



STATUTORY INSTRUMENTS.

S.I. No. 567 of 2021



EUROPEAN UNION (COPYRIGHT AND RELATED RIGHTS IN THE
DIGITAL SINGLE MARKET) REGULATIONS 2021

S.I. No. 567 of 2021

EUROPEAN UNION (COPYRIGHT AND RELATED RIGHTS IN THE
DIGITAL SINGLE MARKET) REGULATIONS 2021

I, LEO VARADKAR, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019, hereby make the following regulations:

PART 1
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021.

Interpretation

2. (1) In these Regulations –

“Act of 2000” means the Copyright and Related Rights Act 2000 (No. 28 of 2000);

“collective management organisation” has the same meaning as it has in the Regulations of 2016;

“Directive” means Directive (EU) 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/EC¹;

“out-of-commerce work” means a work where 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;

“Regulations of 2016” means the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016 (S.I. No. 156 of 2016).

¹ OJ No. L 130, 17.5.2019, p. 92.

(2) A word or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

PART 2

MEASURES TO ADAPT EXCEPTIONS AND LIMITATIONS TO DIGITAL AND CROSS-BORDER ENVIRONMENT

Text and data mining for the purposes of research

3. (1) Section 53A of the Act of 2000 is amended by the insertion of the following subsections after subsection (3):

“(3A) A copy of a work made in compliance with subsection (1) shall be stored in a secure manner appropriate to the nature of the work concerned and may be retained for the purposes of research, including for the purposes of the verification of research results.

(3B) In order to ensure that a copy of a work is stored with an appropriate level of security in accordance with subsection (3A), the person responsible for the security and integrity of the networks and databases where the copy is hosted (in this section referred to as “the responsible person”) shall ensure that only persons who have lawful access to the data contained in that copy shall be permitted to access those data, including through IP address validation or user authentication.

(3C) Where a copy of a work is made in compliance with subsection (1), the author of the work, in order to satisfy himself or herself of the security and integrity of the networks and databases where the copy is hosted, shall –

- (a) be informed of the making of the copy,
- (b) be entitled to request information on the steps taken by the responsible person to comply with subsection (3B), and
- (c) be entitled, where he or she requests any additional security measures, to a response as soon as practicable as to whether or not those additional security measures will be applied.

(3D) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(3E) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant author or performer shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(3F) Any contractual provision contrary to this section shall be unenforceable.”.

(2) Section 225A of the Act of 2000 is amended by the insertion of the following subsections after subsection (3):

“(3A) A copy of a work made in compliance with subsection (1) shall be stored in a secure manner appropriate to the nature of the work concerned and may be retained for the purposes of research, including for the purposes of the verification of research results.

(3B) In order to ensure that a copy of a work is stored with an appropriate level of security in accordance with subsection (3A), the person responsible for the security and integrity of the networks and databases where the copy is hosted (in this section referred to as “the responsible person”) shall ensure that only persons who have lawful access to the data contained in that copy shall be permitted to access those data, including through IP address validation or user authentication.

(3C) Where a copy of a work is made in compliance with subsection (1), the author of the work, in order to satisfy himself or herself of the security and integrity of the networks and databases where the copy is hosted, shall –

- (a) be informed of the making of the copy,
- (b) be entitled to request information on the steps taken by the responsible person to comply with subsection (3B), and
- (c) be entitled, where he or she requests any additional security measures, to a response as soon as practicable as to whether or not those additional security measures will be applied.

(3D) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(3E) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant author or performer shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(3F) Any contractual provisions contrary to this section shall be unenforceable.”.

Exception or limitation for text and data mining

4. The Act of 2000 is amended –

(a) by the insertion of the following section after section 53A:

“Text and data mining for commercial purposes - exception

53B. (1) Where an author has not expressly reserved in an appropriate manner, in accordance with subsection (3), the use of a work for reproduction or extraction for the purposes of text and data mining, a person who has lawful access to it but does not fall within the scope of section 53A(1), may reproduce it for the purposes of text and data mining.

(2) Reproductions and extractions made pursuant to subsection (1) may be retained for as long as is necessary for the purposes of text and data mining.

(3) For the purposes of subsection (1), an author reserves the use of a work for reproduction or extraction for the purposes of text and data mining in an appropriate manner where the reservation concerned –

- (a) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and
- (b) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.

