

DSM Directive Survey

Questions for Performers

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

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

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

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

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

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

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

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

Q43. Do you consider that some of your works are out of commerce?

Instructions: Please select one option.

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

Q44. Are you aware of agreements concluded since 2019 between a CHI and a relevant collective management organisation for the use of out-of-commerce works?

Instructions: Please select one option.

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

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

Instructions: Please select one option.

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

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

Instructions: Please select one option.

1. Yes, once
2. Yes, several times
3. No
4. I don't know

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

Instructions: Please select all that apply.

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

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

Instructions: Please select all that apply.

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

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

Instructions: Please select all that apply.

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

Section 2.4: Contractual fairness & remuneration

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

Section 2.4.2: Contractual fairness and remuneration for authors and performers

Q94. What parties do you usually sign contracts with (transfer or license your rights to)?

Instructions: Please select all that apply.

1. Producers
2. Publishers
3. Broadcasters
4. Online services
5. Other

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

Instructions: Select all that apply.

1. My EU Member State law
2. The EU Member State law of my contractual counter-party
3. Another EU MS law (please specify)
4. Another non-EU law (please specify)
5. I don't know

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

OPEN QUESTION

Q96. Are you a member of a Collective Management Organisation (CMO)?

Instructions: Please select one option.

1. Yes

2. No

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

Instructions: Select all that apply.

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

Grid question with the following answer options:

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

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

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

Instructions: Please select one option.

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

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

OPEN QUESTION

Q104. Are you part of or covered by any CBA?

Instructions: Please select one option.

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

Q104_1 [If Q104=1] How has your remuneration been affected by any CBAs in your sector / industry in the last 5 years?

Instructions: Please select one option.

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

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

OPEN QUESTION

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

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

Instructions: Please select one option.

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

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

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

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

1. Scale 1–5

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

OPEN QUESTION

Q115. What type of information do you usually receive?

Instructions: Please select all that apply.

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

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

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

1. Slider: 1 2 3 4 5

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

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

Instructions: Please select one option.

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

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

Instructions: Please select one option.

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

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

OPEN QUESTION

Q119_3 [If Q119_1=1] When you have invoked the contract adjustment mechanism, please tell us whether you were successful?

Instructions: Please select one option.

1. Successful in adjusting remuneration
2. Unsuccessful in adjusting remuneration

Q119_6 [If Q119_1=1] How would you evaluate the contract adjustment process?

Instructions: Please select one option.

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

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

OPEN QUESTION

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

Instructions: Please select one option.

1. Representative organisations are always involved

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

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

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

Instructions: Please select all that apply.

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

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

OPEN QUESTION

Q121_2 [If Q121=1,2] Were you assisted by an organisation representing authors & performers?

Instructions: Please select one option.

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

Q121_3 [If Q121=1,2] Was the outcome of the process successful?

Instructions: Please select one option.

1. Successful
2. Unsuccessful

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

Instructions: Please select one option.

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

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

Instructions: Please select all that apply.

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

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

OPEN QUESTION

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

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

Instructions: Please select one option.

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

Q122_1 [If Q122=1] Was the revocation successful?

Instructions: Please select one option.

1. Successful
2. Unsuccessful

Q122_4 [If Q122=Yes] Overall, how would you evaluate the revocation process?

Instructions: Please select one option.

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

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

OPEN QUESTION

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

OPEN QUESTION

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

Instructions: Please select all that apply.

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

Q125_1 [If Q125=1,2,3,4] Did you have to go to court outside the EU?

Instructions: Please select one option.

1. Yes
2. No

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

OPEN QUESTION

Q125_3 [If Q125=1,2,3,4] Was the outcome of the court litigation that you have resorted to successful?

Grid question with answer labels inherited from Q125 answer.

1. Successful
2. Unsuccessful

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

Instructions: Please select one option.

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