

Position paper on the amendments to the EP draft report on the implementation of Directive 2001/29/EC

Purpose of the document

This document is meant to be an input to the European Parliament regarding the [amendments](#) submitted to the EP's Evaluation Report of the implementation of Directive 2001/29/EC. Its aim is to provide the position of OpenForum Europe in regards to the amendments linked to our organisation's top priorities in regards to copyright policy, namely hyperlinking/browsing, text and data mining and private copy levies. Other issues, such as public domain, new compensation schemes and technological measures which hinder effective exercise of exceptions and limitations, are also addressed in this document.

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About OpenForum Europe (OFE)

OpenForum Europe (OFE) is a not-for-profit industry organisation launched in 2002 with the mission to facilitate open, competitive choice for IT users. OFE is supported by major IT suppliers, as well as SMEs, user and consumer organisations, and national partners across Europe. We maintain an ongoing dialogue with key decision makers, participate actively in public consultations, and often serve as an interlocutor between legislators and the wider open computing community. Through our programme OpenForum Academy (OFE's think-tank formed by a network of more than 40 academic Fellows) we also encourage constructive policy debates by running a series of focused round table events that bring together academics, industry experts and policy makers.

Hyperlinking and browsing

We consider the act of linking to be a fundamental function of the open Internet that we know today, which should not be subject to any copyright authorisations or arbitrary levy that covers any type of content. Links are no more than pointers to a place where to find a webpage and quoting e.g. a title or a few words and linking, should be recognized as rights falling outside the scope of copyright protection throughout the EU, subject neither to permission, nor to payment. EU rules should be enforced to nullify national legislation which amounts to a levy on linking and free expression. We also believe the rights of users to link and point to information should be strongly recognized and upheld.

OFE's position on AM 349: FOR	
Justification: This amendment on temporary acts of reproduction supports the exemption of browsing, hyperlinking and text and data mining from copyright protection.	
Amendment 349 Julia Reda Motion for a resolution Paragraph 11 e (new) Motion for a resolution	Amendment <i>11 e. Temporary acts of reproduction, which are transient or incidental [and] an integral and essential part of a technological process and whose sole purpose is to enable:</i>

	<p><i>(a) a transmission in a network between third parties by an intermediary, or</i> <i>(b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, should remain a mandatory exception</i></p>
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OFE's position on AMs 397, 400-405, 407-409: AGAINST

Justification: The act of hyperlinking should not be subject to copyright, as suggested by these amendments.

<p>Amendment 397 Marie-Christine Boutonnet Motion for a resolution Paragraph 15</p> <p>Motion for a resolution</p> <p><i>15. souligne que la capacité de relier librement une ressource à une autre constitue l'un des éléments fondamentaux de l'internet; demande au législateur européen de clarifier que la référence à des œuvres par le biais d'un hyperlien n'est pas soumise aux droits exclusifs, vu qu'elle ne forme pas une communication à un nouveau public¹;</i></p>	<p>Amendment</p> <p><i>supprimé</i></p>
<p>Amendment 400 József Szájer Motion for a resolution Paragraph 15</p> <p>15. <i>Stresses</i> that the ability to <i>freely</i> link from one resource to another is one of the fundamental building blocks of the internet; <i>calls on the EU legislator to make it clear that reference to works by means of a hyperlink is not subject to exclusive rights, as it does not consist in</i> a communication to a new public.</p>	<p>15. <i>Notes</i> that the ability to link from one resource to another is one of the fundamental building blocks of the internet <i>and underlines that any furthe legislation must accurately reflect the existing definitions and principles set in the European case law, stating that when the hyperlink allows the recipients to circumvent the restrictions on access to the protected work, so that can access the</i></p>

¹ Ordonnance de la Cour de Justice du 21 octobre 2014 dans l'affaire C-348/13, BestWater International GmbH contre Michael Mebes and Stefan Potsch (demande de décision préjudicielle de la Bundesgerichtshof d'Allemagne).

