

ACT No. _____ of 2020

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:

1. The short title of this Act is the Copyright Act (Amendment) Act;

PART I

Amendments to the Copyright Act

2. This Part amends the Copyright Act and it shall be read and construed as one with the Copyright Act, hereinafter referred to as the "Principal Act"

3. Article 2 of the Principal Act shall be amended as follows:

(a) Immediately after the definition "copyright", there shall be added the following new definition:

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

(b) Immediately after the definition "distribution", there shall be added the following new definition:

"'educational establishment' means a college, school or university in terms of Chapter 327 of the Laws of Malta;"

(c) Immediately after the definition "fixation", there shall be added the following new definition:

"'information society service' means any service which is provided at a distance, by electronic means and at the individual request of a recipient of the service, whether such service is provided for consideration or not, and for the purposes of this definition:

- (a) "at a distance" means that the service is provided without the parties being simultaneously present;
- (b) "by electronic means" means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by any electromagnetic means;

(c) "at the individual request of a recipient of the service" means that the service is provided through the transmission of data on individual request;"

(d) Immediately after the definition "musical work", there shall be added the following new definition:

"'online content-sharing service provider' means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject-matter uploaded by its users, which it organises and promotes for profit-making purposes.

Providers of services, such as not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, providers of electronic communications services as defined in Directive (EU) 2018/1972, online marketplaces, business-to-business cloud services and cloud services that allow users to upload content for their own use, are not 'online content-sharing service providers' within the meaning of this Act;"

(e) Immediately after the definition "prescribed", there shall be added the following new definition:

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

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

Periodicals that are published for scientific or academic purposes, such as scientific journals, are not press publications for the purposes of this Act;"

(f) Immediately after the definition "reproduction", there shall be added the following new definition:

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

(a) on a not-for-profit basis or by reinvesting all the profits in its scientific research; or

(b) pursuant to a public interest mission recognised by a Member State;

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

(g) Immediately after the definition “technological measures”, there shall be added the following new definition:

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

4. Article 3 of the Principal Act shall be amended as follows:

(a) In sub-article (2), immediately after the words “has an original character” there shall be added the words “in the sense that it is the author’s own intellectual creation”;

(b) Immediately after sub-article In sub-article (4), there shall be added the following new sub-article:

“(5) When the term of protection for an artistic work of visual art has expired in terms of this Act any material resulting from an act of reproduction of that work shall not be eligible for copyright or neighbouring rights, unless the material resulting from that act of reproduction is itself sufficiently original in terms of Article 3(2) hereof.”

5. In sub-article (5) of article 7 of the Principal Act the words “Malta Arbitration Centre” shall be replaced with the words “Malta Mediation Centre”;

6. Article 9 of the Principal Act shall be amended as follows:

(a) In sub-article (1), the word “muscial” shall be replaced with the word “musical”;

- (b) In sub-article (1), paragraph (c) the word “commerical” shall be replaced with the word “commercial”;
- (c) In sub-article (1), paragraph (d) immediately after the words “commercial advantage” there shall be added the words “provided that the rightholders receive fair compensation, without prejudice to the exceptions provided in Article 9(3) to (6) of this Act”
- (d) In sub-article (1), paragraph (h) immediately after the words “the non-commercial purpose to be achieved” there shall be added the words “provided that the rightholders receive fair compensation, without prejudice to the exceptions provided in Article 9(3) to (6) of this Act”

- (e) Immediately after sub-article (2)(c), there shall be added the following new sub-articles:

“(d) acts of reproduction, adaptation and making available to the public of lawfully accessible computer programs for the purposes of text and data mining:

Provided that a copy of a computer program made pursuant to the preceding paragraph may be retained for as long as is necessary for the purposes of text and data mining:

Provided further that the use of computer programs referred to above may be expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.”

