The International Federation of Library Associations and institutions welcomes the opportunity to provide comments on the implementation of the Digital Single Market Directive.

IFLA first wishes to reiterate its general support on comments provided by Der Deutsche Bibliotheksverband (DBV).

1. **Text and data mining and cross-border**

IFLA suggests that clarifications should be provided on how to make reproductions (structured data) made in the course of text and data mining available to researchers for referencing and verifiability purposes. The draft bill states: Authorized institutions "may keep reproductions […] as long as they are necessary for purposes of scientific research or to review scientific findings".

The current description made by the provision stating in §60e paragraph 4 (reading room terminals) does not provide additional information on how to store these reproductions and provide a possibility to verify scientific findings (art.3, paragraph 2 of the DSM).

Therefore, we encourage clarifications towards the question of storage. Libraries as research institutions are keen to benefit from a legal framework allowing verifiability to ensure that sources are reliable. We encourage simple provisions to allow individual libraries and researchers to store their datasets without additional complexity such as centralised data storage.

2. **The collective licensing with extended effect**

See below.

3. **Non-available works**

We encourage the development of a legal definition for cultural heritage institutions within the implementation including libraries, museums, archives, institutions active in film and audio heritage.

We support the development of a moving time period to provide access to works that were not available. We suggest the definition of this as 30 years ago. Works published more than 30 years ago (subject to announcement in the online portal and no indication to the contrary) would be assumed to be as legally non-available works.

Within the framework of Articles 8 to 11 of the Directive, concerning Out of Commerce works, cultural heritage institutions should benefit from a broad exception allowing them to digitize and allow access to the greatest number of their collections.

Extended Collective Licenses should only be considered if they are offered by truly representative collective management organisations (with a clear and precise definition of what is a sufficiently representative collective management organisation), which are demonstrably well-governed. When defining categories of works, it will be important to ensure that these are sufficiently narrow and specific
to minimise uncertainty, and in particular to minimise or exclude the risk of payments being made which will never reach original creators. In each of these categories, the representativeness of collective management organisations needs to be calculated both according to the number of creators who are members, and whether they have offered mandates for the relevant actions (i.e. placing works online for noncommercial purposes). Where one or both of these conditions are not fulfilled, the exception should apply.

It is also necessary that the test to determine whether a work is out of commerce is clear and simple (definition of a sold work, and a work no longer on sale) and that even if the nationality of the creator is not clear, it is possible by default to digitize relevant works and make them available. It is vital to learn from the mistakes of the Orphan Works Directive in this regard.

In addition, it is also essential to have a discussion between the various actors on the subject and to benefit from an effective EUIPO portal. We therefore hope that the German government will use its influence to avoid a portal which works neither for rightholders or cultural heritage institutions.

4. The press publisher’s ancillary right

IFLA calls for clarifications regarding scientific institutions that might be affected by §87g UrhG of the draft bill. Furthermore, libraries, as generally publicly funded institutions are often working with the private sector or a third-party. Therefore, we call for clarifications related to the section 87g (1) of the draft bill (e.g. the exclusive right to make his press releases publicly available (...) from information society services” and article 1(1b) of the directive 15/35 on Information Society Service.

We encourage the Ministry of Justice and Consumer Protection to namely exclude libraries, cultural institutions and educational and research institutions from this provision, to continue to facilitate sharing and access to information to all.

5. Article 5 of the EU-DSM: Transmission of legally acquired copies within educational institutions (§60a and §60c)

IFLA believes that document delivery of legally acquired copies by libraries should benefit from legal certainty. We would like to emphasize that libraries are public-funded institutions investing a considerable amount of their budget to support authors, creators and rightholders, to provide access to their paid-for and legally acquired collections to their users. Therefore, we believe that a remuneration fee to provide access to their users, when this takes place on an ad hoc basis, is unnecessary and beyond of the scope of §60a and §60c.

Additional items

E-lending

We support DBV comments regarding the lack of statutory regulation on e-lending. The Court of Justice of the European Union has ruled in 2016 on the Vereniging Openbare Bibliotheken (VOB) case that e-lending does not differ fundamentally from lending analog works, provided that the “one copy one loan” principle is applied.

The International Federation of Library Associations and Institutions encourages the Federal Ministry of Justice and Consumer Projection (BMJV) to support the library field and library users by including legal regulations on electronic lending and implement the corresponding provisions.
This action will provide the legal clarity needed based on the CJEU’s judgement will allow libraries to continue their core missions of providing access to information to reinforce equity, in the digital age.