in their own name the rights of authors and seek remedies in respect of works published in their publication and*** in respect of digital uses.

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 18**

**Proposal for a directive**

**Recital 33**

*Text proposed by the Commission*

(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of ***hyperlinking which do not constitute communication to the public.***

*Amendment*

(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of ***a computation referencing or indexing system such as hyperlinking.***

Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 19**

**Proposal for a directive**

**Recital 34**

*Text proposed by the Commission*

*Amendment*

**(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights 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.**

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Or. en

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**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## **Amendment 20**

### **Proposal for a directive**

#### **Recital 38 – paragraph 1**

*Text proposed by the Commission*

Where information society service providers ***store and provide access to the public to copyright protected works or other subject-matter*** uploaded by their users, ***thereby going beyond the mere provision of physical facilities and performing an act of 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>34</sup>.

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

*Amendment*

Where information society service providers ***actively and directly involved in the making available of user uploaded content to the public and where this activity is not of a mere technical, automatic and passive nature*** they are obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability ***regimes*** provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council<sup>34</sup>.

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

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 21**

**Proposal for a directive**

**Recital 38 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***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.***

***delete  
d***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 22**

**Proposal for a directive**  
**Recital 38 – paragraph 3**

*Text proposed by the Commission*

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.**

*Amendment*

In order to ensure the functioning of any licensing agreement, information society service providers **actively and directly involved in the making available of user uploaded content to the public** should take appropriate and proportionate measures to ensure protection of works or other subject-matter.

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 23**

**Proposal for a directive**

**Recital 38 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***For the implementation of such measures, rightholders should provide service providers with accurately identified works or subject matter over which they consider to have rights in copyright. Rightholders retain responsibility for claims made by third parties over the use of works which they would have identified as being their own in the implementation of any agreement reached with the service provider.***

Or. en



07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

#### **Amendment 24**

**Proposal for a directive**

**Recital 39**

*Text proposed by the Commission*

(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 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

*Amendment*

(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 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 **accuracy** 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.

content covered by an agreement.

Or. en

# EUROPEAN PARLIAMENT

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Committee on Legal Affairs

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07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## **Amendment 25**

### **Proposal for a directive**

#### **Recital 41**

*Text proposed by the Commission*

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.

*Amendment*

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector, **as well as the significance of the contribution by authors and performers to the overall work or performance** should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements **and facilitate the design of standard reporting statements and procedures for each sector**. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency **and where collective bargaining agreements containing transparency obligations are in place the obligations of transparency shall be deemed to have been satisfied**. 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.

Or. en

# EUROPEAN PARLIAMENT

Committee on Legal Affairs

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## Amendment 26

### Proposal for a directive

#### Recital 42

*Text proposed by the Commission*

(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 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

*Amendment*

(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the **unanticipated** relevant **net** revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors. Where the parties do not agree on the

remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority.

Or. en

# EUROPEAN PARLIAMENT

Committee on Legal Affairs

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 27**

**Proposal for a directive**

**Article 1 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

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.

Or. en

*Justification*

*The subject of Article 13 of the proposed Directive is precisely information society service*

*providers and concerns the responsibilities they are expected to shoulder when implementing agreements contracted with rightholders in relation to the use of works protected by copyright. In this sense, Article 13 compliments the rules laid down in the Directive on electronic commerce. Legal clarity and certainty therefore requires this proposed Directive to indicate its complimentary role to the Directive on electronic commerce, hence the inclusion of a reference to it in this Article 1.2.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 28**

**Proposal for a directive**

**Article 2 – paragraph 3**

*Text proposed by the Commission*

(3) ‘cultural heritage institution’ means **a** publicly accessible **library or museum, an archive or a** film or audio heritage **institution**;

*Amendment*

(3) 'cultural heritage institution' means publicly accessible **libraries, educational establishments and museums, as well as archives, film or audio heritage institutions and public-service broadcasting organisations established in the Member States**;

Or. en

*Justification*

*Union law already provides for a definition of ‘cultural heritage institutions’ in the Orphan Works Directive in recitals 1 and 23, and Articles 1(1) and 2(a)(b), as well as in the InfoSoc Directive in article 5(2)(c). Consistency in the definition of these institutions is needed for legal certainty.*