	<i>protected work, which was otherwise unavailable to them, then this constitutes a communication to a new public and it is subject to exclusive rights;</i>
<p>Amendment 401 Jean-Marie Cavada Motion for a resolution Paragraph 15</p> <p>15. souligne que la capacité de relier <i>librement</i> une ressource à une autre constitue l'un des éléments fondamentaux de l'internet; <i>demande au législateur européen de clarifier que la référence à des œuvres par le biais d'un hyperlien n'est pas soumise aux droits exclusifs, vu qu'elle ne forme pas une communication à un nouveau public.</i></p>	<p>15. souligne que la capacité de relier une ressource à une autre <i>par le biais d'un hyperlien</i> constitue <i>certes</i> l'un des éléments fondamentaux de l'internet <i>mais que, dans certains cas, la liaison et l'incorporation peuvent être considérées comme une communication à un public nouveau et, par là même, constituer une atteinte au droit d'auteur;</i></p>
<p>Amendment 402 Angelika Niebler Motion for a resolution Paragraph 15</p> <p>15. betont, dass die Möglichkeit der freien Verlinkung von Quellen zu den Kernbausteinen des Internets gehört; <i>fordert den Gesetzgeber der EU auf klarzustellen, dass der Verweis auf ein Werk mittels Hyperlink nicht Gegenstand eines Ausschließlichkeitsrechts ist, da er keine neue öffentliche Wiedergabe darstellt</i></p>	<p>15. betont, dass die Möglichkeit der freien Verlinkung von Quellen <i>und der Schutz geistigen Eigentums</i> zu den Kernbausteinen des Internets gehört; <i>stellt fest, dass der Gerichtshof der Europäischen Union einen ausgewogenen Ausgleich auf Grundlage der Richtlinie 2001/29/EG getroffen hat</i></p>
<p>Amendment 403 Mary Honeyball Motion for a resolution Paragraph 15</p> <p>15. Stresses that the ability to freely link from one resource to another is <i>one of the fundamental building blocks</i> of the internet; <i>calls on the EU legislator to make it clear that reference to works by means of a hyperlink is not subject to exclusive rights, as it does not consist in a communication to a new public;</i></p>	<p>15. Stresses that the ability to freely link from one resource to another is <i>an important feature</i> of the internet, <i>but stresses that under certain circumstances, embedding and linking may be prejudicial to the rights of the creator; further stresses the need to accurately reflect the existing definitions and principles set out in European case law;</i></p>

<p>Amendment 404 Axel Voss Motion for a resolution Paragraph 15</p> <p>15. <i>betont</i>, dass die Möglichkeit der <i>freien</i> Verlinkung von Quellen <i>zu den Kernbausteinen des Internets gehört</i>; <i>fordert den Gesetzgeber der EU auf klarzustellen, dass der Verweis auf ein Werk mittels Hyperlink nicht Gegenstand eines Ausschließlichkeitsrechts ist, da er keine neue öffentliche Wiedergabe darstellt</i></p>	<p>15. <i>stellt fest</i>, dass die Möglichkeit der Verlinkung von Quellen <i>ein Element der Internetnutzung ist und betont, dass die Verwendung eines Hyperlinks gemäß entsprechender europäischer Rechtsprechung erfolgen muss, nämlich, dass sie nicht zur Umgehung der Zugriffsschranken auf ein ursprünglich geschütztes und den Nutzern unzugängliches Werk führen darf</i></p>
<p>Amendment 405 Angel Dzhambazki, Sajjad Karim Motion for a resolution Paragraph 15</p> <p>15. <i>Stresses</i> that the ability to freely link from one resource to another is one of the fundamental building blocks of the internet; calls on the EU legislator to make it clear that reference to works by means of a hyperlink is not subject to exclusive rights, as it does not consist in a communication to a new public;</p>	<p>15. <i>Notes</i> that the ability to freely link <i>content lawfully made available</i> from one resource to another is one of the fundamental building blocks of the internet; <i>highlights the importance of enhanced user information regarding obligations for anyone who knowingly provides hyperlinks to unauthorised content or links that circumvent paywalls</i>; calls on the EU legislator to make it clear that reference to works by means of a hyperlink is not subject to exclusive rights, as it does not consist in a communication to a new public;</p>
<p>Amendment 407 Therese Comodini Cachia, Pavel Svoboda, Marc Joulaud, Constance Le Grip, József Szájer, Giovanni Toti, Rosa Estaràs Ferragut, Luis de Grandes Pascual, Milan Zver, Sabine Verheyen Motion for a resolution Paragraph 15</p> <p>15. <i>Stresses</i> that the ability to freely link from one resource to another is one of the fundamental building blocks of the internet;</p>	<p>15. <i>Notes</i> that the ability to link from one resource to another is one of the fundamental building blocks of the internet <i>and underlines</i></p>