(4) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(5) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant author or performer shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(6) Any contractual provisions contrary to this section shall be unenforceable.”,

(b) in section 82, by the insertion of the following subsections after subsection (2):

“(3) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to reproduce, or extract from, the computer program for the purposes of text and data mining where the author has not expressly reserved in an appropriate manner, in accordance with subsection (5), the use of the computer program for reproduction or extraction for the purposes of text and data mining.

(4) Reproductions and extractions made pursuant to subsection (3) may be retained for as long as is necessary for the purposes of text and data mining.

(5) For the purposes of subsection (3), an author reserves the use of a computer program for reproduction or extraction for the purposes of text and data mining in an appropriate manner where the reservation concerned –

(a) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and

(b) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.”, and

(c) by the insertion of the following section after section 225A:

“Text and data mining for non-commercial purposes - exception

225AA. (1) Where an author has not expressly reserved in an appropriate manner, in accordance with subsection (3), the use of a work for reproduction or extraction for the purposes of text and data mining, a person who has lawful access to it but does not fall within the scope of section 225A(1), may reproduce it for the purposes of text and data mining.

(2) Reproductions and extractions made pursuant to subsection (1) may be retained for as long as is necessary for the purposes of text and data mining.

(3) For the purposes of subsection (1), an author reserves the use of a work for reproduction or

extraction for the purposes of text and data mining in an appropriate manner where the reservation concerned –

- (a) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and
- (b) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.

(4) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(5) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant author or performer shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(6) Any contractual provisions contrary to this section shall be unenforceable.”.

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

5. (1) Section 57A of the Act of 2000 is amended –

- (a) by the designation of that section as subsection (1),
- (b) in subsection (1), by the substitution of “Subject to subsection (2), it is not an infringement of the rights conferred by this Part for” for “It is not an infringement of the rights conferred by this Part for”, and
- (c) by the insertion of the following subsections after subsection (1):

“(2) Subsection (1) shall apply on condition that such use takes place –

- (a) under the authority of an educational establishment, on its premises or at other venues, or through a secure electronic environment access to which is

limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication, and

- (b) is accompanied by an indication of the source, including the author's name, unless this turns out to be impossible.

(3) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(4) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant author or performer shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(5) Any contractual provisions contrary to this section shall be unenforceable.”.

(2) Section 225C of the Act of 2000 is amended –

- (a) in subsection (1), by the substitution of “Subject to subsections (2), (3) and (4)” for “Subject to subsections (2) and (3)”, and
- (b) by the insertion of the following subsections after subsection (3):

“(4) Subsection (1) shall apply on condition that such use takes place –

- (a) under the authority of an educational establishment, on its premises or at other venues, or through a secure electronic environment access to which is limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication, and
- (b) is accompanied by an indication of the source, including the

author's name, unless this turns out to be impossible.

(5) The exceptions and limitations provided for under this section shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

(6) Where a beneficiary of an exception or limitation under this section has legal access to the relevant protected work or subject matter, the relevant author or performer shall ensure that that beneficiary has the means of benefiting from that exception or limitation to the extent necessary to do so.

(7) Any contractual provisions contrary to this section shall be unenforceable.”.

Amendment of Act of 2000

6. The Act of 2000 is amended –

(a) in section 57, by the insertion of the following subsection after subsection (4):

“(5) Any contractual provisions contrary to this section shall be unenforceable.”,

and

(b) in section 68A, by the insertion of the following subsection after subsection (2):

“(3) Any contractual provisions contrary to this section shall be unenforceable.”.

PART 3

MEASURES TO IMPROVE LICENSING PRACTICES AND ENSURE WIDER ACCESS TO CONTENT

Out-of-commerce works and other subject matter

Amendment of section 2 of Act of 2000

7. The Act of 2000 is amended by the insertion of the following definitions in section 2:

“ ‘collective management organisation’ has the same meaning as it has in the European Union (Collective Rights Management) (Directive 2014/26/EU) Regulations 2016 (SI. No. 156 of 2016);

‘cultural heritage institution’ has the meaning assigned to it in the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021 (S.I. No. 567 of 2021);

‘out-of-commerce work’ means a work where 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;”.

