

DSM Directive Survey

Questions for Representative Organisations of Authors & Performers

Section 2.1: Text and data mining (TDM), teaching exception, preservation exception

Use of TDM, educational and preservation exceptions (Articles 3–6).

For the next few questions please note that the Directive provides for an exception for text and data mining activities conducted for the purposes of scientific research (Article 3) and a general text and data mining exception (Article 4). Rightholders may reserve their rights and exclude their content from the scope of the latter exception.

Q10. Are you aware of instances where your work was used for the development of large language models / AI models or data analytics?

1. Yes
2. No
3. I don't know

Q12. [If Q10, Q11=yes] Can you please elaborate and indicate any concrete examples?

We are responding in our capacity as the European Writers' Council (EWC), the world's largest federation of associations representing exclusively book authors. Accordingly, we have insights from 52 organisations in 34 countries, whose writing members comprise 250,000 authors who publish in all genres, including popular market works as well as academic and school textbooks. Accordingly, our comments are not limited to specific national contexts but reflect the majority of experiences regarding the highly fragmented or negligent implementation of the CDSM Directive across all EU Member States our members' members publish in.

The released court documents in the e.g. Kadrey v. Meta Platforms case as well as Bartz v. Anthropic, but also Gema vs. SUNO and Penguin Random House vs. Open AI, have brought to light previously hidden details about AI developers sources of text works. It is confirmed that Meta, like other big players, served themselves with pirated books from illegal portals, e.g. Anna's Archive or Library Genesis. The corpora included 7.5 million copyright protected books including several thousands of thousands from European writers and translators, and 81 million scientific text works, which impacts the educational and academic writers we, the EWC, are also representing. It is well known that the online circulating corpora Books3 or The Pile, contain between 295.000 and several million of copyright protected works. In addition, there are over 58.000 works and data sets circulating via GitHub or Hugging face, containing IP protected works, from books over essays to posts, reviews, personal conversations etcetera.

The individual members of our 52 member organisations were able to find their titles in the data directory set up by the U.S. Magazine The Atlantic, which archived all titles in the Library Genesis works set. Books by European authors, also published way before 2019 (adoption) or 2021 (entry into force), were found in all European official and nonofficial languages.

A lot of our authors prompted e.g. in ChatGPT, Claude, Perplexity or other of 1000 worldwide active LLMs, to (re)produce their books, and the programs obeyed and delivered full chapters, paragraphs, plots, which is also a proof of the constant misuse of copyrighted works to develop LLM.

We remind in addition, that serious research by several well known universities, e.g. Stanford, Cambridge, etc., have proven that books are memorized in foundations of LLM and therefore are another proof, that European IP protected books were misused, in form of a triple copyright infringement: (a) Using works from piracy sites, plus (b) over expanding the scope of the TDM exception, which does not cover at all the production of LLM, as also the Parliamentary Assembly of the Council of Europe stated in the resolution "Enforcement of Copyright in the era of AI" on 23rd April, 2026, and (c) making public available the text, which is a violation of the exclusive right transferred for paid use to the publisher(s).

Q13. Have you taken any steps to reserve your rights under the TDM exception provided under Article 4 of the DSM Directive?

Instructions: Please select one option.

1. Yes
2. No
3. I don't know

Q14_1 [If Q13, Q14=Yes] Can you explain what methods you use to reserve your rights? Have you encountered any difficulties?

Please note: Seven years after the CDSM Directive in the EU and five years after its entry into force, there is -no- functioning all-over opt-out-system applied in the book sector. And where opt-outs are applied, might it be by TDM:AIRep, by Meta Data information, by robots.txt or other means, e.g. ISCC plus rights declaration (by Liccium), they often meet proven ignorance by crawlers, collectors, curators of text works, and by AI-providers. All rights reservations by European writers and translators are ignored, deleted, cropped. In addition, IP protected works had been not lawfully accessed but downloaded via e.g. piracy sites (Library Genesis, Anna's Archive, Books3, The Pile, and 58.000 furthermore existing text sets, circulation e.g. on Hugging Face and GitHub), acquired as pirated content set via other communication channels incl. cloud servers.

At the same time, books corpora-sets are misused, when a research entity like Universities shared its corpora and collections with a commercial enterprise within a "private partnership". This undermines the chance for authors, to ever apply a rights reservation, as they even do not may be informed that their works are moving from the regime under Art.3

The invisible data trade in AI business is manifold and shows, how AI providers circumvent also TDM opt-outs, as there will always be a file without rights reservation, especially when published before 2021.

We reiterate additionally, that books normally quote in their imprint: "All Rights Reserved", which includes TDM rights. It is considered that AI developers ignore these rights reservations since the first development of LLM in the early 90ties.

The rights reservations to date are, we reiterate, are human readable, asset-based rights reservation, e.g. in the imprint; asset based meta data; soft-binding e.g. International Standard Content Code (ISCC) plus a public available rights declaration (Via Liccium); TDMREP and TDM:AI REP protocols; in rare cases robots.txt, only when a text is solely published online with an URL (including fan fiction, essays, literary blogs etc.); by contractual means, by T&C.

The difficulties for authors as the original rightsowner of all rights involved – be it text and data mining, be it the rights for GPAI, be in for Generative AI developments, which are all different rights related to the technical and legal steps involved, is, that they are rarely enabled to apply TDM rights declarations directly on the to be published work. This is a technical obstacle and considered under the Berne Convention as a burden hurdle, leading to a violation of exercising the rights of the authors. Only the ISCC as soft binding method, available in the very moment a manuscript is finished, guarantees that the original rightsholder, the author, can express their preferences.

All in all: all authors want to opt out. This leads to the fact that the exception in general is not working and therefore should be eliminated without replacement.

.Q14_2 [If Q13=Yes] To your knowledge, have your rights reservations ('opt-outs') been respected by commercial TDM beneficiaries?

As long there is no mandatory transparency, e.g. via the AI-Act related "template" on documentation of usage per title, authors as original rights holders will not be able to examine if their rights

reservations of all kinds – may it be for TDM usage, for AI or Generative AI usage, which are not the same rights and usage forms – are respected. So, the answer is: no, authors do not know at all and have no measure or instrument to seek for any confirmation. We like to point out, that the IP protected works used for the foundations of the LLM launched in 2022 (e.g. “ChatGPT” by Open AI) are very much likely built on titles published before the Directive came into force. Even if an opt-out would have been applied on the 13,8 million books circulating to this point in Europe, it is considered impossible that these titles had been taken off the foundation of existing LLM. The life cycle of every AI model and system means to re-use the works used in the previous cycle. “Unlearning” during an ongoing launched system is not possible. In fact, all existing GenAI models and systems are very likely to still use IP protected works although the authors and their publishing partners applied TDM opt outs in every technical format.

Q15. Have the TDM exceptions impacted your contractual, licensing or enforcement practices?

Instructions: Please select one option.

1. Yes (please explain)
2. No
3. I don't know

Q16. What unexpected benefits or challenges have you experienced in relation to the introduction of the TDM exceptions?

Benefits: none.

Challenges: in a historical devastating scope.

In General: For the book sector: Generative, analytical and assistive informatics, sub-areas of so-called artificial "intelligence", threatens numerous jobs and fields of application in the book sector. Synthetic text and image generators, synthetic robot voice cloning and algorithmic informatics to analyse text and data, will replace some professions by machines in the medium term; be it in the areas of text, editing, proofreading, production, cover design, illustration, translation, selection and editing of original and translated manuscripts, audio book production or in the promotion and distribution of books.

Already, numerous criminal and damaging "AI business models" have threatened the book sector - with fake authors, fake books and also fake readers. It has been demonstrated that the foundations for major language models such as GPT, Meta, StableLM, BERT have been generated from book works whose sources are shadow libraries such as Library Genesis (LibGen), Z-Library (Bok), Sci-Hub and Bibliotik – bit torrent piracy sites.

Generative, algorithmic, synthetic and reproducing technologies accelerate and enable the expansion of exploitation, legitimisation of copyright infringement, climate harm, discrimination, information and communication distortion, identity theft, reputational damage, blacklisting, royalty fraud and collective licensing remuneration fraud.

