[FR] Text and data mining, out-of-commerce works, extended collective licensing: Ordinance of 24 November 2021 completes transposition of Directive 2019/790

IRIS 2022-1:1/3

Amélie Blocman
Légipresse

After the Law of 24 July 2019 protecting the neighbouring rights of press publishers and agencies, and the Ordinance of 12 May 2021 that transposed into French law the new system of liability of content-sharing platforms and mechanisms for the fair remuneration of rightholders, the Ordinance of 24 November 2021 completed the transposition of Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market, the deadline for which had been 7 June 2021.

In accordance with Articles 3 to 6 of the Directive, the Ordinance provides for and adapts exceptions to copyright and neighbouring rights in order to protect text and data mining, the use of extracts of works for the purposes of illustration for teaching and the reproduction of works in order to preserve the cultural heritage.

From 1 January 2022, the *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM) will be responsible for ensuring these exceptions are granted, especially in relation to the implementation of technical protection measures.

The Ordinance also aims to broaden access to works through collective licensing. To this end, it creates a new system enabling cultural heritage institutions such as libraries, museums and archives, to digitise and disseminate, including online and outside EU borders, out-of-commerce works in their collections. Article 5 of the Ordinance defines the notion of an out-of-commerce work (Article L. 138-1 of the *Code de la propriété intellectuelle* (Intellectual Property Code) – CPI).

The Ordinance contains a specific rule on collective licensing with an extended effect. This mechanism is designed to enable a collective management organisation to negotiate an agreement for the benefit not only of its members but also of authors who are not members, provided the works concerned are sufficiently within its remit (non-members can choose to withdraw from the arrangement).

© European Audiovisual Observatory (Council of Europe) 2026

Under Article 1 of the Ordinance, such licences can be used to enable educational establishments to exploit works in a digitised format for illustrative purposes in teaching. The conclusion of extended collective licences is also provided for in Articles 4 and 6 of the Ordinance in relation to, on the one hand, the exploitation of works of visual art by content-sharing platforms and, on the other, the open publication of scientific works on the Internet.

Finally, Article 3 of the Ordinance deals with the possibility provided by the Directive to implement collective licensing mechanisms with an extended effect in order to amend the provisions of Law 2012-287 of 1 March 2012 on the digital exploitation of out of-commerce 20th-century books in order to ensure it complies with EU law.

Ordonnance n° 2021-1518 du 24 novembre 2021 complétant la transposition de la Directive 2019/790 de 2019 sur le droit d'auteur et les droits voisins dans le marché unique numérique

https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044362034

Ordinance no. 2021-1518 of 24 November 2021 completing the transposition of Directive 2019/790 on copyright and related rights in the Digital Single Market

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026