Delegations will find attached a revised version of Article 5(2) and (3) and of the corresponding recitals on the above mentioned draft Directive as a basis for further discussion in the Working Party.

Changes made in relation to the Presidency non-paper of 21 October 1999 are indicated by underlining and […].
Article 5(2)

2. Member States may provide for limitations to the exclusive right of reproduction provided for in Article 2 in the following cases:

Article 5(2)(a)

a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, provided that the rightholders receive fair compensation;

Note: A new recital 24bis will be added after recital 24. (change in numbers: recital 24bis in 11435/99 -> 28ter, recital 24ter -> 28quater).

Recital 24bis

Whereas, in certain cases of exceptions, rightholders should receive a fair compensation to compensate them adequately for the use made of their protected works or other subject matter; whereas, when determining the form, modalities and possible level of such fair compensation, account should be taken of the particular circumstances of each case; whereas, when evaluating these circumstances, valuable criteria would be the degree of benefit for the user and/or of possible harm to the rightholders resulting from the act in question [...]; whereas therefore, in certain de minimis cases, such as reproductions on paper for private study, no obligation for payment may arise; whereas, in cases where rightholders have received payment in some other form, no specific or separate payment may be due;

Article 5(2)(b)

b) in respect of reproductions on any [...] recording media made by a natural person for private use and for non-commercial ends, on condition that the rightholders receive fair compensation;

b bis) Partially merged with b).
Recital 26

Whereas Member States should be allowed to provide for an exception to the reproduction right for certain types of reproduction of audio, visual and audio-visual material for private use, accompanied by fair compensation; whereas this may include the introduction or continuation of remuneration schemes to compensate for the prejudice to rightholders; whereas, although differences between those remuneration schemes affect the functioning of the Internal Market, those differences, with respect to analogue private reproduction, should not have a significant impact on the development of the Information Society; whereas digital private copying is likely to be more widespread and have a greater economic impact; whereas due account should therefore be taken of the differences between digital and analogue private copying and a distinction should [...] be made in certain respects between them [...];

Article 5(2)(c)

c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums or by archives, which are not for direct or indirect economic or commercial advantage;

Recital 28

Whereas Member States may provide for an exception for the benefit of certain non-profit making establishments, such as publicly accessible libraries [...] and equivalent institutions as well as archives; whereas, however, this should be limited to certain special cases covered by the reproduction right; whereas such an exception should not cover uses made in the context of on-line delivery of protected works or other subject matter; whereas this Directive should be without prejudice to Member States' option to derogate from the exclusive public lending right in accordance with Article 5 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as amended by Directive 93/98/EEC; whereas, therefore, specific contracts or licences should be promoted which, without creating imbalances, favour such establishments and the disseminative purposes they serve;

Article 5(2)(d)

d) in respect of ephemeral fixations made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be permitted.
Article 5(2)(e) (former Article 5(3)(h))

e) in respect of reproductions of broadcasts made by [...] social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.

Article 5(3)

3. Member States may provide for limitations to the rights referred to in Articles 2 and 3 in the following cases:

Article 5(3)(a)

a) use for the sole purpose of illustration for teaching or scientific research, as long as, whenever possible, the source, including the author's name, is indicated and to the extent justified by the non-commercial purpose to be achieved, on condition that the rightholders receive fair compensation;

Recital 12ter

Whereas this Directive is without prejudice to modalities, in the Member States, of management of rights, such as extended collective licences;

Recital 28bis

Whereas, when applying the exception for non-commercial educational and scientific research purposes, the non-commercial nature of the activity in question should be determined by that activity as such; whereas the organisational structure and the means of funding of the establishment concerned are not the decisive factors in this respect;

Article 5(3)(b)

b) uses for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;
Article 5(3)(c)

c) use [...] in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as, whenever possible, the source, including the author's name, is indicated;

Article 5(3)(d)

d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject matter which has already been lawfully made available to the public, that, whenever possible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;

Article 5(3)(e)

e) use for the purposes of public security or to ensure the proper performance or reporting of [...] administrative, parliamentary or judicial proceedings;

Note: See Article 8bis and the note under Recital 36ter.

Article 5(3)(f)

f) use of political speeches as well as extracts of public lectures or similar works or subject matter to the extent justified by the informatory purpose and provided that, whenever possible, the source, including the author's name, is indicated;

Article 5(3)(g)

g) use during religious celebrations;
Article 5(3)(h) transferred to 5(2)(e).

Article 5(3)(i)

i) use of works [...] located permanently in public places, provided that they do not constitute the main object of the use and to the extent justified by the informatory purpose;

Article 5(3)(j)

j) incidental use of a work or other subject matter;

Article 5(3)(k)

k) use in certain other cases of minor importance where exceptions already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.

Recital 28quater (Appeared as Recital 24ter in 11435/99)

Whereas in certain other cases of minor importance, such as use for the purpose of demonstration or repair of equipment, use in connection with public exhibitions or public auction or certain forms of humorous use, Member States may apply exceptions which already exist in their national law, to the extent that such application is only in respect to analogue uses and does not affect free circulation of goods and services within the Community;