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*Committee on the Internal Market and Consumer Protection*

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**2011/0136(COD)**

7.12.2011

## **OPINION**

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council  
on certain permitted uses of orphan works  
(COM(2011)0289 – C7-0138/11 – 2011/0136(COD))

Rapporteur: Toine Manders

PA\_Legam

## SHORT JUSTIFICATION

We live in a digital era. Some people already say that what you can not find on Internet does not exist at all. In view of the enormous advantages that the rational dissemination of information on-line can bring to the Internal Market, the digitisation of cultural material has been and should be further supported on a European scale.

Orphan works are works whose rightholder or rightholders cannot be identified or found, while making a work available to the public requires - in accordance with copyright principles - an authorisation from the rightholder. Directive 2001/29/EC<sup>1</sup> provided for certain exceptions that allow scanning for preservation purposes but they do not allow libraries to make the digitised works available online on the Internet, even for non-commercial purposes.<sup>2</sup>

The present legislative initiative builds on the Commission's 2006 Recommendation on the digitisation and online accessibility of cultural content and digital preservation.<sup>3</sup> Despite the Recommendation, only a few Member States introduced legislation on orphan works and the existing solutions are anyway circumscribed by the fact that they limit online access to citizens resident in their national territories and do not provide for the recognition of diligent searches already carried out in other Member States.

The European Parliament has already expressed its support for a legislative solution to be found to the problematic issues of orphan works and for the creation of a European database to facilitate availability of information<sup>4</sup>. In its resolution of 6 April 2011 on a Single Market for Enterprises and Growth<sup>5</sup>, the Parliament also stressed that the creation of an improved system for the management of copyright is indispensable for supporting innovation and creativity within the Single Market.

The present proposal of the Commission aims to allow libraries, educational establishments, museums and archives to provide specific services in the Internal Market which involves the display of orphan works online. One of operational objectives of the proposal is to diminish transaction costs for the online use of orphan works by these institutions, and also to facilitate cross-border access.

The Commission presented six options in the impact assessment accompanying the legislative proposal, including a do-nothing option and modalities of statutory exemption or licencing that would facilitate digitisation of orphan works. Taking into account the results of broad consultations with various stakeholders, the proposal eventually favours mutual recognition of national solutions enabling the libraries to provide for online access to orphan works. It is worth noting that information about all orphan works identified as such in the relevant

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<sup>1</sup> Directive 2001/29/EC of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10-19).

<sup>2</sup> Under Article 5(3)(n) of the 2001 Directive, libraries can only provide access to works contained in their collections on dedicated terminals on their premises for the purpose of research or private study.

<sup>3</sup> OJ L 236, 31.8.2006, p. 28-30.

<sup>4</sup> Resolution of 12 May 2011 on unlocking the potential of cultural and creative industries (P7\_TA(2011)0240, point 71 and Resolution of 5 May 2010 on Europeana - the next steps (OJ C 81, 15.3.2011, p. 16-25).

<sup>5</sup> 2010/2277(INI), point 56.

jurisdictions should be available universally and at no cost. In the event that a rightholder comes forward to make a substantiated claim of ownership in the country of first publication, the authorities in that Member State would revoke the 'orphan works' status and this decision, in turn, would be valid in all other Member States.

The Commission makes an important reference to the Google Books Settlement reached in 2008/2009 between Google and the Authors' Guild and the Association of American Publishers, which would allow Google to use most orphan works without any prior permission and display them online in the United States, this putting Europe far back in terms of competitiveness and access to human heritage. As the Court of the Southern District of New York opposed the agreement in March 2011 (*inter alia* on grounds of alleged monopoly over the use of orphan works that the Agreement would grant Google) and suggested legislative activity instead<sup>1</sup>, the European Union should take the opportunity to provide an example of how this matter can be resolved in a satisfactory way for all future users and beneficiaries, including rightholders.

The Rapporteur welcomes the proposal of the Commission and agrees with its specific objective that an EU-wide online availability of orphan works will promote Europe's cultural diversity and increase sources of knowledge and learning.