<p><i>calls on the EU legislator to make it clear that reference to works by means of a hyperlink is not subject to exclusive rights, as it does not consist in a communication to a new public;</i></p>	<p><i>that any further legislation must accurately reflect the existing definitions and principles set in the European case law stating that when the hyperlink allows the recipients to circumvent the restrictions on access to the protected work so that can access the protected work which was otherwise unavailable to them, then this constitutes a communication to a new public and it is subject to exclusive rights.</i></p>
<p>Amendment 409 Virginie Rozière, Mady Delvaux Motion for a resolution Paragraph 15</p> <p>15. souligne que la capacité de relier librement une ressource à une autre constitue l'un des éléments fondamentaux de l'internet; demande au législateur européen <i>de clarifier</i> que la référence à des œuvres par le biais d'un hyperlien <i>n'est</i> pas soumise aux droits exclusifs, vu qu'elle ne forme pas une communication à un nouveau public</p>	<p>15. souligne que la capacité de relier librement une ressource à une autre constitue l'un des éléments fondamentaux de l'internet; demande au législateur européen <i>d'intégrer dans son droit positif la jurisprudence de la CJUE afin</i> que la référence à des œuvres par le biais d'un hyperlien <i>ne soit</i> pas soumise aux droits exclusifs, vu qu'elle ne forme pas une communication à un nouveau public; <i>rappelle que cette possibilité doit être strictement limitée aux liens renvoyant vers des contenus librement disponibles; rappelle que le régime de responsabilité des intermédiaires pointant vers des contenus illicites devrait être renforcé, notamment par la révision de la directive e-commerce;</i></p>

Text and data mining (TDM)

Data mining and analytics generally involves making temporary (transient) copies of all or part of the data being processed during the data analysis. Journals, documents or databases that are mined may be protected by copyright. But the act of copying is made for technical purposes, as it is often the only way to transform it into a machine readable format.

1. Non-commercial use of TDM

Copyright exceptions for data analytics are possible under the 2001 Directive, but are not mandatory and are limited in scope. Thus only some Member States have implemented them

(notably the UK), with the limitation that TDM is for non-commercial purposes. The principle here is that as long as the material is lawfully accessed in the first place, text and data mining should not be further restricted. EU research would greatly benefit from generalising this exception. In the research context, contracts by which access to research material is secured from the copyright owner should fully ensure the ability of the user to data-mine these materials.

2. Commercial use of TDM where no economic harm to the copyright holder ensues:

As a starting point, an explicit narrow copyright exception for text and data mining of Internet content would clarify the law and thereby benefit the European economy if it were to be structured as follows: where the owner of a copyright work makes it available to the public in digital form over a network without any technological measures restricting access or use, it shall not be an infringing act to make, use and modify a temporary copy of the copyright work for the purpose of text or data analysis where such making, using and modifying does not conflict with a normal exploitation of the work, does not unreasonably prejudice the legitimate interests of the owner, and where any material resulting from the text or data analysis which is made available to the public does not contain substantial protectable expression taken from the copyright work. "

OFE's position on AM 450: FOR	
Justification: This amendment would reinforce the legal grounds to use TDM techniques	
<p>Amendment 450 Julia Reda Motion for a resolution Paragraph 18</p> <p>Motion for a resolution</p> <p>18. Stresses the need to enable automated analytical techniques for text and data (e.g. ‘text and data mining’) for all purposes, provided that permission to read the work has been acquired;</p>	<p>Amendment</p> <p>18. Stresses the need to enable automated analytical techniques for text and data (e.g. ‘text and data mining’) for all purposes, provided that permission to read the work has been acquired, <i>as a mandatory exception;</i></p>

OFE's position on AM 441, 448, 449, 452: AGAINST
Justification: The amendments are too restrictive for effective use of TDM techniques