Use of out-of-commerce works and other subject matter by cultural heritage institutions under licenses with collective management organisations

8. (1) A collective management organisation may, in accordance with its mandates from rightholders, 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 said cultural heritage institution, irrespective of whether all rightholders covered by the licence have so mandated the collective management organisation, if and only if –

- (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) A member of a collective management organisation may exclude his or her work or other subject matter from the licensing mechanism set out in paragraph (1) at any time by notifying the collective management organisation by electronic or other means and by including the following in the notice:

- (a) notification that the owner is asserting his or her right pursuant to this Regulation;
- (b) sufficient details of the work or other subject matter to enable it to be identified and removed from public display.

(3) Within 2 weeks of receiving a written request in relation to a particular work or other subject matter in accordance with paragraph (2), a collective management organisation shall, by electronic or other means, notify the cultural heritage institution with whom it has concluded a license under paragraph (1) of the request and shall forward that request to the institution concerned.

(4) A cultural heritage institution that receives a notification and a forwarded written request in accordance with paragraph (3) shall terminate its use of the work or other subject matter referred to in that written request within 4 weeks of receiving it.

(5) Upon receipt of a written request in relation to a particular work or other subject-matter in accordance with paragraph (2), the collective management organisation shall cease to issue new licenses under paragraph (1) in relation to that work or other subject matter.

(6) A member of a collective management organisation who chooses to exclude the use of his or her work or other subject matter in accordance with paragraph (2) shall still be entitled to claim remuneration for the actual use of the work or other subject matter under the relevant license.

(7) A collective management organisation shall ensure that its members receive relevant and comprehensive information on a regular basis, at least once a year, on their rights under these Regulations.

- (8) (a) Subject to subparagraph (b), this Regulation 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 (9), there is evidence that such sets predominantly consist of –
 - (i) 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,
 - (ii) cinematographic or audiovisual works, of which the producers have their headquarters or habitual residence in a third country, or
 - (iii) 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 clauses (i) and (ii).

- (b) Notwithstanding subparagraph (a), this Regulation shall apply where the collective management organisation is sufficiently representative in accordance with paragraph (1)(a) of rightholders in the relevant third country.

(9) At least 6 months before the work or other subject matter licensed under paragraph (1) is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities within the meaning of section 32 of the Local Government Act 1994 (Act No.8 of 1994) shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office under the Directive:

- (a) the title, where possible, the author, and a brief summary of the contents of an out-of-commerce work that is proposed to be the subject of a license under paragraph (1);
- (b) the information about the options available to rightholders under this Regulation;
- (c) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the license.

(10) In this Regulation –

“mandate” means the manner of authorisation by law or by way of assignment, license or any other contractual arrangement to manage copyright or related rights;

“member” has the same meaning as it has in the Regulations of 2016;

“rightholder” has the same meaning as it has in the Regulations of 2016.

Use of out-of-commerce works and other subject matter by cultural heritage institutions where no collective management organisation exists

9. (1) The Act of 2000 is amended by the insertion of the following section after section 58:

“Cultural Heritage Institutions

58A. (1) It is not an infringement of the rights conferred by this Part for a cultural heritage institution to make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in its collections, where –

- (a) no collective management organisation exists that fulfils the conditions set out in Regulation 8(1)(a) of the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021

(S.I. No. 567 of 2021) in relation to that database right,

- (b) it is accompanied by sufficient acknowledgment, and
- (c) such work is only made available on non-commercial websites.

(2) A copyright owner under this Part may exclude his or her work from the use referred to in subsection (1) at any time by notifying the relevant cultural heritage institution by electronic or other means and by including the following in the notice –

- (a) notification that the owner is asserting his or her right pursuant to this section;
- (b) sufficient details of the work to enable it to be identified and removed from public display.

(3) Upon receipt of a written request in accordance with subsection (2), a cultural heritage institution shall terminate its use of the work or works referred to in that written request within 4 weeks of receiving it.

(4) This section 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 subsection (5), there is evidence that such sets predominantly consist of –

- (a) works, 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 of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to paragraphs (a) and (b).

(5) At least 6 months before the work used under subsection (1) is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities, within the meaning of section 32 of the Local Government Act 1994, shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office:

- (a) the title, where possible, the author, and a brief summary of the contents of the out-of-commerce work that is proposed to be used in accordance with subsection (1);
- (b) the information about the options available to rightholders under this section;
- (c) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the license.

(6) For the purposes of subsection (1), a work may be considered to be permanently in the collections of a cultural heritage institution where it is owned or permanently held by that institution, including as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.”.

