European Commission

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

European Commission

Explanatory Meeting

The EU copyright acquis

DG Communications Networks, Content and Technology
Unit I.2 - Copyright

7 February 2019

The EU Copyright legislation

11 Directives
2 Regulations

- Computer Programs Directive (1991- consolidated version 2009)
- Rental and Lending Rights Directive (1992; consolidated version 2006)
- Satellite and Cable Directive (1993)
- Term of protection Directive (1993; consolidated version 2006) Amended by Term extension Directive (2011)
- Database Directive (1996)
- Copyright in the Information society Directive (2001)
- Resale right Directive (2001)
- Enforcement Directive (2004)
- Orphan Works Directive (2012)
- Collective Rights Management Directive (2014)
- Portability Regulation (2017) – 1.04.2018
- VIP (Marrakesh) Directive (2017) – 12.10.2018
- VIP (Marrakesh) Regulation (2017) – 12.10.2018

The EU Copyright legislation

Implementation of the EU framework

Monitoring – European Commission

Interpretation – Court of Justice of the European Union (CJUE)

- Autonomous provision of EU law: "work" (originality, expression), reproduction, communication to "public", "parody",…-**Rec.6 and 21**
- Outlines

  High level of protection – appropriate rewards **Rec.4 and 9**

  - Broad exclusive rights
  - Strict interpretation: limitations and exceptions

  At the same time: Fair balance between interests of rightholders and those of users - **Rec.31-32**

  - Effectiveness of Limitations and exceptions, Fundamental freedoms

European Commission

Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

European Commission

Main features

Horizontal

Implementation of international treaties (WIPO)

Adaptation of the digital environment of Information society "across border"

- Harmonisation of the exclusive rights of authors and of related rights holders (performers, record producers, film producers and broadcasters)
- Exhaustive list of limitations and exceptions
- Protection of technological protection measures and rights management information
- Remedies (injunction-intermediaries)

The Information Society Directive does not affect pre-existing Directives concerning:

- Term of protection
- Rental and lending
- Satellite broadcasting and cable retransmission
- Computer programmes
- Legal protection of databases

Article 2: Reproduction right

The exclusive right to authorise or prohibit direct or indirect, **temporary or permanent reproduction by any means and in any form, in whole or in part.**

Granted to:

- Authors
- Related rights holders

Reproduction rights

- Reproduction in part: starting point for the determination of the condition for copyright protection
  - **Copyright protected "work" :** *copyright is liable to apply only in relation to subject matter which is original in the sense that it is its* ***author's own intellectual creation***" **Infopaq** (turning point) **and subsequent case law**
  - **Requires room for personal touch, free and creative freedom** (exclusion of technical and functional creativity)

Author's own intellectual creation – case by case approach

2009 **Infopaq** C-5/08		*"words which, considered in isolation, are not as such an intellectual creation of the author who employs them. It is only through the **choice, sequence and combination of those words** that the author may express his creativity in an original manner and achieve a result which is an intellectual creation".*
2009 **BSA** C-393/09		*"where the expression of the components [of a graphic user interface] is **dictated by their technical function**, the criterion of originality is not met, since the different methods of implementing an idea are so limited that the idea and the expression become indissociable."*
2011 **Murphy** C-403/08		*Football matches are not "works": they are subject to rules of the game, leaving no room for **creative freedom** for the purposes of copyright*
2012 **Football dataco** C-604-10		Regarding football fixtures list of the English and Scottish Leagues: *that criterion [of originality] is not satisfied when the setting up of the database is dictated by technical considerations, rules or constraints which leave **no room for creative freedom***
2012 **Sas Institute**		*neither the functionality of a computer program nor the programming language and the format of data files used in a computer program in order to exploit certain of its functions constitute a form of expression of that program and, as such, are not protected by copyright in computer programs for the purposes of that directive*
2013 **Eva painer** C-145/10		*Portrait photograph is protected, if: "such photograph is an intellectual creation of the author reflecting his personality and expressing his **free and creative choices** in the production of that photograph"*
2014 **Nintendo** C-355/12		*In so far as the parts of a videogame, in this case, the graphic and sound elements, are part of its originality, they are protected, together with the entire work, by copyright (..)*
2019 **Cofemel** C-683/17		*?*

Article 3 - Right of communication to the public

- For authors: The exclusive right **to authorise or prohibit any communication to the public** … including the making available to the public of their works, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them

- For related rights holders: **The exclusive right to authorise or prohibit the making available to the public of their works**…

CJUE Cases: Renckoff (C-161/17), Reha training (C-117/15), Marco Del Corso (C-135/10), Pirate Bay (C-610/15)

Two cumulative criteria
Act of Communication

Act of Communication

Rec. 23+ case law

This notion must be construed "broadly" as referring to **any transmission of the protected works, irrespective of the technical means or process used**

To a Public

- **"Indeterminate" number of potential recipients**
- **But implies a "fairly large number of persons"**

there is a 'certain de minimis threshold' which excludes a group of people that is too small or insignificant

Complementary criteria (interdependent)

- *Deliberate intervention*
- *New public*
- *Profit making nature*

- **Deliberate nature of the intervention**

The user must intervene, in full knowledge of the consequences of his action, to give access to a protected work to his customers.

The public should not be merely 'caught' by chance, but be targeted by the operators

- **New public**

"public which was not taken into account by the authors of the protected works when they authorised their use by the communication to the original public" (e.g. showing a broadcast in a hotel or pub) unless the subsequent communication uses a specific technical means which differs from that of the original communication

- **Profit making nature**

not an essential condition for the existence of a communication to the public - although not irrelevant in the overall assessment

Offline setting

Communication to the public		No communication to the public	
SGAE **C-306/05**	**Hotel operator** providing TV sets with signal in guest bedrooms	DEL CORSO **C-135/10** Art. 8.2 Dir.2006/115	Free broadcasting of phonogram in **private dental practice** *phonogram producers, performers*
PREMIER LEAGUE **C-403/08 and C-429/08**	Display of football matches in **café-restaurant**	Hotel Edelweiss **C-641/15** Art. 8.3 Dir.2006/115	**Hotel operator** providing TV set (signal for various TV and radio channel)in guest room. *Broadcasting organisation*: the price of the room is not to be regarded as an "entrance fee"
OSA **C-351/12**	**Spa establishment** providing TV/radio set with signal		
REHA Training **C-117/15** (Art. 8.2 Dir.2006/115)	**Rehabilitation Center** providing broadcast of TV programs by means of TV set in training rooms		
Phonographic performance **C-162/10** (Art. 8.2 Dir.2006/115)	**Hotel operator** providing TV and radio in guest bedrooms		
STIM-Fleetmanager **C-753/18**	**Hire company** providing hiring out cars equipped (by the manufacturer) with a radio receiver ?		

Online	
VCAST **C-265/16**	TV broadcasts captured and stored by a **cloud service** made available to users: **CTP** (different means of transmission)
RENCKHOFF **C-161/17**	A student included a **Photo** in a presentation for Spanish class then posted on the **school's website**: **CTP** (new public)
	Hyperlinking-Platforms?
Svensson **C-466/12** +Best Water	**Hyperlinking to articles freely available** on another website with the RHs' consent: **No CTP** (No new public)
GS MEDIA **C-160/15**	**Hyperlinking to illegal source**: CTP (new public) – posting made "for profit": presumption of knowledge of the protected nature of work and lack of consent
Filmspeler **C-527/15**	**Sale of a multimedia player**, on which there are pre-installed add-ons, available on the internet, containing **hyperlinks** to websites: **CTP**
Pirate Bay **C-610/15**	Operator making available and management of **a sharing platform** which allow users to locate works and to share them in the context of P2P network (**TPB**): **CTP** (full knowledge of the consequence of its conduct, New public, operate for profit)
You Tube – Cyando? **C-682/18** **C-683/18**	*Nemo-YT* :Songs from albums and performances at concerts posted on **Youtube;** notification, videos blocked but then audio recordings accessible again *Elsevier – Cyando* (**cloud storage platform** "uploaded"): notifications sent for copyright-infringing files which can be accessed through **hyperlinks** to files available on Uploaded.