07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 29**

**Proposal for a directive**

**Article 2 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4 a) 'teaching activity means an educational process taking place either (i) on the premises of an establishment recognised or accredited by the relevant national authority as an educational establishment or (ii) within the framework of an education programme recognised or accredited by the relevant national authority;***

Or. en

*Justification*

*Defining 'teaching activity' provides the exception contained in Article 4 with clarity.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 30**

**Proposal for a directive**

**Article 2 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4 b) 'out of commerce work' means when a whole work, in all its versions and manifestations is no longer commercially available in customary channels of commerce and cannot be reasonably expected to become so in all its versions and manifestations. Out of commerce works include both works that have previously been available commercially and works that have never been commercially available.***

Or. en

*Justification*

*The definition of out of commerce works has been moved to the article on definitions and reflects the same definition already used by the Commission and rightholders.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 31**

#### **Proposal for a directive**

#### **Article 3 – paragraph 1**

*Text proposed by the Commission*

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**.

*Amendment*

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 **to be made by a person who has lawful access to works and other subject matter provided that reproduction or extraction is used** for the **sole purpose of text and data mining**.

Or. en

#### *Justification*

*Text and data mining allows for the reading and analysis of large amounts of digitally stored information to gain new knowledge and discover new trends. For text and data mining to occur one first needs to access information and then to reproduce that information. It is generally only after that information is normalised that its processing through text and data mining can occur. Once there is lawful access to information, it is when that information is being normalised that a copyright protected use takes place since this leads to a reproduction by changing the format of the information itself or an extraction from a database into one that can be subjected to text and data mining. The copyright relevant processes in the use of text and data mining technology is*

*consequently not the text and data mining process itself which consists of a reading and analysis of digitally stored normalised information, but the process of access and the process by which information is normalised to enable its automated computational analysis.*

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Committee on Legal Affairs

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**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 32**

**Proposal for a directive**

**Article 3 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1 a. Member States shall provide for an obligation on rightholders who market works or other subject matter primarily for research purposes to provide research organisations not having lawful access to those works or other subject matter with datasets that enable them to carry out text and data mining only. Member States may also provide for rightholders a right to request compensation in fulfilling this obligation as long as that compensation is related to the cost of formatting these datasets.**

Or. en

*Justification*

*The process of access to information be it works or other subject matter protected by copyright is already regulated in the copyright related acquis. In this respect therefore the exception that is required is to address the reproduction or extraction done in the normalisation process of the data. Where those with lawful access to data undertake the process of normalisation of that data for the purpose of subjecting that emerging reproduction or extraction, the prejudice to publishers is minimal on the basis of lawful access. Where however the already normalised data*

*sets are provided from the publishers, compensation may be levied by the publishers to cover the cost of that process.*

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**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

## Amendment 33

**Proposal for a directive**

**Article 3 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4 a. Member States shall designate a facility to securely store datasets used in research by text and data mining technologies and to make such datasets accessible for verification purposes only.**

Or. en

### *Justification*

*At the same time, research organisations often face challenges in obtaining access to the multitude of scientific publications that are required for research to be undertaken through the text and data mining process. In these cases, the research organisations would not have access to such publications and consequently are unable to normalise the data. To facilitate innovation and research for such organisations, publishers are obliged to provide research organisations with the normalised datasets but may seek compensation relative to the costs of undertaking the normalisation process. The possible abuse of datasets being used for other purposes is to be addressed while taking into consideration that for research it is often important that the underlying datasets upon which conclusions are reached remain subject to verification. For this purpose, Member States should set up storage facilities of these datasets access to which is limited to verification of the research.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 34**

**Proposal for a directive**

**Article 4 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

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 **education** purpose to be achieved, provided that the use:

Or. en



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**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 35**

**Proposal for a directive**

**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) ***takes place on the premises of an educational establishment or through a secure electronic network accessible only by the educational establishment's pupils or students and teaching staff;***

*Amendment*

(a) ***is restricted to the specifically limited circle of those taking part in the teaching activity such as pupils or students and teaching staff;***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 36**

**Proposal for a directive**

**Article 4 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

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.**

*Amendment*

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 **licence agreements** authorising the acts described in paragraph 1 **exist and are tailored to the needs and specificities of educational establishments**

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 37**

**Proposal for a directive**

**Article 4 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

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.

