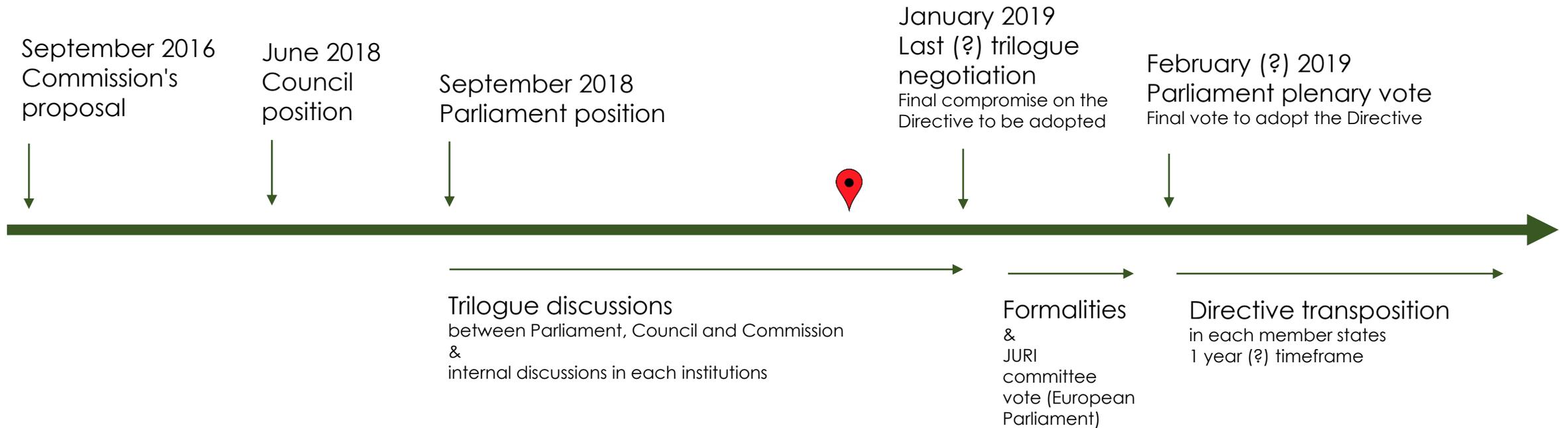




EU Copyright Reform update

December 2018

Timeline of the procedure



Overview of the provisions

The following slides compare the position that each institution (Council, Parliament and Commission) has adopted and the preliminary compromise they have reached in trilogue discussions, when it is the case (what is in the green box, unless otherwise indicated).

It focuses on specific key or controversial aspects in each of the following articles:

3 and 3a (text and data mining), 4 (illustration for teaching), 5 (preservation), 6 (exception stacking and technological protection measures), 7 to 9 (out of commerce works), 9a (extended collective licensing), 11 (press publishers' rights), 12 (claims to fair compensation) and 13 (upload filters).

What has been preliminarily agreed in trilogues is likely to be the final compromise, and so it gives an idea of how the Directive will look like for our sector.

Underlined in **yellow** are the provisions that could still be improved, if there are any further advocacy opportunities.

Other resources:

- A complete overview (the working document used in trilogue discussions) is available in [MEP Reda's webpage](#).
- For a better understanding of what is at stake in each of the provisions, see the following documents: art. 3, 4, 5, 6 (and [here](#)), 7 to 9, 13.