<p>Amendment 441 Constance Le Grip, Marc Joulaud, Sabine Verheyen Motion for a resolution Paragraph 18</p> <p>18. <i>souligne la nécessité de permettre des techniques analytiques automatisées des textes et des données (par exemple la «fouille de textes et de données») à toutes les fins, pour autant que la permission de lire l'œuvre ait été acquise;</i></p>	<p>18. <i>encourage les solutions telles que le modèle de licenses en ce qui concerne la fouille de textes et de données à des fins de recherche scientifique;</i></p>
<p>Amendment 448 Virginie Rozière, Mady Delvaux Motion for a resolution Paragraph 18</p> <p>18. souligne la nécessité de permettre des techniques analytiques automatisées des textes et des données (par exemple la «fouille de textes et de données») à <i>toutes les fins</i>, pour autant que la permission de lire l'œuvre ait été acquise;</p>	<p>18. souligne la nécessité de permettre des techniques analytiques automatisées des textes et des données (par exemple la «fouille de textes et de données») à <i>des fins non directement commerciales</i>, pour autant que la permission de lire l'œuvre ait été acquise;</p>
<p>Amendment 449 Jean-Marie Cavada Motion for a resolution Paragraph 18</p> <p>18. souligne la nécessité de permettre des techniques analytiques automatisées des textes et des données (par exemple la «fouille de textes et de données») à <i>toutes les fins</i>, pour autant que la permission de lire l'œuvre ait été acquise;</p>	<p>18. souligne la nécessité de permettre des techniques analytiques automatisées des textes et des données (par exemple la «fouille de textes et de données»), pour autant que la permission de lire l'œuvre ait été acquise <i>et qu'une rémunération ait été payée aux ayants droit;</i></p>
<p>Amendment 452 Christian Ehler, Sabine Verheyen, Marc Joulaud</p> <p>Motion for a resolution Paragraph 18 b (new)</p>	<p><i>18 b. Acknowledges that Text and data Mining is an emerging and promising practice, in particular for the research field,</i></p>

	<i>recalls that innovative licensing solutions are established, but that any preferential treatment should only be applied for non-commercial use.</i>
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Private copying and reprography

Most but not all EU countries have implemented a copyright levies system to compensate rightholders from the alleged harm suffered from private copying. This system has led to significant market distortions and high administrative costs. While it may currently be difficult to completely phase out private copy levies, we believe that at the very least their scope should not be further extended to new technological supports. In particular, we warn against applying levies to remote storage or cloud services. Digital and cloud services are driving the growth of revenue for content owners. Levies would merely reduce the creative and economic opportunity for creators. Rather, policy makers should provide the optimal conditions for creators to create, distribute and sell in order to provide a sustainable basis for the creative sector. Making cloud solutions more expensive would punish consumers, businesses, creators and innovators by reducing the take-up of new technologies and increasing cost.

OFE's position on AM 509: FOR	
Justification: 22 Member States have adopted levies. Some of them chose to put in place government funds for compensation, other Member States do not foresee any compensation for private copying and a third category of Member States apply varying levels of levies. This affects the functioning of the internal market and creates market distortions. For instance, levies for an iPod Touch ranges from 1.42 EUR to 19.40 EUR and the final price of a printer can amount to a difference up to 170% between two countries because of levies. The levies system can also lead to consumer's economic harm, through double payment: the content and the media. In order to support the single market, this exception needs to be harmonised.	
Amendment 509 Julia Reda, Christian Ehler, Josef Weidenholzer Motion for a resolution Paragraph 21 c (new)	<i>21 c. Deplores the lack of harmonisation between Member States as regards the</i>

	<i>interpretation of Article 5.2 b of Directive 2001/29/EC on exceptions for reproductions on any medium made by a natural person for private use, and as regards the remuneration schemes to compensate for the prejudice to rightholders put in place in some Member States to allow for the fair compensation of the rightholders in relation to these acts of copying, which affects the functioning of the internal market;</i>
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OFE's position on AM 510: AGAINST	
Justification: This is overly positive on the private copy levies system and there is no mention of Member States which have chosen not to implement it.	
<p>Amendment 510 Jean-Marie Cavada Motion for a resolution Paragraph 22</p> <p>Motion for a resolution</p> <p>22. <i>demande l'adoption de critères harmonisés en ce qui concerne la définition du préjudice causé aux titulaires de droits à l'égard des reproductions effectuées par une personne physique pour un usage privé et de mesures de transparence harmonisées concernant les redevances pour copie privée mises en place dans certains États membres.</i></p>	<p>Amendment</p> <p>22. <i>souligne que le système de copie privée représente un système vertueux et équilibré entre l'exception pour copie à usage privé et le droit à une compensation équitable des ayants droit, qu'il est judicieux de préserver;</i></p>