*Amendment*

Member States availing themselves of the provision of the first subparagraph shall take the necessary measures to ensure appropriate availability, **accessibility** and visibility of the **licence agreements** authorising the acts described in paragraph 1 for educational establishments.

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 38**

**Proposal for a directive**

**Article 4 – paragraph 2 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***No sooner than three years after the entry into force of this Directive, and in consultation with all stakeholders, the Commission shall report on the availability of such licence agreements, with a view of proposing improvements if needed.***

Or. en

*Justification*

*Education is a lifelong learning process. This places the responsibility of education on establishments which are not necessarily the traditional schooling premises. Educational programmes are offered by schools, universities, private tuition organisations, NGOs, and other structures. What is important is not who is offering the education but that the use of copyrighted material for illustration in teaching is limited to truly education activities and programmes. Member States have put in place systems which accredit or provide recognition to educational establishments as well as to the programmes of studies that are provided. An exception for illustration in teaching needs to cover everything that happens in formal schooling as school/university structures, as structures recognised or accredited by Member States as educational establishments. But such an exception is also needed to cover that education that is given outside formal school structures formally recognised as educational establishments but which education (as programmes) is accredited with the national authority. The exception is*

*about teaching and not about educational establishments and therefore making the exception on teaching subject to the venue where that teaching takes place is out of sync with the education concept of lifelong learning. For this purpose, I am proposing a definition of 'teaching activities' to include different teaching frameworks. Where however teaching, even if accredited or recognised by the national authority, is run on business commercial basis, Member States may choose to impose an obligation of compensation for use of materials. Several Member States have already put in place systems and structures implementing an exception or limitation for illustration for teaching including licensing agreement structures.*

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**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 39**

**Proposal for a directive**

**Article 7 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1 a. Member States shall provide for an exception to the rights provided for in Article 2 and 3 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC, Article 4(1) of Directive 2009/24/EC, and Article 11(1) of this Directive, permitting cultural heritage institutions, to make copies of out of commerce works that are permanently located in their collections available on their own secure electronic network for non-commercial purposes, provided that the name of the author or any other identifiable rightholder is indicated, unless such indication turns out to be impossible.**

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 40**

**Proposal for a directive**

**Article 7 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**1 b. Provided that all rightholders may at any time object to their works or other subject-matter being deemed to be out of commerce and exclude their works from being made available on the secure electronic network of the cultural heritage institution.**

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 41**

**Proposal for a directive**

**Article 7 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1 c. Member States may provide that the exception adopted pursuant to paragraph 1a does not apply generally or as regards specific types of works or other subject matter, to the extent that the non- exclusive licences provided for in paragraph 1 are or can reasonably be expected to become available.***

Or. en



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**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 42**

**Proposal for a directive**

**Article 7 – paragraph 1 d (new)**

*Text proposed by the Commission*

*Amendment*

**1 d. Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, determine the availability of such licencing based solutions.**

Or. en

*Justification*

*Having recognised the importance of preserving works and other subject matter permanently held in the collections of cultural heritage institutions, and having recognised the need to facilitate non-exclusive licencing through collective management organisations to enable the distribution through closed and secure portals for cultural non-commercial purposes, it becomes important to establish a solution for those works and sectors for which the availability of licencing is lacking. Yet in doing so, it also becomes necessary to provide for the possibility to provide such licenses as well as to involve them in the determination of whether such licences are available or not. Rightholders may also object to the inclusion of their work on such secure portals.*

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**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 43**

**Proposal for a directive**

**Article 7 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***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.***

***delete  
d***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

#### **Amendment 44**

**Proposal for a directive**

**Article 7 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

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 out of commerce.

*Amendment*

Member States shall, in consultation with rightholders, collective management organisations and cultural heritage institutions, ensure that the requirements used to determine whether works and other subject-matter can be licensed in accordance with paragraph 1 **or used in accordance with paragraph 1a** do not extend beyond what is necessary and reasonable and do not preclude the possibility to determine the out-of-commerce status of a collection as a whole, when it is reasonable to presume that all works or other subject-matter in the collection are out of commerce.

