

**Directive (EU) 2019/790 of the European Parliament and of the Council on
copyright and related rights in the Digital Single Market and amending
Directives 96/9/EC and 2001/29/EC**

SUMMARY OF THE ARTICLES

TITLE I

GENERAL PROVISIONS

Subject Matter and Scope

Article 1 states that the Directive seeks to further harmonise EU copyright and related rights law taking into account digital and cross-border uses of protected content; lays down rules on exceptions and limitation to copyright and related rights, rules on the facilitation of licences and rules to facilitate a well-functioning marketplace for the exploitation of works. The Copyright in the Digital Single Market Directive will not affect existing rules in the copyright acquis, i.e. in Directives:

- 96/9/EC (the Database Directive),
- 2000/31/EC (the e-Commerce Directive),
- 2001/29/EC (the Information Society Directive, InfoSoc),
- 2006/115/EC (the Rental and Lending Directive),
- 2009/24/EC (the Computer Programmes Directive),
- 2012/28/EU (the Orphan Works Directive) and
- 2014/26/EU (the Collective Rights Management Directive).

Definitions

Article 2 provides a list of important definitions relevant to the Directive, including:

- 'research organisation';
- 'text and data mining';
- 'cultural heritage institution';
- 'press publication';
- 'information society service'; and
- 'online content-sharing service provider'.

TITLE II

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

Text and data mining for the purposes of scientific research

Article 3 provides that Member States introduce a mandatory copyright exception for acts of text and data mining (TDM). The exception will allow research organisations and cultural heritage institutions to make copies of works in order to carry out text and data mining for the purposes of scientific research. Copies of such works must be stored with an appropriate level of security and rightsholders shall be allowed to apply reasonable security measures to the networks and databases where works are hosted. Member States shall encourage relevant parties to define commonly agreed best practices to facilitate this exception.

Exception or limitation for text and data mining

Article 4 creates an obligation to allow for the reproduction and extraction of lawfully accessible works for the purposes of text and data mining provided the works are not explicitly restricted by the rightsholders. Such reproductions may be retained for as long as necessary for the purposes of text and data mining.

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

Article 5 provides for a mandatory copyright exception for the digital use of works for the sole purpose of illustration for teaching, provided such use a) takes place under the responsibility of an educational establishment, and b) is accompanied by indication of the source. Member States may provide that the exception does not apply to specific types of works, such as material that is primarily intended for the educational market or sheet music, or where licenses authorising use of such works are easily available on the market. Any use of material in accordance with law deriving from this provision shall be deemed to occur solely in the Member State where the educational establishment is established. Member States may provide for fair compensations to rightsholders for use of material in accordance with this article.

Preservation of cultural heritage

Article 6 provides for a mandatory copyright exception to allow cultural heritage institutions to make copies of works that are permanently in their collections, in any format or medium, for the purpose of preservation.

Common provisions

Article 7 provides that any contractual provision contrary to the exceptions provided for in Articles 3, 5 and 6 shall be unenforceable. Article 5(5) of Directive 2001/29/EC (“InfoSoc”) shall apply to the exceptions and limitations provided for under this Title. The first, third and fifth subparagraphs of Article 6(4) of the InfoSoc Directive shall apply to Articles 3 to 6 of this Directive.

TITLE III

MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT

CHAPTER 1

Out-of-Commerce works and other subject matter

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

Article 8 provides for a regulatory framework to allow collective management organisations to conclude licences with cultural heritage institutions for the reproduction, digitisation, or making available of out-of-commerce works that are in the permanent collections of the institutions, provided the use is for non-commercial purposes. Article 8 also provides for an exception to copyright law that will allow cultural heritage institutions to digitise and make available out-of-commerce works in their collections in situations where no adequate licence is available from a collective management organisation or when the cultural heritage institution encounters difficulties in obtaining the necessary authorisation from the rightholder.

Cross-border uses

Article 9 provides that the licences granted for the use of out-of-commerce works may apply to cultural heritage institutions in any EU Member State (cultural heritage institutions and collective management organisations are free to agree on the territorial scope of the licence). However, the use of out-of-commerce works made under the exception can only take place in the Member State where the cultural heritage organisation undertaking the work is established.

Publicity Measures

Article 10 provides that the arrangements put in place to allow rightholders to exclude their works from the licensing mechanism or the exception, are adequately publicised, particularly where uses take place across borders in the EU. To achieve this a single publicly accessible online portal for the EU will be created to make such information available to the public for a reasonable period of time before the use of the out-of-commerce work takes place. In addition to making information available through the online portal, Member States can put in place appropriate additional publicity measures to inform rightholders about the use of their works under the licensing mechanism or the exception.

Stakeholder dialogue

Article 11 provides that there must be stakeholder engagement between rightholders, collective management organisations and cultural heritage institutions in each sector, before establishing the specific requirements to ensure that a work is out-of-commerce, such as checking that the work is not available to the public through customary channels of commerce.

CHAPTER 2

Measures to facilitate collective licensing

Collective licensing with an extended effect

Article 12 provides that where a collective licensing organisation enters into a licensing agreement for the use of works, such an agreement can be extended to apply to the rights of those rightholders who have not authorised that collective management organisation to represent them, or the organisation has a legal mandate or is presumed to represent rightholders who have not authorised the organisation accordingly. The collective management organisation must be subject to the national rules implementing the EU Directive on Collective Rights Management (2014/26/EU). Under that Directive a collective management organisation must be authorised by law to manage copyright on behalf of more than one rightholder, i.e. by way of assignment, licence or other contractual agreement. Article 12 is subject to a number of safeguards to protect the interests of rightholders.