Other issues

Technological measures

OFE's position on AM 529, 530, 534: AGAINST
Justification: Technological measures of protection, while justifiable for the prevention of illegal copying of material, may have adverse side effects preventing or hindering the full exercise of copyright exceptions or limitations. In such particular cases, it is important that

circumvention of these technical measures be legally permitted.	
<p>Amendment 529 Constance Le Grip Motion for a resolution Paragraph 23</p> <p><i>23. souligne que l'exercice efficace des exceptions ou limitations ainsi que l'accès au contenu qui n'est pas soumis à la protection du droit d'auteur ou des droits voisins ne devraient pas être entravés par des mesures technologiques;</i></p>	supprimé
<p>Amendment 530 Virginie Rozière Motion for a resolution Paragraph 23</p> <p><i>23. souligne que l'exercice efficace des exceptions ou limitations ainsi que l'accès au contenu qui n'est pas soumis à la protection du droit d'auteur ou des droits voisins ne devraient pas être entravés par des mesures technologiques;</i></p>	supprimé
<p>Amendment 534 Marie-Christine Boutonnet Motion for a resolution Paragraph 23</p> <p><i>23. souligne que l'exercice efficace des exceptions ou limitations ainsi que l'accès au contenu qui n'est pas soumis à la protection du droit d'auteur ou des droits voisins ne devraient pas être entravés par des mesures technologiques;</i></p>	<i>23. La notion du principe de territorialité doit être respectée;</i>

New compensation schemes

OFE's position on AM 501, 503: FOR
Justification: The amendments below explicitly deplore the introduction of new compensation schemes and notes their ineffectiveness. Any compensation mechanism should be based on

significant, demonstrated harm and balanced against the market distortion effects that it causes.	
<p>Amendment 501 Victor Negrescu Motion for a resolution Paragraph 21</p> <p>Motion for a resolution</p> <p>21. Calls on the EU legislator to preclude Member States from introducing <i>statutory licences for the compensation of rightholders for the harm caused by acts made permissible by an exception</i>;</p>	<p>Amendment</p> <p><i>21. Deplores the introduction of statutory licenses in some member states aimed at news aggregators for acts already made permissible by an exception and calls on the EU legislator to preclude Member States from unilaterally introducing such schemes, which can cause significant damage to the digital economy;</i></p>
<p>Amendment 503 Julia Reda, Victor Negrescu, Josef Weidenholzer Motion for a resolution Paragraph 21</p> <p>21. Calls on the EU legislator to preclude Member States from introducing <i>statutory licences for the compensation of rightholders for the harm caused by acts made permissible by an exception</i>;</p>	<p><i>21. Deplores the introduction of statutory licenses in some member states aimed at news aggregators for acts already made permissible by an exception and calls on the EU legislator to preclude Member States from unilaterally introducing such schemes, which can cause significant damage to the digital economy;</i></p>

OFE's position on AM 489-500, 504: AGAINST

Justification: Acts made permissible by an existing exception should not be subject to new compensation schemes, as these amendments suggest. Any compensation mechanism should be based on significant, demonstrated harm and balanced against the market distortion effects that it causes.	
<p>Amendment 489 Kostas Chrysogonos Motion for a resolution Paragraph 21</p>	