(e) acts of reproduction, adaptation and distribution for the digital use of a computer program for the sole purpose of illustration for teaching, to the extent justified by the non commercial purpose to be achieved, provided that such use:

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

- ii) is accompanied by the indication of the source, including the author’s name, unless this turns out to be impossible.

Provided that the rightholder of such a computer program shall be entitled to fair compensation for such use:

Provided further that with regards to computer programs which are intended primarily for the educational market, the educational establishment shall obtain the appropriate licences, if these are available:

Provided further that the distribution of computer programs under Article 9(2)(e) shall be limited to digital transmission.”

- (f) In sub-article (3), the word “rejudice” shall be replaced with the word “prejudice” and sub-article (3) shall be renumbered as (7);
- (g) Immediately after sub-article (2) there shall be added the following new sub-articles:

“(3) Copyright in a work or other subject-matter, other than in the case of a computer program, shall not include the right to authorise or prohibit reproductions made by research organisations or cultural heritage institutions having lawful access to the work or other subject-matter, to carry out text and data mining for the purpose of scientific research:

Provided that a copy of a work or other subject-matter made pursuant to the preceding paragraph shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results:

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

(4) Copyright in a work or other subject-matter shall not include the right to authorise or prohibit reproductions of lawfully accessible works or other subject-matter for the purposes of text and data mining:

Provided that a copy of a work or other subject-matter made pursuant to the preceding paragraph may be retained for as long as is necessary for the purposes of text and data mining:

Provided further that the use of works and other subject-matter referred to above may be expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.”

(5) Copyright in a work or other subject-matter, other than in the case of a computer program, shall not include the right to authorise or prohibit acts of reproduction or communication to the public, for the digital use of work for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, on condition that such use:

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

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

Provided that the rightholder of such work or other subject-matter shall be entitled to fair compensation for such use:

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

(6) Copyright in a work or other subject-matter shall not include the right to authorise or prohibit acts of reproduction by cultural heritage institutions of works or other subject-matter that are permanently in their collections, in any format or medium, for the purposes of preservation of such works or other subject-matter and to the extent necessary for such preservation."

7. Immediately after article 9 of the Principal Act, there shall be added the following new article:

"(9A) Any contractual provision contrary to Article 9 and Article 26 of this Act shall be unenforceable."

8. Immediately after article 19 of the Principal Act, there shall be added the following new article:

"(19A)(1) Publishers of press publications shall have the exclusive right to authorise or prohibit in respect of any online use by information society service providers :

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

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

(2) Copyright or neighbouring rights in a press publication or in works or other subject-matter incorporated therein shall not include the right to authorise or prohibit:

- a) private or non-commercial uses of press publications by individual users;
- b) acts of hyperlinking;
- c) the use of individual words or very short extracts of a press publication or of works or other subject-matter incorporated therein.

(3) The rights conferred on publishers of press publications by virtue of sub-article (1) may not be invoked:

- a) against authors and other rightholders of works and other subject-matter incorporated in a press publication in which they are incorporated; or
- b) against other authorised users or licensees of that work or other subject-matter where the work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence; or
- c) to prohibit the use of works or other subject-matter for which protection has expired;

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

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

(6) Authors of works incorporated in a press publication shall receive an appropriate share of the revenues that publishers of press publications receive for the use of their press publications by information society service providers. In the absence of agreement on the remuneration payable under this sub-article, the amount of such remuneration shall be determined by the Board.

9. Immediately after article 22 of the Principal Act, there shall be added the following new article:

“(22A) (1) Where no agreement is concluded for the purpose of making available of audiovisual works on video-on-demand services, regarding any rightholder authorisation which may be required, any party thereto may call upon the assistance of one or more mediators appointed by the chairman of the Malta Mediation Centre. The mediators shall be so selected that their independence and impartiality are beyond reasonable doubt. The tasks of the mediators shall be to provide assistance with negotiations and to help the parties to reach an agreement, including, where appropriate, by submitting proposals to them.

