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Procedure for tk whistleblowing rules – thyssenkrupp Group Services Gdańsk Sp. z o.o.

GSG.LEX.04

Version 2.0

thyssenkrupp

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Procedure for tk whistleblowing rules – thyssenkrupp Group Services Gdańsk Sp. z o.o.

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1.0	Monika Gryga	Original Approved Internal reporting procedure for tk GSG	15.10.2024
2.0	Monika Gryga	Updated Approved Internal reporting procedure for tk GSG	01.10.2025

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Introduction

At thyssenkrupp ("**tk**") integrity, compliance with the law and internal regulations are of highest priority. To ensure that these values are upheld and potential risks arising from violations are avoided or minimized, it is crucial that misconduct is identified, clarified, and remedied at an early stage. To this end, tk encourages you to report suspected misconduct. Every indication of a potential misconduct are treated seriously and lead to an investigation following an objective and transparent process without any bias.

Individuals who report misconduct to thyssenkrupp Group Services Gdańsk Sp. z o.o. are now additionally protected by the Polish Act on Protection of Whistleblowers dated 14 June 2024 (officially published in the Polish Journal of Laws No. 2024, item 928) (*Ustawa z 14 czerwca 2024 r. o ochronie sygnalistów, Dz.u. 2024.928*) ("**Whistleblowing Act**") transposed the Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019 on the protection of persons who report breaches of EU or Polish laws.

Below we present the Internal Whistleblowing Procedure adopted by thyssenkrupp Group Services Gdańsk Sp. z o.o. implements requirements of the Whistleblowing Act. The Procedure explains what irregularities can be reported internally to tk under protection of the Whistleblowing Act, and how they will be processed.

Scope

1. Who can inform about a violation?

The whistleblower is any natural person who submits a report or makes a public disclosure of information on violations acquired in the context of his or her work. This includes but is not limited to:

- staff with an employment relationship
- self-employed workers
- freelancers and consultants, suppliers, customers
- volunteers and trainees
- shareholders or owners of company shares persons with administrative, management, supervisory or representative functions

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- any person working for or under the supervision and direction of contractors, subcontractors and suppliers.

2. What can be reported?

This procedure protects whistleblowers who report violations concerning issues listed in the Whistleblowing Act[1] and any violations of the Polish Penal Code.

Even indications or suspicions of violations can be reported and will be treated seriously. Therefore, in this document "violations" will refer to both actual and potential violations.

3. Who is responsible for the whistleblower system?

The Board of Directors has appointed its Compliance Manager of thyssenkrupp Group Services Gdańsk Sp. z o.o. as the responsible for the internal whistleblowing system and procedure ("System Manager"). The System Manager safeguards that all requirements of the Whistleblowing Act. The System Manager guarantees impartiality, is independent, is not bound by instructions and is sworn to secrecy. The System Manager oversees verification of whistleblowing reports and recommends adequate measures. The System Manager may use expertise and assistance of tk Group functions tasked with investigating irregularities (**CO/L&C-INV** unit) and internal audits (**CO/AUD** unit). CO/L&C-INV may receive the reports and provide feedback to the whistleblowers in cases specified in this Procedure.

[1] (1) corruption; (2) public procurement; (3) financial services, products and markets; (4) anti-money laundering and terrorist financing; (5) product safety and compliance; (6) transport safety; (7) environmental protection; (8) radiological protection and nuclear safety; (9) food and feed safety; (10) animal health and welfare; (11) public health; (12) consumer protection; (13) protection of privacy and personal data; (14) security of information and communication networks and systems; (15) financial interests of the State Treasury of the Republic of Poland, local government unit and the European Union; (16) the internal market of the European Union, including the public law principles of competition and state aid as well as corporate taxation; (17) constitutional freedoms and rights of a human being and a citizen - occurring in the relations of an individual with public authorities and not related to the areas indicated in items 1-16.

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Rights and Duties of a Whistleblower

1. Confidentiality

tk guarantees the confidentiality of the identity of the whistleblower, the content of the report and the documentation transmitted during the course of the investigation.

2. Protection from retaliation

tk strictly prohibits and does not tolerate any kind of retaliation (e.g. adverse action, disciplinary measures, threats, intimidation) for reporting a violation in good faith or otherwise cooperating in an investigation of a violation. Intentionally reporting false information ("malicious reporting") can lead to disciplinary consequences or civil/criminal liability. Measures taken as a consequence of malicious reporting are not acts of retaliation.

3. Protection of other individuals concerned

During the investigation, tk strives to protect the legitimate interests of persons affected by a report (including accused persons) and protects other persons concerned against defamation. During the course of the investigation, tk strictly follows the presumption of innocence of the alleged persons and the "need to know"-principle, which means that information will only be disclosed if necessary. No financial advantages are offered or provided to whistleblowers.

4. Possibility for anonymous reporting

Whistleblower anonymity in reporting is permitted. Nevertheless, the disclosure of identity can facilitate the investigation. Regardless of anonymity, all reports are treated seriously. Accordingly, anonymous reports are processed in accordance with the procedure described above with the exception of actions that require communication with the whistleblower, such as confirming receipt of the report and providing feedback.

5. No investigation by whistleblowers

For legal and security reasons we do not expect whistleblowers to investigate compliance violations themselves. Initial collection of information for reporting, on the other hand, is allowed and can help enabling a focused and efficient investigation. In such a case, acquisition of and/or access to the information must be in line with laws and regulations.

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Investigation principles

When carrying out investigations the following principles are being followed:

6. Core principle

We analyze all indications of compliance violations or risks through internal investigations based on transparent and clearly defined processes. This is how we ensure that our internal standards are consistently executed and that our management boards and other managers meet their legal and entrepreneurial responsibilities.

7. Compliance with legal regulations

Our investigations are always executed under consideration of all applicable laws and regulations.

8. Right to be heard

No individual needs to be concerned about facing consequences derived from an investigation until said person has had the chance to comment on the allegations.

9. Strict “Need-to-know“ principle

Only individuals who are factually needed for an investigation are involved in our activities. The information on investigation results are only provided to those parties who actively require them for further proceedings or to comply with legal obligations.

10. Confidentiality

All information that is gathered during compliance investigations is treated confidentially. The identity of the whistleblower will be protected with the utmost care.

11. Fairness and mutual respect

Investigation activities are conducted fairly and with respect for all parties concerned investigation following an objective and transparent process without any bias. “Presumption of innocence” applies throughout internal investigations. Any kind of compulsion, threat or the like is not allowed.

12. Efficiency

Investigation activities are conducted without undue delay in order of priority and urgency as well as cost and effort efficiency.

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13. Admissibility of results

Compliance investigations are conducted in a way that the results generally could be admissible in courts.

14. Mutual Agreement

If possible, a settlement of disputes might be agreed in a mutual agreement.

Operational Procedure

1. How can a report be submitted?

An open communication culture is an essential component of well-functioning compliance. Employees must be able to address potential violations openly, anonymously and, above all, at an early stage. To this end, we offer different channels which can be used to report any misconduct concerning issues listed in the Whistleblowing Act and any violations of the Polish Penal Code. We encourage whistleblowers to disclose their contact data so that we can ask follow-up questions if needed and update them on how their report is being processed. Nevertheless, reports can be also submitted entirely anonymously. In both cases reports are diligently analyzed and whistleblowers are protected by all appropriate means in accordance with the Whistleblowing Act. To guarantee full protection from the very beginning, it is advised that the report has a clear title informing about its whistleblowing nature and that it is submitted via one of the dedicated channels described below.

a) tk Electronic Whistleblowing System (BKMS)

Whistleblowers may report violations in writing or orally via Electronic Whistleblowing System called BKMS, which can be accessed by this link: https://www.bkms-system.net/tk-pl or by scanning this QR code:

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b) Telephone Hotline

If the whistleblower prefers to report via phone, the reporting can be submitted via the following telephone number selecting Polish language (automated telephone dialog):

- Phone: +48 22 1523361
- Access PIN: 4541

Phone calls with the Hotline will be transcribed and transcriptions will be saved in the BKMS.

c) Face-to-face meeting

Whistleblower may also request a face-to-face meeting to submit a report orally directly with the System Manager, If requested, the meeting with the System Manager will be organized within 7 days from the receipt of such request. The System Manager will prepare written minutes of the meeting, which the whistleblower will be given the opportunity to verify, rectify and confirm by signing them. Once signed, the minutes will be stored by the System Manager in a secure, durable and accessible format. Only authorized persons will have access to the minutes.

d) Direct reporting to tk headquarters

If for any reasons the whistleblower does not wish to submit their report to the thyssenkrupp Group Services Gdańsk Sp. z o.o. they can contact alternatively tk Headquarters via following e-mail address: whistleblowing@thyssenkrupp.com or via following postal address:

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thyssenkrupp AG, Compliance, Department Investigations

thyssenkrupp Allee 1, 45143 Essen Germany

More information on the submission of reports can be found here: Submitting a report (tk.com)

Furthermore, violations regarding the International Framework Agreement **("IFA")** (tk internal HR violations) can be also reported to representatives on the International Committee and the Labor Relations department at tk AG under https://www.bkms-system.net/frameworkagreement.

e) External Reporting Channels

Whistleblowers are encouraged to report misconduct internally using one of 4 methods described above, as it may allow quicker response from tk. If, however, the whistleblower does not wish to use any of these 4 methods of internal reporting, they also have the right to submit their report externally with the Polish Ombudsman (Rzecznik Praw Obywatelskich):

Rzecznik Praw Obywatelskich

Al. Solidarności 77; 00-090 Warszawa

You can also call Polish Ombudsman's Free hotline: 800 676 676

Alternatively, whistleblowers may choose to report with other authorities competent in specific areas, such as Consumer and Competition Protection Office (Urząd Ochrony Konkurencji i Konsumentów), Personal Data Protection Office (Urząd Ochrony Danych Osobowych), Police or Prosecutor Office (Policja, Prokuratura), European Public Prosecutor's Office, in the event that the events affect the financial interests of the European Union.

Please note that the scope of application concerning the reporting of criminal offenses under the Polish Criminal Code is limited to our internal thyssenkrupp procedural rules. In the case of external reports, the protection provided by the Polish Whistleblower Protection Act applies only to the areas specified in Article 3 of the Act.

2. Receipt of the whistleblower report

a) by tk AG's unit CO/L&C-INV

Every whistleblower report submitted via channels listed in sections 1(a), (b), (d) will

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be received by tk AG's unit CO/L&C-INV and documented by CO/L&C-INV in BKMS, unless it was directly received via BKMS.

thyssenkrupp Group Services Gdańsk Sp. z o.o. will keep a register of reports received by CO/L&C-INV in accordance with Article 29 of the Whistleblowing Act. CO/L&C-INV will then provide to thyssenkrupp Group Services Gdańsk Sp. z o.o. all information regarding the report that needs to be kept in the register of reports, which includes: description of reported violation, full name of the whistleblower an of the person concerned in the report, contact address of the whistleblower, date when the report was made. The register will be also updated with information about follow-up activities undertaken in response to the report and date when the case was closed.

The CO/L&C-INV will carry out a preliminary check in line with the Polish Whistleblowing Act. "**Preliminary check**" means that CO/L&C-INV will check which tk entity is affected by the whistleblower report (country/entity) and will register the respective company number in BKMS. In addition, CO/L&C-INV will check if the System Manager or any member of the Board of Directors/Management of the respective tk entity is affected by the allegations of the whistleblower report or is in a close relationship with a person concerned in the report.

After the preliminary check, the System Manager will be notified by CO/L&C-INV of the receipt and content of the whistleblower report, unless the System Manager is affected by the allegations, in which case the System Manager will not be included to ensure impartiality.

b) directly by the System Manager

Every whistleblower report submitted in a face-to-face meeting will be received by the System Manager and forwarded to CO/L&C-INV immediately to allow CO/L&C-INV document the whistleblower report in BKMS and then carry out the preliminary check as described under 2.a). thyssenkrupp Group Services Gdańsk Sp. z o.o. will keep a register of reports received by the System Manager, in accordance with Article 29 of the Whistleblowing Act, similarly as in 2.a) above.

3. Handling of the whistleblower report

The System Manager will set up a meeting with CO/L&C-INV and CO/AUD to determine the scope of the whistleblower report including the following topics/areas:

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(i) Core Compliance Topics/Internal Auditing Topics

(ii) Complementary Areas

(iii) Common case (combination of Core Compliance Topics, Internal Auditing Topics and Complementary Areas)

(iv) Case outside the scope of (i)-(iii) (e.g. human rights violations between individuals)

Corresponding to the determined scope of the whistleblower report, the investigation will then be conducted as follows:

a) Related to Core Compliance Topics / Internal Auditing Topics / Complementary Areas

Within seven days, CO/L&C-INV must:

- Inform the whistleblower that the System Manager will lead the investigation supported by CO/L&C-INV and/or CO/AUD where the System Manager needs assistance of additional human resources.
- The CO/L&C-INV leads the communication with the whistleblower on behalf of the System Manager in cases where the whistleblower communicates via BKMS.
- Depending on the nature of the allegations, CO/L&C-INV will decide whether a cooperation with an external law firm/consultant is required ("Subcontractor").

b) In cases outside scope (i)-(iii) that fall under other tk procedures

Within seven days, CO/L&C-INV must:

- Identify and assign the case to a competent corporate function;
- Inform the whistleblower that the report will be handled by the competent corporate function.

c) In cases where the report concerns other tk company or there is conflict of interests

Within seven days, CO/L&C-INV must inform the whistleblower that for those reasons the report will be handled by CO/L&C-INV;

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d) In cases where the report does not concern any tk company or does not fall under tk procedures

Within seven days, CO/L&C-INV must inform the whistleblower that for those reasons the report will not be further investigated.

