

SUBSIDIARY LEGISLATION 415.08

COPYRIGHT AND RELATED RIGHTS IN THE DIGITAL SINGLE MARKET REGULATIONS

18th June, 2021

LEGAL NOTICE 261 of 2021.

1. The title of these regulations is the Copyright and related rights in the Digital Single Market Regulations. Citation.

2. The main scope of these regulations is the transposition of 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/EC. Scope.

3. In these regulations, unless the context otherwise requires: Interpretation,

"Act" means the Copyright Act; Cap. 415.

"Board" shall have the same meaning as assigned to it in the Act;

"cultural heritage institution" means a publicly accessibly library or museum, an archive or a film or audio heritage institution;"

"educational establishment" means a college, school or university as recognised by the Minister responsible for education;

"information society service" means a service within the meaning of article 2 of the Electronic Commerce Act; Cap. 426.

"Minister" shall have the same meaning as assigned to it in the Act;

"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 content of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes with the purpose of making a profit therefrom either directly or indirectly. Providers of services, such as not-for-profit online encyclopaedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, providers of electronic communications services as defined in Directive (EU) 2018/1972, online marketplaces, business-to-business cloud services and cloud services that allow users to upload content for their own use, are not "online content-sharing service providers" within the meaning of these regulations;

"press publication" means a collection composed mainly of literary works of a journalistic nature, but which can also include other works or other subject matter, and which:

- (a) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general or special interest magazine;
- (b) has the purpose of providing the general public with information related to news or other topics; and
- (c) is published in any media under the initiative, editorial responsibility and control of a service provider.

Periodicals that are published for scientific or academic purposes, such as scientific journals and websites, such as blogs, that provide information as part of an activity that is not carried out under the initiative, editorial responsibility and control of a service provider, such as a news publisher, are not press publications for the purposes of these regulations.

"research organisation" means a university, including its libraries, a research institute or any other entity, the primary goal of which is to conduct scientific research or to carry out educational activities involving also the conduct of scientific research:

- (a) on a not-for-profit basis or by reinvesting all the profits in its scientific research; or
- (b) pursuant to a public interest mission recognised by a Member State;

in such a way that the access to the results generated by such scientific research cannot be enjoyed on a preferential basis by an undertaking that exercises a decisive influence upon such organisation;

"text and data mining" means any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations.

Text and data
mining for the
purposes of
scientific research.

4. Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work and the *sui generis* right accorded to the maker of a database as well as the press publishers' right as provided in regulation 15(1), shall not include the right to authorise or prohibit reproductions and extractions made by research organisations or cultural heritage institutions 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:

Provided that:

(a) copies of work or other subject-matter made in compliance with the preceding paragraph shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results;

(b) rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

5. (1) Copyright in an audiovisual work, a database, a literary work, a musical or artistic work and the *sui generis* right accorded to the maker of a database as well as the press publishers right as provided in regulation 15(1), shall not include the right to authorise or prohibit reproductions and extractions of lawfully accessible works or other subject-matter for the purposes of text and data mining:

Text and data
mining exception.

Provided that reproductions and extractions made pursuant to the preceding paragraph may be retained for as long as is necessary for the purposes of text and data mining;

(2) The exception provided for in sub-regulation (1), shall apply on condition that the use of works and other subject-matter referred to above may be expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.

(3) This regulation shall not affect the application of regulation 4.

6. (1) Copyright in an audiovisual work, a database, a literary work, a musical or artistic work and the *sui generis* right accorded to the maker of a database as well as the press publishers' right provided in regulation 15(1), shall not include the right to authorise or prohibit the digital use of works and 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:

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

(a) takes place under the responsibility of an educational establishment, on its premises or at other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff; and

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

Provided that the rightholders shall be entitled to fair compensation for the use of their works or other subject-matter in compliance with sub-regulation (1).

Provided further that with regards to works or other subject-matter which are intended primarily for the educational market, the educational establishment shall obtain the appropriate licences, if these are available.