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

10. Immediately after sub-article (7) of article 24 of the Principal Act, there shall be added the following new sub-articles:

“(8) Where authors or performers transfer their rights for the exploitation of their works, performances or other subject-matter, whether by assignment or by licence, they are entitled to receive appropriate and proportionate remuneration. In the absence of agreement on the remuneration payable under this sub-article, the amount of such remuneration shall be determined by the Board.

(9) Where authors or performers transfer their rights for the exploitation of their works, performances or other subject-matter, whether by assignment or by licence, such authors or performers, or their mandated representatives, shall receive up-to-date, relevant and comprehensive information on the exploitation of their works or other subject-matter, from the parties to whom they have licensed or assigned their rights or their successors in title, as the case may be. Such parties must provide this information on a regular basis, in accordance with the specificities of each sector, but not less than once a year. Such information must include modes of exploitation, all revenues generated globally, the remuneration due to the respective author or performer and the identity of any sub-licensees:

Provided that where these rights have been sub-licensed, authors or performers, or their mandated representatives, shall be entitled to receive additional information from the respective sub-licensees, in the event that the original licensee does not hold all the information required pursuant to the preceding paragraph:

Provided further that the transparency obligations set out in this sub-article shall not apply to collective management organisations which are regulated in terms of Subsidiary Legislation 415.01.

(10) Where authors or performers transfer their rights for the exploitation of their works, performances or other subject-matter, whether by assignment or by licence, such authors or performers or their mandated representatives shall be entitled to claim additional, appropriate and fair remuneration from the party to whom they have assigned or licensed their rights, or from their successors in title, as the case may be, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of those works, performances or other subject-

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

Provided that this shall not apply with respect to agreements concluded by collective management organisations which are regulated in terms of Subsidiary Legislation 415.01.

(11) Should any dispute arise concerning the transparency obligation provided by sub-article (9) hereof or concerning the contract adjustment mechanism provided by sub-article (10) hereof, authors or performers or their mandated representatives may elect to submit such dispute to the Board for its determination:

Provided that this shall be without prejudice to an author or performer's right of recourse before the Civil Court, First Hall.

(12) Where an author or performer has transferred their rights for the exploitation of their work, performance or other subject-matter on an exclusive basis, whether by assignment or by licence, and there is a lack of exploitation of that work for a continuous period of five years, the author or performer in question may by means of a judicial act, set a time-limit of not less than six months within which the exploitation of the licensed or assigned rights by the respective assignee or licensee, must take place. Should the respective assignee or licensee fail to exploit the rights concerned within the stipulated time-limit, the author or performer in question may elect to revoke the assignment or licence in question, in whole or in part, or terminate its exclusivity, by referring the matter to the Board for its determination:

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

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

Provided further that this sub-article shall not apply in the case of audiovisual works or databases or in the event that the lack of exploitation of the work, performance or other subject-matter is predominantly due to circumstances which the author or performer can reasonably be expected to remedy.

(13) Any contractual provision contrary to sub-articles (9) to (12) hereof shall be null and void.

(14) Sub-articles (8) to (13) hereof shall not be applicable in the case of computer programs.

(15) Agreements for the licence, assignment or transfer of rights of authors and performers shall be subject to the transparency obligation set out in sub-article (9) with effect from 7 June 2022, and it shall also apply in respect of those agreements entered into before that date."

11. Immediately after sub-article (2) of article 26 of the Principal Act, there shall be added the following new sub-articles:

"(3) Notwithstanding Article 25, a research organisation or cultural heritage institution with lawful access to a database may, without the authorisation of the maker of a database, extract or re-utilize the whole or a substantial part of the contents of that that database to carry out text and data mining for the purpose of scientific research:

Provided that a copy of a work or other subject-matter made pursuant to the preceding paragraph shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results:

Provided further that the maker of a database shall be allowed to apply measures to ensure the security and integrity of the networks where the databases are hosted. Such measures shall not go beyond what is necessary to achieve that objective.

