

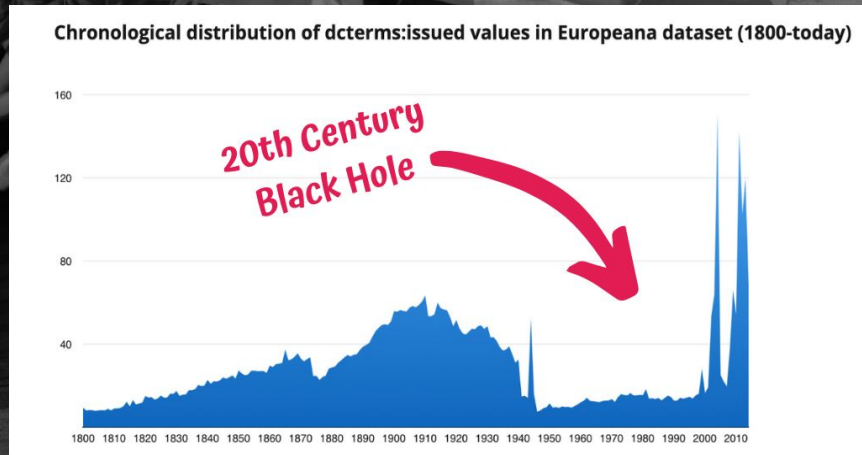


Europeanana

Articles 8-11
Out of Commerce
Works

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SOME CONTEXT



Source: The missing decades: the 20th century black hole in Europeana (2015)
[bit.ly/3hAAheo]

IN A NUTSHELL

Cultural Heritage Institutions will be able to digitise, distribute and make available to the public works in their collections that are out of commerce

Through an extended collective license or an exception

Breaking down articles 8-11



Out of commerce works

DEFINITION

- No longer in commerce, or never in commerce
- Any type of content
- Notes about translations, versions, limited number of copies...
- Collections predominantly consisting of works by EU nationals
- Cut-off date possible

Out of commerce works

OWNED OR PERMANENTLY HELD BY THE CHI

- In a cultural heritage institutions
- Result of a transfer of ownership or a license agreement
- As part of its legal deposit obligations or permanent custody arrangements
- etc.

Out of commerce works

REASONABLE EFFORT

- To determine whether the work is in or out of commerce
- By CHI, or other (to be defined at MS level)
- “Low” effort
- No need to happen repeatedly over time
- Does not require a work-by-work assessment
- Does not require search to be conducted in other MS, unless reasonable
- Should take account of easily accessible evidence of upcoming availability of the work

Permitted uses under license/exception

- Reproduce, distribute, publish online OOCW (with some particularities in the case of the exception)
- In non-commercial platforms
- For non-commercial purposes
- Cross-border applicability
- No further re-use

License vs Exception



License vs Exception

SUFFICIENTLY REPRESENTATIVE CMO

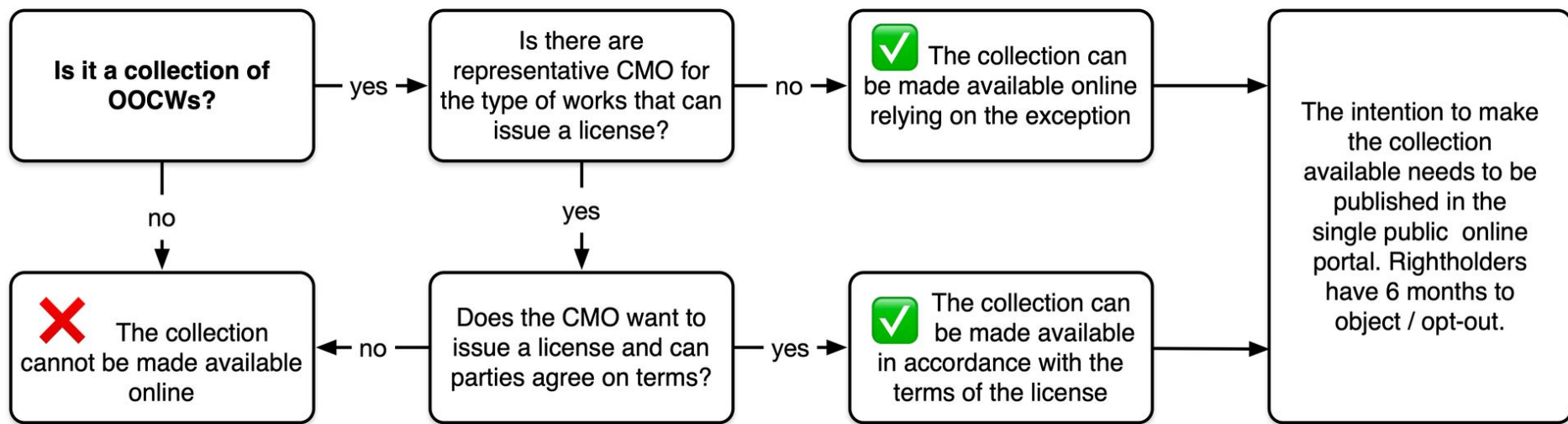
- Up to each member state, but based on...
- ...**significant number of rightholders**...
- ...in the **type of works** ...
- ... having given a mandate allowing the licensing of the relevant **type of use**