(2) The digital use referred to in sub-regulation (1) shall be understood to cover the specific accessibility needs of persons with a disability in the context of illustration for teaching.

(3) The use of works and other subject matter for the sole purpose of illustration for teaching through secure electronic environments undertaken in compliance with regulation 6(1) under the responsibility of an education establishment established in Malta shall be deemed to occur solely in Malta.

Preservation of
cultural heritage.

7. Copyright in an audiovisual work, a database, a literary work a musical or artistic work and the *sui generis* right accorded to the maker of a database as well as the press publishers' right provided in regulation 15(1), shall not include the right to authorise or prohibit cultural heritage institutions to reproduce such works that are permanently in their collections, in any format or medium, for the purposes of preservation and to the extent necessary for such preservation.

Conditions
regarding
exceptions in
regulations 4, 5, 6
and 7.

8. (1) Any contractual provision contrary to the exceptions provided for in regulations 4, 6 and 7 shall be unenforceable.

(2) The exceptions and limitations provided for in regulations 4, 5, 6 and 7 shall only be applied in those particular 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.

(3) Where the application of any effective technological measure to a work prevents any beneficiary of an exception provided for in regulations 4, 5, 6 and 7 from benefiting from that exception, the rightholder shall make available to the beneficiary the means of benefiting from that exception, to the extent necessary to benefit from that exception or limitation:

Provided that the beneficiary shall have legal access to the protected work or subject-matter concerned:

Provided further that there is no voluntary measure taken by the rightholder or exclusive licensee or agreement between the rightholder and the other party concerned, the purpose of which is to enable the beneficiary to benefit from the exceptions specified in the above paragraph.

(4) It shall be illegal to knowingly circumvent the technological measures applied voluntarily by rightholders, including those applied in the implementation of voluntary agreements.

9. (1) A collective management organisation, which is established in Malta, in terms of the control of the establishment and operation of societies for the collective administration of copyright regulations, may in accordance with its mandates from rightholders, conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution, established in Malta, for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject matter that are permanently in the collection of the institution, irrespective of whether all rightholders covered by the licence have mandated the collective management organisation, on condition that:

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

(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:

Provided that the Board shall determine whether a collective management organisation is able to meet the conditions above in the context of a non-exclusive licence negotiated in terms of sub-regulation (1). In reaching its conclusion as to whether a collective management organisation is sufficiently representative according to the condition in paragraph (a) above the Board shall take into consideration:

(a) the categories of rights it manages;

(b) its ability to manage rights effectively;

(c) the specificities of the relevant creative sector;

and

(d) coverage of a significant number of rightholders in the relevant type of work or right:

Provided further that for a collective management organisation to act in respect of all right holders who have not mandated it to do so in the context of a non-exclusive licence

negotiated in terms of sub-regulation (1), it must first apply for and secure authorisation to do so from the Board and in doing so show to the satisfaction of the Board that it meets the conditions listed in paragraphs (a) and (b) above.

(2) Copyright in an audiovisual work, a database, a literary work, a musical or artistic work and the *sui generis* right accorded to the maker of a database as well as the press publishers' right provided in regulation 15(1), shall not include the right to authorise or prohibit cultural heritage institutions to make available, for non-commercial purposes, out-of-commerce works or other subject matter that are permanently in their collections, on condition that:

(a) the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible; and

(b) such works or other subject matter are made available on non-commercial websites.

(3) The exception or limitation provided for in sub-regulation (2) only applies to types of works or other subject matter for which no collective management organisation that fulfils the condition set out in sub-regulation (1)(a) exists.

(4) All rightholders may, at any time, easily and effectively, exclude their works or other subject matter from the licensing mechanism set out in sub-regulation (1) or from the application of the exception or limitation provided for in sub-regulation (2), either in general or in specific cases, including after the conclusion of a licence or after the beginning of the use concerned.