(4) Notwithstanding Article 25, the whole or a substantial part of the contents of a lawfully accessible database may be extracted or re-utilized without the authorisation of the maker of that database, for purposes of text and data mining"

Provided that a copy of the contents of a database made pursuant to the preceding paragraph may be retained for as long as is necessary for the purposes of text and data mining:

Provided further that the use of the content of a database referred to above may be expressly reserved by the maker of a database in an appropriate manner, such as machine-readable means in the case of content made publicly available online."

(5) Notwithstanding the provisions of Article 7 and Article 25, copyright or a sui generis right in a a database shall not include the right to authorise or prohibit:

- (i) the translation, adaptation, arrangement or alteration; or
- (ii) the reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in subparagraph (i); or
- (iii) the extraction or re-utilization of the whole or a substantial part of the contents;

of a database for its digital use, for the sole purpose of illustration for teaching, to the extent justified by the non-commercial purpose to be achieved, on condition that such use:

- (a) takes place under the responsibility of an educational establishment, on its premises or at other venues, or through a secure electronic environment accessible only by the educational establishment's pupils or students and teaching staff; and
- (b) is accompanied by the indication of the source, including the author's name, unless this turns out to be impossible:

Provided that the maker of a database shall be entitled to fair compensation for such use:

Provided further that with regards to databases which are intended primarily for the educational market, the educational establishment shall obtain the appropriate licences, if these are available.

(6) Notwithstanding Article 25, a sui generis right in a database shall not include the right to authorise or prohibit the extraction or re-utilization of the whole or a substantial part of the contents of that database by cultural heritage institutions, of databases that are permanently in their collections, in any format or medium, for the purposes of preservation of such database and to the extent necessary for such preservation."

12. In sub-article (2)(a) of Article 42 of the Principal Act, immediately after the words "any beneficiary of an exception provided for in article 9(1)(b), (c), (d), (e), (f), (i), (l) or (h)" there shall be added the words ", article 9(2)(d) or (e), article 9(3), (4), (5) or (6) or article 26(3), (4), (5) or (6)";

13. Immediately after article 42 of the Principal Act, there shall be added the following article:

"42A. (1) An online content-sharing service provider that gives the public access to copyright-protected works or other protected subject-matter uploaded by its users shall be deemed to perform an act of communication to the public or an act of making available to the public for the purposes of this Act. Therefore, an online content-sharing service provider shall obtain an authorisation from the rightholders in order to communicate to the public or make available to the

public such works or other subject-matter, such as by concluding a licensing agreement:

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

(2) If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject-matter, unless the online content-sharing service providers can demonstrate that they have:

- a) Made best efforts to obtain an authorisation; and
- b) Made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject-matter for which the rightholders have provided the online content-sharing service providers with the relevant and necessary information; and
- c) Acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their services, the notified works or other subject-matter, and made best efforts to prevent their future uploads in accordance with point (b):

Provided that rightholders who request to have access to their specific works or other subject-matter disabled or to have those works or other subject-matter removed, those rightholders shall duly justify the reasons for their requests.

(3) In determining whether the online content-sharing service provider has complied with its obligations under sub-article (2), and in light of the principle of proportionality, the following elements, among others, shall be taken into account:

- a) The type, the audience and the size of the service and the type of works or other subject-matter uploaded by the users of the service; and
- b) The availability of suitable and effective means and their cost for service providers.

(4) In respect of new online content-sharing service providers the services of which:

- a) have been available to the public in the European Union for less than three years; and
- b) have an annual turnover below EUR 10 million, calculated in accordance with Commission Recommendation 2003/361/EC;

the conditions under the liability regime set out in sub-article (2) above are limited to compliance with sub-article (2)(a) above and to acting expeditiously, upon receiving a sufficiently substantiated notice, to disable access to the notified works or other subject-matter or to remove those works or other subject-matter from their services:

Provided that where the average number of monthly unique visitors of such online content-sharing service providers exceeds five million, calculated on the basis of the previous calendar year, they shall also demonstrate that they have made best efforts to prevent further uploads of the notified works and other subject-matter for which the rightholders have provided relevant and necessary information.