Further: For the public or the users of applications: "AI" is a high-risk communicator and unreliable source of information. "Hallucinating" is the vocabulary currently used to describe generative text systems¹ that completely invent or incorrectly plug together data, events², court decisions³ or biographies, contradict themselves when asked questions, or need to be constantly corrected by users with reinforcement learning from human feedback (RHLF)⁴.

In the process, users conveniently teach the system what its developers did not. At the same time, generative text software makes it easier for actors such as propaganda farms to rapidly and cheaply spread disinformation and hate speech; and creates fake authors who flood social networking

¹ <https://www.beamex.com/resources/for-a-safer-and-less-uncertain-world/generative-ai/>

² <https://www.nytimes.com/2023/05/01/business/ai-chatbots-hallucination.html>

³ https://www.morningbrew.com/daily/stories/2023/05/29/chatgpt-not-lawyer?mbcid=31642653.1628960&mbclid=407edcf12ec0&mid=964088404848b7c2f4a8ea179e251bd1&utm_campaign=mb&utm_medium=newsletter&utm_source=morning_brew

⁴ <https://www.telusinternational.com/insights/ai-data/article/rhlf-advancing-large-language-models>

*platforms or market players such as Amazon⁵ with GPT output and artificial communication⁶. The lack of or inadequate security checks to save costs⁷ and the lack of test and correction series prior to publication mean that **generative text informatics must be assessed as fundamentally untruthful**. At the same time, however, the "faith" and lack of sensitivity towards digital content of many of the over 100 million users is so high that they do not recognise these "hallucinations" - or do not even suspect that the output is false or fictitious. Basically, AI needs original, "fresh", human texts in order not to go crazy, as Stanford University found out: If synthetic content (AI output) is used as training⁸, the system collapses.*

Final remark:

☒ *Non-remuneration: output of text bot systems and synthetic text generators compete with a market and harms the interest of authors and other rightsholders. The European Commission fatally has not run a 3-step-test incl. the risk assessments and the damage done to a market and to moral, personal, and economic rights. The non-remuneration is a transfer of value towards tech and for the profit of users.*

☒ *In any case, however, the opt-out provided for TDM (text and Data Mining) in the CDSM Directive is in no way practicable. And this is not only due to the lack of contractual routines everywhere in Europe, in which authors could already declare the opt-out when transferring rights of use – as there is no common practice to declare, if writers or translators agree to TDM or not. None of the contracts concluded until 2021, when the Directive came into force, include declarations on TDM; only now, in the year 2023, some publishing houses and writers start to include opt-out declarations in their bilateral agreements and contracts;*

☒ *No sector standard for meta data, Onix or other machine readable opt-outs or rights reservation protocols: There is no standardisation to make an opt-out machine-readable within works that are "available online"; also, according to contracts none of the AI development companies have asked so far, to be quite sure. It is also unclear what "available online" means and where to draw the line; it is very likely that scrapers also obtain book works behind paywalls of online book retailers;*

☒ *And although several other, machine readable opt-outs are available they have demonstrably been actively ignored by AI data scrapers. The opt-out declarations so far used are: Platform Terms Of Use, On-page copyright information within the imprint, CMI metadata embedded in image files, rights and attribution information in filenames and image descriptions, rights information and signature (watermark) visible in the image itself, copyright notices embedded in source texts and code. But these opt-outs are ignored, not confirmed, or do not lead to "unlearning".*

Section 2.2: Licensing mechanisms (ECL, OOCW, VoD)

The section aims to assess the impact of the Directive on the functioning and use of collective licensing with extended effect, rules on out-of-commerce works, and the Video on Demand negotiation mechanism.

For the next few questions please note that Article 8 concerns a mechanism for cultural heritage institutions (CHIs) to make available out-of-commerce works (works that are no longer commercially available through their usual sales channels) from their collections. Article 12 provides that, within well-defined areas of use, where individual authorisation from rightholders is impractical, licensing agreements concluded by collective management organisations may be extended to apply to rightholders who have not authorised that collective management organisation to represent them. Rightholders have a right to exclude their works from both the outof-commerce mechanism and licences with extended effect.

⁵ <https://www.vice.com/en/article/v7b774/ai-generated-books-of-nonsense-are-all-over-amazons-bestseller-lists>

⁶ <https://www.independent.co.uk/tech/ai-author-books-amazon-chatgpt-b2287111.html>

⁷ <https://www.nytimes.com/2023/04/07/technology/ai-chatbots-google-microsoft.html>

⁸ <https://futurism.com/ai-trained-ai-generated-data>

Q43. Do you consider that some of your works are out of commerce? *Instructions: Please select one option.*

1. Yes
2. No
3. I don't know

Q44. Are you aware of agreements concluded since 2019 between a CHI and a relevant collective management organisation for the use of out-of-commerce works? *Instructions: Please select one option.*

1. Yes
2. No
3. I don't know

Q45. Are you aware of any extended collective licences (ECLs) being used in your country for your type of works?

Instructions: Please select one option.

1. Yes
2. No
3. I don't know

Q46. Have you been informed by a collective management organisation or cultural heritage institution that your works have been licensed or are intended to be licensed under the out of-commerce mechanism or an extended collective licence?

Instructions: Please select one option.

1. Yes, once
2. Yes, several times
3. No
4. I don't know → here the EWC members need to respond individually on their national cases.

Q47. Do you receive revenue from your works being used under the following licences?

Instructions: Please select all that apply.

1. Yes, from an extended collective licence for out-of-commerce works (Article 8)
2. Yes, from an extended collective licence for other specific uses (Article 12)
3. No
4. I don't know

Q47_1 [If Q46=1,2 or Q47=1,2] Have you exercised the right to exclude your works from extended collective licences or from the exception for out-of-commerce works?

Instructions: Please select all that apply.

1. Yes, I have excluded my works from extended collective licences concluded by a CMO for the use of out-of-commerce works by CHIs
2. Yes, I have excluded my works from the exception applying to the use of out-of-commerce works by CHIs (Article 8.2)
3. Yes, I have excluded my works from extended collective licences issued by CMOs for specific uses (Article 12)
4. No
5. I was not aware of the right to exclude my works
6. I don't know

Q47_2 [If Q47_1=1,2,3] What were your main reasons for excluding your works from such extended collective licences / exceptions?

Instructions: Please select all that apply.

1. I do not want my works to be made available online by CHIs
2. I am unhappy with the terms of the licence
3. I object to the use of my work under an extended collective licence
4. I want to keep the possibility to commercially exploit my works
5. Other, please specify

Q48. What unexpected benefits or challenges have you experienced in relation to the Article 8 (out-of-commerce mechanisms) and / or Article 12 (extended collective licensing) mechanisms?

There are so far no benefits, but rising challenges. We note that the EUIPO OOCW portal remains non-functional and is neither adequately prepared for the transfer of catalogues nor for the exercise of reservations of rights by authors. Authors are the original rights holders, as when a work becomes OOCW, the rights revert to the author. Accordingly, they must be able to express their rights preferences effectively, easily and without technical difficulty. In addition, we observed there is no harmonization of the time limit and when a work nationally is declared OOCW. It can be 30 years after the last publication or being in stock, as in Germany, in other countries five years. As this is not communicated to the authors, e.g., when their books are translated into a country with a different OOCW time wall regime, they are not able to monitor the handling of their translated work.

The information stream about the option to “opt out” via the OOCW EUIPO portal is completely missing. The burden to capacity building on this matter is outsourced onto authors’ associations and their often nonpaid volunteer Boards. This is not acceptable, and we plea that an authors’ guide is set up by the EUIPO and the Commission to support authors how to opt out in case they wish so. Also, the remaining open question is, how non European authors, which works had been in original language, been stored in CHI and get OOCW, are handled. The same goes for the open question of repositories of translated editions or original editions but stored as analogue physical object in a EU MS different from the authors’ country. Which legal provision applies in which territory, and can an opt out via the EUIPO portal cover all these circumstances, e.g. when a German author’s original works are in a Slovenian Library, and digitized already five years after the last print date, while the German author wants to re-publish it again, or even is not in the remuneration stream by the national CMO of Slovenia?