<p>Amendment 490 Jean-Marie Cavada</p> <p>Amendment 491 Tadeusz Zwiefka, Bogdan Brunon Wenta</p> <p>Amendment 492 Jiří Maštálka, Kostas Chrysogonos</p> <p>Motion for a resolution</p> <p><i>21. Calls on the EU legislator to preclude Member States from introducing statutory licences for the compensation of rightholders for the harm caused by acts made permissible by an exception;</i></p>	<p>Amendment</p> <p><i>deleted</i></p>
<p>Amendment 493 Marie-Christine Boutonnet</p> <p>Motion for a resolution Paragraph 21</p> <p><i>21. demande au législateur européen d'empêcher les États membres d'introduire des licences légales visant à compenser les titulaires de droits du préjudice causé par des actes permis par une exception;</i></p>	<p><i>21. Le système actuel de licences actuellement utilisé est à améliorer avec prudence.</i></p>
<p>Amendment 494 József Szájer</p> <p>Motion for a resolution Paragraph 21</p> <p><i>21. Calls on the EU legislator to preclude Member States from introducing statutory licences for the compensation of rightholders for the harm caused by acts made permissible by an exception;</i></p>	<p><i>21. Invites the Commission to analyse the necessity of measures, if any, to be implemented by Member States so as to provide compensation to rightholders for the harm caused by acts made permissible by an exception, while they should ensure that rightholders receive fair compensation and that the exceptions or limitations do not conflict with a normal exploitation of the work or subject-matter and do not unreasonably prejudice the legitimate interests of the rightholders;</i></p>

<p>Amendment 495 Therese Comodini Cachia, Mary Honeyball, Marc Joulaud, József Szájer, GiovanniToti, Luis de Grandes Pascual, Rosa Estaràs Ferragut, Sabine Verheyen Motion for a resolution Paragraph 21</p> <p>21. <i>Calls on the EU legislator to preclude Member States from introducing statutory licences for the compensation of rightholders for the harm caused by acts made permissible by an exception;</i></p>	<p>21. <i>Invites the Commission to analyse the necessity of measures, if any, to be implemented by Member States so as to provide compensation to rightholders for the harm caused by acts made permissible by an exception while they should ensure that rightholders receive fair compensation and that the exceptions or limitations do not conflict with a normal exploitation of the work or subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder;</i></p>
<p>Amendment 496 Constance Le Grip Motion for a resolution Paragraph 21</p> <p>21. <i>demande au législateur européen d'empêcher les États membres d'introduire des licences légales visant à compenser les titulaires de droits du préjudice causé par des actes permis par une exception;</i></p>	<p>21. <i>demande au législateur européen de veiller à ce que soient prévues, par les États-membres, des mesures nécessaires pour compenser le préjudice causé aux ayants-droits par des actes permis par une exception.</i></p>
<p>Amendment 497 Virginie Rozière Motion for a resolution Paragraph 21</p> <p>21. <i>demande au législateur européen d'empêcher les États membres d'introduire des licences légales visant à compenser les titulaires de droits du préjudice causé par des actes permis par une exception;</i></p>	<p>21. <i>demande au législateur européen de continuer à garantir aux États membres la possibilité de compenser les titulaires de droits du préjudice causé par des actes permis par une exception;</i></p>
<p>Amendment 498 Angelika Niebler Motion for a resolution</p>	

<p>Paragraph 21</p> <p>21. <i>fordert den Gesetzgeber der EU auf zu verhindern, dass</i> Mitgliedstaaten gesetzliche Lizenzen zur Entschädigung von Rechtsinhabern für den Schaden <i>einführen</i>, der ihnen durch eine Handlung entsteht, die aufgrund einer Ausnahme zulässig ist;</p>	<p>21. <i>achtet die Möglichkeit für</i> Mitgliedstaaten, gesetzliche Lizenzen zur Entschädigung von Rechtsinhabern für den Schaden <i>einzuführen</i>, der ihnen durch eine Handlung entsteht, die aufgrund einer Ausnahme zulässig ist;</p>
<p>Amendment 499 Axel Voss Motion for a resolution Paragraph 21</p> <p>21. <i>fordert den</i> Gesetzgeber der EU <i>auf zu verhindern, dass</i> Mitgliedstaaten <i>gesetzliche Lizenzen</i> zur Entschädigung von Rechtsinhabern für den Schaden einführen, der ihnen durch eine Handlung entsteht, die aufgrund einer Ausnahme zulässig ist;</p>	<p>21. <i>schlägt dem</i> Gesetzgeber der EU <i>vor zu prüfen, ob</i> Mitgliedstaaten <i>Maßnahmen</i> zur Entschädigung von Rechtsinhabern für den Schaden einführen, der ihnen durch eine Handlung entsteht, die aufgrund einer Ausnahme zulässig ist;</p>
<p>Amendment 500 Juan Fernando López Aguilar, Sergio Gutiérrez Prieto, Eider Gardiazabal Rubial, José Blanco López Motion for a resolution Paragraph 21</p> <p>21. Insta al legislador de la UE <i>a que impida a los Estados miembros introducir licencias destinadas a indemnizar</i> a los titulares de derechos por los daños causados por actos permitidos por una excepción;</p>	<p>21. Insta al legislador de la UE <i>asegurar una remuneración justa</i> a los titulares de derechos por los daños causados por actos permitidos por una excepción;</p>
<p>Amendment 504 Mary Honeyball Motion for a resolution Paragraph 21</p> <p>21. <i>Calls on the EU legislator to preclude</i> Member States <i>from introducing statutory licences for the</i> compensation of rightholders for the harm caused by acts made permissible by an exception;</p>	<p>21. <i>Invites the Commission to analyse the necessity of measures, if any, to be implemented by</i> Member States <i>so as to provide</i> compensation to rightholders for the harm caused by acts made permissible by an exception <i>while they should ensure that rightholders receive fair compensation and</i></p>

