



IAML (UK & Irl) Response to Consultation on the transposition of Directive (EU) 2019/790 Consultation Paper No. 2

1. Name (and contact details if you wish)

IAML (UK & Irl)
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2. Are you:

- a rightsholder;
- a user;
- a content-creator;
- a platform (in particular an “online content-sharing service provider”, as defined by Article 2(6) of the Directive);
- a press publisher;
- an organisation representing the rights of rightsholders (such as a collective management organisation); or
- **other – please describe?**

See our response to question 3.

3. If you are providing a submission on behalf of an organisation, who does your organisation represent?

IAML (UK & Irl) is the UK and Ireland branch of the International Association of Music Libraries, Archives and Documentation Centres. We represent a wide range of personal and institutional members. For more information see here: <https://iaml-uk-irl.org/about>

4. Do articles 2-7 of the Directive on Copyright in the Digital Single Market impact or place obligations on you/your organisation directly?

IAML (UK & Irl's) members are directly and indirectly affected by all of these provisions.

5. Do you consider that the text and data mining provision, contained in section 14 of the Copyright and Other Intellectual Property Law Provisions Act 2019, makes sufficient provision for this article? If not, what further provision do you think is necessary in relation to scientific research?

In section 14 the exception is limited to non-commercial research. The new legislation will need to make clear that the exception covers public-private partnerships, and that where a party wishes to carry out TDM but doesn't have the tools to do so they can turn to a private partner to do this (with such a service being offered on a commercial basis), both of which are permitted by recital 11.

6. What do you consider to be “an appropriate level of security” for copies made under this exception, to fulfil article 3(2)? Are there specific details necessary to consider in this regard, and why? Are there “trusted bodies for the purposes of storing such copies”, as outlined in recital 15, that could be used in Ireland?

The introduction of burdensome procedures will affect the cost and therefore uptake of TDM activities, as recognized in recital 15. Research funder mandates (e.g. UKRI, DFG, European Commission) leave it to researchers to decide where to store data as part of their funded data management plans. Libraries and cultural heritage institutions should be considered “trusted bodies”. They already have significant experience of secure hosting, are trusted to spend billions of euros per year of public money, and should also be trusted to maintain their own secure systems for storing datasets.

7. Will it be necessary to outline in greater detail what is necessary to ensure the security and integrity of the networks and data bases containing the original work to transpose article 3(3)? Is there an industry standard to refer to, or what specific matters need to be included? How will these measures remain proportionate, as outlined in Recital 16? What measures may rightsholders take to protect their work while ensuring access for researchers?

Technological protection methods (TPMs) can act as a significant barrier to the undertaking of text and data mining, and the potential exists for rightsholders to employ TPMs in order to restrict the use of this exception. Indeed this already occurs e.g. through the use of CAPTCHAs which prevent automated copying/analysis or placing time restrictions on downloading data (e.g. 1 article every 20 seconds). It is important that clear, objective, parameters are put into place and are subject to independent scrutiny to ensure TPMs are justifiable. The establishment of such parameters should form part of the stakeholder dialogue referred to in article 3(4) and the legislation should explicitly reference the condition in recital 16 that the measures “should remain proportionate to the risks involved and should not exceed what is necessary to pursue the objective of ensuring the security and integrity of the system and should not undermine the effective application of the exception”. We would support the International Federation of Library Association’s (IFLA’s) recommendation that any issues where researchers are prevented from access must be resolved by rightsholders or governments within 72 hours.

8. What would you consider to be the best practices to facilitate the provision in article 3(4)? Please include suggestions for rightsholders, research organisations and cultural heritage institutions to reach agreement on best practises, including any existing stakeholder dialogue mechanisms. Please also indicate whether your answer is from the perspective of a rightholder, a research organisation, a cultural heritage institution or another stakeholder.

IAML (UK & Irl) represents the views of music libraries (educational, research and public), archives and documentation centres. We believe discussions should include a broad range of stakeholders, including umbrella organisations representing libraries (e.g. the Library Association of Ireland, LIBER), research organisations (e.g. the Irish Universities Association) as well as rights holders (e.g. the Irish Music Rights Organisation, the Music Publishers Association of Ireland, the Mechanical Copyright Protection Society, Ireland).

9. How do you expect this exception will operate with existing law? Is it necessary to implement any further measures beyond the text and data mining provision created in section 14 of the Copyright and other Intellectual Property Law Provisions Act 2019? If so, please give details of those additional measures necessary.

A key objective of article 4 is the facilitation of text and data mining for commercial purposes and thus section 14 will either need to be amended wholesale to remove the non-commercial purpose limit (to support all activity permitted in articles 3 and 4) or separate sections drafted to relate to each article.

10. How should the necessary duration of retention of reproductions and extractions for the purposes of text and data mining be determined as allowed in article 4(2)? Please explain your reasons for that duration, including any specific experience you have or industry norms in this regard.

Article 4(2) specifies that that reproductions and extractions may be retained for “as long as is necessary for the purposes of text and data mining”. We believe this needs to be judged within the context in which the TDM activity is being carried out, and take into consideration the whole lifecycle of the process, including preservation of evidence.

