

EU4IP

Strengthening Intellectual Property
Rights in Moldova and Ukraine



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Exceptions and limitations

Karol Kościński



EU4Business

New exceptions and limitation introduced by the Directive 790/2019/EU

List of new exceptions in
the Directive 790/2019

- text and data mining;
- digital and cross-border teaching activities;
- preservation for the purpose of cultural heritage.

- compensation
- licensing solutions may prevail



allow the **digital use** of works and other subject matter **for the sole purpose of illustration for teaching**, to the extent justified by **the non-commercial** purpose



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

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Cultural
Heritage
Institutions

COPY

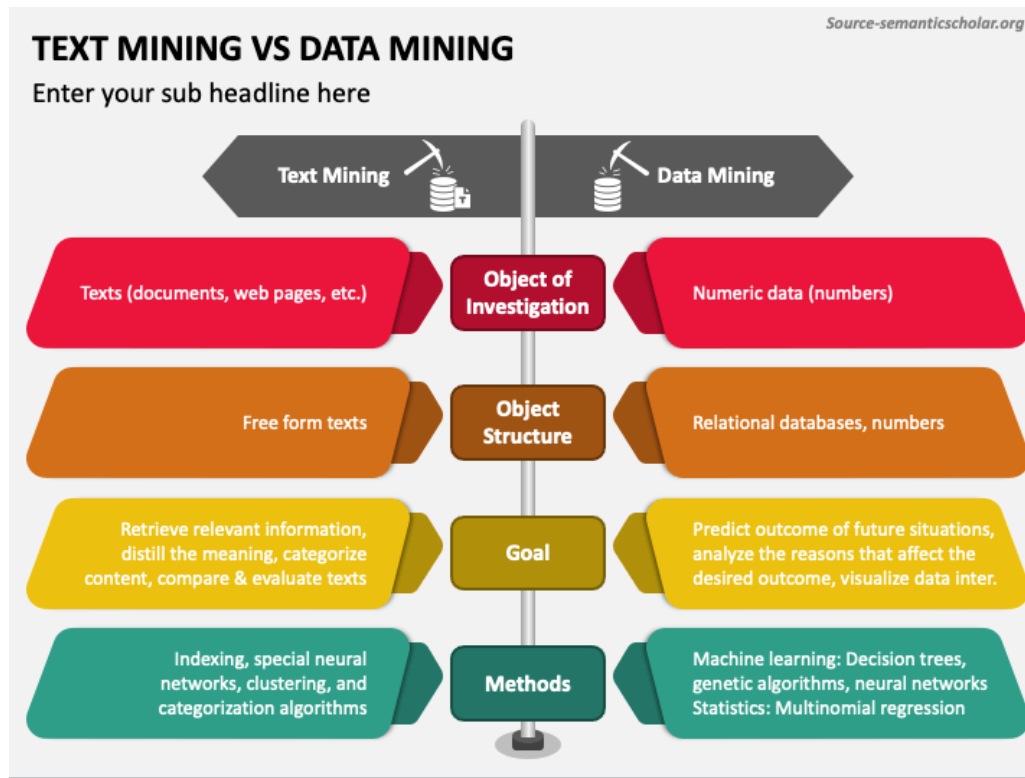
to **make copies** of any works or other subject matter **that are permanently in their collections**, in any format or medium, for **purposes of preservation** of such works or other subject matter and **to the extent necessary for such preservation**.



Two exceptions for text and data mining

Article 3 of the Directive

for **reproductions** and **extractions** made by **research organisations** and **cultural heritage institutions** in order to carry out, for the purposes of **scientific research**, text and data mining of works or other subject matter to **which they have lawful access**.



Article 4 of the Directive

all **entities** for **reproductions** and **extractions** of **lawfully accessible works** and other subject matter for the purposes of text and data mining.

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**

Two exceptions for text and data mining – comparison

Non-commercial T&D mining	Commercial T&D mining
copies of work stored with an appropriate level of security and retained for the purposes of scientific research	may be retained for as long as is necessary for the purposes of text and data mining
rightsholders may apply measures to ensure the security and integrity of the networks and databases where the works are hosted	permission will not apply if rightsholders reserved such an use in an appropriate manner , such as machine-readable means

verbatim implementation vs. national peculiarities



Good examples of verbatim implementation are Luxembourg, Croatia, Estonia, Lithuania, Malta and Netherlands.