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

(6) Online content-sharing service providers must inform their users in their terms and conditions that they can use works and other subject-matter under exceptions or limitations to copyright and neighbouring rights provided for in this Act.

(7) Online content-sharing service providers must put in place an effective and expeditious complaint and redress mechanism that is available to users of their services, in the event of disputes over the disabling of access to, or the removal of, works or other subject-matter uploaded by them:

Provided that complaints shall be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review.

(8) Users of online content-sharing services may refer any dispute relating to the disabling of access to, or the removal of, works or other subject-matter uploaded by them, or regarding the use of an exception or limitation to copyright and neighbouring rights, to the Board for its determination:

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

(9) The application of this Article 42A shall not lead to any general monitoring obligation on online content-sharing service providers.

(10) Online content-sharing service providers shall provide rightholders, at their request, with adequate information on the functioning of their practices in terms of sub-article (2) hereof.

(11) When an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in this Act, the limitation of liability provided in article 21 of Chapter 426 of the Laws of Malta shall not apply to the situations covered by article 42A of the Act:

Provided that this sub-article shall not affect the possible application of Article 21 of Chapter 426 of the Laws of Malta in relation to those service providers for purposes falling outside the scope of this article 42A of the Act.”

14. Article 45 of the Principal Act, shall be amended as follows;

(a) Sub-article 1 shall be substituted by the following:

“45(1) There shall be a Copyright Board for the purpose of performing the functions assigned to it by the provisions of this Act or as may be assigned to it by the Minister, and which Board shall consist of a chairman, to be appointed by the Minister, and four other members as follows:

- a) One member appointed by the National Book Council established in accordance with Article 4 of the National Book Council Act;
- b) One member appointed by the National Congress of Authors established in accordance with Article 15 of the National Book Council Act;
- c) One member appointed by the Malta Competition and Consumer Affairs Authority, established in accordance with Article 3 of Chapter 510 of the Laws of Malta; and
- d) One member appointed by the Malta Reprographic Rights Organisation;”

(b) Sub-article (4) shall be deleted;

(c) Sub-article (5) shall be renumbered as sub-article (4);

(d) Immediately after sub-article (4), there shall be added the following sub-articles:

“(5) In the exercise of their functions the members of the Board shall act impartially and independently and shall not be subject to the direction or control of any person or authority;

(6) A person appointed as chairman or as a member of the Board may be removed from office by the Minister acting in accordance with the advice of the body or the holder of the office appointing such member, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of the mind or body or any other cause) or for misbehaviour;

(7) The office of the chairman or of a member of the Board shall become vacant:

- (a) at the expiration of five years from the date of appointment unless such appointment is renewed for a period or further periods of five years;
- (b) following removal from office pursuant to sub-article (6) hereof; or
- (c) following a written request addressed to the Minister to that effect by such member of the Board;”

15. Immediately after article 45 of the Principal Act, there shall be added the following article;

“45A (1) There shall be a secretary of the Board who shall be appointed by the Board from among public officers assigned to the Courts or from among members of the legal professions. The secretary shall hold office until such time as his or her appointment is terminated by the Board.

(2) The secretary to the Board shall be responsible for any duty which may be incumbent upon him or her under this Act or any rules made thereunder.

(3) The duties of the secretary shall be carried out in accordance with the provisions of the Code of Organisation and Civil Procedure.”

16. Article 48 of the Principal Act shall be amended as follows:

a. Sub-article (1) shall be replaced with the following:

“(1) Proceedings of the Board shall be held in public and the Board’s decision shall be taken by majority, which decision of the majority shall be delivered as the decision of the whole Board.