CHAPTER 3

Access to and availability of audio-visual works on video-on-demand platforms

Negotiation mechanism

Article 13 provides a new voluntary negotiation mechanism to support the availability, visibility and circulation of audiovisual works, in particular European works. This will assist parties in reaching contractual agreements and help to improve the availability of works on Video on Demand platforms.

CHAPTER 4

Works of visual art in the public domain

Article 14 clarifies that any material resulting from copying a work in the public domain will not be subject to copyright, unless that resulting material is the author's own intellectual creation. This would prevent people from claiming the copyright in works that have already entered the public domain.

TITLE IV

MEASURES TO ACHIEVE A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT

CHAPTER 1

Rights in publications

Protection of press publications concerning online uses

Article 15 of the Directive is intended to ensure greater protection for press publishers by creating a neighbouring press publishers' right. This will allow press publishers to receive remuneration for the online exploitation of their works by news aggregators.

Claims to fair compensation

Article 16 is an optional provision that would provide that a transfer of license from an author to a publisher would be a sufficient legal basis for the publisher to claim a share of the compensation arising from the use of a work under an exception or limitation.

CHAPTER 2

Certain uses of protected content by online services

Use of protected content by online content-sharing service providers

Article 17 is a provision intended to address the "value gap", whereby rightsholders are receiving less remuneration despite the increased usage of their works. This article will place rightsholders in a better position to receive remuneration for the online exploitation of their works without preventing users from making lawful use of those works, while being minimally burdensome on platforms.

CHAPTER 3

Fair remuneration in exploitation contracts of authors and performers

Principle of appropriate and proportionate remuneration

Article 18 outlines the principle of appropriate and proportionate remuneration for authors and performers in relation to the exploitation of their works, this is particularly useful as authors and performers tend to be in the weaker contractual position when they grant a licence or transfer their rights.

Transparency obligation

Article 19 provides for transparency obligations on the parties to whom works are licensed, requiring that they provide comprehensive information on the exploitation of the works ‘*at least once a year*’, including the modes of exploitation and all revenues generated and remuneration due. This will ensure that authors and performers have access to an increased level of information about the exploitation of their works and performances, which is necessary in order to allow rightsholders assess their economic value.

Contract adjustment mechanism

Article 20 is designed to operate in conjunction with article 19. It offers authors and performers a contract adjustment mechanism when ‘the remuneration originally agreed turns out to be disproportionately low’ compared to the success of their work or performance and the resulting revenues generated. Certain contracts for the exploitation of rights can be of a lengthy duration, this provision will allow rightsholders, without prejudice to the law applicable to contracts in Member States, to review and adjust existing contracts.

Alternative dispute resolution procedure

Article 21 provides for an alternative dispute resolution procedure in respect of the obligations set out in Articles 19 and 20.

Right of revocation

Article 22 recognises the potential risk that rightsholders face when signing an exclusivity contract. The article addresses the ‘lack of exploitation’ of works by providing a mechanism to allow that authors or performers, after a reasonable time and upon appropriate notices and deadlines, revoke in whole or part the license or transfer of rights when their works are not being exploited. When a rightsholder transfers their rights there is an expectation that their work or performance will be exploited, in the event that this does not occur this article will allow for the revocation of rights thus allowing rightsholders to transfer or license their rights to another person.

Common provisions

Article 23 prevents parties from overriding Articles 19-21 in contract, and so represents a key provision that ensures that the principles contained in Chapter 3 are met. It also clarifies that Articles 18-22 do not apply to authors of a computer program.

TITLE V

FINAL PROVISIONS

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

Article 24 provides for amendments to Directives 96/9/EC (the Database Directive) and 2001/29/EC (the InfoSoc Directive) so that existing exceptions and limitations in Union law should continue to apply, including to text and data mining, education, and preservation activities, as long as they do not limit the scope of the mandatory exceptions or limitations provided for in Directive 2019/790/EU which need to be implemented by Member States in their national law.

Relationship with exceptions and limitation provided for in other directives

Article 25 provides that Member States may adopt broader provisions, compatible with the exceptions and limitations provided for in Directives 96/9/EC (the Database Directive) and 2001/29/EC (the InfoSoc Directive), for uses or fields covered by the exceptions or limitations provided for in this Directive.

Application in time

Article 26 provides that the Directive will apply to all copyright works and other subject matter protected by national law on or after 7 June 2021 and will not prejudice any act concluded or rights acquired before 7 June 2021.

Transitional provision

Article 27 provides that agreements for the licence or transfer of rights of authors and performers will be subject to the transparency obligation set out in Article 19 from 7 June 2022.

Protection of personal data

Article 28 provides that any processing of personal data under the Directive must be carried out in compliance with Directive 2002/58/EC and Regulation (EU) 2016/679 (GDPR).

Transposition

Article 29 states that Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 7 June 2021 and must provide to the Commission the text of their national transposition instruments.

Review

Article 30 provides that the Commission will carry out a review of the Directive and present a report of the findings to the European Parliament and the Council of the European Economic and Social Committee. The Commission will also assess the impact of Article 17 on online content sharing service providers with an annual turnover of less than €10 million and online services providers established for less than 3 years.

Entry into force

Article 31 states that the Directive will enter into force on 7 June 2021.

Addresses

Article 32 provides that the Directive is addressed to the EU Member States.