

Exceptions for Cultural Heritage Institutions under the Copyright Directive in the Digital Single Market

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CULTURAL HERITAGE INSTITUTION – Article 2 o the „DSM“

publicly accessible library or museum, an archive or a film or audio heritage institution;

- CHI can be simultaneously school, research institution or serve other public role

Interpretation:

- Cultural heritage institutions should be understood as covering publicly accessible libraries and museums regardless of the type of works or other subject matter that they hold in their permanent collections, as well as archives, film or audio heritage institutions.
- They should also be understood to include, inter alia, national libraries and national archives, and, as far as their archives and publicly accessible libraries are concerned, educational establishments, research organisations and public sector broadcasting organisations.

Backup copy exception

Article 6 – DSM Directive

Article 6 - Preservation of cultural heritage

- cultural heritage institutions will be able to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation.

ANALYSIS

Cultural heritage institution

- Publicly accessible
- Defined by the purpose
- Defined by (or in accordance with) the law of the member state

Works and other subject matter

- Works
- Databases
- Computer programmes
- Phonograms
- Records
- Broadcasts
- News ...

Permanent collection

- considered to be permanently in the collection of a cultural heritage institution when copies of such works or other subject matter are owned or permanently held by that institution,
- for example as a result of a transfer of ownership or a licence agreement, legal deposit obligations or permanent custody arrangements.

PRACTICAL IMPACT



CHI can use subcontractors

And does not have to do it all alone



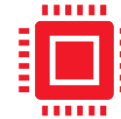
Cross-border digitization

Without the need to compare copyright regimes in both countries



Possibility to convert between formats

(analog, digital) without violating copyright



Applicable also to less conventional content

Databases
Software
Broadcasting



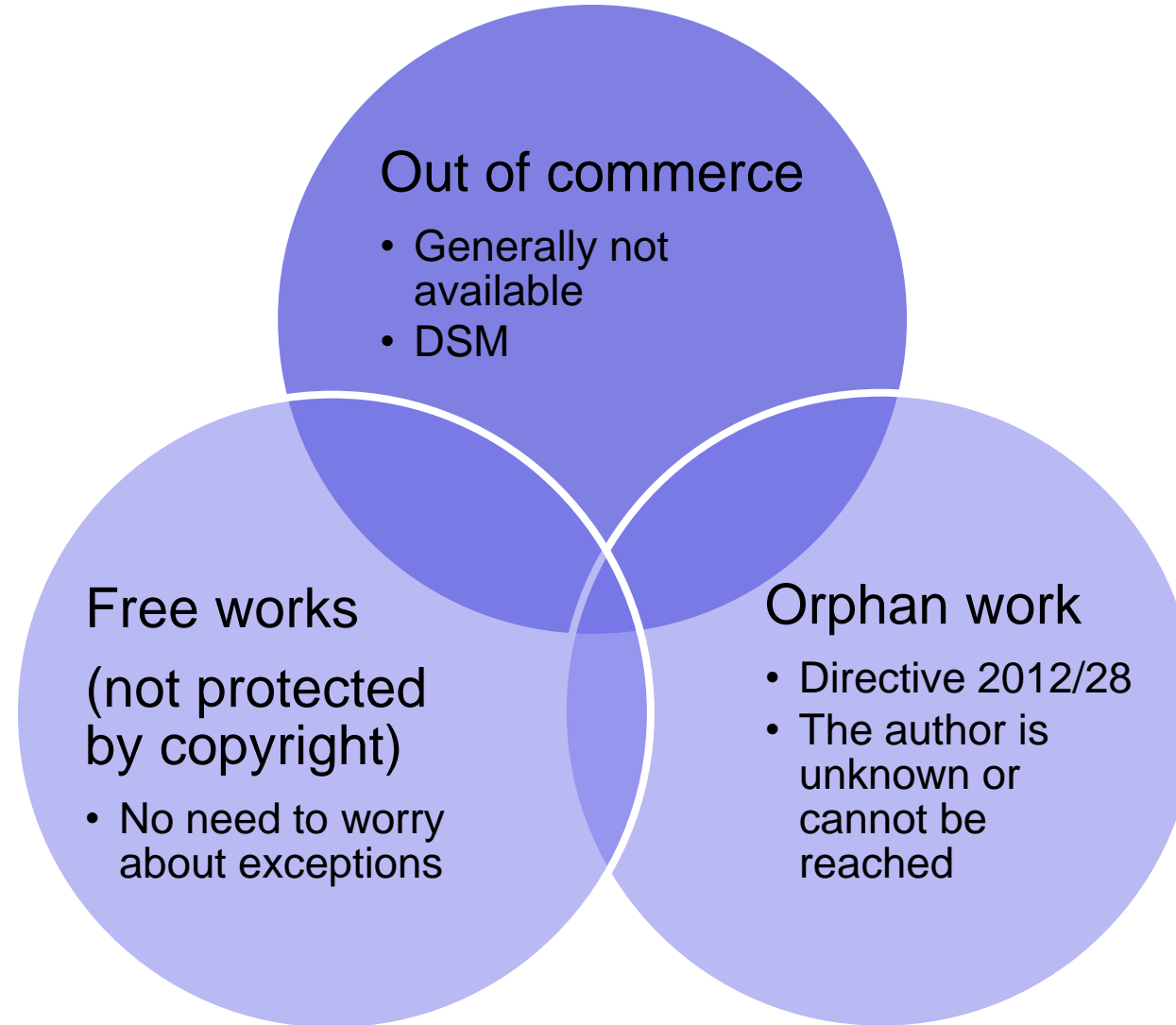
Cannot be restricted by contracts

Can be relied upon even if the license agreement says otherwise

**MEASURES TO IMPROVE LICENSING
PRACTICES AND ENSURE WIDER
ACCESS TO CONTENT**

Objective

- a clear framework for the digitisation and dissemination, including across borders, of works or other subject matter that are considered to be out of commerce



Out of commerce wors

- sufficiently representative collective management organisation
existis
 - CHI concludes a contract and pays the fees
- sufficiently representative collective management organisation
does not exist
 - Mere dedication to the author
 - Non-commercial use only

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GREY LITERATURE

Grey literature



Can be cultural heritage

This term is nowadays defined broadly



DSM exceptions apply to databases, documents and software

(37) | Considering the variety of works and other subject matter in the collections of CHIs, exceptions can be used for different types of works **and other subject matter**, including photographs, software, phonograms, audiovisual works and unique works of art, including where they have never been commercially available.



DSM covers also subject matter that was never available at the market

(37) Never-in-commerce works can include posters, leaflets, trench journals or amateur audiovisual works, but also unpublished works or other subject matter, without prejudice to other applicable legal constraints, such as national rules on moral rights.

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Thank you for your attention!

Czech Scientific Foudnation – Project GA17-22474S

**Adapting Exceptions and Limitations to Copyright, Neighbouring Rights
and Sui Generis Database Rights to Digital Network Environment**

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