Article 5: Exceptions and limitations

- Exhaustive list of **21 exceptions** to the rights of reproduction and of communication to the public.
- One **mandatory** exception: temporary copies which are transient or incidental
- **Optional** exceptions: e.g. for reprography, copying for private use and broadcasts made by social institutions – rights holders must receive fair compensation
- Certain uses by libraries, use for teaching purposes, research and for the benefit of people with a disability
- Exceptions and fundamental freedoms?
- Next?

CJUE Cases: Funke Medien (C-469/17), Deckmyn (C-201/13), Eva-Maria Painer (C-145/10), Padawan (C-467/08)

European Commission

Article 5: Exceptions and limitations

- **Optional:** Limitless margin of discretion of Member States?

CJUE case law

- Free to pick in the closed list
- When implementing the exceptions: certain degree of discretion, including on the modalities but "**within the limit of EU law**"
  - Principle of **proportionality** "appropriate to attain their objective", "not go beyond what is necessary to achieve it"
  - Art.5(5) **Three StepTest**
  - "**Coherent application**" without undermining the objective of the Directive (High level of protection for authors, Proper functioning of the internal market)

Private Copying exception

- "Copyright triangle"- *Art. 5(2)(b):*
  - **Private copying:** *"reproduction on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial"*
  - **Fair compensation:** *"on the condition that the rightholders receive fair compensation" (*levies: notion of harm*)*
  - **Which takes into account the application (or non-application) of technological measures** (e.g. DRMs)

Technological Protection Measures (TPMs)

- Member States shall provide legal protection against the circumvention of any (effective) technological measures
- Legal protection extends to « preparatory » acts such as the manufacture, import, distribution or sale of products and devices which enable or promote, or have as their main purpose, the circumvention of TPMs
- TPMs cannot prevent the beneficiaries of some of the exceptions in Article 5 (e.g. reprography, libraries, research & education, public security) to benefit from the exceptions

Rights Management Information

Member States must provide legal protection against:

- the removal or alteration of any electronic RMI
- distribution, importation, broadcasting, communication to the public etc. of works from which RMI has been removed or altered

Sanctions and remedies
- Injunctions

Members States must provide Effective, proportionate and dissuasive sanctions and remedies

Members States must ensure that rightholders are in a position to **apply for an injunction** against **intermediaries** whose services are used by a third party to infringe a copyright or related right (Art. 8(3) – Rec. 59) "best placed"

See COM(2017)708 **-** *Guidance on certain aspects of Directive 2004/48/EC on the enforcement of IPRs* (29.11.2017)

CJUE Cases: UPC Telekabel (C-314/12), Sabam (C-70/10)

European Commission

QUESTIONS?

European Commission

Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellection property

Definitions

- **Lending**: Making available for use, for a limited period, for NON economic or commercial advantage, and through establishments which are accessible to the public

- **Rental**: Making available for use, for a limited period, for directive or indirect economic or commercial advantage

- The Directive does not apply to the rental of computer programs.

Who benefits from the rights?

Exclusive rights to authorise the rental or lending are granted to: authors, **performers, phonogram (record)** and **film producers**

Exhaustive lists

Equitable remuneration for rental

Authors and performers that have transferred the right to rental of a phonogram or a film to a producer, has an **unwaivable right** to equitable remuneration.

Derogations from the lending right

- Member States may provide for **derogations** from the exclusive public lending right.

- If so, at least authors have the right to **remuneration**.
  - **Member States are free to fix the remuneration in accordance with the cultural promotion objectives.**

  Less than "equitable remuneration" but not purely symbolic.
  - **exemption from payment of the remuneration for certain categories of establishments**

Related rights

- Exclusive **fixation right** for performers and broadcasting organisations
- Exclusive right for performers of **broadcasting by wireless means** and of **communication to the public**
- Exclusive **distribution right** for performers, record producers, film producers and broadcasting orginisations
- Certain other directives do not contain provisions on related rights but refer to this directive.

CJUE Cases:, Reha training Art.8(2) (C-117/15), Hotel Edelweiss Art.8(3) (C-641/15)

European Commission

QUESTIONS?

European Commission

Directive 2006/116/EC on the term of protection of copyright and certain related rights as amended by Directive 2011/77/EU

Literary and artistic works - authors' rights

- For the life-time of the author and for 70 years after his death
- If joint authorship: term is calculated from the death of last surviving author
- Anonymous or pseudonymous or certain collective works: 70 years after the work is lawfully made available to the public

Film or audiovisual works

The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may designate other co-authors

Protection expires after the death of the last to survive, whether or not they are designated as co-authors (i.e., the principal director, the author of the screenplay, the author of the dialogue, and the composer of specially created music)

Related rights

- Performers (record): 70 years after fixation
- Performers (film): 50 years after fixation
- Record producers: 70 years after fixation
- Film producers: 50 years after fixation
- Broadcasting organisations: 50 years after first transmission

Nationals of third countries

Where the country of origin of a work is a third country, and the author of the work is not an EU national:

the term of protection is that of the country of origin, but may not be longer than in the EU

European Commission

QUESTIONS?

European Commission

Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market

Regulation on cross-border portability of online content service

- The Regulation was adopted on 14 June 2017 and became directly applicable in all Member States on 1 April 2018.
- Key achievement of the Digital Single Market Strategy

Benefits for consumers

- The regulation enables consumers who buy or subscribe at home to online content services - to watch films or sporting events, listen to music, download e-books or play games - to continue accessing these services without additional costs when they travel or stay temporarily in other EU countries.
- "Temporarily present" means present in an EU country other than the subscriber's Member State of residence for a limited period of time (Article 2(4)).

Obligation to enable portability of online content services

- Providers of paid online content services are obliged to provide cross-border portability to their subscribers (Article 3). They have to provide access to the same content, on the same range and number of devices, for the same number of users and with the same range of functionalities – without additional charges.

- They don't need to acquire licences for other territories where the subscribers stay temporarily (Article 4 – localisation of the provision of, access to and use of online content services in the MS of residence of the subscriber)

Safeguards

- Service providers have to verify the subscriber's Member State of residence - at the conclusion and renewal of the contract and in case of reasonable doubt (Article 5).
- The Regulation provides for a closed list of such verification means (e.g. ID card, bank account, internet supply contract, IP check). The service provider can apply not more than two means of verification from this list.
- Contractual provisions which are contrary to the Regulation are unenforceable, including those limiting portability to a specific time period (Article 7).
- Processing of personal data to be carried out in accordance with EU data protection rules (Article 8).

Opt-in for free online content services

- Free of charge online content services are able to choose whether they want to benefit from the new rules in order to provide cross-border portability to their subscribers.
- They can opt in to benefit from the portability rules if they verify the subscriber's MS of residence in accordance with the Regulation (Article 6).

European Commission

QUESTIONS?

European Commission

Directive 93/83/EEC concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

Objective and main provisions

- Objective: facilitate the clearing of copyright and related rights for cross-border satellite broadcasting and cable retransmission.

- Two core principles:

  (1) the "country of origin" principle applicable to satellite broadcasting;

  (2) the mandatory collective management applicable for cross-border cable retransmissions.

Communication to the public by satellite

- Definition of "communication to the public by satellite" in Article 1(2)(a)
- "Country of origin principle" established in Article 1(2)(b): the communication to the public by satellite takes place in a single Member State where the program carrying signals:
  - ✓ are introduced under the control and responsibility of the broadcasting organisation,
  - ✓ into an uninterrupted chain of communication leading to the satellite and down towards the earth, and
  - ✓ are intended for reception by the public

→ A broadcaster needs to acquire licenses only from right holders in the MS of origin of the signals.