All in All, the handling of Art.8. in practice leaves authors in the dark about who is using their work under this regime where, how to be remunerated, and how to observe and monitor their own titles in other MS

Already in 2019 we, the EWC, laid down the necessary steps to a functional application of Art. 8 / 2019/790 (EU) from the perspective of the affected rightsholder, the authors: Authors and out-of-commerce-works: conditions of exploitation under Art 8-11.

All contracts (in the EU) or legal provisions needs to have a clear revocation rights clause in the contract (see DSM, Article 22: Right of revocation; in Germany with a diffuse implementation);

National acts must have a clear definition of OOCW; this might be a moving time wall (Germany has set this up: 30 years) AND a clarification, that OOCW always is related to print editions, not to e-books;

must have: clear proceedings of reversion of rights and/or clearing methods, if a publisher also claims to still have transferred primary rights;

must have: the author should be informed before the work is digitised and distributed, as it should not be on the burden of the author to frequently research for their book;

An author needs to be informed about the registry and is allowed opt-out at any time with no time-window

- ☐ *In addition: transparency and frequent overviews of usage-data leads to the chance to pay appropriate and proportionate remuneration, not only compensation;*
- ☐ *Any usage of digitised OOCW shall take place in a closed garden / intranet; no download, no print-out;*
- ☐ *the work should not be modified, altered, adopted or abridged in any way, to not breach the right to integrity of the author onto their works;*

In addition:

The EWC and its represented 250,000 authors are baffled that institutions like Libraries, Archives, Museums or other CHI are misinterpreting the purpose of Art.8. and offer digitised OOCW to commercial AI developers, also outside the EU, or to develop national LLM without any authorization by, remuneration, or transparency for writers and translators. Even more, the normally respectable entity "Europeana" was motivating their members' associations to do so, clearly contradicting Union law, and in this way actively hindering the authors, as original exclusive rightsowners of any AI or GenAI right, to apply a rights reservation or to open up negotiations on paid licensing under full control. Here, the EWC detected a clear misuse by European CHI, which goes beyond their mandate, and is a violation of authors' rights, and against the purpose of Art. 8.

Q49. Do you consider that out-of-commerce works made available by CHIs under the conditions of the Directive should be used for AI training purposes? Please explain any measures that you have taken to limit or prevent such uses of out-of-commerce works (e.g. licensing conditions, technological protection measures).

No.

While there are already differing legal and political perspectives on how far the CDSM Directive TDM exceptions relate to training of generative AI models, whether these usages fall under the exceptions or not, it is essential for authors, further rightsholders and Collective Management organisations (CMOs) that OOCW made available under Article 8 are not used for TDM or (G)AI development purposes, unless there is an express agreement allowing for it (if the author/the rightsholder has mandated a CMO to administer these rights under e.g. controlled and remunerated conditions).

Both Article 8 and Article 4 of the CDSM Directive give authors and rightsholders "opting out" rights. It is essential that rightsholders are not prevented from exercising these rights and also that they and their CMOs can be confident that licences negotiated in the context of Article 8 will not result in their works being used for other purposes, that they do not agree to and that they might want to otherwise opt-out of.

If OOCW are made available under licences with CHIs (or under exceptions e.g. Art. 8), the risk is that authors and rightsholders will always choose to opt-out their works from licences under Art. 8 already agreed or under negotiation. This would be a contradiction to the effet utile and the support of CHI under preservation and access considerations.

CHI shall ensure that authors and rightsholders rights, including to exercise opting-out rights for digitised OOCW, are fully respected. It is contrary to the purpose and spirit of Article 8 (which is focused on licensing for non-commercial purposes), that commercial parties would be given free rein to use the works for commercial purposes, without the authors and rightsholders having a say, and being actively hindered to apply their rights reservation, which would be the case if a CHI digitize e.g. a print book, but does not consult the author about TDM opt out individually and carefully.

We therefore call on CHIs to work closely with CMOs and rightsholders, to ensure that authors and rightsholders – in case there are others, because in case of OOCW all rights fall back to the author alone, hence, they must be consulted by every CHI planning to misuse the Art.8. further for AI purposes – are able to exercise their choice of how I if they allow their OOCW works to be used. This might mean agreeing on terms that, with authors and rightsholders' agreement, include specific usages by third parties, or terms under which CHIs make machine-readable rights reservations on behalf of authors and rightsholders to protect their works, or some other arrangement.

But in general, the Art.8 does not cover any cross-cutting interpretations to have the digitised OOCW fall under any other exception, like Arts. 3 and 4 of the CDSM Directive. We are surprised that the Contractor of this evaluation is posing this question in such a manner, implying there would be any legal backing of this interpretation of Art.8.

Q50. Have you participated in any pre-implementation and / or subsequent sector-specific dialogues organised by Member States on the OOCW mechanism?

Instructions: Please select one option.

1. Yes
2. No → upon EWCMembers to answer; EWC had been invited to be technical expert at EUIPO OOCW
3. I don't know

Q50_1 [If Q50=Yes] To what extent did these dialogues improve the following:

- a) the relevance and usability of the mechanism
 - b) effective safeguards for rightsholders
1. To a great extent
 2. To some extent

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3. To a little extent
4. Not at all
5. I don't know upon EWCMembers to answer

Grid question with the following answer options:

For the next question please note that Article 13 concerns negotiations for making available audiovisual works on video-on-demand services. Negotiating parties should have the possibility to rely on an impartial body or mediation to help them reach an agreement in these negotiations.

EWC INTERNAL COMMENT: for Q51-93 no response will be provided, as the topics are a) not directly related to book authors and b) lack monitoring by the EWC on this matter among their members. C) in some cases Q are reserved for individual authors only.

Q51. Have you ever made use of an impartial body or of a mediator when seeking to conclude an agreement for making available audiovisual works on video-on-demand services?

Instructions: Please select one option.

1. Yes
2. No
3. Considered, but could or did not use it
4. I don't know

Q51_1 [If Q51=Yes] What has been your experience with the negotiation mechanism set up by the DSM Directive in terms of the following:

- a) procedural clarity
 - b) administrative burden
 - c) duration of negotiations
 - d) conclusion of agreements
1. Very positive
 2. Somewhat positive
 3. Neutral
 4. Somewhat negative
 5. Very negative

Grid question with the following answer options:

Q51_2 [If Q51=Yes] Please provide any additional reflection on your experience with the mediation mechanism, such as specific examples of agreements concluded or quantitative data on the success rate of mediation, if possible.

OPEN QUESTION

Q51_3 [If Q51=Yes] What suggestions do you have for improving the effectiveness or efficiency of the negotiation mechanism? OPEN QUESTION

Q51_4 [If Q51=3] What challenges or difficulties have you encountered when considering the negotiation mechanism? OPEN QUESTION

Section 2.3: Press publisher right and obligations of online content sharing service providers (OCSSPs)

Article 15 (press publisher right) and Article 17 (OCSSPs).

For the next few questions please note that Article 15 provides press publishers with a neighbouring right regarding the online use of their press publications by information society service providers. This protection

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does not apply to private or non-commercial uses by individual users, hyperlinking, or the use of very short extracts.

Q59. Have your members, whose works appear in press publications, reported seeing increased remuneration due to Article 15?

Instructions: Please select one option. (Routed to representative organisations of authors and journalists.)

1. Yes, there has been an increase in remuneration
2. No change has been noted
3. No, there has been a decrease in remuneration
4. I don't know

Q59_1 Please briefly explain your answer.

OPEN QUESTION

Q60. To the extent that your works are part of press publications, have you received any additional remuneration linked to the revenues publishers receive for the licensing of their press-publication right?

Note: this question is routed only to individual Authors and is included here for reference.

Instructions: Please select one option.

1. Yes, there has been an increase in remuneration
2. No change has been noted
3. No, there has been a decrease in remuneration
4. I don't know
5. Not applicable

Q60_1 Please briefly explain your answer.

Note: this question is routed only to individual Authors and is included here for reference.

OPEN QUESTION

For the next few questions please note that Article 17 concerns copyright-protected works uploaded by users to an online content-sharing service. The online content sharing service provider needs to obtain the authorisation of rightholders and, under certain circumstances, block or remove unauthorised content. Finally, service providers must put in place a fast and effective redress mechanism for users whose content has been blocked or removed.

Q73. Overall, what has been the impact of Article 17 on your organisation or members? Instructions:

Please select one option.

