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INFORMATION

From:	Presidency
To:	Working Party on Intellectual Property (Copyright)
N° prev. doc.:	12513/18
N° Cion doc.:	12254/16
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market - Articles 11 and 13

Delegations will find in the Annex Presidency compromise suggestions on Articles 11 and 13, and related definitions of Article 2, as well as recitals (31) to (35) of the above mentioned proposal, for discussion at the meeting of the Intellectual Property (Copyright) Working Party on 15 November 2018.

The Presidency suggestions on Article 11, and related definitions and recitals are annexed in 4-column format. Changes compared to the Council text (9134/18) are indicated in **bold**. Comments are in *[italics]*. The suggestions on Article 13 are annexed in continuous text that contains references to the relevant rows of the 4-column table and comments in *[italics]*. Optional text is set out in *[square bracketed text]*.

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	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
117.	Art. 2, para 4	(4) 'press publication' means a fixation of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider.	(4) 'press publication' means a fixation by <i>publishers or news agencies</i> of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider. <i>Periodicals which are published for scientific or academic purposes, such as scientific journals, shall</i>	(4) 'press publication' means a fixation of a <u>collection composed</u> <u>mainly</u> of literary works of a journalistic nature; which : <i>[remaining part of this paragraph was split up in points (a) to (d) - see following rows 118-121]</i>	(4) 'press publication' means a collection composed mainly of literary works of a journalistic nature which:

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			<i>not be covered by this definition;</i>		
118.	Art. 2, para 4, point (a)			<p>(a) may may also omit include other works or subject-matter and;</p> <p><i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i></p>	<p>(a) may also include other works or subject-matter;</p>
119.	Art. 2, para 4, point (b)			<p>(b) 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; 1</p> <p><i>[See Article 2(4) of COM proposal and of EP text (row 117)]</i></p>	<p>(b) 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;</p>
120.	Art. 2, para 4, point (c)			<p>(c) has having the purpose of providing the <u>general public with</u> information related to news or other topics; and</p>	<p>(c) has the purpose of providing the general public with information related to news or other topics; and</p>

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121.	Art. 2, para 4, point (d)			<p>[See Article 2(4) of COM proposal and of EP text (row 117)]</p> <p>(d) is published in any media under the initiative, editorial responsibility and control of a service provider;</p> <p>[See Article 2(4) of COM proposal and of EP text (row 117)]</p>	<p>(d) is published in any media under the initiative, editorial responsibility and control of a service provider;</p> <p>Periodicals which are published for scientific or academic purposes, such as scientific journals, shall be excluded from the scope of application of this definition.</p>
215.		TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT	TITLE IV MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT
216.		CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications	CHAPTER 1 Rights in publications

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
217.	Art. 11, title	<p><i>Article 11</i> <i>Protection of press publications concerning digital uses</i></p>	<p><i>Article 11</i> <i>Protection of press publications concerning digital uses</i></p>	<p><i>Article 11</i> <i>Protection of press publications concerning digitalonline uses</i></p>	<p><i>Article 11</i> <i>Protection of press publications concerning online uses</i></p>
218.	Art. 11, para 1	<p>1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.</p>	<p>1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC so <i>that they may obtain fair and proportionate remuneration</i> for the digital use of their press publications by <i>information society service providers</i>.</p>	<p>1. Member States shall provide publishers of press publications <u>established in a Member State</u> with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital<u>online</u> use of their press publications by <u>information society service providers</u>.</p>	<p>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. As a consequence, these rights shall not apply to uses of press publications carried out by individual users when they do not act as information society service providers.</p>
219.	Art. 11, para 1, sub-para 2			<p><u>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial</u></p>	<p>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a</p>

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			<p><u>parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</u></p>	<p>press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</p> <p>The protection granted under the first subparagraph shall not apply to acts of hyperlinking when they do not constitute communication to the public.</p>
220.	Art. 11, para 1a	1a. <i>The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use</i>		

	Location	COMMISSION PROPOSAL COM(2016)593	EP TEXT <i>of press publications by individual users.</i>	COUNCIL TEXT doc. 9134/18	POSSIBLE COMPROMISE SOLUTION
221.	Art. 11, para 2	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such rights may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. Such <u>The rights referred to in paragraph 1</u> may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.	2. The rights referred to in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. The rights referred to in paragraph 1 may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.