(5) A work or other subject matter shall be deemed to be out of commerce when it can be presumed in good faith that the whole work or other subject matter is not available to the public through customary channels, after a reasonable effort has been made to determine whether it is available to the public:

Provided that, in any case, a work or other subject-matter shall not be presumed to be out-of-commerce before at least ten years have elapsed from the date on which that work or other subject-matter has last been made available commercially.

(6) A licence as referred to in sub-regulation (1) may be sought only from a collective management organisation that is representative for Malta.

(7) (a) 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 sub-regulation (5), 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 sub-paragraphs (i) and (ii).

(b) By way of derogation from sub-regulation (1), this regulation shall apply where the collective management organisation is sufficiently representative, within the meaning of sub-paragraph (i) of sub-regulation (1), of rightholders of the relevant third country.

10. (1) Licenses granted in Malta in accordance with regulation 9 may allow the use of out-of-commerce works or other subject matter by cultural heritage institutions in any Member State. Cross border uses.

(2) The uses of works and other subject matter under the exception or limitation provided for in regulation 9(2) by cultural heritage institution established in Malta shall be deemed to occur solely in Malta.

11. (1) The information for the purposes of the identification of the out-of-commerce works or other subject matter, covered by a licence granted in accordance with regulation 9(1), or used under the exception or limitation provided for in regulation 9(2), as well as information about the options available to rightholders as referred to in regulation 9(4), and, as soon as it is available and where relevant, information on the parties to the licence, the territories covered and the uses, is to be made permanently, easily and effectively accessible on a public single online portal established and managed by the European Union Intellectual Property Office from at least six(6) months before the works or other subject matter are distributed, communicated to the public or made available to the public in accordance with the licence or under the exception or limitation: Publicity measures.

Provided that:

(a) the information for the purposes of the identification of the out-of-commerce works or other subject matter, covered by licences granted in accordance with regulation 9(1) shall be made accessible by the collective management organisation or the culture heritage institution concluding the relevant licence under said sub-regulation.

(b) the information for the purposes of the identification of the out-of-commerce works or other subject matter, covered by or used under the exception or limitation provided for in regulation 9(2) shall be made accessible by the culture heritage institution utilising the exception under said sub-regulation.

(2) If necessary for the general awareness of rightholders, additional appropriate publicity measures are to be taken in Malta regarding the ability of collective management organisations to licence works or other subject matter in accordance with regulation 9(1), the licences granted, the uses under the exception or limitation provided for in regulation 9(2) and the options available to rightholders as referred to in regulation 9(4):

Provided that if there is evidence, such as the origin of the works or other subject matter, to suggest that the awareness of rightholders could be more efficiently raised in other Member States or third countries, such publicity measures shall also cover those Member States and third countries.

Collective
licensing with an
extended effect.

12. (1) The Minister may by notice in the Gazette provide that where a collective management organisation established in Malta enters into a licensing agreement for the exploitation of works or other subject matter, in accordance with its mandates from rightholders, such an agreement can be extended to apply to the rights of rightholders who have not authorised that collective management organisation to represent them by way of assignment, licence or any other contractual arrangement, by first obtaining the approval of the Board with regards to such extension.

In such cases, collective management organisations may submit an application to the Board, for the approval of the extension, which application must indicate the:

- (a) type of licence;
- (b) purpose of the licence;
- (c) type of work or subject-matter or rights covered by the licence;
- (d) identity of the licensees; and
- (e) electronic mail address where rightholders may submit requests relative to the licence.