(2) The Act of 2000 is amended by the insertion of the following section after section 82:

“Cultural Heritage Institutions – computer programs

82A. (1) It is not an infringement of the copyright in a computer program for a cultural heritage institution to make available, for non-commercial purposes, out-of-commerce works that are permanently in its collections, where –

- (a) no collective management organisation exists that fulfils the conditions set out in Regulation 8(1)(a) of the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2011 in relation to that computer program right,
- (b) it is accompanied by sufficient acknowledgment, and
- (c) such work is only made available on non-commercial websites.

(2) An owner of copyright in a computer program may exclude his or her work from the use referred to in subsection (1) at any time by notifying the relevant cultural heritage institution by electronic or other means and by including the following in the notice:

- (a) notification that the owner is asserting his or her right pursuant to this section;

- (b) sufficient details of the work to enable it to be identified and removed from public display.

(3) Upon receipt of a written request in accordance with subsection (2), a cultural heritage institution shall terminate its use of the work or works referred to in that written request within 4 weeks of receiving it.

(4) This section 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 subsection (5), there is evidence that such sets predominantly consist of –

- (a) works, 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 of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to paragraphs (a) and (b).

(5) At least 6 months before the work used under subsection (1) is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities, within the meaning of section 32 of the Local Government Act 1994, shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office:

- (a) the title, where possible, the author, and a brief summary of the contents of the out-of-commerce work that is proposed to be used in accordance with subsection (1);
- (b) the information about the options available to rightholders under this section;
- (c) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the license.

(6) For the purposes of subsection (1), a work can be considered to be permanently in the collections of a cultural heritage institution where it is owned or permanently held by that institution, for example as a result of a transfer of

ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.”.

(3) The Act of 2000 is amended by the insertion of the following section after section 330:

“Cultural Heritage Institutions – databases

330A. (1) The database right in a database is not infringed by a cultural heritage institution making available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in its collections, where –

- (a) no collective management organisation exists that fulfils the conditions set out in Regulation 8(1)(a) of the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021 in relation to that database right,
- (b) it is accompanied by sufficient acknowledgment, and
- (c) such work is only made available on non-commercial websites.

(2) The owner of a database right may exclude his or her work from the use referred to in subsection (1) at any time by notifying the relevant cultural heritage institution by electronic or other means and by including the following in the notice:

- (a) notification that the owner is asserting his or her right pursuant to this section;
- (b) sufficient details of the work to enable it to be identified and removed from public display.

(3) Upon receipt of a written request in accordance with subsection (2), a cultural heritage institution shall terminate its use of the work or works referred to in that written request within 4 weeks of receiving it.

(4) This section 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 subsection (5), there is evidence that such sets predominantly consist of –

- (a) works, 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 of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to paragraphs (a) and (b).

(5) At least 6 months before the work used under subsection (1) is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities, within the meaning of section 32 of the Local Government Act 1994, shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office:

- (a) the title, where possible, the author, and a brief summary of the contents of the out-of-commerce work that is proposed to be used in accordance with subsection (1),
- (b) the information about the options available to rightholders under this section, and
- (c) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the licence.

(6) For the purposes of subsection (1), a work can be considered to be permanently in the collections of a cultural heritage institution where it is owned or permanently held by that institution, for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.”.

Cross-border users

10. (1) Licences granted in accordance with Regulation 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 provided for in Regulation 9 by a cultural heritage institution established in the State shall be deemed to occur solely in the State.

Additional publicity measures

11. In addition to the information required under Regulation 8(9) and sections 58A(5), 82A(5) and 330A(5) of the Act of 2000, additional information regarding the ability of collective management organisations to license works or other subject matter and the options available to rightholders

under Regulation 8 and sections 58A, 82A and 330A of the Act of 2000 shall be provided through a website maintained by the Minister or the Government.

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

Negotiation mechanism

12. When seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services, parties facing difficulties related to the licensing of rights may engage in mediation within the meaning of the Mediation Act 2017 (No. 27 of 2017) and any mediator so engaged shall provide assistance to the parties with their negotiations and help the parties reach agreements, including, where appropriate and at the request of the parties, by submitting proposals to them.

PART 4

MEASURES TO ACHIEVE WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT

Rights in publications

Protection of press publications concerning online uses

13. (1) Subject to Regulations 14 to 17, the rights provided for in sections 37, 39 and 40 of the Act of 2000 shall apply to publishers of press publications established in the State for the online use of their press publications by information society service providers, but shall not apply in relation to –

- (a) private or non-commercial uses of press publications by individual users,
- (b) acts of hyperlinking, or
- (c) the use of individual words or very short extracts of a press publication.

