



2016/0280(COD)

AMENDMENTS TABLED BY 50 MEPS FROM ALDE, S&D, EPP AND ECR

Amendment 1

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 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**

*Amendment*

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or **any other type of** data, generally known as text and data mining. Those technologies allow **the processing of** large amounts of **digitally stored** 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, **individuals, public and private entities who have legal access to content** 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 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

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.*

be required from rightholders. *No authorisation would be required in cases where text or data mining is* carried out in relation to mere facts or data which are not protected by copyright. *The right to read is in effect the same as the right to mine.*

## Amendment 2

### 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 *text and data mining* technologies *which are relevant far beyond the area of* scientific research. Moreover, where access to content *has been lawfully obtained*, 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 *and its action lines envisaged in the European Open Science Agenda* will suffer unless steps are taken to address the legal uncertainty *regarding text and data mining for all potential users. It is necessary that Union law acknowledge that* text and data mining *is increasingly used beyond formal research organisations and for purposes other than scientific research which nevertheless contribute to innovation, technology transfer and the public interest.*

### Amendment 3

#### 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 purpose of asserting the rights they hold by law or by means of assignment, licence or any other contractual arrangement. The sustainability of the press publishing industry should therefore be ensured.*** 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

### Amendment 4

#### 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

*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.

Union law, of rights related to copyright for the reproduction and making available to the public of 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 press publication and*** in respect of digital uses.

## Amendment 5

### 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.**

## Amendment 6

### Proposal for a directive Recital 34

*Text proposed by the Commission*

(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.

*Amendment*

*Deleted*

## Amendment 7

### Proposal for a directive Recital 37

*Text proposed by the Commission*

(37) ***Over the last years, the functioning of the online content marketplace has gained in complexity. Online services providing access to copyright protected content uploaded by their users without the involvement of right holders have flourished and have become main sources of access to content online. This affects rightholders' possibilities to determine whether, and under which conditions, their work and other subject-matter are used as well as their possibilities to get an appropriate remuneration for it.***

*Amendment*

(37) ***Evolution of digital technologies has led to the emergence of new business models and reinforced the role of the Internet as the main marketplace for the distribution of copyright protected content. Over the years, online services enabling their users to upload works and make them accessible to the public have flourished and have become important sources of access to content online, allowing for diversity and ease of access to content but also generating challenges when copyright protected content is uploaded without prior authorisation from rightholders.***

***(37a) Today more creative content is being consumed than ever before. That is facilitated by online platforms and aggregation services. They are a means of***

*providing wider access to cultural and creative works and offer great opportunities for cultural and creative industries to develop new business models. At the same time, artists and authors have struggled to see comparable increases in revenues from this increase in consumption.*

## Amendment 8

### 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.

*Amendment*

Where information society service providers *offer users content storage services* and provide the public *with access to phonograms, broadcasts, films or musical works and where such activity constitutes an act of communication to the public as interpreted by the Court of Justice of the European Union thereby playing an active role beyond the mere hosting of uploaded works by its users*, they *should be* obliged to conclude licensing agreements with rightholders *as regards copyright protected works or other subject-matter. However, micro and small-sized enterprises within the meaning of the Commission Recommendation 2003/361/EC as well as services acting in a non-commercial capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all rightholders concerned, such as educational or scientific repositories and similar services, shall not be considered online content sharing service providers within the meaning of this Directive. Providers of cloud services for individual use which do not provide direct access to the public, open source software development platforms, software archives and software repositories, and online*

*marketplaces, as defined in point (17) of Article 4 of Directive (EU) 2016/1148, shall not be considered online content sharing service providers within the meaning of this Directive.*

## Amendment 9

### Proposal for a directive Recital 38 – paragraph 2

*Text proposed by the Commission*

*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.*

*Amendment*

*deleted*

## Amendment 10

### 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 **playing an essential role and thereby going beyond a mere provision of physical or virtual infrastructure for enabling or making a communication to the public with the purpose to make protected phonograms, broadcasts, films or musical works available to the users**, should take appropriate and proportionate measures to ensure protection of works or other subject-matter. *Such measures should respect the Charter of Fundamental Rights of the European Union and should not lead to general monitoring of the information which they store.*