In reaching a decision as to whether or not to approve the collective licence with extended effect, the Board must ensure that:

- (a) the collective management organisation is, on the

basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence;

(b) all rightholders are guaranteed equal treatment, including in relation to the terms of the licence;

(c) the licence relates to an area of use, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely, due to the nature of the use or of the types of works or other subject-matter concerned;

(d) appropriate publicity measures have been taken by the collective management organisation as provided in sub-regulation (2); and

(e) the territorial scope of the licensing agreement in question is limited to the territory of Malta;

(2) At least six (6) months prior to the commencement of the use of works or other subject-matter under a licence with extended effect pursuant to sub-regulation (1), the collective management organisation intending to grant such a licence must take appropriate publicity measures related to that licence, which must at least include a notice in the Gazette and in two daily newspapers, in order to inform rightholders about:

(a) its ability to licence works or other subject-matter with extended effect;

(b) the licensing with extended effect which is intended to take place;

(c) the option to exclude their work or other subject-matter from the licence with extended effect; and

(d) the electronic mail address where rightholders may submit requests relative to the licence.

(3) Rightholders who have not authorised the collective management organisation granting a licence with extended effect pursuant to sub-regulation (1), may at any time, whether before or after the commencement of the use of their work or other subject-matter under that licence, exclude their works from that licence by communicating a request to this effect by electronic means to the collective management organisation's electronic mail address provided pursuant to sub-regulation (1)(v).

Upon receiving such a request and ascertaining the identity of

the rightholder in question, the relevant collective management organisation shall act expeditiously to exclude the work or other subject-matter indicated in the request, from the licence in question within a period not exceeding three (3) months from the date of the request.

(4) Collective management organisations which have granted a licence with extended effect pursuant to sub-regulation (1) shall ensure that all rightholders are guaranteed equal treatment, including in relation to:

- (a) the terms of that licence;
- (b) the distribution of amounts due under that licence;

and

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(c) transparency and reporting obligations applicable under regulations 26 to 30 of the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations.

(5) In reaching its conclusion as to whether a collective management organisation is sufficiently representative for a particular type of work or right, for the purposes of paragraph (a) of sub-regulation (1), the Board shall take into consideration:

- (a) the categories of rights it manages;
- (b) its ability to manage rights effectively;
- (c) the specificities of the relevant creative sector;

and

(d) coverage of a significant number of rightholders in the relevant type of work or right.

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(6) The provisions of regulation 7 of the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations, shall apply to collective management organisations that provide a licence with extended effect pursuant to sub-regulation (1).

(7) Should any dispute arise in relation to a licence with extended effect pursuant to sub-regulation (1), a rightholder may refer the dispute to the Board for its determination:

Provided that this shall be without prejudice to a rightholder's right of recourse before the Civil Court, First Hall.

(8) This regulation shall not affect the application of collective licensing mechanisms with an extended effect in accordance

with other provisions of the law, including provisions that allow exceptions or limitations, such as under regulation 9.

13. (1) Where parties are facing difficulties related to the licensing of rights when seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services, including regarding any rightholder authorisation which may be required, any party thereto may call upon the assistance of one or more mediators appointed by the Malta Mediation Centre. The mediators shall be so selected that their independence and impartiality are beyond reasonable doubt. The tasks of the mediators shall be to provide assistance with negotiations and to help the parties to reach an agreement, including, where appropriate, by submitting proposals to them.

Negotiation
mechanism.

(2) Both participation in the procedure outlined in sub-regulation (1) as well as the conclusion of any agreement pursuant to the procedure, shall be entirely voluntary and shall not affect the contractual freedom of any party thereto.

(3) Where the negotiation involves parties from Malta and another Member State and where those parties decide to rely on the negotiation mechanism, the parties are to agree beforehand on the competent Member State.

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

Works of visual art
in the public
domain.

15. (1) Publishers of press publications shall have the exclusive right to authorise or prohibit in respect of any online use by information society service providers:

Protection of press
publications
concerning online
uses.

(a) the direct or indirect, temporary or permanent, reproduction of their press publications;

(b) the making available to the public of their press publications, by wire or wireless means, in such a way that members of the public may access them from a place and a time individually chosen by them.

(2) The rights conferred by sub-regulation (1), shall not extend to mere facts reported in a press publication and shall not include the right to authorise or prohibit:

(a) private or non-commercial uses of press publications by individual users;

(b) acts of hyperlinking;

(c) the use of individual words or very short extracts of a press publication.