National differences:

- **scope of beneficiaries** (e.g., acts performed through third parties acting on research organizations' behalf, individual researcher occasionally involved in a research activity or projects, as long as they pursue non-commercial purposes);
- **protection of the reproduced copies** (e.g., more detailed guideline on the specification of the security measures, in particular „access and validation through IP address or user authentication”/ voluntary codes of conducts and best practices;
- **method of expressing the reservation of the rights.**

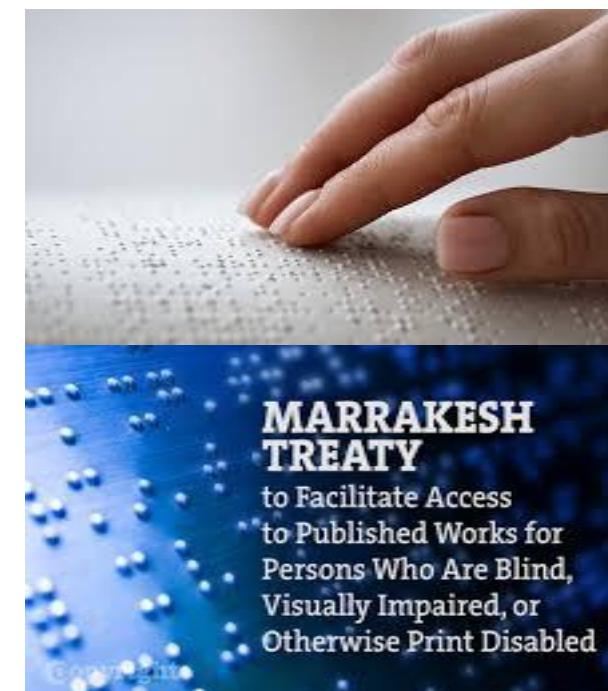
Minor remarks regarding the implementation of Directive 2017/1564 for the benefit of persons who are blind, visually impaired or otherwise print-disabled

Restricted **scope of permitted uses**

- Article 58 of Copyright Act does not provide a specific exception for the translation/adaptation of computer programs.
- The condition of the lawful access in the case of permitted use by the authorized entities (e.g., libraries) should refer to the works to which such an authorized entity (and not visually impaired person) has a lawful access.

Need to regulate the **import and export of accessible format copies** (cross-border effect of the Directive)

Minor amendments of technical and legislative nature, which may make the text of the Law more understandable (e.g., there is no need to transpose provisions on personal data protection in the copyright legislation, no need to transpose provisions which impose on the Member State an obligation to inform the EU Commission, but it is sufficient just to send this information, etc.)



Minor remarks regarding the legal framework on orphan works (Directive 2012/28/EU)

Adjusting the transposition to
local conditions

The Copyright Act does not
precisely indicate what are at
least some **local beneficiaries**
of the exception permitting the
use of orphan work.

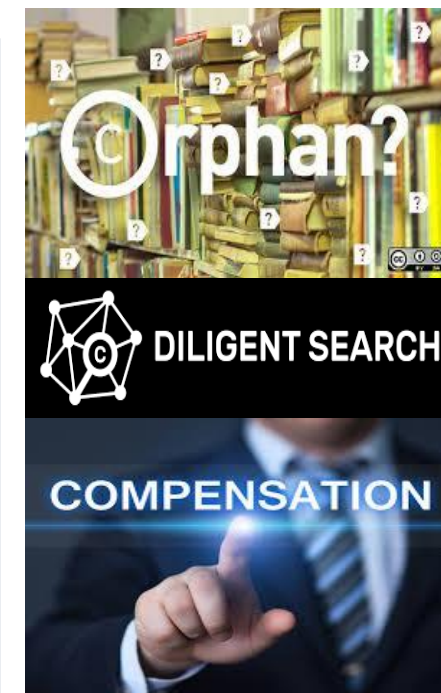
The core of the transposition is
the introduction of the next
exception to the copyright (why
the provisions are not
formulated as in respect of
other exceptions in the existing
law ?)

List of **diligent search
sources**

The list of diligent search
sources issued by DG of
AGPEI should at least cover
the relevant sources
comprising the Annex to the
Directive.

The Directive provisions regarding **the diligent
search in other Member States** requires
transposition.

The **compensation for the
use of orphan works**. That
solution leads to a couple of
questions, in particular:
What entity is supposed to
pay that compensation ?
(State ? Institutions which
are allowed to use their
incomes from the use of the
orphan works on for limited,
specific purposes ?)



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