1. Very positive
2. Somewhat positive
3. No material impact
4. Somewhat negative
5. Very negative
6. I don't know

Q74. Since 2019, approximately how many OCSSPs have you concluded licensing agreements with under Article 17? Have you experienced any changes in this regard? *OPEN QUESTION*

Q75. For your main licensing agreements with OCSSPs since 2019, what has typically been their territorial scope?

Instructions: Please select all that apply.

1. Single Member State
2. Several EU Member States
3. EU-wide

4. Global
5. Not sure / cannot answer

Q76. Where you do not authorise the use of your works or other subject matter by an OCSSP, how do you typically provide the relevant and necessary information needed for the purposes of Article 17(4)(b) and, where applicable, Article 17(4)(c)? *Instructions: Please select all that apply.*

1. Metadata or ownership information
2. Reference files or fingerprints
3. URLs or identifiers of specific content
4. Notices submitted through platform notice tools or portals
5. Information provided through a CMO or another intermediary
6. Information provided manually by email or other direct communication
7. We do not usually provide such information
8. Not sure / cannot answer
9. Other (please specify)

Q78. What is your assessment of the costs associated with providing this information to OCSSPs?

Instructions: Please select one option.

1. Very low
2. Low
3. Moderate 4. High
5. Very high
6. We do not incur identifiable costs
7. Not sure / cannot answer

Q79. For your main licensing agreements with OCSSPs since 2019, how would you describe their typical scope relative to your repertoire?

Instructions: Please select one option.

1. Blanket licence (covers essentially all works / rights represented by the licensor)
2. Mostly blanket, with some exclusions / limitations
3. Limited (specific catalogues / rights / use-cases only)
4. Not sure / cannot answer
5. Other (please specify)

Q81. In your experience, have OCSSPs updated their content moderation, licensing, or terms-of-service policies to address the presence of AI-generated content on their platforms in a manner consistent with the objectives of Article 17 DSM Directive? *Instructions: Please select one option.*

1. Yes, adequately
2. Yes, but insufficiently
3. No
4. Don't know

Q82. Which specific OCSSP policy responses to AI-generated content, if any, do you consider most aligned with Article 17?

OPEN QUESTION

Q84. How would you characterise changes (if any) in revenues received from OCSSPs since Article 17 became applicable?

Instructions: Please select one option.

1. Significant increase

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2. Moderate increase
3. No change
4. Decrease
5. Significant decrease

Q85. Have you experienced disputes with platforms regarding revenues, reporting, or the scope of licences since 2019?

Instructions: Please select one option.

1. Yes
2. No
3. I don't know

Q85_1 [If Q85=Yes] Can you please provide some details on the disputes that you have experienced.

OPEN QUESTION

Q86. How would you assess the reporting you receive from OCSSPs on the use of content covered by licensing agreements concluded under Article 17?

Instructions: please assess the reporting overall.

1. Very poor
2. Poor
3. Neither poor nor good
4. Good
5. Very good
6. I do not receive such reporting
7. I don't know

Q86_1 [If Q86=1,2] Please briefly explain the main reasons for your assessment.

OPEN QUESTION

Q87. What unexpected benefits or challenges have you experienced in relation to Article 17?

OPEN QUESTION

Q90. Are you aware of any out-of-court dispute settlement mechanisms in your Member States that have been used to resolve disputes linked to Article 17(9) complaints? *Instructions: Please select one option.*

1. Yes, and used
2. Yes, but not used
3. No
4. I don't know

Q90_1 [If Q90=1] Have you been involved in such dispute settlement mechanisms, and if so, please give the approximate number of cases since 2021, typical outcomes, and whether it improved resolution speed or consistency. *OPEN QUESTION*

Q90_2 [If Q90=1] What suggestions do you have for improving the effectiveness or efficiency of this dispute settlement mechanism? *OPEN QUESTION*

Q91. To what extent does Article 17 remain fit for purpose, in the context of current technological and business developments?

Instructions: Please select one option.

1. To a great extent
2. To some extent
3. To a little extent
4. Not at all

5. I don't know

Q91_1 [If Q91=2,3,4] Please elaborate on your response.

OPEN QUESTION

Section 2.4: Contractual fairness & remuneration

The section focuses on the provisions of the DSM Directive concerning transparency, remuneration, revocation rights, and alternative dispute resolution (ADR).

Section 2.4.1: Remuneration for publishers under Article 16

For the next few questions, please note that Article 16 provides that when an author transfers or licences a right to a publisher, Member States may provide that the publisher is entitled to receive a share of the compensation received for uses under a copyright exception or limitation (e.g., private copying).

Q93. To what extent has the introduction of Article 16 impacted the compensation you receive for uses of your work under copyright exceptions or limitations?

Note: this question is routed only to individual Authors and is included here for reference. Instructions: Please select one option.

1. To a great extent
2. To some extent
3. To a little extent
4. Not at all
5. I don't receive / I am not aware of any compensation for uses of my work under exceptions or limitations
6. I don't know

Section 2.4.2: Contractual fairness and remuneration for authors and performers

Q95. Which law governs the contracts that you conclude for the transfer / licence of your rights?

Instructions: Select all that apply.

1. My EU Member State law
2. The EU Member State law of my contractual counterparty
3. Another EU MS law (please specify) *in case of translations or an Austrian author publishes at a German Publishing house.*
4. Another non-EU law (please specify) *in case of translations or e.g. a French Author publishes in French speaking Switzerland and vice versa*
5. I don't know

Q95_1 [If Q95=3,4] Please explain why this was designated as governing law.

It is not the author's country of origin that matters, but the place where the work is published.

Q97. Please indicate how often you (or who you represent) are remunerated through the following methods:

Instructions: Select all that apply.

1. Lump-sum payments
2. Royalties
3. Profit sharing
4. Advance payments
5. Mix of two or more types of remuneration methods

6. Other, please specify

The EWC has undertaken several contractual and remuneration survey among their 52 member organisations. The most common practice is a combination of advance payment, to be "sold off", after the break even is reached, the royalty payment hits in.

We observe that lump sums in the book sector are still practice, e.g. for formats like short stories, essays or other short text versions; likewise, in some genres there are lump sums e.g. to visual authors like illustrators for children's books. Please consult for further insights this monitoring document:

<https://europeanwriterscouncil.eu/wp-content/uploads/2024/02/EWC-CONTRACT-SURVEY-FICTION-2024.pdf>

Please take note about the fact that there are many agreements, e.g. in the academic field, that (mis)use CC licences or no-payment schemes.

Grid question with the following answer options: ??

- a) Not applicable
- b) Never
- c) Rarely
- d) Often
- e) Always
- f) I do not know

For the next few questions please note that Article 18 establishes the principle of appropriate and proportionate remuneration of authors and performers. Member States are free to use different mechanisms in ensuring implementation, including collective bargaining. Member States may also define specific cases for the application of lump sum payments, which may constitute proportionate remuneration, but should not be the rule.

Q98. How have the practices on remuneration through lump-sum payments changed since the implementation of the Directive?

Instructions: Please select one option.

- 1. The prevalence of lump-sum payments has increased
- 2. The prevalence of lump-sum payments has stayed the same
- 3. The prevalence of lump-sum payments has decreased
- 4. Lump-sum payments are no longer used
- 5. I don't receive remuneration through lump-sum payments

Q99. Have there been any changes in your remuneration and bargaining power since the implementation of the Directive in your country?

Instructions: Please select one option.

- 1. It has significantly improved
- 2. It has somewhat improved
- 3. There has been no change
- 4. It has somewhat deteriorated
- 5. It has significantly deteriorated
- 6. I don't know

Q99_1 [If Q99=1,2] Please elaborate on the main reasons why you consider that the remuneration has improved. Where appropriate, please distinguish between the impact of the Directive and other factors that may have influenced your remuneration.

In general, the remuneration of authors in the book sector in Europe has not been improved in any way, even more: more and more works are used, but lesser paid, e.g. through the impact of streaming, flat rate, e-lending in public library, and still existing and sadly thriving book piracy, likewise the misuse by AI developers of IP protected works. BUT: there had been EU countries, which had been implementing the principle for appropriate remuneration, and therefore the eligibility of an author to receive payment, for the first time. This gap was essential to be closed. Nevertheless, the “small print” and the flexibility in which EU MS had implemented this provision, led to the fact, that on paper this provision reads well, but does not come into practical effect, see response to Question 99_2

Q99_2 [If Q99=3,4,5] Please elaborate on the main reasons why you consider the remuneration not to have improved. Where appropriate, please distinguish between the impact of the Directive and other factors that may have influenced your remuneration.