4. Investigation

If the reported allegations involve Core Compliance Topics / Internal Auditing Topics / Complimentary Areas, the System Manager is authorized to carry out an internal investigation subject to results of the Preliminary check.

If the System Manager requires assistance of additional resources, whether from CO/L&C-INV or CO/AUD or external subcontractors, the System Manager will oversee all work streams. The System Manager may access any material of the investigation at the request, get updates about progress and outcomes, and be consulted as per what further steps could be taken.

Each time such assistance is needed, the System Manager will issue a separate and direct request for such assistance. The scope of such assistance will be each time agreed by the Parties pursuant to the Internal Service Agreement or to other agreements executed with external subcontractors.

5. Reporting & information disclosure

Corresponding to the determined scope of the whistleblower report, the reporting of the investigation's closure and results will be conducted as follows:

a) If Core Compliance Topics/Internal Auditing Topics are involved:

- The System Manager and/or CO/L&C-INV and/or CO/AUD will report in writing about the investigation results and closure of the case to the Board of Directors/Management of the respective thyssenkrupp Group Services Gdańsk Sp. z o.o.;
- CO/L&C-INV will inform the Compliance Executive and the Compliance Officer of the respective Business Segment and other relevant stakeholders in cases involving Core Compliance Topics;
- CO/AUD will inform relevant stakeholders in cases involving relevant Internal

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Auditing Topics;

- CO/L&C-INV will provide feedback to the whistleblower, as to how the whistleblower report has been handled or is being handled, within three months from the date of the acknowledgement of receipt or, in the absence of such notice, within three months from the expiry of the period of seven days from the submission of the whistleblower report. If the time needed for the investigation should be longer, at most every three months, a reply should be provided to the whistleblower, explaining the circumstances that require the delay.

b) If only Complementary Areas are involved:

- The System Manager will report in writing about the investigation results and closure to CO/L&C-INV and the Board of Directors/Management of thyssenkrupp Group Services Gdańsk Sp. z o.o.;
- The System Manager will provide feedback to the whistleblower, as to how the whistleblower report has been handled or is being handled, within three months from the date of the acknowledgement of receipt or, in the absence of such notice, within three months from the expiry of the period of seven days from the submission of the whistleblower report. If the time needed for the investigation should be longer, at most every three months, a reply should be provided to the whistleblower, explaining the circumstances that require the delay.

6. Measures

If a compliance violation is identified, the **System Manager in cooperation with CO/L&C-INV and/or CO/AUD** will propose to the Board of Directors/Management of thyssenkrupp Group Services Gdańsk Sp. z o.o. adequate measures, which decides about the specific measures.

If the investigation delivers sufficient reasons suspecting criminal offence(s) pursuant to the Polish Criminal Code, the **System Manager in alignment with CO/L&C-INV** will then recommend to inform the responsible authorities, e.g. Public Prosecutors Office, provided that it does not conflict with thyssenkrupp Group Services Gdańsk Sp. z o.o.'s right to non- self-incrimination/defense or other relevant provisions.

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7. Validity and document management

This document is valid as of 01.010.2025.

The owner of this document is the Compliance Coordinator, who must check and, if necessary, update the document at least once a year.

8. Attachments

Attachment No 1 GDPR Information Clause

Attachment No 2. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019

Signed by:
Adrian Korbolewski
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GDPR INORMATION CLAUSE

TO PERSONS WHOSE PERSONAL DATA ARE PROCESSED IN CONNECTION WITH INVESTIGATIONS CARRIED OUT UNDER THE PROVISIONS OF THE ACT ON THE PROTECTION OF WHISTLEBLOWERS OF 14 JUNE 2024

Pursuant to the provisions of the Regulation of the European Parliament and of the Council (EU) 2016/679 of April 27, 2016, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter: GDPR), the Company hereby informs you that:

1. PERSONAL DATA CONTROLLER

The controller of your personal data is thyssenkrupp Group Services Gdańsk Sp. z o.o. seat in Gdańsk, 472D Grunwaldzka St., 80-309 Gdańsk (hereinafter: “the Controller”).

2. DATA PROTECTION OFFICER, CONTACT REGARDING PERSONAL DATA

The controller has appointed a Data Protection Officer who can be contacted at the following email address: dpo.gsg@thyssenkrupp.com or by post to the Controller's address as indicated above.

3. PURPOSES OF PROCESSING PERSONAL DATA AND LEGAL BASIS

Your personal data will be processed on the following legal basis and for the following purposes:

- to verify and process a whistleblower report, the legal basis for the processing is Article 6(1)(c) GDPR in connection with the Law of 14 June 2024 on the protection of whistleblowers (hereinafter: the ‘Law’), i.e. a legal obligation incumbent on the Controller;
- to pursue the Controller's legitimate interest of establishing, pursuing or defending against claims, the legal basis for the processing is Article 6(1)(f) GDPR;
- in the case of obtaining special category personal data processed as part of a notification made for reasons of important public interest - the legal basis for processing is Article 9(2)(g) GDPR.

4. RECIPIENTS OF DATA

Your data may only be passed on to entities authorized to do so by law and to entities entrusted by the controller with the processing of data on the basis of relevant contracts, such as, for example, the provider of a whistleblower system, email, data storage space.

Data may only be made available to unauthorized persons with your express consent.

5. SCOPE OF DATA

As part of the whistleblowing process, your personal data will be processed including identification, contact details and details of your employment and the circumstances of the reported incident, including data from evidence obtained as part of the investigation.

6. RETENTION PERIOD

Personal data and other information in the register of internal notifications are retained for a period of 3 years after the end of the calendar year in which the follow-up actions were completed or after the proceedings initiated by these actions have been completed.

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Personal data that are not relevant to the processing of the notification shall not be collected and, if accidentally collected, shall be deleted immediately. The deletion of such personal data shall take place within 14 days of the determination that it is not relevant to the case.

If the processing may involve claims, the data may be processed until the claims asserted are finally settled or the limitation period has expired.

7. RIGHTS

The person whose data is processed by the Controller in the context of the investigation of a breach notification, within the limits indicated in the GDPR, has the right to request at any time access, rectification, erasure, restriction of processing of personal data.

Data subjects also have the right to object at any time to the processing of their data, which takes place on the basis of Article 6(1)(f) of the GDPR - the objection should indicate the reasons justifying the request, related to the particular situation of the person.

If you consider that the processing of your personal data violates the regulations, you have the right to lodge a complaint with the President of the Office for Personal Data Protection, 2 Stawki Street, 00-193 Warsaw.

8. TRANSFER OF DATA TO THIRD COUNTRIES

As a general rule, your personal data will not be transferred outside the European Economic Area (hereinafter: EEA). However, having regard to the services provided by the Controller's subcontractors in the provision of support for ICT services and IT infrastructure, the Controller may outsource certain activities or IT tasks to recognized subcontractors operating outside the EEA, which may result in the transfer of your data outside the EEA. In particular, we use Microsoft solutions based in the USA and, as part of this cooperation, there may be a transfer of data to the extent necessary. Such transfer is based on the European Commission's decision of 10 July 2023 finding an adequate level of protection for personal data (the ‘EU-US Data Privacy Framework’, or Data Privacy Framework).

Recipient States outside the EEA, in accordance with the European Commission's decision, shall ensure an adequate level of protection of personal data in accordance with EEA standards. For recipients in the territory of the States not covered by the European Commission Decision, in order to ensure an adequate level of such protection, the Controller contracts with the recipients of your personal data, based on the standard contractual clauses issued by the European Commission in accordance with Article 46(2)(c) of the GDPR.

A copy of the standard contractual clauses can be obtained from the Controller by contacting the contact details provided above. The data security measures applied by the Controller comply with the principles provided for in Chapter V of the GDPR. You may request further information on the safeguards applied in this regard, obtain a copy of these safeguards and information on where they are available.

9. AUTOMATED DECISION-MAKING

Personal data processed by the Controller in the course of investigating a breach notification will not be subject to automated decision-making, including profiling.

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GDPR INORMATION CLAUSE

TO THE PERSON MAKING A NOTIFICATION UNDER THE PROVISIONS OF THE ACT ON THE PROTECTION OF WHISTLEBLOWERS OF 14 JUNE 2024

Pursuant to the provisions of the Regulation of the European Parliament and of the Council (EU) 2016/679 of April 27, 2016, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter: GDPR), the Company hereby informs you that:

1. PERSONAL DATA CONTROLLER

The controller of your personal data is thyssenkrupp Group Services Gdańsk Sp. z o.o. seat in Gdańsk, 472D Grunwaldzka St., 80-309 Gdańsk (hereinafter: "the Controller").

2. DATA PROTECTION OFFICER, CONTACT REGARDING PERSONAL DATA

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3. PURPOSES OF PROCESSING PERSONAL DATA AND LEGAL BASIS

Your personal data will be processed on the following legal basis and for the following purposes:

- verification and investigation of a whistleblower report - the legal basis for processing is Article 6(1)(c) GDPR, in relation to the Act of 14 June 2024 on the protection of whistleblowers (hereinafter: the 'Act'), i.e. a legal obligation incumbent on the Controller;
- the fulfilment of the Controller's legitimate interest in establishing, pursuing or defending against claims - the legal basis for processing is Article 6(1)(f) GDPR;
- where the whistleblower has consented to the disclosure of their identity, to the extent of disclosure the legal basis for processing is Article 6(1)(a) GDPR,
- where a special category of personal data is obtained that is processed as part of a notification made for reasons of substantial public interest - the legal basis for processing is Article 9(2)(g) GDPR.

4. RECIPIENTS OF DATA

Your data may only be passed on to entities authorized to do so by law and to entities entrusted by the controller with the processing of data on the basis of relevant contracts, such as, for example, the provider of a whistleblower system, email, data storage space.

Data may only be made available to unauthorized persons with your express consent.

5. RETENTION PERIOD

Personal data and other information in the register of internal notifications are retained for a period of 3 years after the end of the calendar year in which the follow-up actions were completed or after the proceedings initiated by these actions have been completed.

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Personal data that are not relevant to the processing of the notification shall not be collected and, if accidentally collected, shall be deleted immediately. The deletion of such personal data shall take place within 14 days of the determination that it is not relevant to the case.

If the processing may involve claims, the data may be processed until the claims asserted are finally settled or the limitation period has expired.

6. RIGHTS

The person whose data is processed by the Controller in the framework of the investigation of a notification of a breach, within the limits indicated in the GDPR, has the right to request at any time access to personal data, their rectification, erasure, restriction of processing, data portability, withdrawal at any time of consent to the processing of data, if it was the basis of the processing, where the withdrawal of consent does not affect the legality of the processing performed before its withdrawal.

Data subjects also have the right to object at any time to the processing of their data, which takes place on the basis of Article 6(1)(f) of the GDPR - the objection should indicate the reasons justifying the request, related to the particular situation of the person.

If you consider that the processing of your personal data violates the regulations, you have the right to lodge a complaint with the President of the Office for Personal Data Protection, 2 Stawki Street, 00-193 Warsaw.

7. VOLUNTARINESS OF PROVIDING DATA

Submission of data by the person submitting a report on violation of the law is not obligatory. The controller allows submitting anonymous reports.

8. TRANSFER OF DATA TO THIRD COUNTRIES

As a general rule, your personal data will not be transferred outside the European Economic Area (hereinafter: EEA). However, having regard to the services provided by the Controller's subcontractors in the provision of support for ICT services and IT infrastructure, the Controller may outsource certain activities or IT tasks to recognized subcontractors operating outside the EEA, which may result in the transfer of your data outside the EEA. In particular, we use Microsoft solutions based in the USA and, as part of this cooperation, there may be a transfer of data to the extent necessary. Such transfer is based on the European Commission's decision of 10 July 2023 finding an adequate level of protection for personal data (the ‘EU-US Data Privacy Framework’, or Data Privacy Framework).

Recipient States outside the EEA, in accordance with the European Commission's decision, shall ensure an adequate level of protection of personal data in accordance with EEA standards. For recipients in the territory of the States not covered by the European Commission Decision, in order to ensure an adequate level of such protection, the Controller contracts with the recipients of your personal data, based on the standard contractual clauses issued by the European Commission in accordance with Article 46(2)(c) of the GDPR.

A copy of the standard contractual clauses can be obtained from the Controller by contacting the contact details provided above. The data security measures applied by the Controller comply with the principles provided for in Chapter V of the GDPR. You may request further information on the safeguards applied in this regard, obtain a copy of these safeguards and information on where they are available.

9. AUTOMATED DECISION-MAKING

Personal data processed by the Controller in the course of investigating a breach notification will not be subject to automated decision-making, including profiling.

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DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Articles 62 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) The Treaty on European Union (TEU) provides for the establishment of an internal market and the institution of a system ensuring that competition in the internal market is not distorted. Further harmonisation of the laws of the Member States on copyright and related rights should contribute to the achievement of those objectives.

(2) The directives that have been adopted in the area of copyright and related rights contribute to the functioning of the internal market, provide for a high level of protection for rightholders, facilitate the clearance of rights, and create a framework in which the exploitation of works and other protected subject matter can take place. That harmonised legal framework contributes to the proper functioning of the internal market, and stimulates innovation, creativity, investment and production of new content, also in the digital environment, in order to avoid the fragmentation of the internal market. The protection provided by that legal framework also contributes to the Union's objective of respecting and promoting cultural diversity, while at the same time bringing European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.