IFLA highlights that structured datasets do not compete with the original works, and remarks that when the content mined stems from openly available resources, it can also be easily retrieved online or elsewhere. Therefore, they consider that the deletion of datasets is:¹

“damaging, because the importance of being able to reproduce the results of an experiment is a key test of its validity. If the dataset used to conduct the experiment is destroyed, there is no way of doing this. Damaging, because days or months of work may have gone into creating this dataset, just for it to be wiped away, and with it the value of the investment by the researchers or other miners. And damaging because it means that the same dataset cannot be used in future experiments by researchers with legal access to it.”

11. In your opinion, does the new exception for digital and distance education in sections 15 and 31 of the Copyright and other Intellectual Property Law Provisions Act 2019 fulfil the requirements of this article? If not, what further provision needs to be made?

We support the fact that section 15 includes an exception permitting the copying of any kind of work for the purpose of illustration for education, teaching and scientific research which isn't subject to contractual override, and believe this fulfils the requirements of this article.

Section 15 additionally allows for educational licensing, which “trumps” exceptions in making an exception non-applicable when a licence permitting the copying exists.

Article 5 provides flexibility in terms of whether to facilitate copying through an exception model or a licence model, and specifically mentions sheet music as an example where Member States might give precedence to a licence model.

We strongly believe that copying of sheet music must remain permitted under an exception. To take away an existing exception and replace it with a payable licence model brings no benefit to educational establishments and would place additional strain on budgets.

Notwithstanding this statement, should licensing bodies wish to offer licences which permit more generous copying than is currently permitted by an exception we believe educational establishments should have the option of taking these out, but this should not be at the expense of losing the existing exception.

To provide an example of this in practice: in the UK a higher education licence for copying printed music is due to be launched in 2020. This will permit HE institutions to copy **complete** musical works. However institutions choosing not to take out the licence will still be able to avail themselves of the s.32 Illustration for Instruction exception, which is subject to fair dealing.

¹ IFLA. (2018, 28 February). Mining Menace: Could New EU Rules Put Data in Danger? *IFLA Library Policy and Advocacy Blog*. Available at, <https://blogs.ifla.org/lpa/2018/02/28/mining-menace-could-new-eu-rules-put-data-in-danger/>.

This is made possible because the UK has separate exceptions for Illustration for Instruction (s.32 – applicable to all types of instruction and not limited to particular types of establishment) and copying by educational establishments (s.36). The latter is more closely aligned to the Irish section 15, as an exception trumped by licences, so we would advocate for the separation of section 15 into two separate exceptions – one for general instruction and one specific to educational establishments, to more closely mirror the UK exceptions and therefore maintain a two-pronged approach whereby exceptions and licences can complement each other.

12. In your opinion should Ireland introduce compensation for rightsholders for the use of their works or other subject matter as provided for under article 5(4)? Please provide evidence or statistical data to support your view.

We do not believe Ireland should not introduce a compensation for rightsholders under Article 5(4).

Educational budgets are nowadays already often constrained and stretched. Introducing such a compensation mechanism would only introduce an unnecessary level of complexity for educational establishments and further undercut their financial resources.

13. Do you consider that the new exception for preservation of cultural heritage in section 18 of the Copyright and other Intellectual Property Law Provisions Act 2019 fulfils the requirements of this article? If not, what further provision needs to be made?

Section 18, by itself, doesn't fulfil the requirements of Article 6 as it only concerns itself with format shifting. However considered in tandem with section 65 of the 2000 Act we believe the requirements to be fulfilled.

14. Do you have any other issues you wish to raise related to the transposition of articles 2-7 specifically?

Article 3

Article 3 makes no reference to sufficient acknowledgement (which is covered in 2001/29/EC) but the requirement in the current section 14 is often not practical within the context of "big data" projects owing to the huge datasets mined. The transposition of the article would provide a good opportunity to provide extra flexibility to this requirement along the lines of current UK legislation which requires the copy to be "accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)."

Articles 3 and 4

To as large an extent as possible, the transposition of Article 4 should mirror that of Article 3 to allow for maximum simplicity in implementation.

Article 5

Article 5 permits, but does not **require**, a quantitative limitation to be set. Even without such a limitation, EU legislation is subject to the three-step-test and thus the exception cannot negatively affect the legitimate interests of rightsholders. We would advocate using the implementation of the this article to reframe the existing educational exceptions as described in question 11 above to introduce a broader exception for illustration for instruction, subject to fair dealing (rather than imposing a quantitative limit) in addition to an exception specifically for educational establishments.

Article 6

We believe that cultural heritage institutions would greatly benefit from this exception covering a broad array of works in their collections. Therefore, the concept of "works or other subject matter that are permanently

in their collections”, should be considered to also cover works which have been licensed with permanent access, and ideally also works licensed for shorter periods but nevertheless requiring preservation.

It would be helpful to clarify that cultural heritage institutions shall be able to work with partners anywhere in the Union, both in the making of copies and their subsequent storage. This is especially important in the context of current and future efforts stimulating collaboration and cooperation between cultural heritage institutions, such as the 2019 [Declaration of Cooperation on Cultural Heritage](#) to which Ireland is a signatory.

Article 7

We support the fact that the 2000 Act already contains a general prohibition of contractual override for all limitations and exceptions under section 2(10) and would advocate for this general prohibition to be expanded to cover all exceptions contained in the DSM Directive.

In question 7 above we make reference to a 72 hour window for resolving TPM problems. However, another – preferable – solution would be revert back to the original wording of section 374 prior to the 2019 amendments, which allowed for the circumvention of TPMs in order to facilitate permitted acts.