Provided that a member of the Board who has taken part in the consideration of the decision by the Board shall be entitled to annex to the decision a separate opinion, concurring with or dissenting from that decision.”

b. Sub-article (2) shall be renumbered as sub-article (3)

c. Immediately after sub-article (1) there shall be added the following sub-article:

(2) Decisions of the Board shall be notified to the parties by registered post to their respective business or private addresses and, unless the contrary is proved such decision shall be deemed to have been served on the party concerned not later than the third day succeeding the day when it was posted to such party.”

PART II

Consequential Amendments to Subsidiary Legislation 415.01

1. This Part Amends the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations, hereinafter referred to as “the Principal Regulations” and it shall be read and construed as one with the Principal Regulations;
2. Immediately after sub-regulation (2) of regulation 1 of the Principal Regulations, there shall be added the following sub-regulation:

“(3) These regulations transpose certain aspects of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29 EC. “

3. Immediately after the definition “collective management organisation” in regulation 2 of the Principal Regulations, there shall be added the following new definition:

“‘cultural heritage institution’ means a publicly accessible library or museum, an archive or a film or audio heritage institution;”

4. “Chapter 5” of the Principal Regulations, shall be renumbered as “Chapter 7”
5. Immediately after regulation 25 of the Principal Regulations, there shall be added the following regulations:

“Chapter 5 Licensing of Out-of-Commerce Works

(25A)(1) A collective management organisation established in Malta may, in accordance with its mandates from rightholders, conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution established in Malta or in another Member State, for the reproduction, distribution, communication to the public or making available to the public of out-of-commerce works or other subject-matter that are permanently in the collection of such cultural heritage institution, irrespective of whether all rightholders covered by the licence have mandated the collective management organisation, provided that:

(a) the collective management organisation is, on the basis of its mandates, sufficiently representative, in accordance with regulation 25B hereof, of rightholders in the relevant type of works or other subject-matter and of the rights that are subject of the licence; and

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

(2) Where no collective management organisation satisfies the conditions of sub-regulation (1)(a), cultural heritage institutions established in Malta may perform:

(a) acts of reproduction, communication to the public or making available to the public of out-of-commerce works or other subject-matter;

(b) acts of extraction or re-utilisation of the whole or a substantial part of the contents of out-of-commerce databases;

(c) acts of translation, adaptation, arrangement and any other alteration of out-of-commerce databases or computer programs;

(d) acts of reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (c) above;

(e) acts of distribution by digital transmission of out-of-commerce computer programs;

Provided that the name of the author or any other identifiable rightholder is indicated, unless this turns out to be impossible and such works or other subject-matter are made available on non-commercial websites.

(3) Use of out-of-commerce works and other subject-matter under sub-regulation (2) above, shall be deemed to occur solely in Malta.

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

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

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

(6) this regulation shall not apply to sets of out-of-commerce works or other subject-matter if, on the basis of the reasonable effort referred to in sub-regulation (4), there is evidence to suggest that such sets predominantly consist of :

(a) works or other subject-matter, other than cinematographic or audiovisual works, first published or, in the absence of publication, first broadcast in a third country; or

(b) audiovisual works, of which the producers have their headquarters or habitual residence in a third country;

(c) works or other subject-matter of third country nationals, where after a reasonable effort no Member State or third country could be determined pursuant to points (a) and (b):

Unless the relevant collective management organisation from whom licensing will be sought pursuant to sub-regulation (1), is sufficiently representative, within the meaning of sub-regulation (1), of rightholders of the relevant third country.