Article 3

Text and data mining

Topic	Commission	European Parliament	Council	Preliminary compromise
Beneficiaries to the exception	Research organisations (including private-public partnerships)	Research organisations, educational establishments and cultural heritage institutions conducting scientific research.	Research organisations and cultural heritage institutions .	Research organisations and cultural heritage institutions
Storing of datasets after use		Store the reproductions made for the purpose of TDM in a secure manner	Not retain the copies of works made for TDM purposes for longer than necessary	Store the copies with an appropriate level of security; may be retained for the purposes of scientific research, including for the verification of research results
New article 3a Beneficiaries		Optional exception for any individuals and organisations with lawful access to content	Optional exception for any individuals and organisations with lawful access to content	New article 3a Exception for all individuals and institutions with legal access to works. [No agreement yet on optional vs. mandatory . We advocate for a mandatory exception for the sake of cross-border uses in the EU and to ensure the adoption of a broad exception]
New article 3a Contract override		" <i>expressly reserved by their rightholders, including by machine readable means</i> "	" <i>expressly reserved by their rightholders including by technical means</i> "	Rightholders can expressly reserve the use in an appropriate manner, such as machine readable means, for the content made publicly available online
Technological protection measures	TPMs cannot override exceptions under this Directive (provision in art. 6)	TPMs can override exceptions under this Directive (provision in art. 6)	TPMs cannot override exceptions under this Directive, except for new art. 3a (provision in art. 6)	TPMs cannot override exceptions under this Directive, except for new art. 3a (provision in art. 6)

Article 4 Illustration for teaching

Topic	Commission	European Parliament	Council	Preliminary compromise
Beneficiaries to the exception	Educational activities conducted under the responsibility of an educational establishment	Educational establishments and (optional for member states) cultural heritage institutions when they " <i>pursue an educational objective and are involved in teaching activities</i> " (recital 15)	Educational activities conducted under the responsibility of an educational establishment, also when the activity takes place in another venue such as a library, archive or museum	[no compromise yet on recital 15, which we support, preferably not optional but mandatory for member states] Educational activities conducted under the responsibility of an educational establishment, on its premises or other venues.
Licensing mechanism	Optional: Exception does not apply if there are adequate licenses available in the market covering the activities of the exception	Optional: Exception does not apply if there are adequate licenses available in the market covering the activities of the exception	Optional: Exception does not apply if there are licenses covering the needs of educational establishments	Optional for member states: Exception does not apply if suitable licences authorising the acts under the exception covering the needs and specificities of educational establishments are easily available in the market
Compensation	Optional: fair compensation due to harm incurred by the use of the works	Optional: fair compensation due to harm incurred by the use of the works	Optional: fair compensation due to the use of the works	Optional for member states: fair compensation due to harm incurred by the use of the works

Article 5

Preservation and the public domain

Topics	Commission	European Parliament	Council	Preliminary compromise
Activity allowed under the exception	"make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the sole purpose of preservation"	"make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the purposes of preservation"	"make copies of any works or other subject-matter that are permanently in their collections, in any format or medium, for the purpose of preservation"	"make copies of any works or other subject-matter that are permanently in their collections , in any format or medium, for purposes of preservation"
New public domain provision (New 5a)		"Member States shall ensure that any material resulting from an act of reproduction of material in the public domain shall not be subject to copyright or related rights , provided that such reproduction is a faithful reproduction for purposes of preservation of the original material"		[no compromise yet, but it seems likely that the Parliament's proposal will be adopted with slight changes]

Article 6

Exception stacking and technological protection measures

Topics	Commission	European Parliament	Council	Preliminary compromise
Exception stacking		Exceptions cannot be used in combination (e.g. a work digitized under a preservation exception cannot be used for TDM purposes)		[No compromise, but unlikely that the Parliament position is adopted, which would be a positive outcome]
Contract override			Exceptions cannot be overridden by contract	Exceptions cannot be overridden by contract
Technological protection measures	TPMs cannot override exceptions under this Directive	TPMs can override exceptions under this Directive	TPMs cannot override exceptions under this Directive, except for new art. 3a	TPMs cannot override exceptions under this Directive, except for new art. 3a
Three-step-test	E&Ls cannot unreasonably prejudice the legitimate interests of the rightholder.	E&Ls cannot unreasonably prejudice the legitimate interests of the rightholder.	E&Ls cannot unreasonably prejudice the legitimate interests of the rightholder.	E&Ls cannot unreasonably prejudice the legitimate interests of the rightholder.