	<i>that the exceptions of limitations do not conflict with a normal exploitation of the work or subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder;</i>
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Public domain

OFE's position on AM 258, 264: FOR	
<p>Justification: AM 258 re-introduces the definition of 'public domain' at the EU level. There is no substantial change from the initial proposal, but the wording is better than removing the original paragraph entirely, as other submitted amendments suggest. AM 264 adds the need to “clarify that once a work is in the public domain, any digitisation of the work which does not constitute a new, transformative work, stays in the public domain”. This is an important precision to avoid artificial extensions of copyright.</p>	
<p>Amendment 258 Mary Honeyball, Virginie Rozière, Dietmar Köster Motion for a resolution Paragraph 6</p> <p>Motion for a resolution</p> <p><i>6. Calls on the Commission to safeguard public domain works, which are by definition not subject to copyright protection and should therefore be able to be used and re-used without technical or contractual barriers; also calls on the Commission to recognise the freedom of rightholders to voluntarily relinquish their rights and dedicate their works to the public domain;</i></p>	<p>Amendment</p> <p><i>6. Highlights the need for a common definition of 'public domain' so as to ensure the widespread dissemination of cultural content across the EU;</i></p>
<p>Amendment 264 Julia Reda, Victor Negrescu, Josef Weidenholzer Motion for a resolution Paragraph 6</p> <p>6. Calls on the Commission to safeguard public domain works, which are by definition</p>	<p>6. Calls on the Commission to safeguard public domain works, which are by definition</p>

<p>not subject to copyright protection and <i>should</i> therefore <i>be able to</i> be used and re-used without technical or contractual barriers; also calls on the Commission to recognise the freedom of <i>rightholders to voluntarily relinquish their rights and</i> dedicate their works to the public domain;</p>	<p>not subject to copyright protection, and therefore <i>should</i> be use and re-used without technical or contractual barriers; <i>therefore urges the Commission to clarify that once a work is in the public domain, any digitisation of the work which does not constitute a new, transformative work, stays in the public domain</i>; also calls on the Commission to recognise the freedom of <i>authors to</i> dedicate their works to the public domain;</p>
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<p style="text-align: center;">OFE's position on AM 252-256: AGAINST</p>	
<p>Justification: These amendments remove the suggestion to define the public domain in a positive manner and to recognise the freedom of rightholders to voluntarily relinquish their rights and dedicate their works to the public domain; OFE considers that voluntarily relinquishing work to the public domain should be a recognised possibility for creators.</p>	
<p>Amendment 252 Constance Le Grip Motion for a resolution Paragraph 6</p> <p>Amendment 253 József Szájer Motion for a resolution Paragraph 6</p> <p>Amendment 254 Angel Dzhambazki, Sajjad Karim Motion for a resolution Paragraph 6</p> <p>Amendment 255 Axel Voss Motion for a resolution Paragraph 6</p> <p>Amendment 256 Therese Comodini Cachia, Eva Paunova, Pavel Svoboda, Marc Joulaud, József Szájer, Giovanni Toti, Luis de Grandes Pascual,</p>	