A summary of the state of play:

- *90 and 100 per cent of the EWC organisations stated that there is no agreement between writers and publishers on what “appropriate” and “proportional” mean in practice.*
- *Too often the laws will install exceptions from the obligation on appropriate remuneration and on transparency obligations, so that publishers and / or third contractual or distribution parties do not have the mandatory duty to deliver all sales or lending data, although this is especially needed in digital usage. This also means that the basis for an appropriate and proportionate remuneration practice is not sufficiently provided.*
- *Most of the EWC organisations give recommendations confidentially or individually and without harming competition laws. Very few have a binding agreement with publishers, and if they have one, it is in fact, more a voluntary agreement. This is also contradicting the principle of any “appropriate remuneration understanding”.*
- *The book writers of Europe hope to reach an easier recall of rights when a single transferred right is not exercised (“use it or lose it principle”). In most cases (90.91%), there is no mediation body in the book and publishing sector. Most of the respondents believe that there will be no impact with this new legislation, and therefore, no improvement of remuneration.*
- *Future challenges: The topics of non-transparency in audio book streaming and e-lending of the distribution monopolies were raised repeatedly as obstacle for appropriate remuneration or remuneration at all.*

Please take further insights from the EWC monitoring on the implementation of the CDSM Directive into account: https://europeanwriterscouncil.eu/wp-content/uploads/2022/06/EWC-SURVEY-EU-2019_790-RESULTS_FINAL130422_220622.pdf

Q100. Has there been an increase in Collective Bargaining Agreements (CBAs) in your sector / industry in the last 5 years?

Instructions: Please select one option.

1. Yes
2. No
3. I don't know

Q100_1 [If Q100=1] Please elaborate on the main reasons why you consider that the prevalence of CBAs has changed. Where appropriate, please distinguish between the impact of the Directive and other factors that may have influenced the conclusion of CBAs.

(1) None of the EU countries have a legal definition of what an appropriate remuneration or a proportionate remuneration means – 90 and 100 per cent of the authors' organisations surveyed by the EWC stated that there is no agreement between writers and publishers on what “appropriate” and “proportional” mean in practice. On the one hand, this difference in perspective is unsurprising. On the other hand, it shows that the governments in power have little understanding of the ways in which authors live and work.

(2) Exceptions allowing the use of buy-out remunerations preventing the implementation from having a useful effect on the situation of authors and collective agreements cannot help in setting a common remuneration rule for authors (in 83.33%). Still, less than half of the participating countries can demand or sue for disproportion between payment and use. Accordingly, when the law is good but there is no practical enforcement, the law becomes ineffectual, unfortunately.

*(3) Concerning contracts and recommendations, most of European writers' and translators' organisations give recommendations confidentially or individually and without harming competition laws. Very few have a (binding) agreement with publishers (approx. 17%), a vast majority of authors' associations (83.33%) provide individual remuneration recommendations just under collegial nonpublic conditions. Regarding CBA: On the one hand, this is also due to **prevailing competition laws that prohibit any agreements between publishers' and authors' representatives**. Here, the EU-wide modification of competition law on joint remuneration negotiations should close an important legal gap, especially allowing authors' organisations to draw up model contracts or give clear advice on remuneration or clauses. After all, the Directive refers to the chances of common rules seven times. But even with the adjustment of EU competition law for freelancers we had seen in 2024, the counterparts are not willing to move forward:*

(4) On the other hand, it is also due to the lack of interest on the part of the publishing counterpart in binding, fair rules. As long there are no mediation entities installed, to provide mediation or motivation to e.g. publishers' associations on national level, most of authors' friendly CBA will stay fictional.

Q104. Are you part of or covered by any CBA? NOT APPLICABLE FOR EWC, Here the EWC member organisations are kindly asked to give individual answers.

Instructions: Please select one option.

1. Yes
2. No
3. I don't know

Q104_1 [If Q104=1] How has your remuneration been affected by any CBAs in your sector / industry in the last 5 years? NOT APPLICABLE for EWC Here the EWC member organisations are kindly asked to give individual answers.

Instructions: Please select one option.

1. Very positively
2. Somewhat positively
3. No change
4. Somewhat negatively
5. Very negatively
6. I don't know

Q104_2 [If Q104_1=1,2,3,4,5] Please explain your response.

Here the EWC member organisations are kindly asked to give individual answers.

In our response we will advise the survey contractors to carefully study the national answers.

Q106. What unexpected benefits or challenges have you experienced in relation to the principle of fair remuneration set out in Article 18?

As already noted in the EWC Survey 2022 (Implementation of the Directive (EU) 2019/790 on Copyright in the Digital Single Market), the EU Member States have not consistently used this flexibility for decisive protection; in more and more cases, existing rules were even watered down, in others new rules of the Directive were weakly implemented, such as rights to transparent information or collective bargaining options including the right to sue as an association in order to prevent continued, inappropriate

remuneration. Likewise, several EU Member States implemented the CDSM Directive very late, or only partially, to the ongoing disadvantage of the creative and cultural authors and professionals.

All in All, the provision led to rare positive effects, and the Directive posed the challenges in some EU MS, that existing Copyright Acts were weakened to the disadvantage of authors.

Q107. How do you rate the impact of the adoption of generative AI tools in your industry / sector on the fair remuneration of authors / performers?

Instructions: Please select one option.

1. It already has a significant impact
2. It has a potentially significant impact
3. It is not significant
4. I don't know

Q107_1 [If Q107=1,2] Please detail the most significant positive or negative impacts.

The impacts are negative only for writers and translators in the book sector.

(1) Uncontrolled AI output based on LLMs based on the overinterpretation of the TDM exception(s) is being pushed into the bestseller lists with click farms: For years now, the global self-publishing service provider Amazon has been flooded with bogus books by fake authors whose text and visual content have been cobbled together by generative speech and image output software. AI bots from click farms "read" these nonsense works and push them into the bestseller lists⁹. This leads to a rapid decline in revenue for human writers fed by shared-revenue models, such as Kindle KDP and its distribution on a shared-revenue basis (A pot of revenue divided by pages read and distribution beneficiaries, similar to Spotify). At peak times, 80 out of 100 Kindle KDP bestsellers are AI editions.

(2) Identity theft and name deception: The world's most important review platform Goodreads, like Amazon, is flooded with AI books published under the illegitimately used names of real human authors (or slightly altered spellings of real known names). These books are listed as new releases in the authors' profiles and entice readers to buy them. However, the income from them flows to unknown sources. Human authors who are cheated out of their earnings must in turn spend money to defend themselves with lawyers - and thus pay twice. So far, neither Goodreads nor Amazon have stopped this identity theft, which damages the reputation of human authors when a (low-quality) AI book is associated with their name.

(3) Unauthorised AI translations open up foreign-language markets and channel sales to unknown foreign users: We have cases of works being illegally transferred from, for example, the original English language into other languages by means of robot translation without a licence and published under a different name, usually in Amazon Selfpublishing and often still equipped with an AI cover. The author names, in turn, deliberately resemble well-known names. The revenues flow to unknown sources.

(4) Publishing services only against payment by the author: Publishers are increasingly also producing AGI-generated covers. We have cases where authors requested human graphic designers and were then asked to pay. This practice is considered indecent. However, the authors, as weaker contractual partners, hardly have the courage to refuse this, out of well-founded fear of being considered "difficult" or of being rejected by publishers for future cooperation. They are pressured into accepting a technology that harms their own profession at its core.

⁹ <https://www.vice.com/en/article/v7b774/ai-generated-books-of-nonsense-are-all-over-amazons-bestseller-lists>

(5) Illegal remuneration claims to collective management organisations and media customers like press or stock visuals: In any case, it cannot be ruled out that both automatically generated and translated press articles and automatically translated books, or even automatically produced images, already "enjoy" private copying remuneration from collective managements organisations (CMOs), as there is no legal labelling obligation yet; or automated texts, MT translations and AI-generated images flow into the media on a royalty basis.