Article 7

Out of commerce works

Topic	Commission	European Parliament	Council	Preliminary compromise
Determining the out of commerce status	"When a work in all its translations, versions and manifestations is not available to the public through customary channels of commerce and cannot be reasonably expected to become so"	Out of commerce and never in commerce: "Member States may provide a cut-off date in relation to determining whether a work previously commercialised is 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 is made to determine such availability"	Out of commerce and never in 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 is made to determine such availability"
Licensing/exception	Extended collective licensing	Extended collective licensing & Exception, where no appropriate licensing-based solutions are available	Extended collective licensing	Extended collective licensing & Exception, if it involves works or other subject-matter for which no collective management organisations exists that fulfils certain requirements
Collective management organisations entitled to give the license	Licenses should be sought from a collective management organisation that is representative for the Member State where: - first publication of works - habitual residence of the producer - CHI is established	Licenses should be sought from a collective management organisation that is representative for the Member State where: - first publication of works - habitual residence of the producer - CHI is established	Licenses should be sought from a collective management organisation that is representative for the Member State where the cultural heritage institution is established . License not applicable if: - first publication of works in a third country - habitual residence of the producer in a third country	Member States shall ensure that the licences referred to in paragraph 1 are sought from a collective management organisation that is representative for the Member State where the cultural heritage institution is established . License not applicable if: - first publication of works in a third country - habitual residence of the producer in a third country
Territorial scope of use	Use by the CHI in all member states	Use by the CHI in all member states	Use by the CHI in all member states	Use under license by the CHI in any member state. Use under the exception by the CHI in the Member State where the CHI is located.

New article 9a Extended collective licensing

Topic	Commission	European Parliament	Council	Preliminary compromise
New extended collective licensing provision			Optional: "When a collective management organisation, in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised the organisation to represent them by way of assignment, licence or any other contractual arrangement; or, 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"	Optional: "When a collective management organisation, to which is subject to the national rules implementing in accordance with its mandates from rightholders, enters into a licensing agreement for the exploitation of works or other subject-matter such an agreement may be extended to apply to the rights of rightholders who have not authorised that collective management organisation to represent them by way of assignment, license or any other contractual arrangement; or, 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"

Articles 10 a Union Legal Deposit

Topic	Commission	European Parliament	Council	Preliminary compromise
New legal deposit provision		European Legal deposit by the European Parliament Library of any electronic publication dealing with Union-related matters		Deleted

Article 11

Press publishers' rights

Topic	Commission	European Parliament	Council	Preliminary compromise
Definition of press publication	" <i>press publication</i> ' means a fixation of a collection of literary works of a journalistic nature"	" <i>press publication</i> ' means a fixation by publishers or news agencies of a collection of literary works of a journalistic nature" (...) "Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition"	" <i>press publication</i> ' means a collection composed mainly of literary works of a journalistic nature"	" <i>press publication</i> ' means a collection composed mainly of literary works of a journalistic nature" [...] "Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be considered as press publications for the purposes of this Directive".
Activities excluded		Legitimate private and non-commercial use of press publications by individual use		Not applicable to private or non-commercial uses of press publications carried out by individual users

Article 13

Upload filters

Topic	Commission	European Parliament	Council	Preliminary compromise
Excluded from obligations to filter under the article		"online encyclopaedia, and providers of online services where the content is uploaded with the authorisation of all right holders concerned, such as educational or scientific repositories, shall not be considered online content sharing service providers within the meaning of this Directive"	"Excludes providers of services such as non-for-profit online encyclopaedias, non-for-profit educational and scientific repositories from the definition of online content sharing service provider"	[no compromise yet on what services or platform are excluded]

Article 12

Claims to fair compensation

Topic	Commission	European Parliament	Council	Preliminary compromise
Scope of the article and public lending right provision	"Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right"	"Member States with compensation-sharing systems between authors and publishers for exceptions and limitations may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right, provided that an equivalent compensation-sharing system was in operation in that Member State before 12 November 2015. The first paragraph shall be without prejudice to the arrangements in Member States concerning public lending rights, the management of rights not based on exceptions or limitations to copyright, such as extended collective licensing schemes, or concerning remuneration rights on the basis of national law".	"Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to be entitled to a share of : (a) the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right; and (b) the remuneration for public lending provided for in Article 6(1) of Directive 2006/115/EC"	"Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to be entitled to a share of the compensation for the uses 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 "

Thank you!

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