## Amendment 11

### Proposal for a directive Recital 38 a (new)

*Text proposed by the Commission*

*Amendment*

***(38a) For the implementation of such measures, the cooperation between information society service providers and rightholders is essential. Rightholders should accurately identify to information society service providers the works or other subject-matter in respect of which they claim to have the copyright. Rightholders should 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 information society service provider.***

## Amendment 12

### Proposal for a directive Recital 39

*Text proposed by the Commission*

*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***

***deleted***



*success rate for the recognition of rightholders' content. Those technologies should also allow rightholders to get information from the information society service providers on the use of their content covered by an agreement.*

### **Amendment 13**

#### **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.

### **Amendment 14**

#### **Proposal for a directive Article 2 – paragraph 1 – point 4b (new)**

*Text proposed by the Commission*

*Amendment*

**(4b) ‘online content sharing service provider’ means a provider of an information society service provided to consumers, one of the main purposes of which is to store and give access to the public to broadcasts, phonograms, films or musical works, or other audiovisual or music protected subject-matter uploaded by its users, that intervenes to give access to a protected work to its customers beyond a mere provision of physical or virtual infrastructure for enabling or making a communication to the public.**

**Micro and small-sized enterprises within**

**the meaning of the Commission Recommendation 2003/361/EC as well as services acting in a non-commercial purpose capacity such as online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all rightholders concerned, such as educational or scientific repositories, should not be considered online content sharing service providers within the meaning of this Directive. Providers of cloud services for individual use which do not provide direct access to the public, open source software development platforms, software archives and software repositories, and online marketplaces , as defined in point (17) of Article 4 of Directive (EU) 2016/1148, should not be considered online content sharing service providers within the meaning of this Directive;**

## **Amendment 15**

### **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 of works or other subject matter **that are made in order to carry out text and data mining and** to which **the beneficiary has** lawful access

## Amendment 16

### Proposal for a directive Article 3 – paragraph 1a

*Text proposed by the Commission*

*Amendment*

**1a. Reproductions and extractions made for text and data mining purposes shall be stored in a secure manner, for example by trusted bodies appointed for this purpose.**

## Amendment 17

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

*Text proposed by the Commission*

*Amendment*

3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

**3. Any technical protection measures that frustrate the exception provided for in paragraph 1 shall be unenforceable.**

## Amendment 18

### Proposal for a directive Article 5 a (new)

*Text proposed by the Commission*

*Amendment*

*Article 5 a*

*Freedom of panorama*

***Member States shall provide for an exception or limitation to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC and point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, permitting the reproduction and***

*use of works, such as works of architecture or sculpture, made to be located permanently in public places.*

*Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.*

## **Amendment 19**

### **Proposal for a directive Article 5 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 5b**

##### ***User-generated content exception***

**(1) Member States shall provide for an exception to the rights provided for in Articles 2 and 3 of Directive 2001/29/EC, point (a) of Article 5 and Article 7(1) of Directive 96/9/EC, point (a) of Article 4(1) of Directive 2009/24/EC and Article 11 of this Directive in order to allow for the use of extracts from pre-existing works and other subject-matter in content uploaded or made available by users, other than in the course of their work, for purposes such as criticism, review, illustration, caricature, parody or pastiche, provided that the extracts:**

**(a) relate to works or other subject-matter that have been lawfully made available to the public;**

**(b) are accompanied by the indication of the source, including the author's name, unless this turns out to be impossible; and**

**(c) are used in accordance with fair practice and in a manner that does not extend beyond the specific purpose for which they are being used.**

**(2) Any contractual provision contrary to the exception provided for in this Article shall be unenforceable.**

**(3) Online content sharing services providers shall not be able invoke for their benefit the exception provided for in paragraph 1 of this Article in order to limit their liability or the extent of their obligations under the agreements concluded with rightholders in application of Article 13 of this Directive**

## Amendment 20

### 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 **that, in the absence of proof to the contrary, the publisher of a press publication shall be regarded as the party entitled to conclude licences and to seek application of the measures, procedures and remedies referred to in Directive 2004/48/EC and in Article 8 of Directive 2001/29/EC in respect of the rights provided** for in Article 2 and 3(2) of Directive 2001/29/EC, concerning the digital use of the works and other subject-matter incorporated in such a press publication, provided that the name of the publisher appears on the publication. *Member States shall ensure that technical rules that are implemented by a rightholder through universally used and acknowledged robot exclusion protocols, which define parameters for crawling, indexing and displaying of works and other subject-matter by information service providers, are legally binding for such service providers.*