Or. en

*Justification*

*The definition has been moved to article 2 as the definition article. A reference to paragraph 1a becomes necessary to ensure that rightholders are involved even in the determination of necessary and reasonable requirements for determining whether they can fall within the exceptions provided for.*



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**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 45**

**Proposal for a directive**

**Article 7 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. Member States shall provide that **appropriate** publicity measures are taken regarding:

*Amendment*

3. Member States shall provide that **effective and verifiable** publicity measures are taken regarding:

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 46**

**Proposal for a directive**

**Article 7 – paragraph 3 – point c – paragraph 1**

*Text proposed by the Commission*

the possibility of rightholders to object,  
referred to in point (c) of paragraph **1**;

*Amendment*

the possibility of rightholders to object,  
referred to in point (c) of paragraph  
**1 and in the proviso to paragraph 1a**;

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 47**

**Proposal for a directive**

**Article 7 – paragraph 3 – point c – paragraph 2**

*Text proposed by the Commission*

including during a **reasonable** period of **time** before the works or other subject-matter are digitised, distributed, communicated to the public or made available.

*Amendment*

including during a period of **six months** before the works or other subject-matter are digitised, distributed, communicated to the public or made available.

Or. en

*Justification*

*To bring in line with amendments carried out to previous paragraphs and to bring in line with ECJ judgment.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 48**

**Proposal for a directive**

**Article 7 – paragraph 5**

*Text proposed by the Commission*

5. Paragraphs 1, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.

*Amendment*

5. Paragraphs 1, **1a, 1b, 1c**, 2 and 3 shall not apply to the works or other subject-matter of third country nationals except where points (a) and (b) of paragraph 4 apply.

Or. en



07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 49**

**Proposal for a directive**

**Article 8 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

- 1.** Works or other subject-matter covered by a licence granted in accordance with **paragraph 1 of** Article 7 may be used by the cultural heritage institution in accordance with the terms of the licence in all Member States. ***Works or other matter covered by the use in accordance with paragraph 1a of Article 7 may be used by the cultural heritage institution in all Member States.***

Or. en

*Justification*

*To reflect the amendments carried out in article 7 as well as provide wider possibility of access to the portal through which information on licences can be accessed.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 50**

#### **Proposal for a directive**

#### **Article 8 – paragraph 2**

##### *Text proposed by the Commission*

2. Member States shall ensure that information that allows the identification of the works or other subject-matter covered by a licence granted in accordance with Article 7 and information about the possibility of rightholders to object referred to in **Article 7(1)(c)** are made publicly accessible in a single online portal for at least six months before the works or 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.

##### *Amendment*

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(1) or Article 7(1a)** and information about the possibility of rightholders to object referred to in **the mentioned articles** are made publicly accessible in a single online **publicly accessible** 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.

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 51**

**Proposal for a directive**

**Article 8 – paragraph 3**

*Text proposed by the Commission*

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.

*Amendment*

3. The portal referred to in paragraph **1a** shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 52**

#### **Proposal for a directive Article 9 – paragraph 1**

##### *Text proposed by the Commission*

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1), ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7(2).

##### *Amendment*

Member States shall ensure a regular dialogue between representative users' and rightholders' organisations, and any other relevant stakeholder organisations, to, on a sector-specific basis, foster the relevance and usability of the licensing mechanisms referred to in Article 7(1) **and the functioning of the exception referred to in Article 7(1a)**, ensure the effectiveness of the safeguards for rightholders referred to in this Chapter, notably as regards publicity measures, and, where applicable, assist in the establishment of the requirements referred to in the second subparagraph of Article 7 (2)

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 53**

#### **Proposal for a directive**

#### **Article 11 – paragraph 1**

##### *Text proposed by the Commission*

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.

##### *Amendment*

1. Member States shall provide publishers of press publications with **a presumption of representation of authors of literary works contained therein and the legal capacity to sue in their own name when defending the rights of such authors** for the digital use of their press publications.