(2) The rights provided for in paragraph (1) shall –

- (a) in no way affect the rights of authors and other rightholders provided for in European Union law, in respect of works or other subject matter incorporated in a press publication, and
- (b) shall not be invoked against those authors and other rightholders and, in particular, shall not deprive them of their right to exploit their works or other subject matter independently from the press publication in which they are incorporated.

(3) When a work or other subject matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights provided for in paragraph (1) shall not be invoked to prohibit –

- (a) the use by other authorised users, or
- (b) the use of works or other subject matter for which protection has expired.

(4) Sections 51 to 55 of the Act of 2000, the European Communities (Legal Protection of Computer Programs) Regulations (S.I. No. 26 of 1993), the Regulations of 2016, the European Union (Certain Permitted Uses of Orphan Works) Regulations 2014 (S.I. No. 490 of 2014) and the European Union (Marrakesh Treaty) Regulations 2018 (S.I. No 412 of 2018) shall apply mutatis mutandis in respect of the rights provided for in paragraph (1).

(5) The rights provided for in paragraph (1) shall expire 2 years after the press publication is published and that term shall be calculated from the 1st day of January of the year following the date on which that press publication is published.

(6) Paragraph (5) shall not apply to press publications first published before the 6th day of June 2019.

(7) Authors of works incorporated in a press publication shall receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers.

(8) Without prejudice to judicial remedies, disputes under this Regulation may be submitted to a mediator in accordance with the Mediation Act 2017.

Exception from right in publication for text and data mining for research

14. (1) There shall be an exception from the rights provided for under Regulation 13 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) A copy of a work or other subject matter made in compliance with paragraph (1) shall be stored in a secure manner appropriate to the nature of the work or other subject matter concerned and may be retained for the purposes of scientific research, including for the purposes of the verification of research results.

(3) In order to ensure that a copy of a work or other subject matter is stored with an appropriate level of security in accordance with paragraph (2), the person responsible for the security and integrity of the networks and databases where the copy is hosted (in this Regulation referred to as “the responsible person”) shall ensure that only persons who have lawful access to the data contained in that copy shall be permitted to access those data, including through IP address validation or user authentication.

(4) Where a copy of a work or other subject matter is made in compliance with paragraph (1), a rightholder, in order to satisfy himself or herself of the security and integrity of the networks and databases where the copy is hosted, shall –

- (a) be informed of the making of the copy,
- (b) be entitled to request information on the steps taken by the responsible person to comply with paragraph (3), and
- (c) be entitled to a response as soon as practicable where he or she requests any additional security measures.

Exception from right in publication for text and data mining for commercial purposes

15. (1) Notwithstanding Regulation 13, if a press publication has not expressly reserved in an appropriate manner, in accordance with paragraph (3), the use of a work or other subject matter for reproduction or extraction for the purposes of text and data mining a person who has lawful access to it but does not fall within the scope of Regulation 14(1), may reproduce it 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) For the purposes of paragraph (1), an author reserves the use of a work or other subject matter for reproduction or extraction for the purposes of text and data mining in an appropriate manner where the reservation concerned –

- (a) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and
- (b) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.

Exception from right in publication for digital use of works or other subject matter for illustration for teaching

16. There shall be an exception from the rights provided for under Regulation 13 in order to allow the digital use of works or other subject matter for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, on condition that such use –

- (a) takes place under the authority of an educational establishment, on its premises or at other venues, or through a secure electronic environment access to which is limited to an educational establishment's teaching staff and to pupils or students enrolled in a study programme, in particular through appropriate authentication procedures including password-based authentication, and
- (b) is accompanied by an indication of the source, including the author's name, unless this turns out to be impossible.

Exception from right in publication for cultural heritage institutions

17. (1) Notwithstanding Regulation 13, a cultural heritage institution may make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in its collections, where –

- (a) no collective management organisation exists that fulfils the conditions set out in Regulation 8(1)(a) in relation to that database right,
- (b) the name of the author or other identifiable rightholder is indicated, unless this turns out to be impossible, and
- (c) such work or other subject matter is only made available on non-commercial websites.

(2) A press publication may exclude its work or other subject matter from the use referred to in paragraph (1) at any time by notifying the relevant cultural heritage institution by electronic or other means and by including the following in the notice:

- (a) notification that the owner is asserting his or her right pursuant to this Regulation;
- (b) sufficient details of the work or other subject matter to enable it to be identified and removed from public display.