(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. Relevant legislation needs to be future-proof so as not to restrict technological development. 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 stated in the Commission Communication of 9 December 2015 entitled 'Towards a modern, more European copyright framework', in some areas it is necessary to adapt and supplement the existing Union copyright framework, while keeping a high level of protection of copyright and related rights. This Directive provides for rules to adapt certain exceptions and limitations to copyright and related rights to digital and cross-border environments, as well as for measures to facilitate certain licensing practices, in particular, but not only, as regards the dissemination of out-of-commerce works and other subject matter and the online availability of audiovisual works on video-on-demand platforms, with a view to ensuring wider access to content. It also contains rules to facilitate the use of content in the public domain. In order to achieve a well-functioning and fair marketplace for copyright, there should also be rules on rights in publications, on the use of works

([1]) OJ C 125, 21.4.2017, p. 27.
([2]) OJ C 207, 30.6.2017, p. 80.
([3]) Position of the European Parliament of 26 March 2019 (not yet published in the Official Journal) and decision of the Council of 15 April 2019.

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or other subject matter by online service providers storing and giving access to user-uploaded content, on the transparency of authors' and performers' contracts, on authors' and performers' remuneration, as well as a mechanism for the revocation of rights that authors and performers have transferred on an exclusive basis.

(4) This Directive is based upon, and complements, the rules laid down in the directives currently in force in this area, in particular Directives 96/9/EC ([4]), 2000/31/EC ([5]), 2001/29/EC ([6]), 2006/115/EC ([7]), 2009/24/EC ([8]), 2012/28/EU ([9]) and 2014/26/EU ([10]) of the European Parliament and of the Council.

(5) In the fields of research, innovation, education and preservation of cultural heritage, digital technologies permit new types of uses that are not clearly covered by the existing Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 96/9/EC, 2001/29/EC and 2009/24/EC in those fields could 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, innovation, 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, illustration for teaching in the digital environment and for preservation of cultural heritage should be introduced. The existing exceptions and limitations in Union law should continue to apply, including to text and data mining, education, and preservation activities, as long as they do not limit the scope of the mandatory exceptions or limitations provided for in this Directive, which need to be implemented by Member States in their national law. Directives 96/9/EC and 2001/29/EC should, therefore, be amended.

(6) The exceptions and limitations provided for 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 that 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.

(7) The protection of technological measures established in Directive 2001/29/EC remains essential to ensure the protection and the effective exercise of the rights granted to authors and to other rightholders under Union law. Such protection should be maintained while ensuring that the use of technological measures does not prevent the enjoyment of the exceptions and limitations provided for in this Directive. Rightholders should have the opportunity to ensure that through voluntary measures. They should remain free to choose the appropriate means of enabling the beneficiaries of the exceptions and limitations provided for in this Directive to benefit from them. In the absence of voluntary measures, Member States should take appropriate measures in accordance with the first subparagraph of Article 6(4) of Directive 2001/29/EC, including where works and other subject matter are made available to the public through on-demand services.

(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 makes the processing of large amounts of information with a view to gaining new knowledge and discovering new trends possible. Text and data mining technologies are prevalent across the digital economy; however, there is widespread acknowledgment that text and data mining can, in particular, benefit the research community and, in so doing, support

([4]) 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).
([5]) 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 (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).
([6]) 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).
([7]) 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).
([8]) 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).
([9]) 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).
([10]) 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).

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innovation. Such technologies benefit universities and other research organisations, as well as cultural heritage institutions since they could also carry out research in the context of their main activities. However, in the Union, such organisations and institutions 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 can involve acts protected by copyright, by the sui generis database right or by both, in particular, the reproduction of works or other subject matter, the extraction of contents from a database or both which occur for example when the data are normalised in the process of text and data mining. Where no exception or limitation applies, an authorisation to undertake such acts is required from rightholders.

(9) Text and data mining can also be carried out in relation to mere facts or data that are not protected by copyright, and in such instances no authorisation is required under copyright law. There can also be instances of text and data mining that do not involve acts of reproduction or where the reproductions made fall under the mandatory exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC, which should continue to apply to text and data mining techniques that do not involve the making of copies beyond the scope of that exception.

(10) Union law provides for 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 could 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 concerning text and data mining.

(11) The legal uncertainty concerning text and data mining should be addressed by providing for a mandatory exception for universities and other research organisations, as well as for cultural heritage institutions, to the exclusive right of reproduction and to the right to prevent extraction from a database. In line with the existing Union research policy, which encourages universities and research institutes to collaborate with the private sector, research organisations should also benefit from such an exception when their research activities are carried out in the framework of public-private partnerships. While research organisations and cultural heritage institutions should continue to be the beneficiaries of that exception, they should also be able to rely on their private partners for carrying out text and data mining, including by using their technological tools.

(12) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. The term 'scientific research' within the meaning of this Directive should be understood to cover both the natural sciences and the human sciences. Due to the diversity of such entities, it is important to have a common understanding of research organisations. They should for example cover, in addition to universities or other higher education institutions and their libraries, also entities such as research institutes and hospitals that carry out research. Despite different legal forms and structures, research organisations in the Member States generally have in common that they act either on a not-for-profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission could, for example, be reflected through public funding or through provisions in national laws or public contracts. Conversely, organisations upon which commercial undertakings have a decisive influence allowing such undertakings to exercise control because of structural situations, such as through their quality of shareholder or member, which could result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.

(13) Cultural heritage institutions should be understood as covering publicly accessible libraries and museums regardless of the type of works or other subject matter that they hold in their permanent collections, as well as archives, film or audio heritage institutions. They should also be understood to include, inter alia, national libraries and national archives, and, as far as their archives and publicly accessible libraries are concerned, educational establishments, research organisations and public sector broadcasting organisations.

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(14) Research organisations and cultural heritage institutions, including the persons attached thereto, should be covered by the text and data mining exception with regard to content to which they have lawful access. Lawful access should be understood as covering access to content based on an open access policy or through contractual arrangements between rightholders and research organisations or cultural heritage institutions, such as subscriptions, or through other lawful means. For instance, in the case of subscriptions taken by research organisations or cultural heritage institutions, the persons attached thereto and covered by those subscriptions should be deemed to have lawful access. Lawful access should also cover access to content that is freely available online.

(15) Research organisations and cultural heritage institutions could in certain cases, for example for subsequent verification of scientific research results, need to retain copies made under the exception for the purposes of carrying out text and data mining. In such cases, the copies should be stored in a secure environment. Member States should be free to decide, at national level and after discussions with relevant stakeholders, on further specific arrangements for retaining the copies, including the ability to appoint trusted bodies for the purpose of storing such copies. In order not to unduly restrict the application of the exception, such arrangements should be proportionate and limited to what is needed for retaining the copies in a safe manner and preventing unauthorised use. Uses for the purpose of scientific research, other than text and data mining, such as scientific peer review and joint research, should remain covered, where applicable, by the exception or limitation provided for in Article 5(3)(a) of Directive 2001/29/EC.

(16) In view of a potentially high number of access requests to, and downloads of, their works or other subject matter, rightholders should be allowed to apply measures when there is a risk that the security and integrity of their systems or databases could be jeopardised. Such measures could, for example, be used to ensure that only persons having lawful access to their data can access them, including through IP address validation or user authentication. Those measures should remain proportionate to the risks involved, and should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception.

(17) In view of the nature and scope of the exception, which is limited to entities carrying out scientific research, any potential harm created to rightholders through this exception would be minimal. Member States should, therefore, not provide for compensation for rightholders as regards uses under the text and data mining exceptions introduced by this Directive.

(18) In addition to their significance in the context of scientific research, text and data mining techniques are widely used both by private and public entities to analyse large amounts of data in different areas of life and for various purposes, including for government services, complex business decisions and the development of new applications or technologies. Rightholders should remain able to license the uses of their works or other subject matter falling outside the scope of the mandatory exception provided for in this Directive for text and data mining for the purposes of scientific research and of the existing exceptions and limitations provided for in Directive 2001/29/EC. At the same time, consideration should be given to the fact that users of text and data mining could be faced with legal uncertainty as to whether reproductions and extractions made for the purposes of text and data mining can be carried out on lawfully accessed works or other subject matter, in particular when the reproductions or extractions made for the purposes of the technical process do not fulfil all the conditions of the existing exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC. In order to provide for more legal certainty in such cases and to encourage innovation also in the private sector, this Directive should provide, under certain conditions, for an exception or limitation for reproductions and extractions of works or other subject matter, for the purposes of text and data mining, and allow the copies made to be retained for as long as is necessary for those text and data mining purposes.

This exception or limitation should only apply where the work or other subject matter is accessed lawfully by the beneficiary, including when it has been made available to the public online, and insofar as the rightholders have not reserved in an appropriate manner the rights to make reproductions and extractions for text and data mining. In the case of content that has been made publicly available online, it should only be considered

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appropriate to reserve those rights by the use of machine-readable means, including metadata and terms and conditions of a website or a service. Other uses should not be affected by the reservation of rights for the purposes of text and data mining. In other cases, it can be appropriate to reserve the rights by other means, such as contractual agreements or a unilateral declaration. Rightholders should be able to apply measures to ensure that their reservations in this regard are respected. This exception or limitation should leave intact the mandatory exception for text and data mining for scientific research purposes provided for in this Directive, as well as the existing exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC.

(19) Article 5(3)(a) of Directive 2001/29/EC allows Member States to introduce an exception or limitation to the rights of reproduction, communication to the public and making available to the public of works or other subject matter in such a way that members of the public may access them from a place and a time individually chosen by them, for the sole purpose of illustration for teaching. In addition, Articles 6(2)(b) and 9(b) of Directive 96/9/EC permit the use of a database and the extraction of a substantial part of its contents for the purpose of illustration for teaching. The scope of those exceptions or limitations as they apply to digital uses is unclear. In addition, there is a lack of clarity as to whether those exceptions or limitations would apply where teaching is provided online and at a distance. Moreover, the existing legal framework does not provide for a cross-border effect. This situation could hamper the development of digitally supported teaching activities and distance learning. Therefore, the introduction of a new mandatory exception or limitation is necessary to ensure that educational establishments benefit from full legal certainty when using works or other subject matter in digital teaching activities, including online and across borders.

(20) 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 recognised by a Member State, including those involved in primary, secondary, vocational and higher education. It should apply only to the extent that the uses are justified by the non-commercial purpose of the particular teaching activity. The organisational structure and the means of funding of an educational establishment should not be the decisive factors in determining whether the activity is non-commercial in nature.

(21) The exception or limitation provided for in this Directive for the sole purpose of illustration for teaching should be understood as covering digital uses of works or other subject matter to support, enrich or complement the teaching, including learning activities. The distribution of software allowed under that exception or limitation should be limited to digital transmission of software. In most cases, the concept of illustration would, therefore, imply the use only of parts or extracts of works, which should not substitute for the purchase of materials primarily intended for the educational market. When implementing the exception or limitation, Member States should remain free to specify, for the different types of works or other subject matter, in a balanced manner, the proportion of a work or other subject matter that can be used for the sole purpose of illustration for teaching. Uses allowed under the exception or limitation should be understood to cover the specific accessibility needs of persons with a disability in the context of illustration for teaching.

(22) The use of works or other subject matter under the exception or limitation for the sole purpose of illustration for teaching provided for in this Directive should only take place in the context of teaching and learning activities carried out under the responsibility of educational establishments, including during examinations or teaching activities that take place outside the premises of educational establishments, for example in a museum, library or another cultural heritage institution, and should be limited to what is necessary for the purpose of such activities. The exception or limitation should cover both uses of works or other subject matter made in the classroom or in other venues through digital means, for example electronic whiteboards or digital devices which might be connected to the internet, as well as uses made at a distance through secure electronic environments, such as in the context of online courses or access to teaching material complementing a given course. Secure electronic environments should be understood as digital teaching and learning environments access to which is limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication.

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(23) Different arrangements, based on the implementation of the exception or limitation provided for in Directive 2001/29/EC or on licensing agreements covering further uses, are in place in a number of Member States in order to facilitate educational uses of works and other subject matter. Such arrangements have usually been developed taking account of the needs of educational establishments and of different levels of education. While it is essential to harmonise the scope of the new mandatory exception or limitation in relation to digital uses and cross-border teaching activities, the arrangements for implementation can vary from one Member State to another, to the extent that they do not hamper the effective application of the exception or limitation or cross-border uses. Member States should, for example, remain free to require that the use of works or other subject matter respect the moral rights of authors and performers. This should allow Member States to build on the existing arrangements concluded at national level. In particular, Member States could decide to subject the application of the exception or limitation, fully or partially, to the availability of suitable licences, covering at least the same uses as those allowed under the exception or limitation. Member States should ensure that where licences cover only partially the uses allowed under the exception or limitation, all the other uses remain subject to the exception or limitation.

Member States could, for example, use this mechanism to give precedence to licences for material that is primarily intended for the educational market or licences for sheet music. In order to avoid that subjecting the application of the exception to the availability of licences results in legal uncertainty or an administrative burden for educational establishments, Member States adopting such an approach should take concrete measures to ensure that licensing schemes allowing digital uses of works or other subject matter for the purpose of illustration for teaching are easily available, and that educational establishments are aware of the existence of such licensing schemes. Such licensing schemes should meet the needs of educational establishments. Information tools aimed at ensuring that existing licensing schemes are visible could also be developed. Such schemes could, for example, be based on collective licensing or on extended collective licensing, in order to avoid educational establishments having to negotiate individually with rightholders. In order to guarantee legal certainty, Member States should specify under which conditions an educational establishment can use protected works or other subject matter under that exception and, conversely, when it should act under a licensing scheme.

(24) Member States should remain free to provide that rightholders receive fair compensation for the digital uses of their works or other subject matter under the exception or limitation provided for in this Directive for illustration for teaching. In setting the level of fair compensation, due account should be taken, inter alia, of Member States' educational objectives and of the harm to rightholders. Member States that decide to provide for fair compensation should encourage the use of systems that do not create an administrative burden for educational establishments.