(6) Machine voices replace humans - and lead to the loss of licence fees: DeepZen has been working on clone voices since 2013 and offers its repertoire to publishers to save on fees; numerous publishers, including renowned ones, have already resorted to this. The dislocation continues in the question of revenue distribution: where there is no audiobook narrator, where does his calculated share go? The order situation for professional narrators is sinking rapidly¹⁰. To professionally produce a voice clone (of human people) costs less than 2000 euros in a professional studio. It is even cheaper with programmes like Murf, Lobo, Respeacher, Voice.Ai or Overdub. After a few seconds of recording, a voice clone is generated with which you can make "Any:n" say "Anything", no matter how immoral or fraudulent,^{11,12}.

The areas of application of clone voices or synthetic "voices" range from dubbing to audio books to trick calls for fraudsters or for deep-fake interviews etc. **Actors and audio book narrators are increasingly confronted with having to agree to voice cloning in contracts for work if they want to continue to be employed. This leads to the gradual elimination of voice actors.** In addition, there are isolated cases in which voice clones were created without the consent of the human speakers. Or to be replaced by purely synthetic voices of advanced devices (example: "Tonie Box", where synthetic robot voices read automatically generated texts to children for goodnight¹³). **AI dubbing also becomes relevant when e-books are read aloud by devices and voice clones, but the author has neither granted a licence nor receives remuneration.**

All in all, all these new "AI business models" lead to the following paradox: those who made the existence of generative programmes possible in the first place are not remunerated. But those who use the software profit monetarily. This transfer of value as a form of exploitation cannot be intended in a democracy with social and just values.

For the next few questions please note that Article 19 institutes transparency requirements for the benefit of authors and performers. Their contractual counterparties must provide them up to date, relevant and comprehensive information on the exploitation of their works / performances at least once a year. Transparency obligations also extend to those to whom rights have subsequently been licensed (sub-licensees).

Q113. Do you (or who you represent) receive information on the exploitation of your works or performances from parties to whom you have licensed or transferred your rights? (for example, information related to revenue generated, streaming numbers etc.) Instructions: Please select one option.

1. Yes, and I receive this information more than once a year
2. Yes, and I receive information at least once a year
3. Yes, and I receive information less than once a year
4. Yes, but I only receive information infrequently
5. No, I do not
6. I was not aware I should receive such information

¹⁰ <https://www.voanews.com/a/7092661.html>

¹¹ <https://www.podcast.de/episode/609495902/deepfake-bei-anruf-klon>

¹² <https://www.deutschlandfunkkultur.de/audio-deepfakes-was-wenn-wir-unseren-ohren-nicht-mehr-100.html>

¹³ https://rp-online.de/nrw/staedte/duesseldorf/duesseldorf-tonies-testet-geschichten-mit-kuentstlicher-intelligenz_aid-90005417

7. I don't know

Q114. Has the information received provided meaningful indications concerning the exploitation of your works or performances, and the value of your rights?

- a) The amount of information I receive
- b) The relevance of the information I receive

Grid question with scale from 1 to 5. With 1 representing information not being meaningful and 5 representing very meaningful information.

1. Scale 1–5 **3**

Q114_1 [If Q114=2,3,4] Please explain what information about the exploitation of your works or performances you consider lacking?

1) In general, the lack of transparency of platforms and distribution monopolies is still to be criticised. Here, the transparency obligation must also apply to companies outside the EU legal area, and also on state institutions (libraries) – which they do not or are not enabled by the Directive or the weak implementation in EU MS.

2) Current status of availability of information to authors of the book sector in Europe:

2.1) Print books in the country of publication or the legally designated language area.

Information is provided for:

retail sales (mostly)

Information is most often not provided, or is not specified, for:

Breakdown by physical bookshops and online retailers

Sales to libraries (public and university)

Sales in same language speaking countries abroad (e.g. in Austria or Switzerland, where retail prices are often different, or in Spanish speaking parts of non EU MS)

Class sets, school textbooks

Number of batch and postage replacement copies

Information is provided in a heterogeneous / imprecise manner for:

Sales of translations abroad

Number of press, review or other promotional copies

Special case: royalties based on net publishing proceeds rather than the net retail price:

Information is not provided in a specified manner regarding the breakdown of discounts and overhead costs incurred by wholesalers, online retailers, brick-and-mortar bookshops, etc., which are deducted from the net retail price to arrive at the net publishing revenue.

Special case: translations and translators' share abroad.

Practices vary in the USA, for example, translators do not receive a share, and if they do, the author is required to contribute 0.5 or 1% of their royalties. In the UK, publishers already allocate an additional 0.5 or 1% (or more) and do not deduct this from the author.

Large publishers settle accounts twice a year; smaller ones once a year. Few have an author portal for real-time digital tracking.

2.2 E-books and further digitised text works, information status in Europe:

Information is provided for:

Sales of reading licences (similar to 'print run', 'copies sold')

Information is not provided specifically for:

- ☒ *Breakdown by distributor: publisher's website, portal, online bookshops (and corresponding deductions for calculating net publisher's revenue, see below)*
- ☒ *Sales of licenses for digital lending in public libraries, including framework conditions, purchase price and license model*
- ☒ *Sales in countries abroad*
- ☒ *Usage data via information on so-called "multiple use" within the context of, for example, "family sharing" and simultaneous reading on up to 5 different devices*
- ☒ *Usage within apps and so-called digest business models (Blinkist, GetAbstract)*
- ☒ *Usage within "AI features": enhanced interactive e-Books with Chatbots "Ask This Book"; Recaps; automated summaries; Quotes about the book (Grammarly)*
- ☒ *No information about internal AI uses by the publishers.*

Information on e-books is not provided for:

- ☒ *Discounts, commissions, ancillary costs via digital distributor portals*
- ☒ *Lending transactions in digital lending of public libraries*
- ☒ *Lending or usage transactions in commercial digital flat-rate schemes and shares*
- ☒ *Usage and usage figures for regular text and data mining (not AI use)*
- ☒ *Usage within zero-euro promotional campaigns*

2.3 Audiobooks (Stream; Download) and digitised audiobooks on CD

Information is provided for:

- ☒ *Sales of purchased (stream/download/physical media) audio licenses*

Information is not provided in a specified format for:

- ☒ *Breakdown by distributor: publisher's website, portal, online bookshop*
- ☒ *Sales of licenses for digital lending in public libraries*
- ☒ *Sales in countries abroad or via Flatrates and Subscription models abroad*

Information is not provided for:

- ☒ *Discounts, commissions, ancillary costs via distributor portals*
- ☒ *Lending transactions in digital lending of audiobooks in public libraries*
- ☒ *Usage transactions within subscription or flat-rate models (Spotify, Audible) with pooling remuneration schemes (one pot divided through all consumed minutes)*
- ☒ *Framework agreements and revenue models, including usage in shared-revenue models (pool models such as Spotify/Deezer, etc.)*
- ☒ *Framework agreements and usage revenues for providers on a fixed-fee basis (BookBeat, Nextory, Storytell)*
- ☒ *Usage surveys for promotional licenses within commercial enterprises often remunerated on a lump sum, one time payment flat-rate basis (Lufthansa, Deutsche Bahn, etc.), which is a total buy out and harm the principle of appropriate and proportionate remuneration.*

Special case:

Reference values for net publisher revenue. In the audiobook sector, the HAP (retail price) is the market standard as a reference value. In the 'traditional' print book sector, a retail margin of 40% (calculated on the gross retail price, i.e. including VAT) was often standard; however, this cannot be applied in the digital sphere in the same way, as it depends heavily on the individual platforms or the publishers' specific deals with those platforms – and these are kept strictly confidential. Thus, in principle, the author or translator has little say in whether they agree to a deal, nor can they assess whether the "appropriate remuneration" applies.

3. Desired situation

All information not yet specified or provided should be disclosed – or a list of mandatory and optional items drawn up as part of joint agreements.

Likewise, a fundamental agreement must be reached on the specification of the 'derivative' portion of a work (which legitimises a refusal to provide information), or, in the best-case scenario, general information should be provided regardless of the scope of the work's components.