Author's broadcasting right and acquisition of rights

- The author has the exclusive right to authorise the communication to the public by satellite (Article 2), which may not be made subject to a system of statutory licensing (Article 3)
- Acquisition of rights in accordance with the legislation on copyright and related rights of the Member State where the communication to the public occurs (principle of the country of origin).
- Member States may provide for rules on extended collective licensing under certain conditions

Rights applicable to the retransmission of programmes via cable

- Member States must ensure the protection of copyright and related rights when programmes, which are transmitted by wire or over the air in one Member State, are simultaneously and in an unaltered way retransmitted by cable in another Member State (Article 8).

- Retransmissions of programmes should take place on the basis of contractual arrangements between right holders and cable operators.

European Commission

Exercise of the cable retransmission right

- Mandatory collective management: Holders of copyright and related rights can only exercise their rights through a collecting society (Article 9).
- Exception for broadcasting organisations (Article 10): they can negotiate directly with the cable operators (for their own rights and for rights transferred to them by right holders).
- Provisions on mediation and prevention of abuse of negotiating positions (Articles 11 and 12) to facilitate agreements between broadcasters, collecting societies and cable operators.

European Commission

QUESTIONS?

European Commission

Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes.

COM(2016) 594 final

State of play

- Commission's proposal (Regulation) in September 2016
- Political agreement reached on 13 December 2018
- Ongoing adoption procedure: Vote in Council on 18 January 2019; vote in the European Parliament in JURI committee on 23 January; plenary in March.
- The proposed Regulation has been turned into a Directive

Objective and main provisions

- Objective: facilitate the clearance of rights for online transmissions of TV and radio programmes by broadcasters and for retransmissions by means other than cable
- Main provisions of the political agreement:
  - Application of the Country of Origin principle to the licensing of certain TV and radio programmes provided by broadcasters on their ancillary online services;
  - Mandatory collective management for retransmissions of TV and radio programmes by means other than cable;
  - New provisions on direct injection.

Online transmissions of broadcasting organisations

- Country of origin principle for the licensing of broadcasters' ancillary online services (simulcasting, catch-up services)
  - Scope: applies to radio programmes and, for television programmes, to news and current affairs and fully financed own productions of the broadcasting organisations. Television broadcasts of sports events are excluded.
- Need to take into account all aspects of the ancillary online service when determining the licence fees
- Contractual freedom of broadcasters / right holders not affected – subject to applicable EU rules

Retransmissions of TV and radio programmes

- Mandatory collective management for retransmissions by means other than cable (e.g. IPTV, satellite, digital terrestrial, mobile), including for services provided over the open internet, to the extent the retransmission is carried out in a managed environment.
- Possibility for broadcasters to directly license their rights to retransmission service providers
- Good faith negotiations and possibility to call assistance of mediators
- Possibility for MS to apply the same rules for 'national' retransmissions

Direct injection

- Definition of direct injection
- Two situations:
  - Transmission of the signals through direct injection without any parallel transmission by the broadcaster: broadcasters and signal distributors participate in a single act of communication to the public for which they need to obtain authorisation from right holders; possibility for MS to apply mandatory collective management
  - Transmission of the signals through direct injection for retransmission: the rules on retransmissions apply (including cable retransmission)

Final provisions

- Transitional provisions: 2 years for the application of the COO principle to existing contracts; 4 years for the application of direct injection provisions
- Review clause: 4 years after transposition
- Transposition: 2 years

European Commission

QUESTIONS?

European Commission

Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art

Scope – subject matter of the resale right (art. 1)

- Aim: to ensure that authors of graphic and plactic works of art are associated to the economic success of their works
- The resale right is an inalienable right which cannot be waived
- The resale right applies only to an original work of art
- The resale right is not an exclusive right but a right to remuneration
- The right applies to all acts of resale, subsequent to the first transfer of the work by the author
- MS entitled to provide that the resale right does not apply to acts of resale under certain conditions

Scope – subject matter of the resale right (art. 1)

Royalties

Principle: The royalty shall be paid by the seller.

Derogation: Member States may provide that the dealer of arts involved shall alone be liable for the payment or shall share liability with the seller for the payment of the royalty.

Scope - Which works are concerned? (art. 2)

Original works of art : works of graphic or plastic art such as paintings, drawings, engravings, sculptures, tapestries, photographs etc.

Non-exhaustive enumeration

Original works or copies which have been made in limited numbers by the artist itself or under his authority

Particular provisions (art. 3, art. 4, art. 5)

- MS have the possibility to set a minimum sale price from which the sales shall be subject to a resale right
- The directive provides for a minimum threshold which may not exceed 3000 EUR
- Art. 4 sets the rate of the resale right.
- Art. 5 states that the sale prices are without taxes.

Particular provisions (art. 6, 7, 9 - beneficiaries)

The royalty shall be payable to the author or, after his death, to those entitled under him/her, for 70 years (cf. art. 8)

MS may provide for collective management of the royalties (compulsory or optional)

The author or those entitled under him/ her have the right to obtain information from the art market dealer about a resale, for a period of 3 years after it has taken place

Authors who are nationals of third countries benefits from the resale right if the legislation in their country permits resale right protection for authors from Member States (reciprocity)

Final provisions (art. 10, 11, 12, 13, 14)

- Application in time: art. 10
- Revision clause (art. 11): the EC to report on the implementation of the directive to the EP and Council; first report in 2011
- Art. 11 establishes a Contact committee composed of representatives of MS ; aim: to discuss possible issues deriving from the application of the directive and exchange information.
- implementation deadline was on the 1st of January 2006 (art. 12); entry into force on 13 October 2001 (art. 13)
- Art. 14: the directive is addressed to MS

European Commission

QUESTIONS?

European Commission

Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

Objectives

(1) Improve governance and transparency of all collective management organisations

(2) Facilitate multi-territorial licensing of rights in musical works for online uses and the development of digital music services

Scope of application

Directive applies to:

- all CMOs established in the EU, with the exception of Title III,
- Title III applies only to EU-based CMOs managing authors' rights in musical works for online use on a multi-territorial basis.
- entities owned or controlled by CMOs that carry out management activities and,
- in part, to independent management entities established in the EU.

Member States are free to apply the Directive to CMOs established outside the EU which operate in that Member State (recital 10).

Definitions

- **Collective management organisations** ("CMOs"): intermediaries for licensing rights to users; operating traditionally in national territories and cooperating in a network of reciprocal representation agreements

  Definition [Article 3(a)]: any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of **more than one** rightholder, for the **collective benefit** of those rightholders, as its **sole or main purpose**, and which fulfils one or **both** of the following criteria:

  (i) it is owned or controlled by its members,

  (ii) it is organised on a not-for-profit basis.
- Tasks of CMOs: **licensing** (tariffs), **monitoring** of the use, **enforcement** of copyright, **collection** of royalties, **distribution** of royalties, [**promotion** of culture]
- No specific legal form required

Definitions

- **Independent management entity [Article 3(b)]** means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which is:

  (i) neither owned nor controlled, directly or indirectly, wholly or in part, by rightholders; and

  (ii) organised on a for-profit basis;

- **No IMEs:** audiovisual producers, record producers, broadcasters

- **Provisions which apply to IMEs:**

  Article 16(1), Articles 18 and 20, points (a), (b), (c), (e), (f) and (g) of Article 21(1) and Articles 36 and 42

European Commission

Governance & Transparency

Main provisions on Governance & Transparency

Apply to ALL CMOs (whatever category of rightholders they represent, whatever rights, remunerations, compensations they manage)

- Membership of CMOs
- Participation of rightholders in the decision-making process
- Handling of funds
- Relations with other CMOs and users
- Transparency and financial reporting