(7) At least six months prior to making use of out-of-commerce works or other subject-matter under sub-regulations (1) or (2) above, collective management organisations intending to conclude licences pursuant to sub-regulation (1) or cultural heritage institutions intending to use out-of-commerce works or other subject-matter under sub-regulation (2) shall ensure that at least the following information is made permanently available, easily and effectively, on the portal to be established and managed by the European Union Intellectual Property Office in accordance with Regulation (EU) No 386/2012, pursuant to Article 10(1) of Directive 2019/790 (EU):

(a) identification of the works or other subject-matter to be covered by the licence or use under sub-regulation (2);

(b) information on the parties to the licence, unless use is being made pursuant to sub-regulation (2);

(c) territories covered by the licence or use being made pursuant to sub-regulation (2); and

(d) the ability of rightholders to exclude their works or other subject-matter in accordance with sub-regulation (5) above;

(8) In addition to the publicity measures referred to in sub-regulation (7), if necessary, for the general awareness of rightholders, additional appropriate publicity measures shall be taken in Malta regarding the ability of collective management organisations to license works or other subject-matter in accordance with sub-regulation (1), the uses under the exception or limitation provided for in sub-regulation (2), and the options available to rightholders under sub-regulation (5):

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

Chapter 6 Licensing with Extended Effect

(25B) (1) Where a collective management organisation established in Malta enters into a licensing agreement for the exploitation of works or other subject-matter, in accordance with its mandates from rightholders, such an agreement can be extended to apply to the rights of rightholders who have not authorised that collective management organisation to represent them by way of assignment, licence or any other contractual arrangement, by first obtaining the approval of the Copyright Board with regards to such extension. Collective management organisations may submit an application to the Copyright Board, for the approval of the extension, which application must indicate:

- i. The type of licence;
- ii. The purpose of the licence;
- iii. The type of work or subject-matter or rights covered by the licence;
- iv. The identity of the licensees;
- v. The electronic mail address where rightholders may submit requests relative to the licence;

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

- (a) The collective management organisation is, on the basis of its mandates, sufficiently representative of rightholders in the relevant type of works or other subject-matter and of the rights which are the subject of the licence;
- (b) The licence relates to an area of use, where obtaining authorisations from rightholders on an individual basis is typically onerous and impractical to a degree that makes the required licensing transaction unlikely, due to the nature of the use or of the types of works or other subject-matter concerned;
- (c) Appropriate publicity measures have been taken by the collective management organisation as provided under sub-regulation (2) hereof; and
- (d) The territorial scope of the licensing agreement in question is limited to the territory of Malta;

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

- (a) its ability to license works or other subject-matter with extended effect;
- (b) the licensing with extended effect which is intended to take place;
- (c) the option to exclude their work or other subject-matter from the licence with extended effect; and
- (d) the electronic mail address where rightholders may submit requests relative to the licence.

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

Upon receiving such a request and ascertaining the identity of the rightholder in question, the relevant collective management organisation shall act expeditiously to exclude the work or other subject-matter indicated in the request, from the licence in question within a period not exceeding three months from the date of the request.

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

- (a) the terms of that licence;
- (b) the distribution of amounts due under that licence; and
- (c) transparency and reporting obligations applicable under regulations 26 to 30 hereof.

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

- i. The categories of rights it manages;
- ii. Its ability to manage rights effectively;
- iii. The specificities of the relevant creative sector; and
- iv. Coverage of a significant number of rightholders in the relevant type of work or right;

(7) Where the Copyright Board has approved a licence with extended effect pursuant to sub-regulation (1) hereof, it shall, before the commencement of the licence in question, notify the European Commission about:

- i. The type of licence;
- ii. The purpose of the licence;
- iii. The basis upon which it has decided that the collective management organisation in question satisfies the condition stipulated in sub-regulation (1)(a) hereof;
- iv. The electronic mail address of the collective management organisation issuing the licence provided pursuant to sub-regulation (1)(v) hereof; and
- v. The means by which the information related to the licence is being made publicly available.

(8) The provisions of regulation 7 hereof shall apply to collective management organisations that provide a licence with extended effect pursuant to sub-regulation 1 hereof;

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

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

(10) This regulation shall not apply to mandatory collective management of rights regulated under Article 7(4) of the Copyright Act;

(11) This regulation shall not affect the application of collective licensing mechanisms with an extended effect in accordance with other provisions of the law, including provisions that allow exceptions or limitations, such as under regulation 25A hereof."