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222.	Art. 11, para 2, sub-para 2			<p><u>When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection has expired.</u></p>	<p>When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection has expired.</p>
223.	Art. 11, para 2a		<p><i>2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by individual words.</i></p>		
224.	Art. 11, para 3	<p>3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.</p>	<p>3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.</p>	<p>3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.</p>	<p>3. Articles 5 to 8 of Directive 2001/29/EC and Directives 2012/28/EU and (EU) 2017/1564 shall apply <i>mutatis mutandis</i> in</p>

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					respect of the rights referred to in paragraph 1.
225.	Art. 11, para 4	4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.	4. The rights referred to in paragraph 1 shall expire 20 5 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. <i>The right referred to in paragraph 1 shall not apply with retroactive effect.</i>	4. The rights referred to in paragraph 1 shall expire 20 years 1 year after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.	4. The rights referred to in paragraph 1 shall expire 1 year after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.
226.	Art. 11, para 4a		4a. <i>Member States shall ensure that authors receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers</i>		4a. Member States shall ensure that the authors of the works incorporated in a press publication receive appropriate remuneration for the exploitation of press publications by information society service providers.

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227.	Art. 11, para 5			5. Paragraph 1 shall not apply to press publications first published before <i>entry into force of the Directive</i>].	5. Paragraph 1 shall not apply to press publications first published before <i>entry into force of the Directive of the Directive</i>].

Row	COMMISSION PROPOSAL	EP TEXT	COUNCIL TEXT	POSSIBLE COMPROMISE SOLUTION
68.	<p>(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.</p>	<p>(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. <i>The increasing imbalance between powerful platforms and press publishers, which can also be news agencies, has already led to a remarkable regression of the media landscape on a regional level.</i> In the transition from print to digital, publishers and news agencies of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital</p>	<p>(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers <u>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 revenues. Publishers of press publications are facing problems in licensing the online use of their publications and</u> recouping <u>to the providers of these kind of services, making it more difficult for them to</u></p>	<p>(31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. 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 revenues. Publishers of press publications are facing problems in licensing the online use of their publications to the providers of these kind of services, making it more difficult for them to recoup their investments. In the absence of recognition of publishers of press publications</p>

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69.	(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for	(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry <i>and thereby to guarantee the availability of reliable information</i> . It is therefore necessary <i>for Member States</i> to provide at Union level a harmonised legal protection for press publications in respect of <i>the Union</i> for digital uses. Such protection should be	(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of <u>digital online uses by information society service providers, leaving unaffected current copyright rules in</u>	(32) The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry <i>and thereby to foster the availability of reliable information</i> . It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of online uses by information society service providers, leaving unaffected
		environment is often complex and inefficient.	<u>recoup</u> their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement <u>of rights in press publications regarding online uses by information society service providers</u> in the digital environment are often complex and inefficient.	as rightholders, 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.

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	the reproduction and making available to the public of press publications in respect of digital uses.	effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses <i>in order to obtain fair and proportionate remuneration for such uses. Private uses should be excluded from this reference. In addition, the listing in a search engine should not be considered as fair and proportionate remuneration.</i>	<u>Union law applicable to uses of press publications by other users, including individual users.</u> Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in <u>respect of digital uses published by publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council.¹ The legal protection for press publications provided for by this directive should only benefit publishers established in a Member State in the</u>	current copyright rules in Union law applicable to uses of press publications by other users, including individual users. 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 published by publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council. ¹ The legal protection for press publications provided for by this D directive should only benefit publishers established in a Member State in the meaning of the Treaty of the functioning

¹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1–15).

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70.	(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general	(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general	(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining in any media, including on paper, in the context of an economic activity which constitutes a	(33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published in any media, including on paper, in the context of an economic activity which constitutes a provision of services under Union law. The press publications to be covered are those whose purpose is to
			<u>meaning of the Treaty of the functioning of the European Union, i.e. when they have their registered office, central administration or principal place of business within the Union.</u>	of the European Union, i.e. when they 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.

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	<p>or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public.</p>	<p>Or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public. The protection shall also not extend to factual information which is reported in journalistic articles from a press publication and will therefore not prevent anyone from reporting such factual information.</p>	<p><u>provision of services under Union law. The press publications to be covered are those whose purpose is to inform the general public and which are periodically or regularly updated.</u> Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. <u>Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably photographs and videos.</u> Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not</p>	<p>inform the general public and which are periodically or regularly updated. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably 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.</p>

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71.	(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.	(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They <i>Member States</i> should also be <i>able to</i> subject <i>those rights</i> to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.	(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital <i>online</i> uses are concerned <i>by information society service providers</i> are concerned. They should not extend to acts of hyperlinking when they do not constitute communication to the public. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC, including the exception on quotation for purposes such as criticism or	(34) The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as online uses by information society service providers are concerned. <u>Addressing EP's recital 321</u> The rights granted to the publishers of press publications under this Directive are exclusive in nature and allow publishers of press publications to authorise or prohibit the uses of their press publications against the payment of remuneration or for free, for instance through free licences. The parties should remain free to negotiate the terms of