(3) Upon receipt of a written request in accordance with paragraph (2), a cultural heritage institution shall terminate its use of the work or other subject matter referred to in that written request within 4 weeks of receiving it.

(4) This Regulation 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 paragraphs (a) and (b).

(5) At least 6 months before the work or other subject matter used under paragraph (1) is distributed, communicated to the public or made available to the public, cultural heritage institutions, collective management organisations and library authorities, within the meaning of section 32 of the Local Government Act 1994, shall provide the following information on the Out-of-Commerce Works Portal established by the European Union Intellectual Property Office:

- (a) the title, where possible, the author, and a brief summary of the contents of the out-of-commerce work that is proposed to be used in accordance with paragraph (1);
- (b) the information about the options available to rightholders under this Regulation;
- (c) as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses authorised under the license.

PART 5

CERTAIN USES OF PROTECTED CONTENT BY ONLINE SERVICES

Definition for purposes of Part 5

18. In this Part, “online content-sharing service provider” means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes, and does not include providers of services, including (but not limited to) the following:

- (a) not-for-profit online encyclopedias;
- (b) not-for-profit educational and scientific repositories;
- (c) open source software-developing and-sharing platforms;
- (d) providers of electronic communications services within the meaning of Directive 2018/1972, of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code²;
- (e) online marketplaces, business-to-business cloud services and cloud services that allow users to upload content for their own use.

Use of protected content by online content-sharing service providers

19. (1) An online content-sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of these Regulations when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users.

(2) An online content-sharing service provider shall not perform an act described in paragraph (1) without first obtaining an authorisation from the rightholders referred to in sections 37 and 40 of the Act of 2000 and such

² OJ L 321 17.12.2018, p.36

authorisation may be obtained by means such as by concluding a licensing agreement where those rightholders are willing to do so.

(3) Where an online content-sharing service provider obtains an authorisation under paragraph (2), that authorisation shall also cover acts carried out by users of the services falling within the scope of sections 37 and 40 of the Act of 2000 when those users are not acting on a commercial basis or where their activity does not generate significant revenues.

- (4) (a) When an online content-sharing service provider performs an act described in paragraph (1) in accordance with these Regulations, the limitation of liability established in section 40 of the Act of 2000 shall not apply to the situations covered by this Regulation.
- (b) Subparagraph (a) shall not affect the application of section 40 of the Act of 2000 to those service providers for purposes falling outside the scope of these Regulations.

Liability of online content-sharing service providers where no authorisation obtained

20. (1) Subject to paragraphs (2) to (6), if no authorisation is granted, an online content-sharing service provider shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers can demonstrate that they have –

- (a) made best efforts to obtain an authorisation,
- (b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information, and
- (c) in any event, acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with subparagraph (b).

(2) In determining whether the service provider has complied with its obligations under paragraph (1), and in light of the principle of proportionality, the following matters (but not limited to those matters) shall be taken into account:

- (a) the type, the audience and the size of the service and the type of work or other subject matter uploaded by the users of the service;
- (b) the availability of suitable and effective means and their cost for service providers.

(3) A new online content-sharing service provider the services of which have been available to the public in the European Union for less than 3 years and which has an annual turnover below EUR 10 million, calculated in accordance with Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises³, shall only be obliged to comply with subparagraph (a) of paragraph (2) and to act expeditiously, upon receiving a sufficiently substantiated notice, to disable access to the notified works or other subject matter or to remove those works or other subject matter from their websites.

(4) Where the average number of monthly unique visitors of a new online content-sharing service provider exceeds 5 million, calculated on the basis of the previous calendar year, such a service provider shall also demonstrate that it has made best efforts to prevent further uploads of the notified works and other subject matter for which the rightholders have provided relevant and necessary information.

Removal of certain content and protection of freedom of expression

21. (1) The cooperation between an online content-sharing service provider and a rightholder shall not result in the prevention of the availability of a work or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such a work or other subject matter is covered by an exception or limitation, including those specified in paragraph (2).

(2) A user in the State may rely on the existing exceptions or limitations provided for by or under Parts II and III of the Act of 2000 when uploading and making available content on online content-sharing services.

(3) The application of this Part shall not be construed as imposing any general monitoring obligation.

