



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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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 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’²⁶, 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’²⁶, 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-

EUROPEAN PARLIAMENT

Committee on Legal Affairs

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 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 Council²⁷, Directive 2001/29/EC of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹ **and** Directive 2014/26/EU of the European Parliament and of the Council³².

Amendment

(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 Council²⁷, Directive 2001/29/EC of the European Parliament and of the Council²⁸, Directive 2006/115/EC of the European Parliament and of the Council²⁹, Directive 2009/24/EC of the European Parliament and of the Council³⁰, Directive 2012/28/EU of the European Parliament and of the Council³¹, Directive 2014/26/EU of the European Parliament and of the Council³² **and Directive 2000/31/EC of the European Parliament and of the Council³³**

[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

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 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,

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 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

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

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

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 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

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 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

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 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

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 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

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

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 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

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 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

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 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 Council³⁴.

³⁴ 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 Council³⁴.

³⁴ 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).

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 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

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 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

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 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.

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

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.

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 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.

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 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

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 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

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 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.

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 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

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 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

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.

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 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

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 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.

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 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.

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 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

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 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.

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 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.

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 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

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 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

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 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

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 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.*

deleted

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 2000/13/EC 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

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 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

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 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

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 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

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 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.

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 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

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 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

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 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 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