(25) Cultural heritage institutions are engaged in the preservation of their collections for future generations. An act of preservation of a work or other subject matter in the collection of a cultural heritage institution might require a reproduction and consequently require the authorisation of the relevant rightholders. Digital technologies offer new ways of preserving the heritage contained in those collections but they also create new challenges. In view of those new challenges, it is necessary to adapt the existing legal framework by providing for a mandatory exception to the right of reproduction in order to allow such acts of preservation by such institutions.

(26) The existence of different approaches in the Member States with regard to acts of reproduction for preservation by cultural heritage institutions hampers cross-border cooperation, the sharing of means of preservation and the establishment of cross-border preservation networks in the internal market by such institutions, leading to an inefficient use of resources. That can have a negative impact on the preservation of cultural heritage.

(27) Member States should, therefore, be required to provide for an exception to permit cultural heritage institutions to reproduce works and other subject matter permanently in their collections for preservation purposes, for example to address technological obsolescence or the degradation of original supports or to insure such works and other subject matter. Such an exception should allow the making of copies by the appropriate preservation tool, means or technology, in any format or medium, in the required number, at any point in the life of a work or other subject matter and to the extent required for preservation purposes. Acts of reproduction undertaken by

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cultural heritage institutions for purposes other than the preservation of works and other subject matter in their permanent collections should remain subject to the authorisation of rightholders, unless permitted by other exceptions or limitations provided for in Union law.

(28) Cultural heritage institutions do not necessarily have the technical means or expertise to undertake the acts required to preserve their collections themselves, particularly in the digital environment, and might, therefore, have recourse to the assistance of other cultural institutions and other third parties for that purpose. Under the exception for preservation purposes provided for by this Directive, cultural heritage institutions should be allowed to rely on third parties acting on their behalf and under their responsibility, including those that are based in other Member States, for the making of copies.

(29) 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 of such works or other subject matter are owned or permanently held by that institution, for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.

(30) Cultural heritage institutions should benefit from a clear framework for the digitisation and dissemination, including across borders, of works or other subject matter that are considered to be out of commerce for the purposes of this Directive. However, the particular characteristics of the collections of out-of-commerce works or other subject matter, together with the amount of works and other subject matter involved in mass digitisation projects, mean that obtaining the prior authorisation of the individual rightholders can be very difficult. This can be due, for example, to the age of the works or other subject matter, their limited commercial value or the fact that they were never intended for commercial use or that they have never been exploited commercially. It is therefore necessary to provide for measures to facilitate certain uses of out-of-commerce works or other subject matter that are permanently in the collections of cultural heritage institutions.

(31) All Member States should have legal mechanisms in place allowing licences issued by relevant and sufficiently representative collective management organisations to cultural heritage institutions, for certain uses of out-of-commerce works or other subject matter, to also apply to the rights of rightholders that have not mandated a representative collective management organisation in that regard. It should be possible, pursuant to this Directive, for such licences to cover all Member States.

(32) The provisions on collective licensing of out-of-commerce works or other subject matter introduced by this Directive might not provide a solution for all cases in which cultural heritage institutions encounter difficulties in obtaining all the necessary authorisations from rightholders for the use of such out-of-commerce works or other subject matter. That could be the case for example, where there is no practice of collective management of rights for a certain type of work or other subject matter or where the relevant collective management organisation is not sufficiently representative for the category of the rightholders and of the rights concerned. In such particular instances, it should be possible for cultural heritage institutions to make out-of-commerce works or other subject matter that are permanently in their collection available online in all Member States under a harmonised exception or limitation to copyright and related rights. It is important that uses under such exception or limitation only take place when certain conditions, in particular as regards the availability of licensing solutions, are fulfilled. A lack of agreement on the conditions of the licence should not be interpreted as a lack of availability of licensing solutions.

(33) Member States should, within the framework provided for in this Directive, have flexibility in choosing the specific type of licensing mechanism, such as extended collective licensing or presumptions of representation, that they put in place for the use of out-of-commerce works or other subject matter by cultural heritage institutions, in accordance with their legal traditions, practices or circumstances. Member States should also have flexibility in determining what the requirements for collective management organisations to be sufficiently representative are, as long as that determination is based on a significant number of rightholders in the relevant type of works or other subject matter having given a mandate allowing the licensing of the relevant type of use.

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Member States should be free to establish specific rules applicable to cases in which more than one collective management organisation is representative for the relevant works or other subject matter, requiring for example joint licences or an agreement between the relevant organisations.

(34) For the purpose of those licensing mechanisms, a rigorous and well-functioning collective management system is important. Directive 2014/26/EU provides for such a system and that system includes in particular rules on good governance, transparency and reporting, as well as the regular, diligent and accurate distribution and payment of amounts due to individual rightholders.

(35) Appropriate safeguards should be available for all rightholders, who should be given the opportunity of excluding the application of the licensing mechanisms and of the exception or limitation, introduced by this Directive for the use of out-of-commerce works or other subject matter, in relation to all their works or other subject matter, in relation to all licences or all uses under the exception or limitation, in relation to particular works or other subject matter, or in relation to particular licences or uses under the exception or limitation, at any time before or during the term of the licence or before or during the use under the exception or limitation. Conditions governing those licensing mechanisms should not affect their practical relevance for cultural heritage institutions. It is important that, where a rightholder excludes the application of such mechanisms or of such exception or limitation to one or more works or other subject matter, any ongoing uses are terminated within a reasonable period, and, where they take place under a collective licence, that the collective management organisation once informed ceases to issue licences covering the uses concerned. Such exclusion by rightholders should not affect their claims to remuneration for the actual use of the work or other subject matter under the licence.

(36) This Directive does not affect the ability of Member States to decide who is to have legal responsibility as regards the compliance of the licensing of out-of-commerce works or other subject matter, and of their use, with the conditions set out in this Directive, and as regards the compliance of the parties concerned with the terms of those licences.

(37) Considering the variety of works and other subject matter in the collections of cultural heritage institutions, it is important that the licensing mechanisms and the exception or limitation provided for by this Directive are available and can be used in practice for different types of works and other subject matter, including photographs, software, phonograms, audiovisual works and unique works of art, including where they have never been commercially available. Never-in-commerce works can include posters, leaflets, trench journals or amateur audiovisual works, but also unpublished works or other subject matter, without prejudice to other applicable legal constraints, such as national rules on moral rights. When a work or other subject matter is available in any of its different versions, such as subsequent editions of literary works and alternate cuts of cinematographic works, or in any of its different manifestations, such as digital and printed formats of the same work, that work or other subject matter should not be considered out of commerce. Conversely, the commercial availability of adaptations, including other language versions or audiovisual adaptations of a literary work, should not preclude a work or other subject matter from being deemed to be out of commerce in a given language. In order to reflect the specificities of different types of works and other subject matter as regards modes of publication and distribution, and to facilitate the usability of those mechanisms, specific requirements and procedures might have to be established for the practical application of those licensing mechanisms, such as a requirement for a certain time period to have elapsed since the work or other subject matter was first commercially available. It is appropriate that Member States consult rightholders, cultural heritage institutions and collective management organisations when establishing such requirements and procedures.

(38) When determining whether works or other subject matter are out of commerce, a reasonable effort should be required to assess their availability to the public in the customary channels of commerce, taking into account the characteristics of the particular work or other subject matter or of the particular set of works or other subject matter. Member States should be free to determine the allocation of responsibilities for making that reasonable effort. The reasonable effort should not have to involve repeated action over time but it should nevertheless involve taking account of any easily accessible evidence of upcoming availability of works or other subject matter in the customary channels of commerce. A work-by-work assessment should only be required where that is considered reasonable in view of the availability of relevant information, the likelihood of commercial availability

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and the expected transaction cost. Verification of availability of a work or other subject matter should normally take place in the Member State where the cultural heritage institution is established, unless verification across borders is considered reasonable, for example in cases where there is easily available information that a literary work was first published in a given language version in another Member State. In many cases, the out-of-commerce status of a set of works or other subject matter could be determined through a proportionate mechanism, such as sampling. The limited availability of a work or other subject matter, such as its availability in second-hand shops, or the theoretical possibility that a licence for a work or other subject matter could be obtained should not be considered as availability to the public in the customary channels of commerce.

(39) For reasons of international comity, the licensing mechanism and the exception or limitation provided for in this Directive for the digitisation and dissemination of out-of-commerce works or other subject matter should not apply to sets of out-of-commerce works or other subject matter where there is evidence available to presume that they predominantly consist of works or other subject matter of third countries, unless the collective management organisation concerned is sufficiently representative for that third country, for example via a representation agreement. That assessment could be based on the evidence available following the making of the reasonable effort to determine whether the works or other subject matter are out of commerce, without the need to search for further evidence. A work-by-work assessment of the origin of out-of-commerce works or other subject matter should only be required insofar as it is also required for making the reasonable effort to determine whether they are commercially available.

(40) Contracting cultural heritage institutions and collective management organisations should remain free to agree on the territorial scope of licences, including the option of covering all Member States, the licence fee and the uses allowed. Uses covered by such licences should not be for profit-making purposes, including where copies are distributed by the cultural heritage institution, such as in the case of promotional material about an exhibition. At the same time, given that the digitisation of the collections of cultural heritage institutions can entail significant investments, any licences granted under the mechanism provided for in this Directive should not prevent cultural heritage institutions from covering the costs of the licence and the costs of digitising and disseminating the works or other subject matter covered by the licence.

(41) Information regarding the ongoing and future use of out-of-commerce works and other subject matter by cultural heritage institutions on the basis of this Directive and the arrangements in place for all rightholders to exclude the application of licences or of the exception or limitation to their works or other subject matter should be adequately publicised both before and during the use under a licence or under the exception or limitation, as appropriate. Such publicising is particularly important when uses take place across borders in the internal market. It is therefore appropriate to provide for the creation of a single publicly accessible online portal for the Union in order to make such information available to the public for a reasonable period of time before the use takes place. Such portal should make it easier for rightholders to exclude the application of licences or of the exception or limitation to their works or other subject matter. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council ([11]), the European Union Intellectual Property Office is entrusted with certain tasks and activities, financed by making use of its own budgetary means and aimed at facilitating and supporting the activities of national authorities, the private sector and Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. It is therefore appropriate to rely on that Office to establish and manage the portal making such information available.

In addition to making the information available through the portal, further appropriate publicity measures might need to be taken on a case-by-case basis in order to increase the awareness in that regard of the rightholders concerned, for example through the use of additional channels of communication to reach a wider public. The necessity, the nature and the geographic scope of the additional publicity measures should depend on the characteristics of the relevant out-of-commerce works or other subject matter, the terms of the licences or the type of use under the exception or limitation, and the existing practices in Member States. Publicity measures should be effective without the need to inform each rightholder individually.

([11]) Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1).

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(42) In order to ensure that the licensing mechanisms established by this Directive for out-of-commerce works or other subject matter are relevant and function properly, that rightholders are adequately protected, that licences are properly publicised and that legal certainty is provided with regard to the representativeness of collective management organisations and the categorisation of works, Member States should foster sector-specific stakeholder dialogue.

(43) The measures provided for in this Directive to facilitate the collective licensing of rights in out-of-commerce works or other subject matter that are permanently in the collections of cultural heritage institutions should be without prejudice to the use of such works or other subject matter under exceptions or limitations provided for in Union law, or under other licences with an extended effect, where such licensing is not based on the out-of-commerce status of the covered works or other subject matter. Those measures should also be without prejudice to national mechanisms for the use of out-of-commerce works or other subject matter based on licences between collective management organisations and users other than cultural heritage institutions.

(44) Mechanisms of collective licensing with an extended effect allow a collective management organisation to offer licences as a collective licensing body on behalf of rightholders, irrespective of whether they have authorised the organisation to do so. Systems built on mechanisms such as extended collective licensing, legal mandates or presumptions of representation, are a well-established practice in several Member States and can be used in different areas. A functioning copyright framework that works for all parties requires the availability of proportionate, legal mechanisms for the licensing of works or other subject matter. Member States should, therefore, be able to rely on solutions allowing collective management organisations to offer licences covering a potentially large number of works or other subject matter for certain types of use, and to distribute the revenue resulting from such licences to rightholders, in accordance with Directive 2014/26/EU.

(45) Given the nature of some uses, together with the usually large amount of works or other subject matter involved, the transaction cost of individual rights clearance with every rightholder concerned is prohibitively high. As a result, it is unlikely that, without effective collective licensing mechanisms, all the transactions in the areas concerned that are required to enable the use of such works or other subject matter would take place. Extended collective licensing by collective management organisations and similar mechanisms can make it possible to conclude agreements in those areas where collective licensing based on an authorisation by rightholders does not provide an exhaustive solution for covering all works or other subject matter to be used. Such mechanisms complement collective management of rights based on individual authorisation by rightholders, by providing full legal certainty to users in certain cases. At the same time, they provide an opportunity to rightholders to benefit from the legitimate use of their works.

(46) Given the increasing importance of the ability to offer flexible licensing schemes in the digital age, and the increasing use of such schemes, Member States should be able to provide for licensing mechanisms which permit collective management organisations to conclude licences, on a voluntary basis, irrespective of whether all rightholders have authorised the organisation concerned to do so. Member States should have the ability to maintain and introduce such mechanisms in accordance with their national traditions, practices or circumstances, subject to the safeguards provided for in this Directive and in compliance with Union law and the international obligations of the Union. Such mechanisms should only have effect in the territory of the Member State concerned, unless otherwise provided for in Union law. Member States should have flexibility in choosing the specific type of mechanism allowing licences for works or other subject matter to extend to the rights of rightholders that have not authorised the organisation that concludes the agreement, provided that such mechanism is in compliance with Union law, including with the rules on collective management of rights provided for in Directive 2014/26/EU. In particular, such mechanisms should also ensure that Article 7 of Directive 2014/26/EU applies to rightholders that are not members of the organisation that concludes the agreement. Such mechanisms could include extended collective licensing, legal mandates and presumptions of representation. The provisions of this Directive concerning collective licensing should not affect the existing ability of Member States to apply mandatory collective management of rights or other collective licensing mechanisms with an extended effect, such as that included in Article 3 of Council Directive 93/83/EEC ([12]).