Transparency obligations of online content-sharing service providers

22. (1) An online content-sharing service provider shall provide a rightholder, at his or her request, with adequate information on the functioning of its practices with regard to the cooperation referred to in Regulation 21.

(2) Subject to paragraph (4), where a licensing agreement is concluded between a service provider and a rightholder, an online content-sharing service provider shall provide a rightholder, at his or her request, with sufficiently specific information on the use of content covered by the agreement to provide enough transparency to rightholders without affecting the business secrets of the online content-sharing service provider.

(3) The information referred to in paragraph (2) shall include –

- (a) data on the exploitation of the rightholders' works, and
- (b) data on the revenues generated by the online content-sharing service provider.

³ OJ No. L124 20.05.2003, p.36

(4) Notwithstanding paragraph (2), an online content-sharing service provider is not required to provide detailed and individualised information on each work unless this is provided for in a contractual agreement.

Effective and expeditious complaint and redress mechanism

23. (1) An online content-sharing service provider shall put in place an effective and expeditious complaint and redress mechanism that is available to users of its services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by it.

(2) Where a rightholder requests to have access to his or her specific work or other subject matter disabled or to have that work or other subject matter removed, in accordance with paragraph (1), he or she shall state the reasons for the request.

(3) Complaints submitted under the mechanism provided for under paragraph (1) shall be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review.

(4) An online content-sharing service provider shall, in its terms and conditions, inform its users that they can use works and other subject matter under exceptions or limitations to copyright and related rights provided for in European Union law.

Out-of-court dispute settlement

24. Without prejudice to judicial remedies, disputes under this Part may be submitted –

- (a) to a mediator in accordance with the Mediation Act 2017, or
- (b) where appropriate, to an arbitrator in accordance with the Arbitration Act 2010 (No. 1 of 2010).

PART 6

FAIR REMUNERATION IN EXPLOITATION OF CONTRACTS OF AUTHORS AND PERFORMERS

Application of Part 6

25. This Part shall not apply to authors of a computer program within the meaning of the Act of 2000.

Principle of appropriate and proportionate remuneration

26. (1) Where an author or a performer licenses or transfers his or her exclusive rights for the exploitation of his or her works or other subject matter, he or she shall be entitled to receive appropriate and proportionate remuneration.

(2) Remuneration under Paragraph (1) shall be considered appropriate and proportionate where it is proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work or other subject matter, including, where applicable, merchandising revenues.

Transparency obligation

27. (1) A party to whom an author or performer has licensed or transferred his or her rights or his or her successor in title (in this Regulation referred to as a “first contractual counterpart”), shall, at least once each year provide the author or performer with –

- (a) a clear, detailed description of how any work or performance the subject of that license or transfer has been exploited worldwide during the relevant period,
- (b) an itemised list of the euro value of all copyright revenues generated worldwide during the relevant period, including, where applicable, merchandising revenues, and
- (c) notification of the author or performer's rights under this Regulation.

(2) Upon receipt of a request from an author or performer for the name and business address of a sub-licensee for the purposes of making a request under paragraph (3), a contractual counterpart shall, as soon as practicable after receipt of the request, supply that information by electronic or other means to the author or performer.

(3) A sub-licensee who receives a request from an author or performer for additional details that are required to be provided under paragraph (1) shall, as

soon as practicable after receipt of the request, provide those additional details by electronic or other means.

(4) A first contractual counterpart who receives a request for additional details that are required to be provided under paragraph (1) shall, as soon as practicable after receipt of the request, forward that request to the sub-licensee by electronic or other means.

(5) A sub-licensee who receives a forwarded request in accordance with paragraph (4) shall, as soon as practicable after receipt of the request, supply the additional details to the first contractual counterpart by electronic or other means.

(6) A first contractual counterpart who receives a response from a sub-licensee in accordance with paragraph (5) shall, as soon as practicable after receipt of the response, forward that response by electronic or other means.

(7) Any agreement between an author or a performer and his or her contractual counterpart to keep information shared under this Regulation confidential shall not affect the right of an author or a performer to use the shared information to exercise his or her rights under these Regulations.

(8) Where Chapter 5 of the Regulations of 2016 is applicable, the obligation set out in paragraph (1) shall not apply in respect of agreements concluded by the following:

- (a) entities (within the meaning of Regulation 2 of those Regulations);
- (b) by other entities subject to those Regulations.