Governance & Transparency

- **Rights of rightholders** (1) [Article 5]

  - **Mandates**
    - by rights, categories of rights, types of works,
    - territories according to choice of rightholder,
    - irrespective of residence/establishment of rightholder or CMO
  - CMO has obligation to manage (unless objectively justified reasons to refuse) if falls within the scope
  - **Rights' withdrawal**
    - in the same manner as mandates
    - notice not exceeding 6 months
    - may take effect at the end of financial year

  - Right to grant licenses for **non-commercial uses**

Governance & Transparency

- **Rights of rightholders** (2) [Article 6]
  - Rules on **membership** requirements
    - CMO has obligation to accept RH and RH's entities if they fulfil membership requirements
    - objective, transparent and non-discriminatory criteria
    - publicly available
    - if refusal – clear explanation of reasons

European Commission

Governance & Transparency

- **General assembly** [Article 8]
  - Members have right to participate and to vote (MS may allow for restrictions) as well by proxy
  - Meets at least 1/year
  - Decides on amendments to the statute, membership terms, appoints and dismisses of directors, approves their remuneration + minimum competences in Article 8(5)
- **Supervisory function** [Article 9]
  - Monitors CMO's activity and persons who manage CMO
  - fair and balanced representation of members
  - Minimum powers in Article 9(4)
- **Persons who manage the business** [Article 10]
  - Sound, prudent appropriate manner
  - Avoid conflict of interests (annual individual statement)

European Commission

Governance & Transparency

- **Collection and use of rights revenue** [Article 11]
  - Diligent collection and management
  - Separate accounts for right revenues and for own assets
  - Use revenues only for distribution, except if allowed by GA
  - Invests in best interests of RH, according to policy approved by GA and rules in Article 11(5)

- **Deductions** [Article 12]
  - Reasonable, based on objective criteria
  - CMO informs RH on management fees and other deductions
  - Management fees should not exceed justified and documented costs
  - Social, cultural and educational services offered to RH on fair criteria

European Commission

Governance & Transparency

- **Distribution of royalties** [Article 13]
  - Regularly, diligently and accurately
  - max. 9 months from the end of the financial year in which the rights revenue was collected, unless objective reasons
  - From distributable to non-distributable income:
    - If RH cannot be identified or located, the amount should be kept separate on the accounts
    - CMO has to take all necessary measures to identify and locate RHs, at least Article 13(3)
    - If amounts cannot be distributed after 3 years - **non-distributable income**
    - GA decides on use of amounts – but MS may limit permitted uses
- **Distribution under representation agreements** [Articles 14, 15]

Governance & Transparency

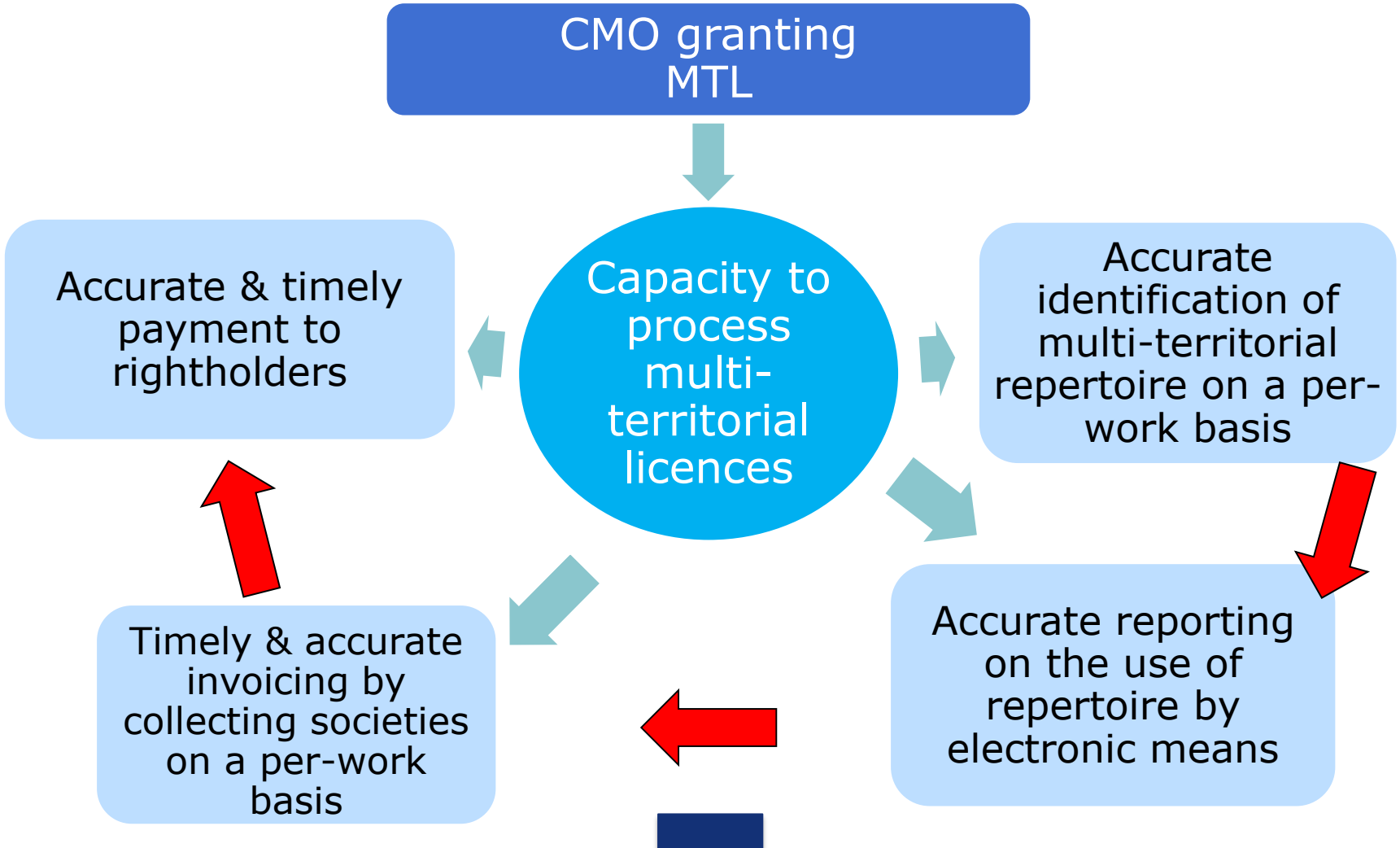
- **Licensing** [Article 16]
  - CMOs and users shall conduct negotiations in good faith
  - Licensing terms shall be based on objective and non-discriminatory criteria.
  - Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to, i.a.:
    - economic value of the use of the rights in trade,
    - the nature and scope of the use of the work and other subject matter,
    - economic value of the service provided by the collective management organisation.
- **User's obligations** [Article 17]
  - provide a CMO with information on agreed format and within agreed time

Governance & Transparency

- **Information and reporting**
  - Information should be provided to [Articles 18-21]:
    - Rightholders on management of their rights
    - Other CMOs under representation agreements
    - Rightholders and other CMOs on request
    - Public