(3) The rights conferred on publishers of press publications by virtue of sub-regulation (1) shall leave intact and shall in no way affect the rights of authors and other rightholders, in respect of the works and other subject matter incorporated in a press publication. The rights provided for in sub-regulation (1) may not be invoked against authors and other rightholders in respect of the works and other subject matter incorporated in a press publication and, in particular, shall not deprive them of their right to exploit their works and other subject matter independently from the press publication in which they are incorporated.

(4) 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 sub-regulation (1) shall not be invoked to prohibit the use by other authorised users.

(5) The rights provided for in sub-regulation (1) shall not be invoked to prohibit the use of works or other subject matter for which protection has expired.

S.L. 415. 05.
S.L. 460. 36.

(6) The provisions of articles 9 and 42 of the Act, the Certain Permitted Uses of Orphan Works Regulations, and the Permitted Use of Certain Works and Other Subject Matter Protected by Copyright and Related Rights for the Benefit of Persons who are Blind, Visually Impaired or Otherwise Print-Disabled Order shall apply *mutatis mutandis* in respect of the rights provided for in sub-regulation (1).

(7) The rights conferred by this regulation on press publications shall have a duration of two (2) years from the end of the year following the date on which that press publication is published.

(8) The rights provided by sub-regulation (1) shall not apply to press publications first published before the 6th of June 2019.

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

Provided that in the absence of agreement on the remuneration payable under this sub-article, the amount of such remuneration shall be determined by the Board.

Use of protected
content by online
content-sharing
service providers.

16. (1) An online content-sharing service provider shall be deemed to perform an act of communication to the public or an act of making available to the public when it gives the public access to copyright-protected works or other protected subject matter uploaded

by its users.

An online content-sharing service provider shall therefore obtain an authorisation from the authors, performers, phonogram producers, film producers and/or broadcasting organisations, as the case maybe, in order to communicate to the public or make available to the public copyright-protected works or other protected subject matter:

Provided that such authorisation may be obtained, *inter alia*, by concluding a licensing agreement:

Provided further that rightholders shall not be obliged to give an authorisation or to conclude licensing agreements.

(2) Where an online content-sharing service provider obtains an authorisation, that authorisation shall also cover acts of communication to the public and, or acts of making available to the public where such acts are carried out by users of the services when the users are not acting on a commercial basis or where their activity does not generate significant revenues.

(3) (a) When an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in these regulations, the limitation of liability established in article 21 of the Electronic Commerce Act shall not apply to the situations covered by this regulation.

Cap. 426.

(b) The preceding sub-regulation shall not affect the possible application of article 21 of the Electronic Commerce Act in relation to those service providers for purposes falling outside the scope of these regulations:

Cap. 426.

Provided that the limitation of liability as established in article 21 of the Electronic Commerce Act shall not apply to service providers, the main purpose of which is to engage in or to facilitate copyright piracy.

Cap. 426.

(4) If no authorisation is granted, online content-sharing service providers 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 demonstrate that they have:

(a) made best efforts to obtain an authorisation, and

(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 in any event,

(c) 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 paragraph (b).

(5) In determining whether the service provider has complied with its obligations under sub-regulation (4), and in light of the principle of proportionality, the following elements, shall *inter alia* be taken into account:

(a) the type, the audience and the size of the service and the type of works or other subject matter uploaded by the users of the service; and

(b) the availability of suitable and effective means and their cost for service providers;

(6) In respect of new online content-sharing service providers the services of which have been available to the public in the Union for less than three years and which have an annual turnover below ten million euro (€10,000,000), calculated in accordance with Commission Recommendation 2003/361/EC, the conditions under the liability regime set out in sub-regulation (4) are limited to compliance with paragraph (a) of sub-regulation (4) and to acting 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:

Provided that where the average number of monthly unique visitors of such service providers exceeds five (5) million, calculated on the basis of the previous calendar year, they shall also demonstrate that they have 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.

