

DSM Directive Survey

Questions for Phonogram Producers

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

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

OPEN QUESTION

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

- a) the relevance and usability of the mechanism
 - b) effective safeguards for rightholders
1. To a great extent
 2. To some extent
 3. To a little extent
 4. Not at all
 5. I don't know

Grid question with the following answer options:

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

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

Instructions: Please select one option.

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

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

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

Grid question with the following answer options:

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

OPEN QUESTION

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

OPEN QUESTION

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

OPEN QUESTION

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

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

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

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

Instructions: Please select one option.

1. Very positive
2. Somewhat positive
3. No material impact
4. Somewhat negative

5. Very negative
6. I don't know

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

OPEN QUESTION

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

Instructions: Please select all that apply.

1. Single Member State
2. Several EU Member States
3. EU-wide
4. Global
5. Not sure / cannot answer

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

Instructions: Please select all that apply.

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

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

Instructions: Please select one option.

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

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

Instructions: Please select one option.

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

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

Instructions: please assess the reporting overall.

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

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

OPEN QUESTION

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

OPEN QUESTION

Section 2.4: Contractual fairness & remuneration

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

Section 2.4.2: Contractual fairness and remuneration for authors and performers

Q101. Have your practices around remuneration of authors and performers changed since 2019?

Instructions: Please select all applicable options.

1. Yes, due to new rules introduced due to the DSM
2. Yes, due to other factors
3. No
4. I don't know

Q101_1 [If Q101=1,2] Please explain the role of the Directive and / or external factors in these changes.

OPEN QUESTION

Q102. How often do you use the following methods in your industry for remunerating authors and performers for their creative works and performances?

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

Q103. How have your practices on remunerating authors and performers 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. We don't use lump-sum payments

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_3 [If Q104=Yes] How have CBAs impacted remuneration practices?

OPEN QUESTION

Q104_4 [If Q104=Yes] Have CBAs improved transparency on the exploitation of works and performances?

Instructions: Please select one option.

1. Significantly improved it
2. Somewhat improved it
3. No change
4. Somewhat deteriorated it
5. Significantly deteriorated it
6. I don't know

Q105. Has Article 18 led to an increase in CBAs or collectively managed remuneration in your sector / industry?

Instructions: Please select all that apply.

1. Yes, an increase in CBAs
2. Yes, an increase in collectively managed remuneration
3. No
4. I don't know

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).

Q108. Do you provide additional information relating to the exploitation of works or performances to authors and performers since the implementation of the Directive compared to before?

- a) Information on the different modes of exploitation of work or performance (for example: broadcasting, online streaming, sub-licensing)
 - b) Frequency of use of the work or performance through different modes of exploitation (for example streaming numbers)
 - c) Information on the revenue generated by each mode of exploitation
 - d) Information on the revenue generated overall
 - e) Information on remuneration due
 - f) Other information
1. We don't provide this information
 2. We started providing this information after the introduction of the Directive
 3. We already provided this information before the introduction of the Directive

Grid question with the following answer options:

Q109. How often do you provide information on the exploitation of works or performances to authors and performers who have transferred their rights or licensed their works to you for exploitation?

Instructions: Please select one option.

1. I provide information more than once a year
2. I provide information at least once a year
3. I provide information less frequently than once a year
4. I only provide information on request
5. Never
6. I don't know

Q110. Are there instances where the information on exploitation you provide is more limited?

Instructions: Please select all that apply.

1. Yes, due to administrative burdens
2. Yes, due to legal limitations
3. No
4. I don't know

(if respondents select 1 or 2, a pop-up box will appear)

Q110_1 [If Q110=1,2] Please elaborate on the reasons why you were not able to provide the information and how often such situations arise.

OPEN QUESTION

Q111. Are there any applications or other technologies you use to report and provide transparency information to authors and performers?

Instructions: Please select one option.

1. Yes: please specify which applications or technologies
2. No
3. I don't know

Q112. How costly is the process of providing additional transparency when compared to your usual administrative costs?

Instructions: Please select one option.

1. Extremely costly
2. Quite costly
3. Not very costly
4. Not at all costly
5. Insignificant
6. I don't know

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.

Q120. Have you received any claims for additional remuneration from authors and performers (or their representatives) invoking the Directive's Article 20 contract adjustment mechanism?

Instructions: Please select one option.

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

Q120_1 [If Q120=1] How have these claims for additional remuneration from authors been addressed?

OPEN QUESTION

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_4 [If Q121=1,2] How many times were you involved in ADR proceedings?

Open numeric

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.

Q123. Have you received any requests for revocation of licences for lack of exploitation from authors and performers (or their representatives), invoking the DSM Article 22?

Instructions: Please select one option.

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

Q123_1 [If Q123=1] How have these claims for revocation been addressed?

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

Section 2.5: Other impacts

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

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

OPEN QUESTION

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

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

Instructions: Please select one option.

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

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

OPEN QUESTION

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

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

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

1. Slider: 1 2 3 4 5

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

OPEN QUESTION

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

Instructions: Please select one option.

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

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

OPEN QUESTION