([12]) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L 248, 6.10.1993, p. 15).

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(47) It is important that mechanisms of collective licensing with an extended effect are only applied in well-defined areas of use, in which obtaining authorisation from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction, namely one involving a licence that covers all rightholders concerned, unlikely to occur due to the nature of the use or of the types of works or other subject matter concerned. Such mechanisms should be based on objective, transparent and non-discriminatory criteria as regards the treatment of rightholders, including rightholders who are not members of the collective management organisation. In particular, the mere fact that the rightholders affected are not nationals or residents of, or established in, the Member State of the user who is seeking a licence, should not be in itself a reason to consider the clearance of rights to be so onerous and impractical as to justify the use of such mechanisms. It is equally important that the licensed use neither affect adversely the economic value of the relevant rights nor deprive rightholders of significant commercial benefits.

(48) Member States should ensure that appropriate safeguards are in place to protect the legitimate interests of rightholders that have not mandated the organisation offering the licence and that those safeguards apply in a non-discriminatory manner. Specifically, in order to justify the extended effect of the mechanisms, such an organisation should be, on the basis of authorisations from rightholders, sufficiently representative of the types of works or other subject matter and of the rights which are the subject of the licence. Member States should determine the requirements to be satisfied for those organisations to be considered sufficiently representative, taking into account the category of rights managed by the organisation, the ability of the organisation to manage the rights effectively, the creative sector in which it operates, and whether the organisation covers a significant number of rightholders in the relevant type of works or other subject matter who have given a mandate allowing the licensing of the relevant type of use, in accordance with Directive 2014/26/EU. To provide legal certainty and ensure that there is confidence in the mechanisms, Member States should be allowed to decide who is to have legal responsibility as regards uses authorised by the licence agreement. Equal treatment should be guaranteed to all rightholders whose works are exploited under the licence, including in particular as regards access to information on the licensing and the distribution of remuneration. Publicity measures should be effective throughout the duration of the licence and should not involve imposing a disproportionate administrative burden on users, collective management organisations or rightholders, and without the need to inform each rightholder individually.

In order to ensure that rightholders can easily regain control of their works, and prevent any uses of their works that would be prejudicial to their interests, it is essential that rightholders be given an effective opportunity to exclude the application of such mechanisms to their works or other subject matter for all uses and works or other subject matter, or for specific uses and works or other subject matter, including before the conclusion of a licence and during the term of the licence. In such cases, any ongoing use should be terminated within a reasonable period. Such exclusion by rightholders should not affect their claims for remuneration for the actual use of the work or other subject matter under the licence. Member States should also be able to decide that additional measures are appropriate to protect rightholders. Such additional measures could include, for example, encouraging the exchange of information among collective management organisations and other interested parties across the Union to raise awareness about such mechanisms and the option available to rightholders to exclude their works or other subject matter from those mechanisms.

(49) Member States should ensure that the purpose and scope of any licence granted as a result of mechanisms of collective licensing with an extended effect, as well as the possible uses, should always be carefully and clearly defined in law or, if the underlying law is a general provision, in the licensing practices applied as a result of such general provisions, or in the licences granted. The ability to operate a licence under such mechanisms should also be limited to collective management organisations that are subject to national law implementing Directive 2014/26/EU.

(50) Given the different traditions and experiences in relation to mechanisms of collective licensing with an extended effect across Member States, and their applicability to rightholders irrespective of their nationality or their Member State of residence, it is important to ensure that there is transparency and dialogue at Union level about the practical functioning of such mechanisms, including as regards the effectiveness of safeguards for rightholders, the usability of such mechanisms, their effect on rightholders who are not members of the collective management organisation, or on rightholders who are nationals of, or resident in, another Member State, and the

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impact on the cross-border provision of services, including the potential need to lay down rules to give such mechanisms cross-border effect within the internal market. To ensure transparency, information about the use of such mechanisms under this Directive should be regularly published by the Commission. Member States that have introduced such mechanisms should, therefore, inform the Commission about relevant national provisions and their application in practice, including the scope and types of licensing introduced on the basis of general provisions, the scale of licensing and the collective management organisations involved. Such information should be discussed with Member States in the contact committee established in Article 12(3) of Directive 2001/29/EC. The Commission should publish a report on the use of such mechanisms in the Union and their impact on licensing and rightholders, on the dissemination of cultural content and on the cross-border provision of services in the area of collective management of copyright and related rights, as well as on the impact on competition.

(51) Video-on-demand services have the potential to play a decisive role in the dissemination of audiovisual works across the Union. However, the availability of such works, in particular European works, on video-on-demand services remains limited. Agreements on the online exploitation of such works can be difficult to conclude due to issues related to the licensing of rights. Such issues could, for instance, arise when the holder of the rights for a given territory has a low economic incentive to exploit a work online and does not license or holds back the online rights, which can lead to audiovisual works being unavailable on video-on-demand services. Other issues could relate to windows of exploitation.

(52) To facilitate the licensing of rights in audiovisual works to video-on-demand services, Member States should be required to provide for a negotiation mechanism allowing parties willing to conclude an agreement to rely on the assistance of an impartial body or of one or more mediators. For that purpose, Member States should be allowed either to establish a new body or rely on an existing one that fulfils the conditions established by this Directive. Member States should be able to designate one or more competent bodies or mediators. The body or the mediators should meet with the parties and help with the negotiations by providing professional, impartial and external advice. Where a negotiation involves parties from different Member States and where those parties decide to rely on the negotiation mechanism, the parties should agree beforehand on the competent Member State. The body or the mediators could meet with the parties to facilitate the start of negotiations or in the course of the negotiations to facilitate the conclusion of an agreement. Participation in that negotiation mechanism and the subsequent conclusion of agreements should be voluntary and should not affect the parties' contractual freedom. Member States should be free to decide on the specific functioning of the negotiation mechanism, including the timing and duration of the assistance to negotiations and the bearing of the costs. Member States should ensure that administrative and financial burdens remain proportionate to guarantee the efficiency of the negotiation mechanism. Without it being an obligation for them, Member States should encourage dialogue between representative organisations.

(53) The expiry of the term of protection of a work entails the entry of that work into the public domain and the expiry of the rights that Union copyright law provides in relation to that work. In the field of visual arts, the circulation of faithful reproductions of works in the public domain contributes to the access to and promotion of culture, and the access to cultural heritage. In the digital environment, the protection of such reproductions through copyright or related rights is inconsistent with the expiry of the copyright protection of works. In addition, differences between the national copyright laws governing the protection of such reproductions give rise to legal uncertainty and affect the cross-border dissemination of works of visual arts in the public domain. Certain reproductions of works of visual arts in the public domain should, therefore, not be protected by copyright or related rights. All of that should not prevent cultural heritage institutions from selling reproductions, such as postcards.

(54) 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. The wide availability of press publications online has given rise to the emergence of new online services, such as news aggregators or media monitoring services, for which the reuse of press publications constitutes an important part of their business models and a source of revenue. Publishers of press publications are facing problems in

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licensing the online use of their publications to the providers of those kinds of services, making it more difficult for them to recoup their investments. In the absence of recognition of publishers of press publications as rightholders, the licensing and enforcement of rights in press publications regarding online uses by information society service providers in the digital environment are often complex and inefficient.

(55) 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 and thereby foster the availability of reliable information. It is therefore necessary to provide at Union level for harmonised legal protection for press publications in respect of online uses by information society service providers, which leaves the existing copyright rules in Union law applicable to private or non-commercial uses of press publications by individual users unaffected, including where such users share press publications online. 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 of publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council ([13]). The legal protection for press publications provided for by this Directive should benefit publishers that are established in a Member State and have their registered office, central administration or principal place of business within the Union.

The concept of publisher of press publications should be understood as covering service providers, such as news publishers or news agencies, when they publish press publications within the meaning of this Directive.

(56) For the purposes of this Directive, it is necessary to define the concept of 'press publication' so that it only covers journalistic publications, published in any media, including on paper, in the context of an economic activity that constitutes a provision of services under Union law. The press publications that should be covered include, for instance, daily newspapers, weekly or monthly magazines of general or special interest, including subscription-based magazines, and news websites. Press publications contain mostly literary works, but increasingly include other types of works and other subject matter, in particular photographs and videos. Periodical publications published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. Neither should that protection apply to websites, such as blogs, that provide information as part of an activity that is not carried out under the initiative, editorial responsibility and control of a service provider, such as a news publisher.

(57) 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 online uses by information society service providers are concerned. The rights granted to publishers of press publications should not extend to acts of hyperlinking. They should also not extend to mere facts reported in press publications. The rights granted to publishers of press publications under this Directive 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 in the case of quotations for purposes such as criticism or review provided for in Article 5(3)(d) of that Directive.

(58) The use of press publications by information society service providers can consist of the use of entire publications or articles but also of parts of press publications. Such uses of parts of press publications have also gained economic relevance. At the same time, the use of individual words or very short extracts of press publications by information society service providers may not undermine the investments made by publishers of press publications in the production of content. Therefore, it is appropriate to provide that the use of individual words or very short extracts of press publications should not fall within the scope of the rights provided for in this Directive. Taking into account the massive aggregation and use of press publications by information society service providers, it is important that the exclusion of very short extracts be interpreted in such a way as not to affect the effectiveness of the rights provided for in this Directive.

([13]) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

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(59) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject matter independently from the press publication in which they are incorporated. Publishers of press publications should, therefore, not be able to invoke the protection granted to them under this Directive against authors and other rightholders or against other authorised users of the same works or other subject matter. That should be without prejudice to contractual arrangements concluded between the publishers of press publications, on the one hand, and authors and other rightholders, on the other. Authors whose works are incorporated in a press publication should be entitled to an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers. That should be without prejudice to national laws on ownership or exercise of rights in the context of employment contracts, provided that such laws are in compliance with Union law.

(60) Publishers, including those of press publications, books or scientific publications and music publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In that context, publishers make an investment with a view to the exploitation of the works contained in their publications and can in some instances be deprived of revenues where such works are used under exceptions or limitations such as those for private copying and reprography, including the corresponding existing national schemes for reprography in the Member States, or under public lending schemes. In several Member States, compensation for uses under those exceptions or limitations is shared between authors and publishers. In order to take account of this situation and to improve legal certainty for all parties concerned, this Directive allows Member States that have existing schemes for the sharing of compensation between authors and publishers to maintain them. That is particularly important for Member States that had such compensation-sharing mechanisms before 12 November 2015, although in other Member States compensation is not shared and is due solely to authors in accordance with national cultural policies. While this Directive should apply in a non-discriminatory way to all Member States, it should respect the traditions in this area and not oblige Member States that do not currently have such compensation-sharing schemes to introduce them. It should not affect existing or future arrangements in Member States regarding remuneration in the context of public lending.

It should also leave national arrangements relating to the management of rights and to remuneration rights unaffected, provided that they are in compliance with Union law. All Member States should be allowed but not obliged to provide that, where authors have transferred or licensed their rights to a publisher or otherwise contribute with their works to a publication, and there are systems in place to compensate for the harm caused to them by an exception or limitation, including through collective management organisations that jointly represent authors and publishers, publishers are entitled to a share of such compensation. Member States should remain free to determine how publishers are to substantiate their claims for compensation or remuneration, and to lay down the conditions for the sharing of such compensation or remuneration between authors and publishers in accordance with their national systems.

(61) In recent years, the functioning of the online content market has gained in complexity. Online content-sharing services providing access to a large amount of copyright-protected content uploaded by their users have become a main source of access to content online. Online services 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. However, although they enable diversity and ease of access to content, they also generate challenges when copyright-protected content is uploaded without prior authorisation from rightholders. Legal uncertainty exists as to whether the providers of such services engage in copyright-relevant acts, and need to obtain authorisation from rightholders for content uploaded by their users who do not hold the relevant rights in the uploaded content, without prejudice to the application of exceptions and limitations provided for in Union law. That uncertainty affects the ability of rightholders to determine whether, and under which conditions, their works and other subject matter are used, as well as their ability to obtain appropriate remuneration for such use. It is therefore important to foster the development of the licensing market between rightholders and online content-sharing service providers. Those licensing agreements should be fair and keep a reasonable balance

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between both parties. Rightholders should receive appropriate remuneration for the use of their works or other subject matter. However, as contractual freedom should not be affected by those provisions, rightholders should not be obliged to give an authorisation or to conclude licensing agreements.

(62) Certain information society services, as part of their normal use, are designed to give access to the public to copyright-protected content or other subject matter uploaded by their users. The definition of an online content-sharing service provider laid down in this Directive should target only online services that play an important role on the online content market by competing with other online content services, such as online audio and video streaming services, for the same audiences. The services covered by this Directive are services, the main or one of the main purposes of which is to store and enable users to upload and share a large amount of copyright-protected content with the purpose of obtaining profit therefrom, either directly or indirectly, by organising it and promoting it in order to attract a larger audience, including by categorising it and using targeted promotion within it. Such services should not include services that have a main purpose other than that of enabling users to upload and share a large amount of copyright-protected content with the purpose of obtaining profit from that activity. The latter services include, for instance, electronic communication services within the meaning of Directive (EU) 2018/1972 of the European Parliament and of the Council ([14]), as well as providers of business-to-business cloud services and cloud services, which allow users to upload content for their own use, such as cyberlockers, or online marketplaces the main activity of which is online retail, and not giving access to copyright-protected content.

Providers of services such as open source software development and sharing platforms, not-for-profit scientific or educational repositories as well as not-for-profit online encyclopedias should also be excluded from the definition of online content-sharing service provider. Finally, in order to ensure a high level of copyright protection, the liability exemption mechanism provided for in this Directive should not apply to service providers the main purpose of which is to engage in or to facilitate copyright piracy.