(9) Without prejudice to judicial remedies, disputes under this Regulation may be submitted to –

- (a) a mediator in accordance with the Mediation Act 2017 or,
- (b) where appropriate, to an arbitrator in accordance with the Arbitration Act 2010.

Contract adjustment mechanism

28. (1) An author or a performer or his or her representative may claim additional, appropriate and fair remuneration from the party with whom he or she entered into a contract for the exploitation of his or her rights in a work or performance, or from the successors in title of such party, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the work or performance.

(2) Paragraph (1) shall not apply to agreements concluded by collective management organisations and independent management entities (within the meaning of Regulation 2 of the Regulations of 2016) or by other entities that are already subject to those Regulations.

(3) The assessment of a claim made under paragraph (1) as to whether the remuneration originally agreed turns out to be disproportionately low shall take account of the following matters:

- (a) all revenues relevant to the rights at issue, including, where applicable, merchandising revenues;
- (b) the specific circumstances of each case, including the contribution of the author or performer;
- (c) the specificities and remuneration practices in the different content sectors;
- (d) whether the contract is based on a collective bargaining agreement.

(4) Where an author or performer makes a claim under paragraph (1) by electronic or other means, the party with whom that author or performer has entered into a contract shall provide a written response addressing the substance of the claim within one month of receiving that written claim.

(5) Without prejudice to judicial remedies, disputes under this Regulation may be submitted to a mediator in accordance with the Mediation Act 2017 or, where appropriate, to an arbitrator in accordance with the Arbitration Act 2010.

Right of revocation

29. (1) Where an author or a performer has licensed or transferred his or her rights in a work or other protected subject matter on an exclusive basis, the author or performer may revoke in whole or in part the licence or the transfer of rights where there is no exploitation of that work or other protected subject matter.

(2) The right of revocation provided for in paragraph (1) may only be exercised after a reasonable time following the conclusion of the licence or the transfer of the rights.

(3) The author or performer referred to in paragraph (1) –

- (a) shall notify the person to whom the rights have been licensed or transferred and set an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place, and
- (b) may, after the expiry of the deadline referred to in subparagraph (a), choose to terminate the exclusivity of the contract instead of revoking the licence or the transfer of the rights.

(4) Paragraph (1) shall not apply if the lack of exploitation is predominantly due to circumstances that the author or the performer can reasonably be expected to remedy.

PART 7

LEGITIMATE USES, DATA PROCESSING AND COMMON AND TRANSITIONAL PROVISION

Legitimate uses and data protection

30 (1) These Regulations shall not affect legitimate uses, such as uses under exceptions provided for under the Act of 2000 or any other enactment, and shall not lead to any identification of individual users nor to the processing of personal data, except in accordance with the following:

- (a) the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. 336 of 2011);
- (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (in this Regulation referred to as the “General Data Protection Regulation”)⁴.

(2) For the purposes of these Regulations, an online content-sharing service provider is designated as data controller in relation to personal data processed for the purposes of that Part.

(3) The processing of personal data in these Regulations shall be carried out in accordance with Article 6(1)(c) of the General Data Protection Regulation.

(4) Personal data collected for the purposes of these Regulations shall not be retained for any period beyond which they are required for the purposes of these Regulations, and shall be permanently deleted after they are no longer so required.

Common Provision

31. Any contractual provision that prevents compliance with Regulation 27 or 28 shall be unenforceable in relation to authors and performers.

Transitional provision

32. Agreements for the licence or transfer of rights of authors and performers shall be subject to the transparency obligation set out in Regulation 27 on and from the 7th day of June 2022.

⁴ OJ No. L 119, 4.5.2016, p. 1.



GIVEN under my Official Seal,
12 November, 2021.

LEO VARADKAR,
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations, made pursuant to the European Communities Act 1972, transpose Directive 2019/790/EU of the European Parliament and of the Council of 17 April 2019. These Regulations also further amend the Copyright and Related Rights Act 2000 (as amended).

These Regulations strengthen the rights and protections afforded to various categories of rightholders in order to reflect the impact of technological advances and increased digitisation. They also provide for wider access and use of copyright protected works to the potential benefit of the creative sectors, press publishers, researchers, educators, cultural heritage institutions, and citizens.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Tel: 046 942 3100
r-phost: publications@opw.ie

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
MOUNTSHANNON ROAD,
KILMAINHAM, DUBLIN 8,
D08 XAO6

Tel: 046 942 3100
E-mail: publications@opw.ie

€ 6.50