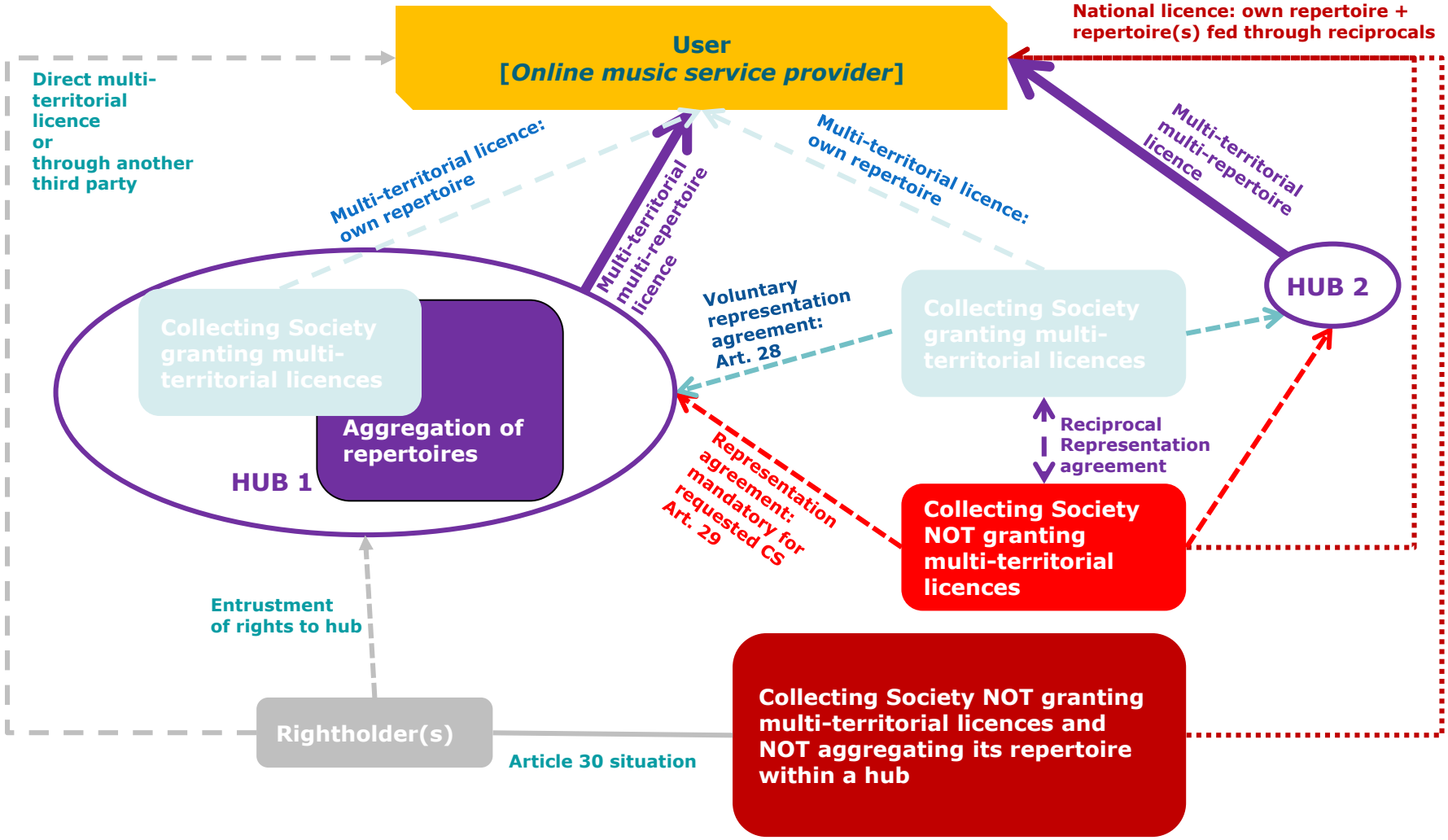
  - Annual transparency report [Article 22 and annex]
    - Includes special report on social, cultural and educational deductions
    - No later than 8 months before following the end of the financial year
    - Made public on the website for at least 5 years

MTL – minimum standards



MTL– aggregation of repertoire (hubs)

- **Voluntary aggregation** [Article 29] – non-exclusive agreements
- **Obligation to represent** another CMO for multi-territorial licensing: if the other CMO does not grant MTL licences and the requested CMO grants such licences and aggregates repertoire (tag-on right) [Article 30]
- Right to rightholders to **withdraw rights** (without rights for mono-territorial licences) if CMO does not grant MTL licences and does not use the tag-on right [Article 31]
- **Derogation** for online music rights required for radio and television programmes simultaneously or after initial broadcast [Article 32]


User
[Online music service provider]
National licence: own repertoire + repertoire(s) fed through reciprocals
Direct multi-territorial licence or through another third party
Multi-territorial licence: own repertoire
Multi-territorial multi-repertoire licence
Multi-territorial licence: own repertoire
Multi-territorial multi-repertoire licence
HUB 2
Collecting Society granting multi-territorial licences
Aggregation of repertoires
HUB 1
Voluntary representation agreement: Art. 28
Collecting Society granting multi-territorial licences
Reciprocal Representation agreement
Representation agreement: mandatory for requested CS Art. 29
Collecting Society NOT granting multi-territorial licences
Entrustment of rights to hub
Rightholder(s)
Article 30 situation
Collecting Society NOT granting multi-territorial licences and NOT aggregating its repertoire within a hub

Enforcement measures	For
Complaints procedure [33] • within CMO, effective, timely • in particular: mandate, withdrawal, membership, collection, deduction, distribution, …+ art.35 (2))	• members • Other CMOs
Alternative Dispute Resolution [34] • rapid, independent, impartial • mandatory for MS if MTL • always optional for the parties	• Disputes between CMOs, members, RHs, users • For MTL: OSP, RHs, CMOs
Dispute resolution [35] • mandatory for MS • licensing condition, breach of contract • Independent and impartial body with expertise in IPR	• Disputes between CMOs and users
Competent supervisory authority [36, 37] • compliance of CMOs established in MS • Procedure of notification of breach of law • Appropriate sanctions, measures • Exchange of information between competent supervisory authorities • Request to take appropriate action (reasoned reply within 3 months)	• MS of establishment • members, RHs, users, CMOs, other interested parties

European Commission

QUESTIONS?

European Commission

Directive 96/9/EC on the legal protection of databases

Directive 96/9/EC on the legal protection of databases

Overview of the Database Directive

- **Chapter 1: the scope of protection** (definition of databases, limitation)
- **Chapter 2: copyright** (object of protection, exclusive rights, exceptions)
- **Chapter 3: *sui generis* right (**object of protection, exclusive rights, lawful users rights and obligations, exceptions)
- **Chapter 4: common provisions** ("without prejudice" clause, remedies, binding nature of certain provisions…)

Scope of protection (definition of databases, limitation)

- **Chapter 1** applies both to the copyrights provisions and the sui generis provisions
- The directive applies to databases **"in any form"** (electronic and non-electronic databases)
- Prerequisite: The Directive applies to databases which are defined as "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means" (art. 1(2))
- Exclusion of computer programs (art. 1(3)).
- The directive is without prejudice to previous directives (art. 2)

Copyright protection (Chapter 2 - for original databases)

The object of protection (art. 3)

Databases which, by reason of the selection or arrangement of their contents, constitute the author's intellectual creation, shall be protected by copyright (see Football Data Co).

The copyright protection of databases (structure) does not extend to its contents

Authorship (art. 4)

Author of a database : the natural person, or group of natural persones (joint authorship), who created it

MS allowed to grant the authorship to legal persons if in national law

Copyright protection (Chapter 2 - for original databases)

Authors have the following **exclusive rights** (art. 5):

- Reproduction
- Translation, adaption, arrangement
- Distribution
- Communication, display, or performance to the public

Copyright protection (Chapter 2 - for original databases)

Exceptions to the exclusive rights:

One mandatory exception for acts of a lawful user necessary for the purposes of access and normal use of the contents of a copyright protected database → to be read with art. 15 stating the **prohibition of contractual override**.

And **three optional exceptions**:

- Reproduction for private purposes (non-electronic)
- Illustration for teaching or scientific research
- Public security or administrative or judicial procedure

Reference to the **three-step test**

Sui generis protection (chapter 3 - for non-original databases)

Sui generis right for a **database maker** who has (art. 7(1)):

- made, qualitatively or quantitatively, a **substantial investment** in **obtaining, verifying or presenting** the contents of a database (art. 7) → protection of investment ≠ copyright

Nature of the investment (regularly confirmed by the CJUE): quantitative (financial, material) or/and qualitative (human).