(63) The assessment of whether an online content-sharing service provider stores and gives access to a large amount of copyright-protected content should be made on a case-by-case basis and should take account of a combination of elements, such as the audience of the service and the number of files of copyright-protected content uploaded by the users of the service.

(64) It is appropriate to clarify in this Directive that online content-sharing service providers perform an act of communication to the public or of making available to the public when they give the public access to copyright-protected works or other protected subject matter uploaded by their users. Consequently, online content-sharing service providers should obtain an authorisation, including via a licensing agreement, from the relevant rightholders. This does not affect the concept of communication to the public or of making available to the public elsewhere under Union law, nor does it affect the possible application of Article 3(1) and (2) of Directive 2001/29/EC to other service providers using copyright-protected content.

(65) When online content-sharing service providers are liable for acts of communication to the public or making available to the public under the conditions laid down in this Directive, Article 14(1) of Directive 2000/31/EC should not apply to the liability arising from the provision of this Directive on the use of protected content by online content-sharing service providers. That should not affect the application of Article 14(1) of Directive 2000/31/EC to such service providers for purposes falling outside the scope of this Directive.

(66) Taking into account the fact that online content-sharing service providers give access to content which is not uploaded by them but by their users, it is appropriate to provide for a specific liability mechanism for the purposes of this Directive for cases in which no authorisation has been granted. That should be without prejudice

([14]) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

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to remedies under national law for cases other than liability for copyright infringements and to national courts or administrative authorities being able to issue injunctions in compliance with Union law. In particular, the specific regime applicable to new online content-sharing service providers with an annual turnover below EUR 10 million, of which the average number of monthly unique visitors in the Union does not exceed 5 million, should not affect the availability of remedies under Union and national law. Where no authorisation has been granted to service providers, they should make their best efforts in accordance with high industry standards of professional diligence to avoid the availability on their services of unauthorised works and other subject matter, as identified by the relevant rightholders. For that purpose, rightholders should provide the service providers with relevant and necessary information taking into account, among other factors, the size of rightholders and the type of their works and other subject matter. The steps taken by online content-sharing service providers in cooperation with rightholders should not lead to the prevention of the availability of non-infringing content, including works or other protected subject matter the use of which is covered by a licensing agreement, or an exception or limitation to copyright and related rights. Steps taken by such service providers should, therefore, not affect users who are using the online content-sharing services in order to lawfully upload and access information on such services.

In addition, the obligations established in this Directive should not lead to Member States imposing a general monitoring obligation. When assessing whether an online content-sharing service provider has made its best efforts in accordance with the high industry standards of professional diligence, account should be taken of whether the service provider has taken all the steps that would be taken by a diligent operator to achieve the result of preventing the availability of unauthorised works or other subject matter on its website, taking into account best industry practices and the effectiveness of the steps taken in light of all relevant factors and developments, as well as the principle of proportionality. For the purposes of that assessment, a number of elements should be considered, such as the size of the service, the evolving state of the art as regards existing means, including potential future developments, to avoid the availability of different types of content and the cost of such means for the services. Different means to avoid the availability of unauthorised copyright-protected content could be appropriate and proportionate depending on the type of content, and, therefore, it cannot be excluded that in some cases availability of unauthorised content can only be avoided upon notification of rightholders. Any steps taken by service providers should be effective with regard to the objectives pursued but should not go beyond what is necessary to achieve the objective of avoiding and discontinuing the availability of unauthorised works and other subject matter.

If unauthorised works and other subject matter become available despite the best efforts made in cooperation with rightholders, as required by this Directive, the online content-sharing service providers should be liable in relation to the specific works and other subject matter for which they have received the relevant and necessary information from rightholders, unless those providers demonstrate that they have made their best efforts in accordance with high industry standards of professional diligence.

In addition, where specific unauthorised works or other subject matter have become available on online content-sharing services, including irrespective of whether the best efforts were made and regardless of whether rightholders have made available the relevant and necessary information in advance, the online content-sharing service providers should be liable for unauthorised acts of communication to the public of works or other subject matter, when, upon receiving a sufficiently substantiated notice, they fail to act expeditiously to disable access to, or to remove from their websites, the notified works or other subject matter. Additionally, such online content-sharing service providers should also be liable if they fail to demonstrate that they have made their best efforts to prevent the future uploading of specific unauthorised works, based on relevant and necessary information provided by rightholders for that purpose.

Where rightholders do not provide online content-sharing service providers with the relevant and necessary information on their specific works or other subject matter, or where no notification concerning the disabling of access to, or the removal of, specific unauthorised works or other subject matter has been provided by rightholders, and, as a result, those service providers cannot make their best efforts to avoid the availability of

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unauthorised content on their services, in accordance with high industry standards of professional diligence, such service providers should not be liable for unauthorised acts of communication to the public or of making available to the public of such unidentified works or other subject matter.

(67) Similar to Article 16(2) of Directive 2014/26/EU, this Directive provides for rules as regards new online services. The rules provided for in this Directive are intended to take into account the specific case of start-up companies working with user uploads to develop new business models. The specific regime applicable to new service providers with a small turnover and audience should benefit genuinely new businesses, and should therefore cease to apply three years after their services first became available online in the Union. That regime should not be abused by arrangements aimed at extending its benefits beyond the first three years. In particular, it should not apply to newly created services or to services provided under a new name but which pursue the activity of an already existing online content-sharing service provider which could not benefit or no longer benefits from that regime.

(68) Online content-sharing service providers should be transparent with rightholders with regard to the steps taken in the context of cooperation. As various actions could be undertaken by online content-sharing service providers, they should provide rightholders, at the request of rightholders, with adequate information on the type of actions undertaken and the way in which they are undertaken. Such information should be sufficiently specific to provide enough transparency to rightholders, without affecting business secrets of online content-sharing service providers. Service providers should, however, not be required to provide rightholders with detailed and individualised information for each work or other subject matter identified. That should be without prejudice to contractual arrangements, which could contain more specific provisions on the information to be provided where agreements are concluded between service providers and rightholders.

(69) Where online content-sharing service providers obtain authorisations, including through licensing agreements, for the use on their service of content uploaded by the users of the service, those authorisations should also cover the copyright relevant acts in respect of uploads by users within the scope of the authorisation granted to the service providers, but only in cases where those users act for non-commercial purposes, such as sharing their content without any profit-making purpose, or where the revenue generated by their uploads is not significant in relation to the copyright relevant acts of the users covered by such authorisations. Where rightholders have explicitly authorised users to upload and make available works or other subject matter on an online content-sharing service, the act of communication to the public of the service provider is authorised within the scope of the authorisation granted by the rightholder. However, there should be no presumption in favour of online content-sharing service providers that their users have cleared all relevant rights.

(70) The steps taken by online content-sharing service providers in cooperation with rightholders should be without prejudice to the application of exceptions or limitations to copyright, including, in particular, those which guarantee the freedom of expression of users. Users should be allowed to upload and make available content generated by users for the specific purposes of quotation, criticism, review, caricature, parody or pastiche. That is particularly important for the purposes of striking a balance between the fundamental rights laid down in the Charter of Fundamental Rights of the European Union ('the Charter'), in particular the freedom of expression and the freedom of the arts, and the right to property, including intellectual property. Those exceptions and limitations should, therefore, be made mandatory in order to ensure that users receive uniform protection across the Union. It is important to ensure that online content-sharing service providers operate an effective complaint and redress mechanism to support use for such specific purposes.

Online content-sharing service providers should also put in place effective and expeditious complaint and redress mechanisms allowing users to complain about the steps taken with regard to their uploads, in particular where they could benefit from an exception or limitation to copyright in relation to an upload to which access has been disabled or that has been removed. Any complaint filed under such mechanisms should be processed without

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undue delay and be subject to human review. When rightholders request the service providers to take action against uploads by users, such as disabling access to or removing content uploaded, such rightholders should duly justify their requests. Moreover, cooperation should not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC of the European Parliament and of the Council ([15]) and Regulation (EU) 2016/679 of the European Parliament and of the Council ([16]). Member States should also ensure that users have access to out-of-court redress mechanisms for the settlement of disputes. Such mechanisms should allow disputes to be settled impartially. Users should also have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright and related rights.

(71) As soon as possible after the date of entry into force of this Directive, the Commission, in cooperation with Member States, should organise dialogues between stakeholders to ensure uniform application of the obligation of cooperation between online content-sharing service providers and rightholders and to establish best practices with regard to the appropriate industry standards of professional diligence. For that purpose, the Commission should consult relevant stakeholders, including users' organisations and technology providers, and take into account developments on the market. Users' organisations should also have access to information on actions carried out by online content-sharing service providers to manage content online.

(72) Authors and performers tend to be in the weaker contractual position when they grant a licence or transfer their rights, including through their own companies, for the purposes of exploitation in return for remuneration, and those natural persons need the protection provided for by this Directive to be able to fully benefit from the rights harmonised under Union law. That need for protection does not arise where the contractual counterpart acts as an end user and does not exploit the work or performance itself, which could, for instance, be the case in some employment contracts.

(73) The remuneration of authors and performers should be appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work. A lump sum payment can also constitute proportionate remuneration but it should not be the rule. Member States should have the freedom to define specific cases for the application of lump sums, taking into account the specificities of each sector. Member States should be free to implement the principle of appropriate and proportionate remuneration through different existing or newly introduced mechanisms, which could include collective bargaining and other mechanisms, provided that such mechanisms are in conformity with applicable Union law.

(74) Authors and performers need information to assess the economic value of rights of theirs that are harmonised under Union law. This is especially the case where natural persons grant a licence or a transfer of rights for the purposes of exploitation in return for remuneration. That need does not arise where the exploitation has ceased, or where the author or performer has granted a licence to the general public without remuneration.

(75) As authors and performers tend to be in the weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of adequate and accurate information by their contractual counterparts or their successors in title is important for the transparency and balance in the system governing the remuneration of authors and

([15]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

([16]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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performers. That information should be up-to-date to allow access to recent data, relevant to the exploitation of the work or performance, and comprehensive in a way that it covers all sources of revenues relevant to the case, including, where applicable, merchandising revenues. As long as exploitation is ongoing, contractual counterparts of authors and performers should provide information available to them on all modes of exploitation and on all relevant revenues worldwide with a regularity that is appropriate in the relevant sector, but at least annually. The information should be provided in a manner that is comprehensible to the author or performer and it should allow the effective assessment of the economic value of the rights in question. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned. The processing of personal data, such as contact details and information on remuneration, that are necessary to keep authors and performers informed in relation to the exploitation of their works and performances, should be carried out in accordance with Article 6(1)(c) of Regulation (EU) 2016/679.

(76) In order to ensure that exploitation-related information is duly provided to authors and performers also in cases where the rights have been sub-licensed to other parties who exploit the rights, this Directive entitles authors and performers to request additional relevant information on the exploitation of the rights, in cases where the first contractual counterpart has provided the information available to them, but that information is not sufficient to assess the economic value of their rights. That request should be made either directly to sub-licensees or through the contractual counterparts of authors and performers. Authors and performers, and their contractual counterparts, should be able to agree to keep the shared information confidential, but authors and performers should always be able to use the shared information for the purpose of exercising their rights under this Directive. Member States should have the option, in compliance with Union law, to provide for further measures to ensure transparency for authors and performers.

(77) When implementing the transparency obligation provided for in this Directive, Member States should take into account the specificities of different content sectors, such as those of the music sector, the audiovisual sector and the publishing sector, and all relevant stakeholders should be involved when deciding on such sector-specific obligations. Where relevant, the significance of the contribution of authors and performers to the overall work or performance should also be considered. Collective bargaining should be considered as an option for the relevant stakeholders to reach an agreement regarding transparency. Such agreements should ensure that authors and performers have the same level of transparency as or a higher level of transparency than the minimum requirements provided for in this Directive. To enable the adaptation of existing reporting practices to the transparency obligation, a transitional period should be provided for. It should not be necessary to apply the transparency obligation in respect of agreements concluded between rightholders and collective management organisations, independent management entities or other entities subject to the national rules implementing Directive 2014/26/EU, as those organisations or entities are already subject to transparency obligations under Article 18 of Directive 2014/26/EU. Article 18 of Directive 2014/26/EU applies to organisations that manage copyright or related rights on behalf of more than one rightholder for the collective benefit of those rightholders. However, individually negotiated agreements concluded between rightholders and those of their contractual counterparts who act in their own interest should be subject to the transparency obligation provided for in this Directive.

(78) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few opportunities for authors and performers to renegotiate them with their contractual counterparts or their successors in title in the event that the economic value of the rights turns out to be significantly higher than initially estimated. Accordingly, without prejudice to the law applicable to contracts in Member States, a remuneration adjustment mechanism should be provided for as regards cases where the remuneration originally agreed under a licence or a transfer of rights clearly becomes disproportionately low compared to the relevant revenues derived from the subsequent exploitation of the work or fixation of the performance by the contractual counterpart of the author or performer. All revenues relevant to the case in question, including, where applicable, merchandising revenues, should be taken into account for the assessment of whether the remuneration is disproportionately low. The assessment of the situation should take account of the specific circumstances of each case, including the contribution of the author or performer, as well as of the specificities and remuneration practices in the different content sectors, and whether the contract is based on a collective bargaining agreement. Representatives of authors and performers duly mandated in accordance with national law in compliance with Union law, should be able to provide assistance to one or more authors or performers in relation to requests for the adjustment of the contracts, also taking into account the interests of other authors or performers where relevant.

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Those representatives should protect the identity of the represented authors and performers for as long as that is possible. Where the parties do not agree on the adjustment of the remuneration, the author or performer should be entitled to bring a claim before a court or other competent authority. Such mechanism should not apply to contracts concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities subject to national rules implementing Directive 2014/26/EU.