## Amendment 21

### Proposal for a directive Article 11 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. The presumption provided for in paragraph 1 shall not affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject matter incorporated in a press publication. Press publishers shall not invoke the presumption against the authors and other rightholders and, in particular, shall not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which such works and other subject-matter are incorporated.**

## Amendment 22

### Proposal for a directive Article 11 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.**

*Deleted*

## Amendment 23

### 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**

*Deleted*

*first day of January of the year following the date of publication.*

## **Amendment 24**

### **Proposal for a directive Title IV – Chapter 2 – title**

*Text proposed by the Commission*

13. Certain uses of protected content **by** online *services*

*Amendment*

13. Use of protected content by **online content sharing service providers**

***-1 Without prejudice of Art. 3 (1) and (2) of the Directive 2001/29/EC online content sharing service providers perform an act of communication to the public when they store phonograms, broadcasts, films or musical works uploaded by their users and play an active role, including by optimising the presentation of such uploaded works or promoting them, allowing them to have knowledge of the content or control of the user uploads. Licensing agreements concluded by the online content sharing service providers with rightholders shall cover the liability for works uploaded by the users of their services, provided that those users do not act for commercial purposes or are not the rightholder or his representative***

## **Amendment 25**

### **Proposal for a directive Article 13 – paragraph 1**

*Text proposed by the Commission*

1. Information society service providers ***that store*** and provide ***to*** the public access to ***large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take*** measures to ensure the functioning of agreements concluded with

*Amendment*

***1. Online content sharing service providers referred to in Article 2 shall, in cooperation with rightholders, take appropriate and proportionate measures to ensure the functioning of licensing agreements where concluded with rightholders for the use of their works or***

rightholders *for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.*

*other subject-matter on those services.*

*1a. Member States shall ensure that the online content sharing service providers referred to in paragraph -1 shall apply the measures referred to in paragraph 1 based on the relevant information provided by rightholders.*

*The online content sharing service providers shall be transparent towards the concerned rightholders and its users and shall inform both rightholders and its users of the measures employed, their implementation, as well as when relevant, shall periodically report on the use of the works and other subject-matter.*

**1b. Members States shall ensure that the implementation of such measures shall ensure a fair balance is struck between the various fundamental rights protected by the Community legal order and shall not lead to general monitoring by online content sharing service providers of the information which they transmit or store.**

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

*2. To prevent misuses or limitations in the exercise of exceptions and limitations to copyright, Member States shall ensure that the service providers referred to in paragraph 1 put in place effective and*



*measures* referred to in paragraph 1.

*expeditious* complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1. ***Any complaint filed under such mechanisms shall be processed without undue delay and be subject to human review by a trusted third party designated by the Member States. Liability shall be incurred for any unjustified use of the measures referred to in paragraph 1, and dismissal of complaints should be motivated.***

*Moreover, in accordance with Regulation (UE) 2016/679 and Directive 2002/58/EC, the measures referred to in paragraph 1 shall not require the identification of individual users and the processing of their personal data.*

*Member States shall also ensure that, in the context of the application of the measures referred to in paragraph 1, users have access to a court or other relevant judicial authority to assert the use of an exception or limitation to copyright.*

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

3. Member States shall facilitate, where appropriate, the cooperation between the ***online content sharing*** service providers, *users* and rightholders through stakeholder dialogues to define best practices ***for the implementation of the measures referred to in paragraph 1 in a manner that is proportionate and efficient,*** taking into account, among others, the nature of the services, the availability of technologies and their effectiveness in light of technological developments.

## **Amendment 26**

### **Proposal for a directive**

Article 13 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 13a***

***Member States shall provide that disputes between successors in title and information society services regarding the application of Article 13(1) may be subject to an alternative dispute resolution system.***

***Member States shall establish or designate an impartial body with the necessary expertise, with the aim of helping the parties to settle their disputes under this system.***

***The Member States shall inform the Commission of the establishment of this body no later than (date mentioned in Article 21(1)).***