Key distinction between obtaining and creation of data (CJUE 2004)

Sui generis protection (chapter 3 - for non-original databases)

Exclusive rights of **extraction** (akin to reproduction) **and re-utilization** (akin to making available) **on the whole or substantial part** of the content of the database (may be transfered, assigned or granted under contractual licence – art. 7(3))

Repeated and systematic extraction and/or re-utilization of **insubstantial parts** of the content of the database: **prohibited** (art. 7(5))

The *sui generis* protection applies irrespectively of the eligibility of a database for copyright protection or other rights (art. 7(4)).

Sui generis protection (chapter 3 - for non-original databases)

Lawful user's rights and obligations (art. 8)

- lawful users may extract and re-utilize insubstantial parts of the content of a database → to be read with art. 15 stating the prohibition of contractual override.

- lawful users may not cause prejudice to the database maker

Sui generis protection (chapter 3 - for non-original databases)

Exceptions (art. 9 - similar to the copyright ones)

- Extraction for private purposes (non-electronic)
- Extraction for the purposes of illustration for teaching or scientific research
- Extraction and/or re-utilization for purposes of public security or administrative or judicial procedure

Sui generis protection (chapter 3 - for non-original databases)

Term of protection (art. 10): 15 years (may be prolonged after substantial change)

Beneficiaries (art. 11): nationals or residents of MS and companies ; possibility of extension of the rights to third parties (Council decision)

Common provisions (chapter 4)

Remedies (art. 12): obligation for MS to provide appropriate remedies in case of infringements of the database rights

"Without prejudice" clause (art. 13)

Application in time (art. 14)

Binding nature of certain provisions (art 15): art.6(1) and 8

Others (art. 16 and 17) – deadline for implementation, communication to the EC, report on the application of the directive

European Commission

QUESTIONS?

European Commission

Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses 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 and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

European Commission

Objective of Marrakesh Directive and Regulation

Implementation of the Marrakesh Treaty in EU law:

- **Directive – Implementation in the internal market**
- **Regulation – Relations with other parties to the treaty**

Exclusive competence of the EU: ECJ Opinion 3/15 of 14 February 2017

Objective of the Marrakesh Treaty: Facilitating the availability and cross-border exchange of books and other print material in formats that are accessible to persons who are blind, visually impaired or otherwise print disabled

The instruments

Directive(EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses 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 and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

- **Published in the Official Journal on 20 September 2017**
- **Deadline for transposition: 11 October 2018**

The instruments

Regulation (EU) 2017/1563of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies 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

- **Published in the Official Journal on 20 September 2017**
- **Directly applicable in all MS as of 12 October 2018 (Art. 8)**

The instruments

Regulation (EU) 2017/1563

The Regulation provides for a **copyright exception** that permits the **cross-border exchange of accessible format copies** of certain works and subject matter that are ordinarily protected by copyright and related rights, **for the benefit of persons who are blind, visually impaired or otherwise print-disabled**.

The regulation will permit the **cross-border exchange** of copies made under the exception **between the EU and third countries that are parties to the Treaty.**

Directive – Scope of application of the exception (art. 1 and 2)

Works or other subject matter covered

All types of works coming in the form of text and related illustrations

Other subject matter – refers e.g. to audiobooks, phonograms

Protected by copyright or related rights and

Published or otherwise lawfully made publicly available

Directive – Scope of application of the exception (art. 1 and 2)

Beneficiary persons – types of disabilities / impairments

MT

- Those related to blindness
- Those related to visual impairment or perceptual or reading disabilities other than visual or physical
- Those that are related to physical disabilities

Directive

- Those related to blindness
- Visual impairment
- Perceptual or reading disabilities
- Those that are related to physical disabilities

2nd category divided in 2 categories: to ensure clarity – no intention to expand or restrict the categories of beneficiaries

Directive – Scope of application of the exception (art. 1 and 2)

Accessible format copies

Definition aligned with the one of MT

The accessible format copy needs to be interpreted relative to the beneficiaries' specific disability/impairment and its severity

What is accessible for one may not be accessible for others

Second part of accessible format copy definition in MT (concerning exclusive use by beneficiaries and integrity of the works) covered by Article 3(a) and Article 3(b) of the Directive

Directive – Scope of application of the exception (art. 1 and 2)

Authorised entities (AE)

Organisations that are authorised or recognised by the government to provide certain services to beneficiary persons on a non-for-profit basis

- **Simple financial support from Government: Ok**
- **Also governmental institutions**

Public institution or non-profit organisation that provide the same services to beneficiary persons as one of its:

- **primary activities,**
- **institutional obligations or**
- **as part of its public-interest missions**

General forms of recognition are possible as long as they do not require ex-ante authorisation and give public authorities the possibility to exclude any of the organisations falling into the definition of the MT/Directive (Recital 13)

European Commission

Directive – Exception

Article 3(1) – Permitted uses

Introduces an **exceptio**n to copyright and certain related rights

- **Articles 2, 3 and 4 of Directive 2001/29/EC**
- **Articles 5 and 7 of Directive 96/9/EC**
- **Article 1(1), Article 8(2) and (3), Article 9 of Directive 2006/115/EC**
- **Article 4 of Directive 2009/24/EC**

The exception has a **cross-border effect within the internal market**

Allows acts necessary for:

A beneficiary person, or a person acting on their behalf	to make an accessible format copy of a work or other subject matter to which the beneficiary person has lawful access for the exclusive use of the beneficiary person
An authorised entity	to make an accessible format copy of a work or other subject matter to which it has lawful access, or to communicate, make available, distribute or lend an accessible format copy to a beneficiary person or another authorised entity on a non-profit basis for the purpose of exclusive use by a beneficiary person

Directive – Exception

Article 3(2) and (3)– Integrity and three-step test

Integrity

Each accessible format copy should respect the integrity of the work of other subject matter, with due consideration given to the changes required to make the work accessible in an alternative format

Three-step test

Paragraph 3 states that the three-step test applies to the exception laid down in Article 3(1)

> Already in COM proposal, spelled out in the final text of the Directive

Directive – Exception

Article 3(4) and (5) – TPMs and contractual override

TPMs

Relevant articles on TPM apply with the exception of Article 6(4)(4)

Contractual override

The exception cannot be overridden by contract

Addition requested by the EP, consistent with COM approach to mandatory exceptions

European Commission

Directive – Exception

Article 3(6) – Compensation

Article 3(6) leaves the possibility for MS to provide that the uses permitted under this Directive, if undertaken by AE in their territory, are subject to compensation schemes within the limits provided for in this Directive

Limited possibility according to Recital 14

Conditions of application of the compensation

Limited to uses by AE, not uses by beneficiary persons

In the territory of the MS that provides for compensation
> Place of establishment of AE where the compensation scheme applies
> Does not apply to AE established in other territories or in third countries

Member States should ensure that there are no more burdensome requirements for the cross-border exchange of accessible format copies under such compensation schemes than for non-cross border situations, including with regard to the form and possible level of such compensation.