(79) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims by authors and performers, or by their representatives on their behalf, related to obligations of transparency and the contract adjustment mechanism. For that purpose, Member States should be able to either establish a new body or mechanism, or rely on an existing one that fulfils the conditions established by this Directive, irrespective of whether those bodies or mechanisms are industry-led or public, including when part of the national judiciary system. Member States should have flexibility in deciding how the costs of the dispute resolution procedure are to be allocated. Such alternative dispute resolution procedure should be without prejudice to the right of parties to assert and defend their rights by bringing an action before a court.

(80) When authors and performers license or transfer their rights, they expect their work or performance to be exploited. However, it could be the case that works or performances that have been licensed or transferred are not exploited at all. Where those rights have been transferred on an exclusive basis, authors and performers cannot turn to another partner to exploit their works or performances. In such a case, and after a reasonable period of time has elapsed, authors and performers should be able to benefit from a mechanism for the revocation of rights allowing them to transfer or license their rights to another person. As exploitation of works or performances can vary depending on the sectors, specific provisions could be laid down at national level in order to take into account the specificities of the sectors, such as the audiovisual sector, or of the works or performances, in particular providing for time frames for the right of revocation. In order to protect the legitimate interests of licensees and transferees of rights and to prevent abuses, and taking into account that a certain amount of time is needed before a work or performance is actually exploited, authors and performers should be able to exercise the right of revocation in accordance with certain procedural requirements and only after a certain period of time following the conclusion of the licence or of the transfer agreement. Member States should be allowed to regulate the exercise of the right of revocation in the case of works or performances involving more than one author or performer, taking into account the relative importance of the individual contributions.

(81) The provisions regarding transparency, contract adjustment mechanisms and alternative dispute resolution procedures laid down in this Directive should be of a mandatory nature, and parties should not be able to derogate from those provisions, whether in contracts between authors, performers and their contractual counterparts, or in agreements between those counterparts and third parties, such as non-disclosure agreements. As a consequence, Article 3(4) of Regulation (EC) No 593/2008 of the European Parliament and of the Council ([17]) should apply to the effect that, where all other elements relevant to the situation at the time of the choice of applicable law are located in one or more Member States, the parties' choice of applicable law other than that of a Member State does not prejudice the application of the provisions regarding transparency, contract adjustment mechanisms and alternative dispute resolution procedures laid down in this Directive, as implemented in the Member State of the forum.

(82) Nothing in this Directive should be interpreted as preventing holders of exclusive rights under Union copyright law from authorising the use of their works or other subject matter for free, including through non-exclusive free licences for the benefit of any users.

(83) Since the objective of this Directive, namely the modernisation of certain aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market, cannot be sufficiently achieved by Member States but can rather, by reason of their scale, effects and cross-border dimension, be better achieved at Union level, the Union may adopt measures in

([17]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

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accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(84) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter. Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles.

(85) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data set out in Articles 7 and 8, respectively, of the Charter and must be in compliance with Directive 2002/58/EC and Regulation (EU) 2016/679.

(86) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([18]), Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive lays down rules which aim to harmonise further Union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licences, as well as rules which aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter.

2. Except in the cases referred to in Article 24, 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.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'research organisation' means a university, including its libraries, a research institute or any other entity, the primary goal of which is to conduct scientific research or to carry out educational activities involving also the conduct of scientific research:

(a) on a not-for-profit basis or by reinvesting all the profits in its scientific research; or

(b) pursuant to a public interest mission recognised by a Member State;

in such a way that the access to the results generated by such scientific research cannot be enjoyed on a preferential basis by an undertaking that exercises a decisive influence upon such organisation;

(2) 'text and data mining' means any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations;

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

([18]) OJ C 369, 17.12.2011, p. 14.

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(4) 'press publication' means a collection composed mainly of literary works of a journalistic nature, but which can also include other works or other subject matter, and which:

(a) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general or special interest magazine;

(b) has the purpose of providing the general public with information related to news or other topics; and

(c) is published in any media under the initiative, editorial responsibility and control of a service provider.

Periodicals that are published for scientific or academic purposes, such as scientific journals, are not press publications for the purposes of this Directive;

(5) 'information society service' means a service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535;

(6) 'online content-sharing service provider' means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes.

Providers of services, such as not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, providers of electronic communications services as defined in Directive (EU) 2018/1972, online marketplaces, business-to-business cloud services and cloud services that allow users to upload content for their own use, are not 'online content-sharing service providers' within the meaning of this Directive.

TITLE II

MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO THE DIGITAL AND CROSS-BORDER ENVIRONMENT

Article 3

Text and data mining for the purposes of scientific research

1. Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, and Article 15(1) of this Directive for reproductions and extractions made by research organisations and cultural heritage institutions in order to carry out, for the purposes of scientific research, text and data mining of works or other subject matter to which they have lawful access.

2. Copies of works or other subject matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.

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.

4. Member States shall encourage rightholders, research organisations and cultural heritage institutions to define commonly agreed best practices concerning the application of the obligation and of the measures referred to in paragraphs 2 and 3 respectively.

Article 4

Exception or limitation for text and data mining

1. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 15(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining.

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2. Reproductions and extractions made pursuant to paragraph 1 may be retained for as long as is necessary for the purposes of text and data mining.

3. The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.

4. This Article shall not affect the application of Article 3 of this Directive.

Article 5

Use of works and other subject matter in digital and cross-border teaching activities

1. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a), (b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of Directive 2009/24/EC and Article 15(1) of this Directive in order to allow the digital use of works and other subject matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, on condition that such use:

(a) takes place under the responsibility of an educational establishment, on its premises or at other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff; and

(b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible.

2. Notwithstanding Article 7(1), Member States may provide that the exception or limitation adopted pursuant to paragraph 1 does not apply or does not apply as regards specific uses or types of works or other subject matter, such as material that is primarily intended for the educational market or sheet music, to the extent that suitable licences authorising the acts referred to in paragraph 1 of this Article and covering the needs and specificities of educational establishments are easily available on the market.

Member States that decide to avail of the first subparagraph of this paragraph shall take the necessary measures to ensure that the licences authorising the acts referred to in paragraph 1 of this Article are available and visible in an appropriate manner for educational establishments.

3. The use of works and other subject matter for the sole purpose of illustration for teaching through secure electronic environments undertaken in compliance with the provisions of national law adopted pursuant to this Article shall be deemed to occur solely in the Member State where the educational establishment is established.

4. Member States may provide for fair compensation for rightholders for the use of their works or other subject matter pursuant to paragraph 1.

Article 6

Preservation of cultural heritage

Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 15(1) of this Directive, in order to allow cultural heritage institutions to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation.

Article 7

Common provisions

1. Any contractual provision contrary to the exceptions provided for in Articles 3, 5 and 6 shall be unenforceable.

2. Article 5(5) of Directive 2001/29/EC shall apply to the exceptions and limitations provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to Articles 3 to 6 of this Directive.

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TITLE III

MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT

CHAPTER 1

Out-of-commerce works and other subject matter

Article 8

Use of out-of-commerce works and other subject matter by cultural heritage institutions

1. Member States shall provide that a collective management organisation, in accordance with its mandates from rightholders, may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject matter that are permanently in the collection of the institution, irrespective of whether all rightholders covered by the licence have mandated the collective management organisation, on condition that:

(a) the collective management organisation is, on the basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject matter and of the rights that are the subject of the licence; and

(b) all rightholders are guaranteed equal treatment in relation to the terms of the licence.

2. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a), (b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of Directive 2009/24/EC, and Article 15(1) of this Directive, in order to allow cultural heritage institutions to make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in their collections, on condition that:

(a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible; and

(b) such works or other subject matter are made available on non-commercial websites.

3. Member States shall provide that the exception or limitation provided for in paragraph 2 only applies to types of works or other subject matter for which no collective management organisation that fulfils the condition set out in point (a) of paragraph 1 exists.

4. Member States shall provide that all rightholders may, at any time, easily and effectively, exclude their works or other subject matter from the licensing mechanism set out in paragraph 1 or from the application of the exception or limitation provided for in paragraph 2, either in general or in specific cases, including after the conclusion of a licence or after the beginning of the use concerned.

5. A work or other subject matter shall be deemed to be out of commerce when it can be presumed in good faith that the whole work or other subject matter is not available to the public through customary channels of commerce, after a reasonable effort has been made to determine whether it is available to the public.

Member States may provide for specific requirements, such as a cut-off date, to determine whether works and other subject matter can be licensed in accordance with paragraph 1 or used under the exception or limitation provided for in paragraph 2. Such requirements shall not extend beyond what is necessary and reasonable, and shall not preclude being able to determine that a set of works or other subject matter as a whole is out of commerce, when it is reasonable to presume that all works or other subject matter are out of commerce.

6. Member States shall provide that the licences referred to in paragraph 1 are to be sought from a collective management organisation that is representative for the Member State where the cultural heritage institution is established.

7. This Article shall not apply to sets of out-of-commerce works or other subject matter if, on the basis of the reasonable effort referred to in paragraph 5, there is evidence that such sets predominantly consist of:

(a) works or other subject matter, other than cinematographic or audiovisual works, first published or, in the absence of publication, first broadcast in a third country;

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(b) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country; or

(c) works or other subject matter of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to points (a) and (b).

By way of derogation from the first subparagraph, this Article shall apply where the collective management organisation is sufficiently representative, within the meaning of point (a) of paragraph 1, of rightholders of the relevant third country.

Article 9

Cross-border uses

1. Member States shall ensure that licences granted in accordance with Article 8 may allow the use of out-of-commerce works or other subject matter by cultural heritage institutions in any Member State.

2. The uses of works and other subject matter under the exception or limitation provided for in Article 8(2) shall be deemed to occur solely in the Member State where the cultural heritage institution undertaking that use is established.

Article 10

Publicity measures

1. Member States shall ensure that information from cultural heritage institutions, collective management organisations or relevant public authorities, for the purposes of the identification of the out-of-commerce works or other subject matter, covered by a licence granted in accordance with Article 8(1), or used under the exception or limitation provided for in Article 8(2), as well as information about the options available to rightholders as referred to in Article 8(4), and, as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses, is made permanently, easily and effectively accessible on a public single online portal from at least six months before the works or other subject matter are distributed, communicated to the public or made available to the public in accordance with the licence or under the exception or limitation.

The portal shall be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012.

2. Member States shall provide that, if necessary for the general awareness of rightholders, additional appropriate publicity measures are taken regarding the ability of collective management organisations to license works or other subject matter in accordance with Article 8, the licences granted, the uses under the exception or limitation provided for in Article 8(2) and the options available to rightholders as referred to in Article 8(4).

The appropriate publicity measures referred to in the first subparagraph of this paragraph shall be taken in the Member State where the licence is sought in accordance with Article 8(1) or, for uses under the exception or limitation provided for in Article 8(2), in the Member State where the cultural heritage institution is established. If there is evidence, such as the origin of the works or other subject matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.

Article 11

Stakeholder dialogue

Member States shall consult rightholders, collective management organisations and cultural heritage institutions in each sector before establishing specific requirements pursuant to Article 8(5), and shall encourage regular dialogue between representative users' and rightholders' organisations, including collective management organisations, and any other relevant stakeholder organisations, on a sector-specific basis, to foster the relevance and usability of the licensing mechanisms set out in Article 8(1) and to ensure that the safeguards for rightholders referred to in this Chapter are effective.

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CHAPTER 2

Measures to facilitate collective licensing

Article 12

Collective licensing with an extended effect

1. Member States may provide, as far as the use on their territory is concerned and subject to the safeguards provided for in this Article, that where a collective management organisation that is subject to the national rules implementing Directive 2014/26/EU, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject matter:

(a) such an agreement can be extended to apply to the rights of rightholders who have not authorised that collective management organisation to represent them by way of assignment, licence or any other contractual arrangement; or

(b) with respect to such an agreement, the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly.

2. Member States shall ensure that the licensing mechanism referred to in paragraph 1 is only applied within well-defined areas of use, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely, due to the nature of the use or of the types of works or other subject matter concerned, and shall ensure that such licensing mechanism safeguards the legitimate interests of rightholders.

3. For the purposes of paragraph 1, Member States shall provide for the following safeguards:

(a) the collective management organisation is, on the basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject matter and of the rights which are the subject of the licence, for the relevant Member State;

(b) all rightholders are guaranteed equal treatment, including in relation to the terms of the licence;

(c) rightholders who have not authorised the organisation granting the licence may at any time easily and effectively exclude their works or other subject matter from the licensing mechanism established in accordance with this Article; and

(d) appropriate publicity measures are taken, starting from a reasonable period before the works or other subject matter are used under the licence, to inform rightholders about the ability of the collective management organisation to license works or other subject matter, about the licensing taking place in accordance with this Article and about the options available to rightholders as referred to in point (c). Publicity measures shall be effective without the need to inform each rightholder individually.

4. This Article does not affect the application of collective licensing mechanisms with an extended effect in accordance with other provisions of Union law, including provisions that allow exceptions or limitations.

This Article shall not apply to mandatory collective management of rights.

Article 7 of Directive 2014/26/EU shall apply to the licensing mechanism provided for in this Article.

5. Where a Member State provides in its national law for a licensing mechanism in accordance with this Article, that Member State shall inform the Commission about the scope of the corresponding national provisions, about the purposes and types of licences that may be introduced under those provisions, about the contact details of organisations issuing licences in accordance with that licensing mechanism, and about the means by which information on the licensing and on the options available to rightholders as referred to in point (c) of paragraph 3 can be obtained. The Commission shall publish that information.