(7) The cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation in terms of the Act.

The rights provided by the Act and these regulations shall not preclude online content-sharing service providers from uploading and making available content generated by users on online content-sharing services in the context of:

- (a) quotation, criticism, review; and
 - (b) use for the purpose of caricature, parody or pastiche.
- (8) (a) The application of this regulation shall not lead to any general monitoring obligation on online content-sharing service providers.
 - (b) Online content-sharing service providers shall provide rightholders, at their request, with adequate information on the functioning of their practices with regard to the cooperation referred to in sub-regulation (4) and, where licensing agreements are concluded between service providers and rightholders, information on the use of content covered by the agreements.
- (9) (a) Online content-sharing service providers shall put in place an effective and expeditious complaint and redress mechanism that is available to users of their services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them.
 - (b) Where rightholders request to have access to their specific works or other subject matter disabled or to have those works or other subject matter removed, they shall duly justify the reasons for their requests.
 - (c) Complaints submitted under the mechanism provided for in sub-regulation (1) shall be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review.
 - (d) Users of online content-sharing services may refer any dispute relating to the disabling of access to, or the removal of, works or other subject-matter uploaded by them, or regarding the use of an exception or limitation to copyright and related rights, to the Board for its determination:

Provided that this shall be without prejudice to users' right of recourse before the Civil Court, First Hall.
 - (e) These regulations shall not affect legitimate uses, such as uses under exceptions or limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC and Regulation (EU) 2016/679.
 - (f) Online content-sharing service providers shall inform their users in their terms and conditions that they can use works and other subject matter under exceptions or limitations to copyright and

related rights provided for in Union law.

Principle of
appropriate and
proportionate
remuneration.

17. Where authors or performers licence or transfer the exclusive rights for the exploitation of their works, or other subject-matter, they are entitled to receive appropriate and proportionate remuneration. In the absence of agreement on the remuneration payable under this sub-regulation, the amount of such remuneration shall be determined by the Board:

Provided that in determining the appropriate and proportionate remuneration to the actual or potential economic value of the licensed or transferred rights, account shall be taken of 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.

Transparency
obligation.

18. (1) Authors and performers are to receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due:

Provided that where these rights have been sub-licensed, authors or performers, or their mandated representatives, shall at their request receive additional information from the respective sub-licensees, in the event that the original licensee does not hold all the information that would be necessary for the purposes of the above sub-regulation. Where that additional information is requested, the first counterpart of authors and performers shall provide information on the identity of those sub-licensees.

(2) The obligation set out in sub-regulation (1) shall be proportionate and effective in ensuring a high level of transparency in every sector:

Provided that the parties or their successors in title to whom the rights were licensed or transferred may make claims substantiated by representations to the Board indicating:

(a) duly justified cases where the administrative burden resulting from the obligation set out in sub-regulation (1) would become disproportionate in the light of the revenues generated by the exploitation for the work or performance;

(b) that obligation be limited to the types and level of information that can reasonably be expected in such cases:

Provided further that the Board may refuse such claims.

(3) The transparency obligations set out in this regulation shall not apply in respect of agreements concluded by collective management organisations which are regulated in terms of the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations.

S.L. 415. 01.

19. (1) In the absence of an applicable collective bargaining agreement providing for a mechanism to claim additional appropriate and fair remuneration, authors or performers or their mandated representatives shall be entitled to claim such additional, appropriate and fair remuneration from the party with whom they have entered into a contract for the exploitation of their rights, or from their successors in title as the case may be:

Contract
adjustment
mechanism.

Provided that such a claim can only be made when the remuneration originally agreed upon turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of those works, performances or other subject-matter:

Provided further that when assessing whether such remuneration is disproportionately low, account should be taken of:

(a) all revenues relevant to the case in question, including, where applicable, merchandising revenues,

(b) the specific circumstances of each case, the contribution of each author or performer and the specificities and remuneration practices in the different content sectors.