Directive – Exception

Article 3(6) – Compensation

Level of compensation – Criteria (Recital 14)

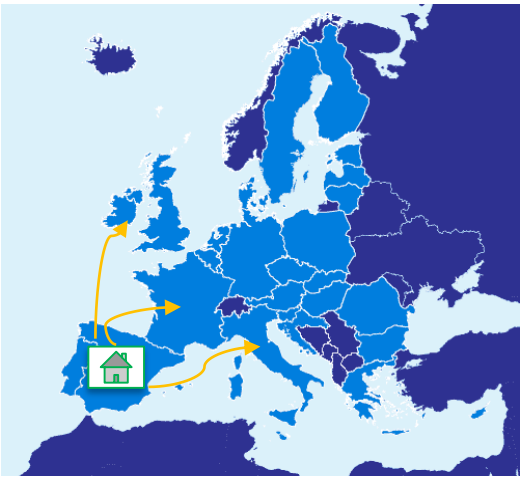
- Non-for-profit nature of the activities of AE
- Public-interest objectives pursued by Directive
- Interests of the beneficiaries of the exception
- Possible harm to right holders - Where the harm is minimal, no obligation of payment should arise.
- Need to ensure cross-border dissemination of accessible format copy

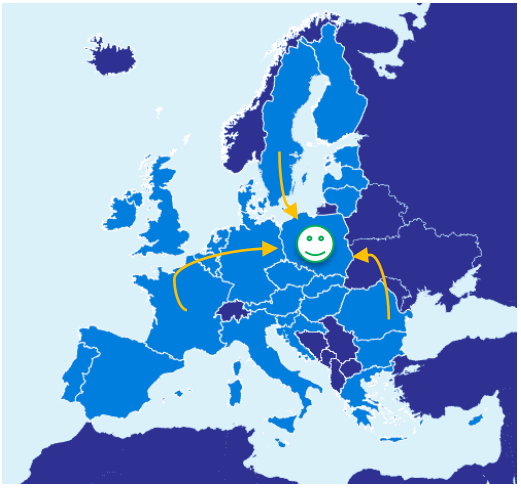
No possibility to impose additional conditions such as commercial availability tests

Directive – Cross-border uses

Article 4 – Accessible Format Copies in the internal market

An authorised entity (AE) can make and distribute an accessible format copy for / to a beneficiary person or another AE established in any MS.





A beneficiary person or a AE established in one MS may obtain or have access to an accessible format copy from an AE established in any MS.

European Commission

Directive – Obligations of AE

Article 5

This article was originally in COM's regulation proposal and was replicated in the Directive to cover AE which are active in the internal market as well

Obligations of AE	Additional obligations, upon request by either a beneficiary person or a right holder
1. Only disseminate copies to beneficiary persons and authorised entities as defined in the Directive 2. Take appropriate steps to discourage the unlawful reproduction, distribution, communication to the public or making available of accessible format copies 3. Handle works and accessible format copies with due care and to maintain records of its handling of works and accessible format copies 4. Publish and update information on the manner in which it complies with the above obligations	AE should provide: - Information on the list of works of which it has accessible format copies and the available formats - Name and details of authorised entities with whom it has exchanged copies.

Directive – Transparency

Article 6 – Transparency and exchange of information

Authorised entities (AE) should be encouraged to communicate on a voluntary basis their name and contact details to MS

There is no obligation for MS to check the completeness and the accuracy of the information

MS should provide info to COM which will make such information available online on a central information access point and keep it up to date

The COM central point should be complementary to the central point established by WIPO

European Commission

Directive – Personal data

Article 7 – Protection of personal data

Article 7 establishes that the processing of personal data shall be carried out in compliance with the EU's data protection directive

- **Directive 95/46/EC - now GDPR - Regulation no. 2016/679/EU**
- **Directive 2002/58/EC - Directive on privacy and electronic communications**

It covers personal data processing that may be carried out, for example, by authorised entities (AE) when recording the names and contact details of beneficiary persons to whom they have lent an accessible format copy

It does not imply that any personal data processing will have to be carried out under this Directive

Article 5(1) also specifies that the carrying out of obligations should respect personal data, in particular those of beneficiary persons

Directive – Infosoc Directive

Article 8 – Amendment to Directive 2001/29/EC

This Article ensures consistency between the Marrakesh Directive and the relevant provision of the Infosoc Directive (Article 5(3)(b) of Directive 2001/29/EC)

MS are therefore free to introduce exceptions and limitations for other types of disabilities than the ones covered by the Marrakesh Directive

Directive – Report and Review

Article 9 – Report

This article refers to the need for the EU to consider:

- ***The situation of accessibility to other works than those covered by the MT by people with the disabilities covered under this Directive (e.g. audiovisual works)***
- **The situation of accessibility to works and other subject matter in general for people with disabilities other than those covered by this Directive (e.g. people with hearing disabilities)**

And to consider whether the scope of this Directive, which implements the MT, should not be expanded

Article 10 – Review

COM shall carry out a review of the Directive and submit a report by 11 October 2023

- ***Should include an assessment of the remuneration schemes, on the availability of accessible format copies for beneficiary persons on and on their cross-border exchange***
- ***And take into account the views of the relevant civil society actors and of non-governmental organisations***

Directive – Final articles

Article 11 – Transposition

Article 12 – Entry into force

Article 13 - Addressees

European Commission

QUESTIONS?

European Commission

Directive 2012/28/EU on certain permitted uses of orphan works

Main features

- Main objective: digitisation of orphan works for public interest purposes, i.e. **works or phonograms in which none of the rightholders is identified or located despite a diligent search** (not possible to obtain a prior consent)
- **New exception** to the making available and reproduction rights based on 'diligent search'
- Collaboration with the EUIPO on the establishment of an **online register** for orphan works

Subject matter and scope

- **Beneficiaries**:
  - publicly accessible libraries, educational establishments and museums
  - archives, film or audio heritage institutions
  - public-service broadcasting organisations

Subject matter and scope

Works covered:

- literary works (works published in the form of books, journals, newspapers, magazines or other writings) contained in the collections of beneficiaries
- cinematographic and audiovisual works and phonograms contained in the collections of beneficiaries
- cinematographic and audiovisual works and phonograms produced by public-service broadcasting organisations (31.12.2002) and contained in their archives

First published or broadcast in a MS

Subject matter and scope

Works covered:

- including works and phonograms which have never been published or broadcast but which have been made publicly accessible with the consent of the rightholders, provided that it is reasonable to assume that the rightholders would not oppose the uses (possible cut-off date).

Excluded: photographs (unless embedded)

Orphan works status

- Still protected by copyright
- A work or phonogram shall be considered orphan if no right holder has been identified or located following a diligent search.
- Partial orphan works - one or more rightholders have been identified and located. The work can be used under the Directive if those rightholders agree.

Diligent search

- **Who?** The beneficiary organisations defined in Article 1.
- **How?** In 'good faith' by consulting the 'appropriate' sources: at least the ones listed in Annex, prior to the use.
- **Where?** In the Member States:
  - of first publication, or
  - of first broadcast, or
  - headquaters or habitual residence of the producer.
- If evidence to suggest that relevant information on RH is to be found in other countries, sources of information available in those other countries shall also be consulted.
- Obligation to save the research and forward the result to the competent national authority.

Mutual recognition

- A work or phonogram that is considered an orphan work following a diligent search in one Member State shall be considered an orphan work in all Member States.

- It can be used and accessed in all MS.

End of Orphan works status

- MSs have to ensure that a RH has a possibility to put an end to the orphan works statut concerning his rights.

- Fair compensation for eventual use made prior to the end to the orphan works status.

Exception

- **Permitted uses:**
  - Reproduction for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration
  - Making available to the public
- indicate the name of identified authors and other rightholders in any use of an orphan work.

- Beneficiaries may generate revenues for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public

EUIPO online portal

- Information provided by beneficiaries forwarded to the EUIPO by competent national authorities:
  - The results of diligent search
  - The use of orphan work
  - Any change to the orphan works status
  - Contact information to the beneficiary
- Important role in preventing and bringing to an end possible copyright infringements.
- https://euipo.europa.eu/orphanworks/

European Commission

QUESTIONS?