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	COM(2016)593	P8_TA-PROV(2018)0337 A8-0245/2018	9134/18 review laid down in Article 5(3)(d) of that Directive.	use of the press publications. The rights granted to the publishers of press publications should not extend to acts of hyperlinking when they do not constitute communication to the public. They should also not extend to the mere facts reported in the press publications. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC, including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.
72.			<u>(34a) Uses 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</u>	<u>(34a) Uses 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</u>

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			<p><u>parts of press publications have also gained economic relevance. At the same time, where such parts are insubstantial, the use thereof by information society service providers may not undermine the investments made by publishers of press publications in the production of content. Furthermore, insubstantial parts of press publications are not usually the expression of the intellectual creation of their authors, in accordance with the case law of the Court of Justice of the European Union. Therefore, it is appropriate to provide that the use of insubstantial parts of press publications should not fall within the scope of the rights provided for in this Directive. To determine the insubstantial nature of parts of press publications for the</u></p>	<p>publications have also gained economic relevance. At the same time, where such parts are insubstantial, the use thereof by information society service providers may not undermine the investments made by publishers of press publications in the production of content. Furthermore, insubstantial parts of press publications are not usually the expression of the intellectual creation of their authors, in accordance with the case law of the Court of Justice of the European Union. Therefore, it is appropriate to provide that the use of insubstantial parts of press publications should not fall within the scope of the rights provided for in this Directive. To determine the insubstantial nature of parts of press publications for the purposes of this Directive, Member States may take into account whether</p>

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73.	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press	(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press
			<u>purposes of this Directive, Member States may take into account whether these parts are the expression of the intellectual creation of their authors or whether these parts are limited to individual words or very short excerpts, without independent economic significance, or both criteria.</u>	these parts are the expression of the intellectual creation of their authors or whether these parts are limited to individual words or very short excerpts, without independent economic significance, or both criteria.

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	<p>publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.</p>	<p>to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. <i>Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for licensing of their work to the press publisher, authors whose work is incorporated in a press publication should be entitled to an appropriate share of the new additional revenues press publishers receive for certain types of secondary use of their press publications by information society service providers in respect of the</i></p>	<p>publications should not be able to invoke the protection granted to them against authors and other rightholders- <u>or against other authorised users of the same works and other subject-matter</u>. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.</p>	<p>publications should not be able to invoke the protection granted to them against authors and other rightholders or against other authorised users of the same works and other subject-matter. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. Member States should ensure that authors whose works are incorporated in a press publication receive appropriate remuneration for the exploitation of press publications by information society service providers.</p>

Row	COMMISSION PROPOSAL	EP TEXT	COUNCIL TEXT	POSSIBLE COMPROMISE SOLUTION
	COM(2016)593	<p>P8_TA-PROV(2018)0337 A8-0245/2018</p> <p><i>rights provided for in Article 11(1) of this Directive. The amount of the compensation attributed to the authors should take into account the specific industry licensing standards regarding works incorporated in a press publication which are accepted as appropriate in the respective Member State; and the compensation attributed to authors should not affect the licensing terms agreed between the author and the press publisher for the use of the author's article by the press publisher.</i></p>	9134/18	

Article 2(5)

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

[Microenterprises and small-sized enterprises within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC and] Providers of services such as [non-for-profit] online encyclopaedias, [non-for-profit] educational and [non-for-profit] scientific repositories as well as open source software developing and sharing platforms, internet access service providers [*alternative*: electronic communication service providers as defined in (Directive 2002/21/EC)], online marketplaces and providers of cloud services which allow users, including businesses for their internal purposes, to upload content for their own use [*alternative*: providers of business-to-business cloud services and cloud services which allow users to upload content for their own use] shall not be considered online content sharing service providers within the meaning of this Directive.

[Council row 125; EP row 125]

Article 13

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 when it gives the public access to copyright protected works or other protected subject matter uploaded by its users. [Council row 238]
 2. An online content sharing service provider shall obtain an authorisation from the rightholders referred to in Article 3(1) and (2) of Directive 2001/29/EC in order to communicate or make available to the public works or other subject matter. [Council row 238]
 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, it shall not be eligible for the exemption of liability provided for in Article 14 of Directive 2000/31/EC for unauthorised acts of communication to the public and making available to the public, without prejudice to the possible application of Article 14 of Directive 2000/31/EC to those services for purposes other than copyright relevant acts. [Council row 243]
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Option 1

