



International Federation of
Library Associations and Institutions

Articles 3 and 4: Text and Data mining

The implementation of Articles 3 and 4 on text and data mining should include the possibility for remote access by users in order to carry out analysis including in the case of digitised analogue objects.

No disproportionate requirements should be laid down for the storage of data , as mentioned in the recital to the directive. Given that libraries are already trusted to provide access to materials, it does not make sense for them to face additional rules for storing this.

When implementing the provision, the terms "text and data analysis" or "data analysis" should be used and not "text and data mining", so there is no doubt that all data analysis techniques used in the creation process are included in artificial intelligence.

A mandatory response time of 72 hours for rights holders should be adopted in cases where access to text and data mining or data analysis is blocked due to technological barriers. This is in order to ensure that the rights of library users cannot be frustrated by abusive use of digital locks and other technology.

The work of heritage institutions should not be hindered by the establishment of specific requirements for the secure storage of data.

There should be a clear exception for sharing or making the results of data mining available to the public.

It should be explicitly mentioned that the analysis of software data is authorized.

Article 5: Use of works in Teaching Activities

Article 5 concerning the use of works for educational activities should lead to a non-remunerated exception allowing public educational institutions, including libraries explicitly, to make use of these resources. We must avoid a situation where educational budgets are being used to pay for activities that should ordinarily be covered by exceptions, and which do no harm to markets.

As the activities of these institutions are increasingly digital, responding to the needs of their users, it is essential that this exception apply in a similar way to physical and digital materials, thus facilitating online educational learning for educators.

Article 6: Preservation of Cultural Heritage

Article 6 on the preservation of cultural heritage requires, beyond the establishment of an exception, to establish a definition of the term "work from a permanent collection" including



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works acquired through a license agreement. In order to be effective, this definition should cover all works acquired for more than a very limited period of time.

The list of authorized uses should be left open-ended to allow institutions to easily adapt to new needs and uses facilitating the conservation of works.

The exception should not contain restrictions on tools, media, or formats for creation and storage of preservation copies, as this would considerably limit the work of heritage institutions (preservation networks allow storing of works in different places including other countries).

The same applies to the entities with which cultural institutions can collaborate. Indeed, an explicit authorization on public-private partnerships would be welcome, including the fact that the exception cannot be eliminated by contractual provisions.

The exception should also allow for web harvesting, which represents an increasingly important means for libraries to achieve their mission.

Finally, an exception should cover all types of needs of cultural heritage institutions which would allow digital technologies and different uses to be adapted.

Article 7: Contract Override and Technological Protection Measures

Article 7 on circumvention of contracts and technological protection measures should introduce a principle of non-enforcement of contract terms that prevent the use of wider exceptions applied to the fields of libraries, educational and research institutions. This will facilitate the work of libraries, meaning that they do not need to check where such a non-enforcement provision exists or not each time.

It is also recognised that TPMs hinder the application of this exception to copyright. In this context, it is crucial to provide libraries with the necessary tools to remove or circumvent these protections or the establishment of a simple procedure with quick means (within 72 hours) for rights holders to offer the possibility to circumvent or remove these protections.

Articles 8 to 11: Out-of Commerce works

Within the framework of Articles 8 to 11 of the Directive on Out of Commerce works, cultural heritage institutions should benefit from a broad exception allowing them to digitize and allow access to the greatest number of their collections.

Extended Collective Licenses should only be considered if they are representative (with a clear and precise definition of what is a sufficiently representative collective management organisation), and come from a demonstrably well-governed collective management organization. When defining categories of works, it will be important to ensure that these are sufficiently narrow and specific to minimise uncertainty. In each of these categories, the representativeness of collective management organisations needs to be calculated both



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according to the number of creators who are members, and whether they have offered mandates for the relevant actions (i.e. placing works online for non-commercial purposes).

It is also necessary that the test to determine whether a work is out of commerce is clear and simple (definition of a sold work, and a work no longer on sale) and that even if the nationality of the creator is not clear, it is possible by default to digitize relevant works and make them available.

In addition, it is also essential to have a discussion between the various actors on the subject and to benefit from an effective EUIPO portal.

Article 14: Works of Visual Art in the Public Domain

The implementation of Article 14 requires clarification on the definition of the terms of faithful reproduction of visual works of art in the public domain. It is essential to ensure both that works already in the public domain remain there, and that non-original reproductions themselves do not enjoy new rights, but rather contribute to wider access to culture.

It is essential to establish that this provision applies to reproductions before and after the expiry of the period of protection of the work or any other object of protection, since digitization campaigns are extremely time-consuming in terms of time and human resources, and may become unviable if it is either impossible, or costly, to place works online.

Moreover, as heritage collections are extremely varied, it also seems to be good practice to also include two- or three-dimensional faithful reproductions for the necessary uses of professionals and their audiences.

This provision also provides an opportunity to define more broadly what the public domain is and what it encompasses.

Article 15: Press Publishers Right

The implementation of Article 15 of the reform should explicitly mention that libraries and educational and research institutions are not included in the effects of this provision. This would offer welcome clarity.

Furthermore, the national implementation should explicitly echo the clarification in the Directive that scientific journals and other scientific publications (natural and human sciences) should be excluded from the new right. To do otherwise would considerably limit the visibility and discovery of scientific content and thus by extension reduce the progress and impact of current research. A broad definition of other excluded websites (such as blogs, social media) would be helpful.



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It is also relevant to define the meaning of "very short extract" in order to benefit from legal certainty. To do otherwise would risk acting in contravention of international law, which sets out a mandatory exception for quotation.

All existing exceptions and limitations should apply to this new right especially on the exceptions for news reporting and quotations.

Article 17: Use of Protected content by online content-sharing service providers

In the context of Article 17, it is essential to find a balance between the remuneration of copyright and the respect of exceptions and limitations to copyright. The filters currently designed are put in place in order to detect copyright infringements, although are unable to identify where a legitimate exception may be being used. In this context, particular care must be taken to ensure that users' rights are not impeded. This applies in particular to content uploaded by library users - readers, researchers and others - as part of their activities at the library.

The establishment of a provision excluding all kinds of scientific (natural and human sciences) and educational or non-profit repositories, including also the platforms of library, archive, museum and research institutions, is necessary. These should be able to continue to operate under the safe harbour provisions of the eCommerce Directive.

In the case of content detected as subject to copyright, it is crucial that the content filtering procedure can include the content uploaded to the platform even during the verification procedure. In effect, users should be treated as innocent until proven guilty. It is a matter of respecting both the exceptions and limitations put in place and taking them into account in the development of the tools, but also of respecting freedom of expression.