Nevertheless the Rapporteur considers some amendments to the Commission proposal. In general, the Rapporteur wants to highlight that copyright is the foundation for innovation, creation, investments and productions in the creative industry. The problems around orphan works should get proper framing, so that measures will not be taken too broadly. Furthermore, the rapporteur believes that the criteria for the remunerations of rightholders should be harmonised, to create legal certainty and guarantees at EU-level. He finds it important that rightholders can put an end to the status of orphan work by a simple and uniform procedure in the Member State of their choice.

More specifically, the Rapporteur would like to emphasise the importance of compatibility and interoperability of the interlinked databases. The situation that a work gets an undeserved predicate of orphan work should be avoided.

According to the Rapporteur, questions that still need an answer are whether the beneficiaries mentioned in the proposal of the Commission should get harmonised definitions, and how Member States will deal with the situation that one Member State has to do the diligent search but the available information in another Member State is more accurate and up-to-date, so more fit for the actual search. Also the spectrum of permitted use needs further attention, since the proposal leaves the door open not only for broad interpretation of the definition but also for all kinds of forms of use by the various Member States.

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<sup>1</sup> [http://thepublicindex.org/docs/amended\\_settlement/opinion.pdf](http://thepublicindex.org/docs/amended_settlement/opinion.pdf), page 23.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive Recital 3

*Text proposed by the Commission*

(3) Creating a legal framework to facilitate the digitisation and dissemination of works for which no **author** is identified or, even if identified, is not located, so called orphan works, is a key action of the Digital Agenda for Europe, as set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – A Digital Agenda for Europe.

*Amendment*

(3) Creating a legal framework to facilitate the digitisation and dissemination of works for which no **rightholder** is identified or, even if identified, is not located, so called orphan works, is a key action of the Digital Agenda for Europe, as set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – A Digital Agenda for Europe.

*(This amendment applies throughout the text.)*

### Amendment 2

#### Proposal for a directive Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(4a) Copyright is the economic foundation for the creative industry, since it stimulates innovation, creation, investment and production. Mass digitisation and dissemination of works is therefore a means of protecting Europe's cultural heritage. Copyright is an***

*important tool for ensuring that the creative sector is rewarded for its work.*

### **Amendment 3**

#### **Proposal for a directive Recital 9**

*Text proposed by the Commission*

(9) For the purposes of this Directive, cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations should be understood as including works commissioned by such organisations for their exclusive exploitation.

*Amendment*

*(Does not affect English version)*

### **Amendment 4**

#### **Proposal for a directive Recital 11**

*Text proposed by the Commission*

(11) ***For reasons of international comity***, this Directive should only apply to works that are first published or broadcast in a Member State.

*Amendment*

(11) This Directive should only apply to works that are first published or broadcast in a Member State. ***The Commission should study the situation when a work has been produced and disseminated by an entity from a Member State but first published outside the European Union.***

#### *Justification*

*The Commission should further study a problem of works that have been produced on European soil and were meant to be disseminated in Europe, but the publication itself took place in third countries outside of Europe because of lower costs. For example, in the case of the British Library this problem concerns 30% of books, especially those printed in India.*

## Amendment 5

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) Before a work can be considered an orphan work, a good faith and reasonable diligent search for the **author** should be carried out. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations.

#### *Amendment*

(12) Before a work can be considered an orphan work, a good faith and reasonable diligent search for the **rightholder** should be carried out. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations **as long as those organisations carry out the search in good faith and in a reasonable manner and use the results in order to attain objectives in the public interest, unless otherwise provided. In the latter case, organisations referred to in this Directive should remain liable for the diligent search performed. Member States should be able to appoint public bodies entitled to check that diligent searches have been properly carried out in good faith and in a reasonable manner.**

## Amendment 6

### Proposal for a directive Recital 13

#### *Text proposed by the Commission*

(13) It is appropriate to provide for a harmonised approach concerning such diligent search in order to ensure a high level of protection of copyright in the Union. A diligent search should involve the consultation of publicly accessible databases that supply information on the copyright status of a work. Moreover, in order to avoid duplication of costly digitisation, Member States should ensure that use of orphan works by the organisations referred to in this Directive **is**

#### *Amendment*

(13) It is appropriate to provide for a harmonised approach concerning such diligent search in order to ensure a high level of protection of copyright in the Union. A diligent search should involve the consultation of publicly accessible databases that supply information on the copyright status of a work. **In order to avoid duplication of search efforts, a reasonable diligent search, to be carried out in good faith, should be conducted in the Member State where the work was**

recorded in a publicly accessible database. To the extent possible, publicly accessible databases of search results and use of orphan works should be designed and implemented so as to permit interlinkage **with each other** on a pan-European level **and** consultation thereof through a single entry point.