<p>Rosa Estaràs Ferragut, Sabine Verheyen Motion for a resolution Paragraph 6</p> <p>Motion for a resolution</p> <p><i>6. Calls on the Commission to safeguard public domain works, which are by definition not subject to copyright protection and should therefore be able to be used and re-used without technical or contractual barriers; also calls on the Commission to recognise the freedom of rightholders to voluntarily relinquish their rights and dedicate their works to the public domain;</i></p>	<p>Amendment</p> <p><i>6. deleted</i></p>
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Acknowledging new business models

OFE's position on AM 114: AGAINST	
Justification: To mention copyright as “the” (rather than “a”) way to finance creation, is ignoring new business models based on crowdfunding, pay-what-you-want, DRM-free digital goods, etc.	
<p>Amendment 114 Virginie Rozière, Jean-Marie Cavada Motion for a resolution Paragraph -1 c (new)</p> <p>Motion for a resolution</p>	<p>Amendment</p> <p><i>-1 quater. Rappelle que le droit d'auteur est le moyen concret qui permet d'assurer la rémunération des créateurs et le financement de la création;</i></p>

Adapting the analogue world to the digital transformation

OFE's position on AM 293, 297, 298: FOR	
Justification: These amendments bring some balance which was lacking in the original draft,	

<p>regarding the way to apply exceptions and limitations in the digital world, as compared to the analogue world. It can be challenging to apply exceptions and limitations in both digital and analogue worlds in exactly the same way (e.g. CJEU ruling on the Allposters case compared to the arguments developed in the UsedSof case). The intention to extend analogue world exceptions to the digital world is welcome, and when this is not practically possible, it should be duly justified.</p>	
<p>Amendment 293 József Szájer Motion for a resolution Paragraph 9</p> <p>Motion for a resolution</p> <p>9. Notes that exceptions and limitations in the digital environment should be enjoyed <i>without any unequal treatment as compared with those granted in the analogue world;</i></p>	<p>Amendment</p> <p>9. Notes that <i>technological changes have led to renewed interest in</i> exceptions and limitations, <i>especially their role</i> in the digital environment <i>and considers that the rights enjoyed by the creators of work in the digital world should be identical to those enjoyed in the analogue world, subject to the exceptions and limitations set out. Recognises that further analysis of the exceptions and limitations is sought so as to consider how these can serve the public in the digital age;</i></p>
<p>Amendment 297 Therese Comodini Cachia, Eva Paunova, Pavel Svoboda, József Szájer, Giovanni Toti, Rosa Estaràs Ferragut, Luis de Grandes Pascual, Milan Zver, Sabine Verheyen Motion for a resolution Paragraph 9</p> <p>9. Notes that exceptions and limitations in the digital environment should be enjoyed <i>without any unequal treatment as compared with those granted in the analogue world;</i></p>	<p>9. Notes that <i>technological changes have led to renewed interest in</i> exceptions and limitations, <i>especially their role</i> in the digital environment <i>and considers that the rights enjoyed by the creators of work in the digital world should be identical to those enjoyed in the analogue world, subject to the exceptions and limitations set out. Recognises that further analysis of the exceptions and limitations is sought so as to consider how these can serve the public in the digital age;</i></p>

<p>Amendment 298 Mary Honeyball, Silvia Costa Motion for a resolution Paragraph 9</p> <p>9. Notes that exceptions and limitations in the digital environment should be enjoyed <i>without any unequal treatment as compared with those granted in the analogue world</i>;</p>	<p>9. Notes that <i>technological changes have led to renewed interest in</i> exceptions and limitations, <i>especially their role</i> in the digital environment <i>and considers that the rights enjoyed by the creators of work in the digital world</i> should be <i>identical to those</i> enjoyed in the analogue world, <i>subject to the exceptions and limitations set out. Recognises that further analysis of the application of the exceptions and limitations is required so as to consider how these can serve the public</i> in the digital age;</p>
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For more information, please contact OFE's CEO Graham Taylor at graham@openforumeurope.org or OFE's Policy Analyst Diana Cocoru at +32 2 210 02 92 or diana@openforumeurope.org.

About OpenForum Europe

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