European Commission

Directive 2009/24/EC on the legal protection of computer programs

Object of protection (art. 1)

- Obligation on MS to protect computer programs by copyright as literary works within the meaning of the Berne Convention.
- No definition of a computer programme in the Directive.
- However: shall include their preparatory design material (confirmed by CJUE).
- The protection applies to the expression in any form of a computer program.
- Ideas and principles that underlie any element of a computer program (including interfaces) are not protected.
- Originality criterion: the computer program must be the author's own intellectual creation (CJUE)

Authorship (art. 2)

- General principle: the author shall be the natural person – the human being – that has created the program
- But flexibility given to MS to deviate from this principle in their national law: the legal person – such as a company – can be designated as author
- MS may also apply their national rules on collective works to computer programs
- The author of the computer program is the initial owner of copyright – the case of joint authorship
- The particular case of computer programs created by employees

Author's exclusive rights (art.4)

- Acts involving the permanent or temporary reproduction of a computer program, such as loading, displaying, running, transmission or storage
- Translation, adaptation, arrangement and any other alteration
- Any form of distribution to the public, including the rental, or the original program or copies – lending not covered (recital 12)

Exhaustion of rights (art. 4(2))

- The sale (by right holder or with his consent) of a copy of a computer program exhausts the distribution right in that copy: the rightholder won't have anymore the possbility to oppose to further distribution of that copy

- Exception: the rightholder is able to oppose to the rental of any distributed copy (no exhaustion for rental)

Exceptions to the exclusive rights (art. 5)

- Act necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose

- The making of a back-up copy - if right to use the program. No contractual override (see art. 8)

- A person having a right to use a copy may "observe, study or test the functioning of the program in order to determine the ideas and principles… if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program..." (see also CJUE) - No contractual override (see art. 8)

The exception for decompilation (art. 6)

- Decompilation: "reproduction of the code and translation of its form" … indispensable … to achieve interoperability" with other computer programs.
- A list of conditions apply to decompilation.
- Reference to the three-step test
- No contractual override (art. 8)

Special measures of protection (art. 7)

- Obligation for MS to provide appropriate remedies against a person committing specific acts (putting in circulation, possession of copies for commercial purposes, circumvention of technical measures)

- MS to provide for seizure of infringing copies of computer programs

Other provisions

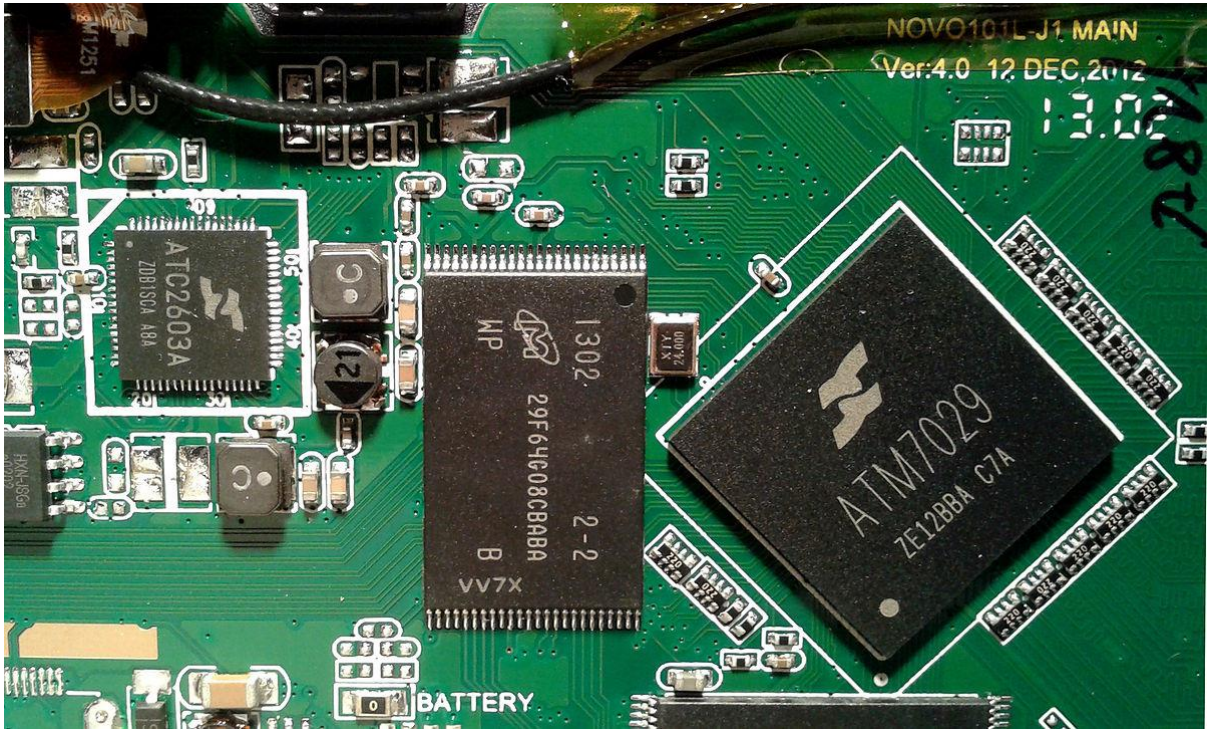
- "Without prejudice clause": art 8
- Prohibition of contractual override for art. 6 (decompilation), art. 5(2) (back-up copy), and art. 5(3) (observing, studying, testing the functioning of the program).
- Communication to the EC (art. 9)
- Repeal of Directive 91/250/EEC as amended by the Term directive (art. 10)

European Commission

QUESTIONS?

European Commission

Directive 87/54/EC on the legal protection of topographies of semiconductor



https://en.wikipedia.org/wiki/Actions_Semiconductor#/media/File:Actions_Semiconductor_ATM7029_chipset.jpg

Definitions

Semiconductor product:

The final or an intermediate form of any product:

- consisting of a body of material which includes a layer of semiconducting material, and
- having one or more other layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a predetermined three-dimensional pattern, and
- intended to perform, exclusively or together with other functions, an electronic function

Definitions

Topography of a semiconductor product:

A series of related images, however fixed or encoded:

- representing the three-dimensional pattern of the layers of which a semiconductor product is composed, and
- in which series, each image has the pattern or part of the pattern of a surface of the semiconductor product at any stage of its manufacture

Object of protection

- Topographies are protected by exclusive rights if:
  - **they are result of their creator's own intellectual effort and**
  - **are not commonplace in the semiconductor industry** (if yes, only to the extent that the combination of such elements, taken as a whole, fulfils these conditions)
- Not protected: concepts, process, system, technique or encoded information embodied in the topography other than the topography itself

Authorship and beneficiaries of protection

- Protection is granted to the creator, subject to that person being a natural person who is a national of a Member State or has habitual residence there.

- Member States might grant a protection to creator's employer.

- Under certain conditions, protection is also granted to natural persons, companies or other legal persons who first commercially exploit a topography:
  - which has not previously been exploited commercially and;
  - who have been exclusively authorised to commercially exploit the topography throughout the Community by person entitled to dispose of it.

Duration of rights

Start of the exclusive rights

- If registration is a condition for protection:
  - when the **application for registration is filed** or
  - when the topography is **first commercially exploited** anywhere in the world, whichever comes first.
- If registration is not a condition for protection:
  - when the topography is **first commercially exploited** anywhere in the world or when it is first fixed or encoded.

End of the exclusive rights

- If registration required – 10 year after the end of the calendar year in which the application for registration was filed or from the end of the calendar year in which the topography was first commercially exploited, whichever comes first.
- 10 years from the end of the calendar year in which the topography was first commercially exploited.

Exclusive rights and exceptions

- Right to authorise or prohibit **reproduction** of a protected topography and **commercial exploitation or the importation for that purpose** of a topography or of a semiconductor product manufactured using the topography.

Reproduction right does not apply to:

- reproduction for the purpose of **analysing, evaluating or teaching the concepts, processes, systems or techniques embodied** in the topography or the topography itself.

European Commission

QUESTIONS?