License vs Exception

SUFFICIENTLY REPRESENTATIVE CMO

	CMO representative for...	Sufficiently representative for...?	Sufficiently representative for...?	Sufficiently representative for...?
Type of work	Books, journals, newspapers	Books ✓	Personal letters and postcards ✗	Newspaper ✓
Types of use	Reproduction & distribution	Distribution ✓		Distribute & posting online ✓ ✗

License vs Exception



Other provisions

SECTOR-SPECIFIC STAKEHOLDER DIALOGUES

- Between CHIs, CMOs and rights holders
- Sector-specific
- To consult them on conditions according to which a work shall be considered OOC
- To to foster the relevance and usability of the licensing mechanisms

Other provisions

OPT-OUT BY RIGHTSHOLDERS

- To exclude their works from the uses being made under the license or the exception
- CHIs should stop distributing and communicating to the public the work

PUBLIC SINGLE ONLINE PORTAL

- To gather information on OOCW
- Information posted 6 months before work is used
- Ready by June 2021

How to implement articles 8-11



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Best implementation of the Directive

WORKABLE, CLEAR AND BROAD DEFINITION OF OOCW

- Participate in the stakeholder dialogues
- Cut-off date
- “Low” reasonable effort
- Keep the positives
 - If availability of translations, OOC
 - Limited availability, OOC
 - Sets that predominantly consist of works of non-EU countries, not OOC
- Go beyond
 - Permanently in the collection to include long-term loan
 - If availability of versions, editions, manifestations, not OOC
 - Determination of the OOC should not depend on availability of works embedded in the main work

Best implementation of the Directive

CLARITY ON LICENSE vs EXCEPTION

- How to consider a CMO sufficiently representative
- Definition of the “type of works” that a CMO covers

Best implementation of the Directive

STAKEHOLDER DIALOGUES

- Key discussions around the definition of OOC and licenses
- Good understanding of opportunities in the Directive & the collective management landscape
- Broad representation of all types of CHIs
- Participate constructively
- Advocate for transparency and good practice by CMOs

Approaches at the national level



THE NETHERLANDS

- GLAMs consulted by the government
- No definition of out of commerce beyond the Directive's definition (tbd through secondary law), of sufficient representativity or of type of works
- CMO act also amended to include OOCWs licenses in the scope of the supervisory authority for CMOs

BELGIUM

- GLAMs consulted by the government
- The exception does not include the distribution right, the license does
- No definition of out of commerce beyond the Directive's definition
- CMO appointed to be representative of other CMOs [through secondary law]
- Possibility that secondary law defines additional publicity measures other than the EUIPO single online portal

CROATIA

- Clear reference to never in commerce works
- Clear possibility to use sampling or similar proportional mechanism to determine OOC status
- Opt-out through an explicit written statement

HUNGARY

- “Reasonable effort” to be conducted by the CHI
- Establishes cut-off date for “literary works published on or before 31 August 1999” and an “in commerce” presumption for “literary works less than five years after their publication”



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