6. Based on the information received pursuant to paragraph 5 of this Article and on the discussions within the contact committee established in Article 12(3) of Directive 2001/29/EC, the Commission shall, by 10 April 2021, submit to the European Parliament and to the Council a report on the use in the Union of the licensing mechanisms referred to in paragraph 1 of this Article, their impact on licensing and rightholders, including rightholders who are not members of the organisation granting the licences or who are nationals of, or resident in, another Member State, their effectiveness in facilitating the dissemination of cultural content, and their impact on the internal market, including the cross-border provision of services and competition. That report shall be accompanied, if appropriate, by a legislative proposal, including as regards the cross-border effect of such national mechanisms.

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CHAPTER 3

Access to and availability of audiovisual works on video-on-demand platforms

Article 13

Negotiation mechanism

Member States shall ensure that parties facing difficulties related to the licensing of rights when seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services may rely on the assistance of an impartial body or of mediators. The impartial body established or designated by a Member State for the purpose of this Article and mediators shall provide assistance to the parties with their negotiations and help the parties reach agreements, including, where appropriate, by submitting proposals to them.

Member States shall notify the Commission of the body or mediators referred to in the first paragraph no later than 7 June 2021. Where Member States have chosen to rely on mediation, the notification to the Commission shall at least include, when available, the source where relevant information on the mediators entrusted can be found.

CHAPTER 4

Works of visual art in the public domain

Article 14

Works of visual art in the public domain

Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is not subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.

TITLE IV

MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT

CHAPTER 1

Rights in publications

Article 15

Protection of press publications concerning online uses

1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service providers.

The rights provided for in the first subparagraph shall not apply to private or non-commercial uses of press publications by individual users.

The protection granted under the first subparagraph shall not apply to acts of hyperlinking.

The rights provided for in the first subparagraph shall not apply in respect of the use of individual words or very short extracts of a press publication.

2. The rights provided for in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject matter incorporated in a press publication. The rights provided for in paragraph 1 shall not be invoked against those 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 they are incorporated.

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When a work or other subject matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights provided for in paragraph 1 shall not be invoked to prohibit the use by other authorised users. The rights provided for in paragraph 1 shall not be invoked to prohibit the use of works or other subject matter for which protection has expired.

3. Articles 5 to 8 of Directive 2001/29/EC, Directive 2012/28/EU and Directive (EU) 2017/1564 of the European Parliament of the Council ([19]) shall apply mutatis mutandis in respect of the rights provided for in paragraph 1 of this Article.

4. The rights provided for in paragraph 1 shall expire two years after the press publication is published. That term shall be calculated from 1 January of the year following the date on which that press publication is published.

Paragraph 1 shall not apply to press publications first published before 6 June 2019.

5. Member States shall provide that authors of works incorporated in a press publication receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers.

Article 16

Claims to fair compensation

Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or licence constitutes a sufficient legal basis for the publisher to be entitled to a share of the compensation for the use of the work made under an exception or limitation to the transferred or licensed right.

The first paragraph shall be without prejudice to existing and future arrangements in Member States concerning public lending rights.

CHAPTER 2

Certain uses of protected content by online services

Article 17

Use of protected content by online content-sharing service providers

1. Member States shall provide that an online content-sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of this Directive when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.

An online content-sharing service provider shall therefore obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of Directive 2001/29/EC, for instance by concluding a licensing agreement, in order to communicate to the public or make available to the public works or other subject matter.

2. Member States shall provide that, where an online content-sharing service provider obtains an authorisation, for instance by concluding a licensing agreement, that authorisation shall also cover acts carried out by users of the services falling within the scope of Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis or where their activity does not generate significant revenues.

3. When an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in this Directive, the limitation of liability established in Article 14(1) of Directive 2000/31/EC shall not apply to the situations covered by this Article.

([19]) Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 242, 20.9.2017, p. 6).

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The first subparagraph of this paragraph shall not affect the possible application of Article 14(1) of Directive 2000/31/EC to those service providers for purposes falling outside the scope of this Directive.

4. If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have:

(a) made best efforts to obtain an authorisation, and

(b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information; and in any event

(c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b).

5. In determining whether the service provider has complied with its obligations under paragraph 4, and in light of the principle of proportionality, the following elements, among others, shall be taken into account:

(a) the type, the audience and the size of the service and the type of works or other subject matter uploaded by the users of the service; and

(b) the availability of suitable and effective means and their cost for service providers.

6. Member States shall provide that, in respect of new online content-sharing service providers the services of which have been available to the public in the Union for less than three years and which have an annual turnover below EUR 10 million, calculated in accordance with Commission Recommendation 2003/361/EC ([20]), the conditions under the liability regime set out in paragraph 4 are limited to compliance with point (a) of paragraph 4 and to acting expeditiously, upon receiving a sufficiently substantiated notice, to disable access to the notified works or other subject matter or to remove those works or other subject matter from their websites.

Where the average number of monthly unique visitors of such service providers exceeds 5 million, calculated on the basis of the previous calendar year, they shall also demonstrate that they have made best efforts to prevent further uploads of the notified works and other subject matter for which the rightholders have provided relevant and necessary information.

7. The cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation.

Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services:

(a) quotation, criticism, review;

(b) use for the purpose of caricature, parody or pastiche.

8. The application of this Article shall not lead to any general monitoring obligation.

Member States shall provide that online content-sharing service providers provide rightholders, at their request, with adequate information on the functioning of their practices with regard to the cooperation referred to in paragraph 4 and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.

9. Member States shall provide that online content-sharing service providers put in place an effective and expeditious complaint and redress mechanism that is available to users of their services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them.

([20]) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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Where rightholders request to have access to their specific works or other subject matter disabled or to have those works or other subject matter removed, they shall duly justify the reasons for their requests. Complaints submitted under the mechanism provided for in the first subparagraph shall be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review. Member States shall also ensure that out-of-court redress mechanisms are available for the settlement of disputes. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law, without prejudice to the rights of users to have recourse to efficient judicial remedies. In particular, Member States shall ensure that users have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright and related rights.

This Directive shall in no way affect legitimate uses, such as uses under exceptions or limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC and Regulation (EU) 2016/679.

Online content-sharing service providers shall inform their users in their terms and conditions that they can use works and other subject matter under exceptions or limitations to copyright and related rights provided for in Union law.

10. As of 6 June 2019 the Commission, in cooperation with the Member States, shall organise stakeholder dialogues to discuss best practices for cooperation between online content-sharing service providers and rightholders. The Commission shall, in consultation with online content-sharing service providers, rightholders, users' organisations and other relevant stakeholders, and taking into account the results of the stakeholder dialogues, issue guidance on the application of this Article, in particular regarding the cooperation referred to in paragraph 4. When discussing best practices, special account shall be taken, among other things, of the need to balance fundamental rights and of the use of exceptions and limitations. For the purpose of the stakeholder dialogues, users' organisations shall have access to adequate information from online content-sharing service providers on the functioning of their practices with regard to paragraph 4.

CHAPTER 3

Fair remuneration in exploitation contracts of authors and performers

Article 18

Principle of appropriate and proportionate remuneration

1. Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration.

2. In the implementation in national law of the principle set out in paragraph 1, Member States shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests.

Article 19

Transparency obligation

1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due.

2. Member States shall ensure that, where the rights referred to in paragraph 1 have subsequently been licensed, authors and performers or their representatives shall, at their request, receive from sub-licensees additional information, in the event that their first contractual counterpart does not hold all the information that would be necessary for the purposes of paragraph 1.

Where that additional information is requested, the first contractual counterpart of authors and performers shall provide information on the identity of those sub-licensees.

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Member States may provide that any request to sub-licensees pursuant to the first subparagraph is made directly or indirectly through the contractual counterpart of the author or the performer.

3. The obligation set out in paragraph 1 shall be proportionate and effective in ensuring a high level of transparency in every sector. Member States may provide that in duly justified cases where the administrative burden resulting from the obligation set out in paragraph 1 would become disproportionate in the light of the revenues generated by the exploitation of the work or performance, the obligation is limited to the types and level of information that can reasonably be expected in such cases.

4. Member States may decide that the obligation set out in paragraph 1 of this Article does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance, unless the author or performer demonstrates that he or she requires the information for the exercise of his or her rights under Article 20(1) and requests the information for that purpose.

5. Member States may provide that, for agreements subject to or based on collective bargaining agreements, the transparency rules of the relevant collective bargaining agreement are applicable, on condition that those rules meet the criteria provided for in paragraphs 1 to 4.

6. Where Article 18 of Directive 2014/26/EU is applicable, the obligation laid down in paragraph 1 of this Article shall not apply in respect of agreements concluded by entities defined in Article 3(a) and (b) of that Directive or by other entities subject to the national rules implementing that Directive.

Article 20

Contract adjustment mechanism

1. Member States shall ensure that, in the absence of an applicable collective bargaining agreement providing for a mechanism comparable to that set out in this Article, authors and performers or their representatives are entitled to claim additional, appropriate and fair remuneration from the party with whom they entered into a contract for the exploitation of their rights, or from the successors in title of such party, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances.

2. Paragraph 1 of this Article shall not apply to agreements concluded by entities defined in Article 3(a) and (b) of Directive 2014/26/EU or by other entities that are already subject to the national rules implementing that Directive.

Article 21

Alternative dispute resolution procedure

Member States shall provide that disputes concerning the transparency obligation under Article 19 and the contract adjustment mechanism under Article 20 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors or performers.

Article 22

Right of revocation

1. Member States shall ensure that where an author or a performer has licensed or transferred his or her rights in a work or other protected subject matter on an exclusive basis, the author or performer may revoke in whole or in part the licence or the transfer of rights where there is a lack of exploitation of that work or other protected subject matter.

2. Specific provisions for the revocation mechanism provided for in paragraph 1 may be provided for in national law, taking into account the following:

(a) the specificities of the different sectors and the different types of works and performances; and

(b) where a work or other subject matter contains the contribution of more than one author or performer, the relative importance of the individual contributions, and the legitimate interests of all authors and performers affected by the application of the revocation mechanism by an individual author or performer.

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Member States may exclude works or other subject matter from the application of the revocation mechanism if such works or other subject matter usually contain contributions of a plurality of authors or performers.

Member States may provide that the revocation mechanism can only apply within a specific time frame, where such restriction is duly justified by the specificities of the sector or of the type of work or other subject matter concerned.

Member States may provide that authors or performers can choose to terminate the exclusivity of the contract instead of revoking the licence or transfer of the rights.

3. Member States shall provide that the revocation provided for in paragraph 1 may only be exercised after a reasonable time following the conclusion of the licence or the transfer of the rights. The author or performer shall notify the person to whom the rights have been licensed or transferred and set an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiry of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the licence or the transfer of the rights.

4. Paragraph 1 shall not apply if the lack of exploitation is predominantly due to circumstances that the author or the performer can reasonably be expected to remedy.

5. Member States may provide that any contractual provision derogating from the revocation mechanism provided for in paragraph 1 is enforceable only if it is based on a collective bargaining agreement.

Article 23

Common provisions

1. Member States shall ensure that any contractual provision that prevents compliance with Articles 19, 20 and 21 shall be unenforceable in relation to authors and performers.

2. Members States shall provide that Articles 18 to 22 of this Directive do not apply to authors of a computer program within the meaning of Article 2 of Directive 2009/24/EC.

TITLE V

FINAL PROVISIONS

Article 24

Amendments to Directives 96/9/EC and 2001/29/EC

1. Directive 96/9/EC is amended as follows:

(a) In Article 6(2), point (b) is replaced by the following:

‘(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 limitations provided for in Directive (EU) 2019/790 of the European Parliament and of the Council (*);

(*) Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).’.

(b) In Article 9, point (b) is replaced by the following:

‘(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 limitations provided for in Directive (EU) 2019/790;’.

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2. Directive 2001/29/EC is amended as follows:

(a) In Article 5(2), point (c) is replaced by the following:

'(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage, without prejudice to the exceptions and limitations provided for in Directive (EU) 2019/790 of the European Parliament and of the Council (*);

(*) Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).'.

(b) In Article 5(3), point (a) is replaced by the following:

'(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 limitations provided for in Directive (EU) 2019/790;'.

(c) In Article 12(4), the following points are added:

'(e) to examine the impact of the transposition of Directive (EU) 2019/790 on the functioning of the internal market and to highlight any transposition difficulties;

(f) to facilitate the exchange of information on relevant developments in legislation and case law as well as on the practical application of the measures taken by Member States to implement Directive (EU) 2019/790;

(g) to discuss any other questions arising from the application of Directive (EU) 2019/790.'.

Article 25

Relationship with exceptions and limitations provided for in other directives

Member States may adopt or maintain in force broader provisions, compatible with the exceptions and limitations provided for in Directives 96/9/EC and 2001/29/EC, for uses or fields covered by the exceptions or limitations provided for in this Directive.

Article 26

Application in time

1. This Directive shall apply in respect of all works and other subject matter that are protected by national law in the field of copyright on or after 7 June 2021.

2. This Directive shall apply without prejudice to any acts concluded and rights acquired before 7 June 2021.

Article 27

Transitional provision

Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation set out in Article 19 as from 7 June 2022.

Article 28

Protection of personal data

The processing of personal data carried out within the framework of this Directive shall be carried out in compliance with Directive 2002/58/EC and Regulation (EU) 2016/679.

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Article 29

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 June 2021. They shall immediately inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 30

Review

1. No sooner than 7 June 2026, the Commission shall carry out a review of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

The Commission shall, by 7 June 2024, assess the impact of the specific liability regime set out in Article 17 applicable to online content-sharing service providers that have an annual turnover of less than EUR 10 million and the services of which have been available to the public in the Union for less than three years under Article 17(6) and, if appropriate, take action in accordance with the conclusions of its assessment.

2. Member States shall provide the Commission with the necessary information for the preparation of the report referred to in paragraph 1.

Article 31

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 32

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 17 April 2019.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	G. CIAMBA