Or. en

##### *Justification*

*Press publishers do face challenges in the digitalisation process of business and consumer habits. Digitalisation makes it easier for content found in press publications to be copied or taken. Digitalisation also facilitates access to news and press by providing digital users a referencing or indexing system that leads them to a wide range of news and press. Both processes need to be recognised as separate processes. Using digital technology to copy and make one's own news and press content that is created by others, is clearly disproportionately harmful to the financial interests of press publishers. Using digital technology to facilitate the finding of news and press published in press publications is not necessarily disproportionately harmful to the financial interests of press publishers and in some cases it is these linking or referencing systems (such as hyperlinks) that facilitate the finding by users of news online portals. It is important that the challenges which press publishers face in enforcing the*

*derivative rights upon which they depend to protect the investment made in their publication are addressed in a manner that while strengthening the position of press publishers the measure taken does not disrupt other industries. For this purpose, press publishers are given the right to bring proceedings in their own name before tribunals against infringers of the rights held by the authors of the works contained in their press publication. Within this context it is also important to consider that plurality of news and opinions and wide access to these news and opinions is important for public debate in a democratic society. Similarly, non-commercial sharing of such news or opinions is also important in modern democratic societies.*

# EUROPEAN PARLIAMENT

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*Committee on Legal Affairs*

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07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 54**

**Proposal for a directive**

**Article 11 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1 a. Paragraph 1 shall not apply to criminal procedures.**

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 55**

**Proposal for a directive**

**Article 11 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 56**

**Proposal for a directive**

**Article 11 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**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.**

***delete  
d***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 57**

**Proposal for a directive**

**Article 13 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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1. Information society service providers ***actively and directly involved in the making available to the public of user uploaded content and where this activity is not of a mere technical, automatic and passive nature*** shall ***take*** appropriate and proportionate ***measures to ensure*** the functioning ***of agreements concluded with rightholders for the use of their*** works.

Or. en

## Justification

*The liability of platforms is already established in Directive 2000/31/EC and Article 13 is of a complimentary nature to the regimes already established in Directive 2000/13EC to the extent that Article 13 seeks to ensure the effective implementation of agreements concluded between online service providers and rightholders for the use of works. In doing so, the text needs to provide clarity as to which online service providers it is referring to and in doing so legal clarity and certainty requires the use of the same classifications of service providers already established under Directive 2000/13/EC to be used. Implementation of agreements concluded between service providers and rightholders may be carried out through technological measures which however must be respectful of the copyright acquis in its entirety thereby not only respectful of the rights in copyright but also of the exceptions and limitations to copyright. The implementation of such measures requires the correct identification of works by rightholders as being their own or under a licence to them. Consequently while service providers are in a position to be responsible for the functioning of measures operated, rightholders remain liable in the assertion of their rights over works.*

# EUROPEAN PARLIAMENT

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Committee on Legal Affairs

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07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 58**

**Proposal for a directive**

**Article 13 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1 a. For this purpose, rightholders shall provide service providers with accurately identified works or subject matter over which they enjoy rights. The service providers shall inform rightholders of the measures employed and the accuracy of their functioning as well as, when relevant, periodically report on the recognition and use of the works and other subject-matter.**

Or. en

*Justification*

*Transparency in the implementation of the measures adopted by service providers are connected to the management by rightholders of their rights in copyright transparency. The process cannot underestimate the effects of the identification of user uploaded content which falls within an exception or limitation to copyright. To ensure the continued use of such exceptions and limitations, which are based on public interest concerns, communication between users and rightholders needs to be efficient. The application of such obligations to only those platforms who have large amounts of information creates more uncertainty, since there is no verifiable way of defining what amounts to large amounts especially when even start ups require large amounts of data to be able to start participating and contributing to the digital economy.*





# EUROPEAN PARLIAMENT

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Committee on Legal Affairs

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07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 59**

**Proposal for a directive**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**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.**

***delete***  
***d***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 60**

**Proposal for a directive**

**Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2 a. The measures referred to in paragraph 1 shall be implemented without prejudice to the use of works made within an exception or limitation to copyright. To this effect, Member States shall ensure that users are allowed to communicate rapidly and in an effective manner with the rightholders who have requested the measures referred to in paragraph 1 in order to challenge the application of those measures.**

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 61**

**Proposal for a directive**

**Article 13 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2 b. Member States shall ensure that national law provides users with access to a court or relevant authority for the assertion of the right of use under an exception or limitation.**

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 62**

#### **Proposal for a directive Article 13 – paragraph 3**

##### *Text proposed by the Commission*

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, *such as* appropriate and proportionate **content recognition technologies**, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

##### *Amendment*

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices **for the implementation of** appropriate and proportionate **measures**, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

### **Amendment 63**

**Proposal for a directive**

**Article 14 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.

*Amendment*

1. Member States shall ensure that authors and performers ***who are in a contractual relationship where there are ongoing payment obligations***, receive on a regular basis and taking into account the specificities of each sector, timely, adequate, ***accurate*** 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, ***modes of promotion***, revenues generated and remuneration due.

