

CDSMD. [Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC](#)

Article 3

Text and data mining for the purposes of scientific research

1. Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, and Article 15(1) of this Directive for reproductions and extractions made by research organisations and cultural heritage institutions in order to carry out, for the purposes of scientific research, text and data mining of works or other subject matter to which they have lawful access.
2. Copies of works or other subject matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.
3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.
4. Member States shall encourage rightholders, research organisations and cultural heritage institutions to define commonly agreed best practices concerning the application of the obligation and of the measures referred to in paragraphs 2 and 3 respectively.

Article 4

Exception or limitation for text and data mining

1. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 15(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining.
2. Reproductions and extractions made pursuant to paragraph 1 may be retained for as long as is necessary for the purposes of text and data mining.
3. The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.
4. This Article shall not affect the application of Article 3 of this Directive.

Article 6

Preservation of cultural heritage

Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) of Directive 2009/24/EC and Article 15(1) of this Directive, in order to allow cultural heritage institutions to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation.

Article 8

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

1. Member States shall provide that a collective management organisation, in accordance with its mandates from rightholders, may conclude a non-exclusive licence for non-commercial purposes with

a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject matter that are permanently in the collection of the institution, irrespective of whether all rightholders covered by the licence have mandated the collective management organisation, on condition that:

- (a) the collective management organisation is, on the basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject matter and of the rights that are the subject of the licence; and
- (b) all rightholders are guaranteed equal treatment in relation to the terms of the licence.

2. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a), (b), (d) and (e) and Article 7(1) of Directive 96/9/EC, Articles 2 and 3 of Directive 2001/29/EC, Article 4(1) of Directive 2009/24/EC, and Article 15(1) of this Directive, in order to allow cultural heritage institutions to make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in their collections, on condition that:

- (a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible; and
- (b) such works or other subject matter are made available on non-commercial websites.

3. Member States shall provide that the exception or limitation provided for in paragraph 2 only applies to types of works or other subject matter for which no collective management organisation that fulfils the condition set out in point (a) of paragraph 1 exists.

4. Member States shall provide that all rightholders may, at any time, easily and effectively, exclude their works or other subject matter from the licensing mechanism set out in paragraph 1 or from the application of the exception or limitation provided for in paragraph 2, either in general or in specific cases, including after the conclusion of a licence or after the beginning of the use concerned.

5. A work or other subject matter shall be 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 has been made to determine whether it is available to the public.

Member States may provide for specific requirements, such as a cut-off date, to determine whether works and other subject matter can be licensed in accordance with paragraph 1 or used under the exception or limitation provided for in paragraph 2. Such requirements shall not extend beyond what is necessary and reasonable, and shall not preclude being able to determine that a set of works or other subject matter as a whole is out of commerce, when it is reasonable to presume that all works or other subject matter are out of commerce.

6. Member States shall provide that the licences referred to in paragraph 1 are to be sought from a collective management organisation that is representative for the Member State where the cultural heritage institution is established.

7. This Article shall not apply to sets of out-of-commerce works or other subject matter if, on the basis of the reasonable effort referred to in paragraph 5, there is evidence that such sets predominantly consist of:

- (a) works or other subject matter, other than cinematographic or audiovisual works, first published or, in the absence of publication, first broadcast in a third country;
- (b) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country; or
- (c) works or other subject matter of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to points (a) and (b).

By way of derogation from the first subparagraph, this Article shall apply where the collective management organisation is sufficiently representative, within the meaning of point (a) of paragraph 1, of rightholders of the relevant third country.

Article 9

Cross-border uses

1. Member States shall ensure that licences granted in accordance with Article 8 may allow the use of out-of-commerce works or other subject matter by cultural heritage institutions in any Member State.

2. The uses of works and other subject matter under the exception or limitation provided for in Article 8(2) shall be deemed to occur solely in the Member State where the cultural heritage institution undertaking that use is established.

Article 14

Works of visual art in the public domain

Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is not subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.

InfoSoc Directive. [Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society](#)

Article 5

Exceptions and limitations

(...)

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

(...)

(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;

(...)

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

(...)

(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, unless this turns out to be impossible, 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;

(...)

(h) use of works, such as works of architecture or sculpture, made to be located permanently in public places;

(i) incidental inclusion of a work or other subject-matter in other material;

(...)

4. Where the Member States may provide for an exception or limitation to the right of reproduction pursuant to paragraphs 2 and 3, they may provide similarly for an exception or limitation to the right of distribution as referred to in Article 4 to the extent justified by the purpose of the authorised act of reproduction.

Orphan works Directive. [Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works](#)

Article 1

Subject-matter and scope

1. This Directive concerns certain uses made of orphan works by publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations, established in the Member States, in order to achieve aims related to their public-interest missions.

2. This Directive applies to:

(a) works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions;

(b) cinematographic or audiovisual works and phonograms contained in the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions; and

(c) cinematographic or audiovisual works and phonograms produced by public-service broadcasting organisations up to and including 31 December 2002 and contained in their archives;

which are protected by copyright or related rights and which are first published in a Member State or, in the absence of publication, first broadcast in a Member State.

3. This Directive also applies to works and phonograms referred to in paragraph 2 which have never been published or broadcast but which have been made publicly accessible by the organisations referred to in paragraph 1 with the consent of the rightholders, provided that it is reasonable to assume that the rightholders would not oppose the uses referred to in Article 6. Member States may limit the application of this paragraph to works and phonograms which have been deposited with those organisations before 29 October 2014.

4. This Directive shall also apply to works and other protected subject-matter that are embedded or incorporated in, or constitute an integral part of, the works or phonograms referred to in paragraphs 2 and 3.

5. This Directive does not interfere with any arrangements concerning the management of rights at national level.

Article 2

Orphan works

1. A work or a phonogram shall be considered an orphan work if none of the rightholders in that work or phonogram is identified or, even if one or more of them is identified, none is located despite a diligent search for the rightholders having been carried out and recorded in accordance with Article 3.

2. Where there is more than one rightholder in a work or phonogram, and not all of them have been identified or, even if identified, located after a diligent search has been carried out and recorded in

accordance with Article 3, the work or phonogram may be used in accordance with this Directive provided that the rightholders that have been identified and located have, in relation to the rights they hold, authorised the organisations referred to in Article 1(1) to carry out the acts of reproduction and making available to the public covered respectively by Articles 2 and 3 of Directive 2001/29/EC.

3. Paragraph 2 shall be without prejudice to the rights in the work or phonogram of rightholders that have been identified and located.

4. Article 5 shall apply *mutatis mutandis* to the rightholders that have not been identified and located in the works referred to in paragraph 2.

5. This Directive shall be without prejudice to national provisions on anonymous or pseudonymous works.

Article 6

Permitted uses of orphan works

1. Member States shall provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC to ensure that the organisations referred to in Article 1(1) are permitted to use orphan works contained in their collections in the following ways:

(a) by making the orphan work available to the public, within the meaning of Article 3 of Directive 2001/29/EC;

(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

2. The organisations referred to in Article 1(1) shall use an orphan work in accordance with paragraph 1 of this Article only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collection. The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.

3. Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.

4. This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, particularly in respect of public-private partnership agreements.

5. Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.