4. In the absence of the authorisation referred to in paragraph 2, Member States shall provide that online content sharing service providers and rightholders have to cooperate with each other according to professional diligence to ensure that there are no unauthorised acts of communication to the public or making available to the public within the meaning of this Article of specific works or other subject matter identified by rightholders for which the rightholders have provided the service with relevant and necessary information taking into account the criteria of proportionality and effectiveness as set out in paragraph 5. *[Council rows 238, 251; EP row 240]*
5. Member States shall provide that an online sharing service provider is liable for unauthorised acts of communication to the public or making available to the public within the meaning of this Article of specific works or other subject matter identified by rightholders and for which the rightholders have provided the service with relevant and necessary information unless it shows that it has taken effective and proportionate steps to ensure that those works or other subject matter are not available on its service based on, among other factors:
 - (a) the nature and size of the services, [in particular whether they are provided by a microenterprise or a small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC], and their audience;
 - (b) the amount and the type of works or other subject matter uploaded by the users of the services;
 - (c) the availability of suitable and effective technologies;
 - (d) the resulting financial burden;
 - (e) [legitimate interests of rightholders];
 - (f) [the estimated impact on legitimate uses, including in particular those which guarantee the freedom of expression of users]
 - (g) [the number of notices received under paragraph 6].*[Council rows 238, 244, 245, 247 – 250]*
6. Without prejudice to paragraph 5, Member States shall provide that an online sharing service provider has to act expeditiously to remove or disable access to works or other subject matter upon a sufficiently substantiated notification of unauthorised acts of communication to the public or making available to the public within the meaning of this Article by rightholders and makes its best efforts to prevent their future availability. *[Council row 246]*

Option 2

4. In the absence of the authorisation referred to in paragraph 2, Member States shall provide that an online content sharing service provider is liable for unauthorised acts of communication to the public or making available to the public within the meaning of this Article unless it cooperates with rightholders according to professional diligence by taking effective and proportionate steps to avoid the availability on its service of specific unauthorised works or other subject matter identified by rightholders and for which the rightholders have provided the service with relevant and necessary information, taking into account among other factors:
- (a) the nature and size of the services, [in particular whether they are provided by a microenterprise or a small-sized enterprise within the meaning of Title I of the Annex to Commission Recommendation 2003/361/EC], and their audience;
 - (b) the amount and the type of works or other subject matter uploaded by the users of the services;
 - (c) the availability of suitable and effective technologies;
 - (d) the resulting financial burden;
 - (e) [legitimate interests of rightholders];
 - (f) [the estimated impact on legitimate uses, including in particular those which guarantee the freedom of expression of users]
 - (g) [the number of notices received under the following sub-paragraph].

[Council rows 238, 244, 245, 247 – 251; EP, row 240]

If specific works and other subject matter become available on the service, despite the cooperation with rightholders referred to in the first subparagraph, the online content sharing service provider is liable for unauthorised acts of communication to the public or making available to the public unless upon a sufficiently substantiated notification by rightholders of these works or other subject matter, it acts expeditiously to remove or disable access to these works or other subject matter and makes its best efforts to prevent their future uploads in cooperation with rightholders. *[Council row 246]*

- 7.[5.]* [Paragraphs 4, 5 and 6 (of Option 1)][Paragraph 4 (of Option 2)] shall not affect legitimate uses, such as uses under exceptions and limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of their personal data, in accordance with Directive 95/46/EC, Directive 2002/58/EC and the General Data Protection Regulation. [Council rows 238, 252; EP row 241]
- 8.[6.]* Member States shall provide that online content sharing service providers shall provide rightholders, at their request, with adequate information on the functioning of their practises with regard to their obligations referred to in [paragraphs 4, 5 and 6 (of Option 1)][paragraph 4 (of Option 2)] and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements. [Council row 251]
- 9.[7.]* The Commission and the Member States shall encourage stakeholder dialogues to define best practices for the cooperation between the online content sharing service providers and rightholders referred to in paragraph 4. The Commission shall, in consultation with online content sharing service providers, rightholders and other relevant stakeholders and taking into account the results of the stakeholder dialogues and the national mechanisms, issue guidance on the application of the cooperation referred to in paragraph 4. [Council row 253]

* numbering of paragraphs to be adapted if Option 2 is chosen

Article 13a

Users of online content sharing services

1. Member States shall provide that when an authorisation has been obtained, including via a licensing agreement, by an online content sharing service provider, this authorisation shall also cover acts of uploading by the users of the service falling within Article 3 of Directive 2001/29/EC provided that [Council row 238; EP row 239]
 - (a) the acts described in Article 13 paragraph 1 point (a) are covered by the terms and conditions of the licensing agreements and
 - (b) the users do not act for commercial purposes.

2. Member States shall provide that an online sharing service provider puts in place a complaint and redress mechanism that is available to users of the service in case of disputes over the justification of the removal or blocking of works or other subject matter uploaded by them. Complaints submitted under this mechanism shall be processed without undue delay. Rightholders shall duly justify the reasons for their requests to remove or block access to their specific works or other subject matter. Member States shall endeavour to put in place independent bodies to assess complaints by the users of the service. [Council row 252; EP row 241]