Or. en

*Justification*

*The amendments are proposed to provide further clarity and legal certainty.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 64**

**Proposal for a directive**

**Article 15 – paragraph 1**

*Text proposed by the Commission*

Member States shall ensure that authors and performers are entitled to ***request additional, appropriate*** remuneration ***from the party with whom they entered into a contract*** for the exploitation of ***the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.***

*Amendment*

Member States shall ensure that authors and performers are entitled to ***equitable*** remuneration for the exploitation of ***their*** works.

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 65**

**Proposal for a directive**

**Article 15 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall ensure that authors and performers or their representative organisations are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the unanticipated subsequent relevant net revenues and benefits derived from the exploitation of the works or performances.***

Or. en

*Justification*

*Authors and performers are at the centre of creativity yet often face challenges of making a livelihood and also face challenges to negotiate their rights. Recognising their right to an equitable remuneration for the exploitation of their works as well as the possibility of appointing representatives to seek contract adjustment on their behalf are means of empowering authors and performers without creating an unreasonable claim on the investment done by others.*

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 66**

**Proposal for a directive**

**Article 16 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Proceedings in respect of a dispute may also be brought on behalf of authors and performers by their representative organisations as appointed by them.***

Or. en

*Justification*

*Authors and performers often face challenges in initiating disputes with other rightholders. The possibility allowing their representatives to initiate proceedings on their behalf facilitates such processes.*



07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 67**

**Proposal for a directive**

**Article 17 – paragraph 1 – point a**

Directive 96/9/EC

Article 6(2) point (b)

*Text proposed by the Commission*

(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];

*Amendment*

(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 ***that the use is restricted to the specifically limited circule of those taking part in the teaching activity***, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 68**

**Proposal for a directive**

**Article 17 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(a a) In Article 6(3), point (e) is to be added as follows:***

***"(e) in the case of reproduction or extraction from a database for the sole purpose of text and data mining as provided for in Directive [this Directive];"***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 69**

**Proposal for a directive**

**Article 17 – paragraph 1 – point b**

Directive 96/9/EC

Article 9, point (e)

*Text proposed by the Commission*

(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];

*Amendment*

(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 ***that the use is restricted to the specifically limited circle of those taking part in the teaching activity***, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];"

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 70**

**Proposal for a directive**

**Article 17 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(b a) In Article 9, point (d) is to be added as follows:***

***"(d) in the case of reproduction or extraction from a database for the sole purpose of text and data mining as provided for in Directive [this Directive];"***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 71**

**Proposal for a directive**

**Article 17 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(a a) In Article 5(2), point (f) is to be added as follows:***

***"(f) in the case of reproductions of works or other subject matter for the sole purpose of text and data mining as provided for in Directive [this Directive];"***

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 72**

**Proposal for a directive**

**Article 17 – paragraph 2 – point b**

Directive 2001/29/EC

Article 5 (3) point (a)

*Text proposed by the Commission*

(a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent ***justified by the non-commercial purpose to be achieved***, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];

*Amendment*

(a) ***"(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 ***that the use is restricted to the specifically limited circule of those taking part in the teaching activity***, without prejudice to the exceptions and the limitation provided for in Directive [this Directive];

Or. en

07/03/2017

**Therese Comodini Cachia**

Copyright in the Digital Single Market

**Proposal for a directive** COM(2016)0593 - C8-0383/2016 – 2016/0280(COD)

**Amendment 73**

**Proposal for a directive**  
**Article 18 – paragraph 2**

*Text proposed by the Commission*

2. The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)].

*Amendment*

2. The provisions of Article 11 shall also apply to press publications published before [the date mentioned in Article 21(1)] **but only in so far as uses of works contained in press publications are made after (the date mentioned in Article 21(1)).**

Or. en

### *Justification*

*The application of new rights established in this Directive to uses carried out in the past would unjustly apply a new law which was not foreseeable with certainty. However the application of such new right to uses of works contained in press publications published even prior to the coming into force of this Directive but which uses are made after the coming into force of this new right is foreseeable and in accordance with law.*