Third-party license holders: In the digital sphere, public libraries and commercial (and non-European) audio and e-book portals in particular must be held to account; this is also covered by Section 32e: e-book sales are a significant (co-)determining factor in exploitation.

In the case of translations, care must be taken to ensure that the right to information of the country of origin of the translator is applied.

Q115. What type of information do you usually receive?

Instructions: Please select all that apply.

1. Information on the different modes of exploitation of work or performance (for example: broadcasting, online streaming, sub-licensing)
2. Frequency of use of the work or performance through different modes of exploitation (for example streaming numbers)
3. Information on the revenue generated by each mode of exploitation
4. Information on the revenue generated overall
5. Information on remuneration due
6. Other information

Q116. How clear and easy to understand is the information you receive?

Instructions: 1 being very difficult to understand and 5 being very easy to understand.

1. Slider: 1 2 **3** 4 5

Q117. In your experience, have any rules in Collective Bargaining Agreements improved transparency on how your works or performances are exploited?

Instructions: Please select one option.

1. Yes, CBAs have significantly improved transparency
2. Yes, CBAs have somewhat improved transparency
3. No change
4. No, transparency has gotten worse
5. No, transparency has gotten significantly worse
6. I don't know
7. Not applicable

Q118. What unexpected benefits or challenges have you experienced in relation to the transparency obligations set out in Article 19 of the Directive?

Challenges: Appropriate remuneration and subsequent renegotiation are based on knowledge of usage figures. Similarly, any collective bargaining rules (CBR) are based on knowledge of general and specific usage figures. However, in the course of implementing the EU Copyright Directive, the German legislature has made things more difficult rather than easier for creators – in our case, authors and translators.

In general, the lack of transparency of platforms and distribution monopolies as well as Public Libraries and Educational institutions using book works is still to be criticised. Here, the transparency obligation must also apply to companies outside the EU legal area, and also on national state institutions including CHI – which they do not or are not enabled by the Directive or the weak implementation in EU MS. Authors still face an inconsistent documentation of how their works are used by whom when. Especially in streaming areas, the title specific usage overview is missing. Some MS also implemented too many exemptions from a full transparency chain, e.g.:

The national law makes it possible for a publisher not to provide information or to refuse to do so if it (a) is declared 'unusual' (who decides this?),

(b) entails additional administrative costs that would exceed the remuneration to be paid (who proves this without any concrete figures?),

(c) a work makes a so-called 'subordinate' contribution, e.g. in our cases this may apply to anthologies or authors of forewords – or by the arbitrary decision of a publisher what "subordinate" means.

(d) At the same time, the burden of proof regarding disproportionate and therefore unreasonable remuneration is shifted onto the author or translator; it is up to them to provide evidence. Which is difficult – without information.

A publisher may also refuse to provide information if there was a total buy-out. Or contractually stipulate a sum below which neither information nor payment is possible.

The Directive gave authors a right to transparency, and not the well intended obligation of granting information posed on the exploiter and distributor. But the national flexibility watered this effet utile down. Third contractual and distributing parties often do not have the mandatory duty to deliver all data, although this is especially needed in digital usage. This also means that the basis of appropriate (and proportionate) remuneration practice is not sufficiently given across MS. Without transparency about each use, no appropriate remuneration or even re-negotiation under Article 20 is possible.

When there is a mandatory accounting for authors, only a minority (9.09%) gets two accounting reports per year. Also, only a bit more than a third (36.36%) get third parties' data (for example on number of loaned titles in commercial flat rates, numbers of streamed audio books, or sales of translations). These numerous national restrictions on the obligation to provide transparent information weaken the important effect that the directive was intended to create in the interests of authors.

For the next few questions please note that Article 20 allows authors and performers, where they have entered into a contract for the exploitation of their works or performances, to claim additional appropriate and fair remuneration when the remuneration originally agreed on turns out to be disproportionately low compared to the revenue generated from the exploitation of the works or performances.

Q119. How often have you experienced a situation where the remuneration for the exploitation of your work or performance turned out to be disproportionately low compared with the revenue generated by exploitation of your work or performance? Instructions: Please select one option.

1. Never
2. Rarely
3. Often
4. Always
5. Don't know

Q119_1 [If Q119=2,3,4,5] Have you ever invoked the contract adjustment mechanisms provided for under Article 20 of the Directive to claim additional remuneration? Instructions: Please select one option.

1. Yes
2. No, I have not needed to
3. No, I considered the adjustment mechanism but decided against using it
4. I was not aware of this possibility
5. I don't know

Q119_2 [If Q119_1=3] Can you explain the situation in which you considered the contract adjustment mechanism and the reasons you decided against using it?

In many EU MS the transparency provision was implemented in an inconsistent and therefore non-effective way; which leads to the fact that, without concrete figures, the proof of a non-proportional payment burdens the author. Combined with a lack of having the right of "proportionate remuneration" as we saw it in some of EU MS, also this is hindering authors to get in re-negotiation and make use of the "bestseller-clause".

Often, authors have no money to sue, or fear to be put on a blacklist.

From our members we heard, that they tried in between 5-12 cases per organisation to assist in these negotiations; but as long there is no implemented right for associations to co to court in the name of the author, or as long there are no installed alternative dispute mechanisms, as well as no option to give

publicly advice onto remuneration, clauses or contractual details, the wished impact of this article remains non existent for writers in the book sector.

Q119_4 [If Q119_1=1] How many times have you assisted authors and performers with contract adjustments? Open numeric **Here the EWC member organisations are kindly asked to give individual answers.**

Q119_5 [If Q119_1=1] How many times were you successful in assisting authors & performers? Open numeric **Here the EWC member organisations are kindly asked to give individual answers.**

Q119_6 [If Q119_1=1] How would you evaluate the contract adjustment process? Instructions: Please select one option.

1. Very positively
2. Rather positively
3. Rather negatively
4. Very negatively
5. Don't know

Q119_7 [If Q119_1=1] Please explain the situation(s) where you resorted to the contract adjustment mechanism and what benefits and challenges you may have encountered? OPEN QUESTION

Q119_8 [If Q119_1=1] In your experience, to what extent are representative organisations for authors and performers involved in contract adjustments?

Instructions: Please select one option.

1. Representative organisations are always involved
2. Representative organisations are often involved
3. Representative organisations are rarely involved
4. Contract adjustment is negotiated individually by authors and performers

For the next few questions, please note that Article 21 provides an Alternative Dispute Resolution mechanism for disputes between authors / performers and their counterparties relating to transparency and contract adjustments in connection with the exploitation of their works or performances. This is intended to offer an option where authors and performers may be reluctant to enforce those rights before a court or tribunal.

Q121. In case of disputes concerning transparency obligations or contract adjustments, have you used Alternative Dispute Resolution (ADR)?

Instructions: Please select all that apply.

1. Yes, for issues with the transparency of exploitation of works or performances
2. Yes, for claims for additional remuneration (contract adjustment)
3. I was not aware of the possibility of Alternative Dispute Resolution
4. I was not involved in disputes concerning the transparency obligations or contract adjustment
5. I used other means to invoke these rights
6. I don't know

Q121_1 [If Q121=5] What other means than ADR do you use to address disputes?

FINAL EWC response, submitted 29 May 2026, 12:30

As our EWC monitoring shows, so far only 10% Member State has been established a mediation body to make proceedings within an ADR possible. It is a pity that the Commission allows in the last seven years, that the CDSM Directive is not completely implemented in all MS.

Q121_4 [If Q121=1,2] How many times were you involved in ADR proceedings? Open numeric [Here the EWC member organisations are kindly asked to give individual answers.](#)

Q121_5 [If Q121=1,2] How many times were you successful in ADR proceedings? Open numeric [Here the EWC member organisations are kindly asked to give individual answers.](#)

Q121_6 [If Q121=1,2] Overall, how would you evaluate the process?

Instructions: Please select one option.

1. Very positively
2. Rather positively
3. Rather negatively
4. Very negatively
5. Don't know

Q121_7 [If Q121_6=3,4] What were the issues that you encountered during the process?

Instructions: Please select all that apply.

1. The other party did not abide by the outcome
2. Relevant data to substantiate the claim was not available
3. I lacked means to defend the case
4. The process was lengthy and burdensome
5. Other (please explain)

As our EWC monitoring shows, so far only 10% Member State has been established a mediation body to make proceedings within an ADR possible. It is a pity that the Commission allows in the last seven years, that the CDSM Directive is not completely implemented in all MS.