(2) In the absence of agreement on the additional remuneration payable under this sub-article, the amount of such additional remuneration shall be determined by the Board.

(3) Sub-regulations (1) and (2) shall not apply with respect to agreements concluded by collective management organisations which are regulated in terms of the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations.

S.L. 415. 01.

20. In any disputes concerning the transparency obligation provided in Regulation 18 or concerning the contract adjustment mechanism provided in regulation 19, authors or performers or their mandated representatives may submit such dispute for resolution before the Malta Arbitration Centre or the Malta Mediation Centre in accordance with procedure and formalities of the Malta Arbitration Act and the Malta Mediation Act respectively:

Alternative dispute
resolution
procedure.

Cap. 387.
Cap. 474.

Provided that representative organisations of authors and performers may initiate such procedures at the specific request of one of more authors or performers.

Provided further that this shall be without prejudice to an

author's or performer's right of recourse before the Civil Court, First Hall.

Right of
revocation.

21. (1) Where the author or 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 a lack of exploitation of that work or other protected subject matter for a continuous period of five (5) years:

Provided that the author or performer in question shall by means of a judicial act, set a time-limit of not less than six (6) months within which the exploitation of the licensed or assigned rights by the respective assignee or licensee, must take place:

Provided further that in the case of sound recordings, the time limit established by a performer shall not be less than one (1) year.

(2) If the respective assignee or licensee fails to exploit the rights concerned within the stipulated time-limit, the author or performer in question may choose to revoke the licence or transfer of rights, in whole or in part, or terminate its exclusivity by referring the matter to the Board for its determination.

(3) In the case of works of joint authorship or collective works, the judicial act referred to in the preceding paragraph may be filed by any joint author or joint rightholder. However, prior to determining whether or not to revoke the licence or transfer of rights in question or to terminate its exclusivity, as the case may be, the Board shall set a time-limit within which all other joint authors or joint rightholders may make their submissions relative to revocation or termination of exclusivity, as the case may be:

Provided that in reaching a decision in relation to the preceding paragraphs, the Board shall assess the relative importance of the individual contributions of each joint author or joint rightholder involved, as well as the legitimate interests of all joint authors or joint rightholders affected by the application of the revocation or termination of exclusivity, as the case may be.

(4) Sub-regulation (1) shall not apply:

(a) in the case of audiovisual works or databases; or

(b) in the event that the lack of exploitation of the work or other subject matter is predominantly due to the circumstances that the author or the performer can reasonably be expected to remedy; or

(c) with respect to contractual provision derogating from the revocation mechanism where these form part of agreements concluded by collective management organisations which are regulated in terms of the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations. S.L. 415. 01.

22. The reproduction, translation, distribution communication to the public of a work for the sole purpose of illustration for teaching or scientific research only to the extent justified by the non-commercial purpose to be achieved, and as long as the source, including the author's name, is, unless this is impossible, indicated, provided for in article 9(1)(h) the Act shall be on the condition that the rightholders receive fair compensation Fair Compensation for acts done for the sole purpose of illustration for teaching or scientific research.

23. The exceptions and limitations provided for in these regulations shall not be prejudiced or limited in scope as a result of articles 9(1)(d) and (h) and 26(2)(b) of the Act. Exceptions and limitations in regulations not prejudiced by exceptions in Copyright Act.

24. (1) Any contractual provision that prevents compliance with regulations 18, 19 and 20 shall be null and void in relation to authors and performers and unenforceable in their regard. Common provisions.

(2) Regulations 17 to 21, both included, shall not apply to authors of a computer program within the meaning of Article 2 of Directive 2009/24/EC.

25. Agreements for the license, assignment or transfer of rights of authors and performers shall be subject to the transparency obligation set out in regulation 18 as from 7 June 2022: Transitional provisions.

Provided that this regulation shall apply to agreements which come into force as from that date and in respect of those agreements entered into before that date which are still in force.