Q121_8 [If Q121=1,2] What suggestions do you have for improving the effectiveness or efficiency of the alternative dispute resolution process?

As our EWC monitoring shows, so far only 10% Member State has been established a mediation body to make proceedings within an ADR possible. It is a pity that the Commission allows in the last seven years, that the CDSM Directive is not completely implemented in all MS.

For the next few questions please note that Article 22 enables authors and performers to revoke (end) exclusive contracts in which they licensed or transferred their rights, in case of lack of exploitation of their work or performances.

Q122. Have you used your right to revocation in case of lack of exploitation of your works or performances (Article 22)?

Instructions: Please select one option.

1. Yes
2. No
3. I was not aware of this possibility
4. I don't know

Q122_2 [If Q122=1] How many times have you assisted authors and performers with revocation?

Open numeric

Q122_3 [If Q122=1] How many times were you successful in assisting authors & performers?

Open numeric

Q122_4 [If Q122=Yes] Overall, how would you evaluate the revocation process? Instructions: Please select one option.

1. Very positively
2. Rather positively
3. Rather negatively
4. Very negatively
5. Don't know

Q122_5 [If Q122_4=3,4] Please elaborate on the difficulties that you have encountered.

Rights revocation will still remain a question of individual contract negotiations.

Our authors hope, that – often only with the support of tough Literary Agents, where applicable (in ca 4-5 EU MS) – an easier recall of rights is contractually laid down, when a single transferred right is not exercised (“use it or lose it” -principle), or a clearer recall of rights when the work is not reprinted for a certain period (for instance, 3 months to 12 months) and the conversion of an exclusively granted right of use into a simple, non-exclusive right of use after a certain time period (for short texts or anthologies; after 2 years).

*In practice, unfortunately, the author is often required to send the publisher several written requests, either to reprint the work or to declare that the rights have reverted to the author. In this regard, the **MS legislatures have not succeeded in improving the situation for authors, for example by establishing a clearly defined timeframe** that could also have been structured flexibly enough to accommodate license agreements with third parties.*

Q124. What unexpected benefits or challenges have you experienced in relation to the contract adjustment and revocation rights provided for by the Directive?

Rights revocation will still remain a question of individual contract negotiations.

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Q125. For which of the following aspects of the Directive have you resorted to court litigation?

Instructions: Please select all that apply.

1. Fair & appropriate remuneration
2. Transparency obligations
3. Contract adjustments
4. Rights of revocation
5. No, I have not gone to court

Q125_1 [If Q125=1,2,3,4] Did you have to go to court outside the EU? Instructions: Please select one option.

1. Yes
2. No

Q125_2 [If Q125_1=1] Please explain the circumstances.

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We need to point out, that authors most often go alone to court, if ever; as in many EU MS the right for associations to claim on behalf of authors is denied by legal provisions.

Q125_4 [If Q125=1,2,3,4] How many times have you assisted authors and performers with court proceedings? Open numeric **Here the EWC member organisations are kindly asked to give individual answers.**

Q125_5 [If Q125=1,2,3,4] How many times were you successful in assisting authors & performers in court proceedings? Open numeric **Here the EWC member organisations are kindly asked to give individual answers.**

Q125_6 [If Q125=1,2,3,4] How difficult were the court proceedings?

Instructions: Please select one option.

1. Very difficult
2. Moderately difficult
3. Slightly difficult
4. Not difficult at all
5. Don't know

Section 2.5: Other impacts

The following questions concern the value added by the Directive, as an EU-level intervention, compared to the pre-existing situation in the Member States. Please respond based on your direct experience.

Q126. Based on your experience, please indicate one key benefit or value added by the DSM Directive, if any?

The fundamental aim of European lawmakers—namely, the European Parliament—to support authors and cultural sectors cannot be praised highly enough. On paper, the directive in its EU version is wonderful; however, in practice, partly due to the too flexible implementation practices of member states, it has turned out to be a paper tiger whose promises have by no means been fulfilled in a sustainable manner.

The following questions concern the efficiency of the Directive and aim to assess the incurred costs of the Directive. Please respond based on your direct experience.

Q127. To what extent has your organisation incurred compliance costs because of the Directive?

Instructions: Please select one option.

1. To a great extent
2. To some extent
3. To a little extent
4. Not at all
5. I don't know

Q128. What is the nature and level of those compliance costs and in relation to which of the Directive's provisions are they incurred?

The additional financial burden placed on the book sector by the obligation to include TDM rights reservations is enormous. Since there is no established time wall, for example, explicitly excluding all works published before June 7, 2021, from the TDM exception—since this cannot apply retroactively—but the Commission has responded ambiguously to direct inquiries on the matter and claims that the exception applies to all circulating works, this means that existing published works must also be equipped with a right reservation retroactively.

With over 14–15 million book titles now (2026) in circulation in Europe, this implies an estimated monetary cost per title of 30–40 euros (technology, administration, personnel, infrastructure, etc.), which amounts to several hundred billion euros for the book sector. For an exception that is neither legally covered by the three-step test nor technically and legally entitled to cover so-called “AI development,” and where the assumed counterpart, the AI developers, do not even make the effort to confirm the TDM reservation, nor are they required to provide title-specific information. The European book sector has been burdened with billions in costs and nothing but subsequent financial disadvantages (lost licensing revenue; penetration of its own market by AI-based competing products that imitate and plagiarize cultural works), as well as millions in legal costs. Additional financial expenses are incurred, such as developing AI detectors to prevent the illegitimate appropriation of remuneration for AI products; contract amendments; and, furthermore, declining tax payments and contributions to pension systems.

Individual authors have to hire lawyers, to defend themselves when AI bogus books are published under their names or when malicious actors use AI chatbots for mass e-mail scams, impersonating an author, and portals, eg. Amazon or Goodreads rejects to take them down or to label these fake “books”, which are benefitting from financial privileges meant for cultural goods by humans only. The TDM exception has allowed to built systems which are now leading to criminal business models, harming authors financially on so many levels.

It is an unacceptable imposition.

The following questions concern the coherence of the Directive and aim to assess to what extent the provisions of the Directive are coherent with other national or international laws.

Q129. How well do the DSM Directive’s provisions align with other relevant EU legislation (e.g., GDPR, AI Act, Digital Services Act, Orphan Works Directive)?

Instructions: with 1 being not at all aligned and 5 being fully aligned.

1. Slider: 1 2 **3** 4 5

Q129_1 [If Q129=1 or 2] Please specify any particular laws where you have noticed alignment or conflict.

(1) TEUF. The EU competition law (TEUF) does not permit authors’ associations to give contractual or remuneration related advice publicly. Here, the EU-wide modification of competition law on joint remuneration negotiations should close an important legal gap. After all, the CDSM Directive refers to the chances of common rules and collective bargaining seven times. But still the Union law on competition does not provide the legal framework.

(2) AI ACT. The AI Act and its interpretative guidelines, particularly the so-called “template” issued by the EU AI Office, actively hinder the exercise of the rights of authors as copyright holders as enshrined in various provisions of EU law. Furthermore, in its recitals, the right to trade secrets—which is essentially very narrowly defined—is repeatedly interpreted as taking precedence over existing intellectual property law. First, this interpretation has no legal basis, and second, it is disastrous, as it implies that AI developers are under no obligation to account for the works they use—whether under exceptions, licenses, or what are likely unlawful appropriations. This prevents authors as the original copyright holders from exercising their rights. While the AI Act refers to both the CDSM Directive and the InfoSoc Directive, it does not clarify the scope of the TDM exception, which, as studies commissioned by the JURO Committee from Dr. Nicola Lucchi and independent legal-technical studies such as that by Prof. Stober and Prof. Dornis have shown, remains inapplicable to the development of AI products.

Q130. Have you experienced any legal or practical tensions or conflicts between the DSM Directive as implemented and other national laws in your country? Instructions: Please select one option.

1. Yes
2. No
3. I don’t know

Q130_1 [If Q130=Yes] Please describe the tension or conflict and its impact.

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OPEN QUESTION **Here the EWC member organisations are kindly asked to give individual answers.**