**first published, broadcast or communicated or distributed to the public, but may in some cases also necessitate consultation of information available in other Member States.** Moreover, in order to avoid duplication of costly digitisation **and to ascertain whether the orphan status of a work has been established in another Member State,** Member States should ensure that **the results of diligent searches carried out in their territories and the** use of orphan works by the organisations referred to in this Directive **are** recorded in a publicly accessible database. To the extent possible, publicly accessible databases, **available free of charge,** of search results and **of the** use of orphan works should be designed and implemented **within a clear and user-friendly framework** so as to permit interlinkage **and interoperability** on a pan-European level **between the different Member States, as well as** consultation thereof through a single entry point.

#### *Justification*

*Merging Recital 13 and Recital 15 for more coherence.*

#### **Amendment 7**

##### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

**(13a) Online accessibility of cultural content and digital preservation often fail to fulfil their potential owing inter alia to inadequate resources in the Member States and fruitless attempts to interconnect databases that are incompatible. For the purposes of this Directive, Member States should be asked to consider standardisation at European level for digitisation of works, in order to improve the central registration,**



*accessibility and interoperability of their public databases.*

## **Amendment 8**

### **Proposal for a directive Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

***(13b) In order to facilitate cross-border access to publicly accessible online databases recording the search results and the use of orphan works, it is appropriate that Member States communicate to the Commission the online location of databases in their territory and that the Commission share such information with other Member States. Practical arrangements should be devised to permit the on-line consultation and the interlinkage of those databases through a single European entry point, accessible by the public at a distance and by electronic means, and to facilitate access to information contained therein, in particular through technical mechanisms such as machine translations designed to ease language barriers.***

#### *Justification*

*In order to facilitate the access to the databases or records of diligent searches and of the use of orphan works, especially in cross-border context, the Member States will have to cooperate with the Commission.*

## **Amendment 9**

### **Proposal for a directive Recital 15**

*Text proposed by the Commission*

*Amendment*

***(15) In order to avoid duplication of search efforts, a diligent search should be conducted only in the Member State***

***deleted***

*where the work was first published or broadcast. In order to enable other Member States to ascertain whether the orphan status of a work has been established in another Member State, Member States should ensure that the results of diligent searches carried out in their territories are recorded in a publicly accessible database.*

*Justification*

*Merging Recital 13 and Recital 15 for more coherence.*

## **Amendment 10**

### **Proposal for a directive Recital 17**

*Text proposed by the Commission*

*Amendment*

(17) In order to promote learning and culture, Member States should permit libraries, educational establishments and museums which are publicly accessible, as well as archives, film heritage institutions and public service broadcasting organisations, to make available and reproduce orphan works, provided such use fulfils their public interest missions, notably preservation, restoration and the provision of cultural and educational access to works contained in their collections. Film heritage institutions should, for the purposes of this Directive, cover organisations designated by Member States to collect, catalogue, preserve and restore films forming part of their cultural heritage.

*(Does not affect English version)*

## **Amendment 11**

### **Proposal for a directive Recital 18**

*Text proposed by the Commission*

(18) Contractual arrangements may play a role in fostering the digitisation of European cultural heritage, it being understood that libraries, educational establishments, museums or archives **and** film heritage institutions may, with a view to undertake the uses permitted under this Directive, conclude agreements with commercial partners for the digitisation and making available of orphan works. These agreements may include financial contributions by such partners.

*Amendment*

(18) Contractual arrangements may play a role in fostering the digitisation of European cultural heritage, it being understood that libraries, educational establishments, museums or archives, film heritage institutions **and public service broadcasters** may, with a view to undertake the uses permitted under this Directive, conclude agreements with commercial partners for the digitisation and making available of orphan works. These agreements may include financial contributions by such partners **but should not vest in them any exploitation rights in respect of the works. Such agreements should not include restrictions on the manner in which libraries, educational establishments, museums or archives and film or audio heritage institutions are permitted under this Directive to use the orphan works in order to fulfil their public-interest mission, in particular as regards the non-exclusive and non-discriminatory provision of access to the orphan works.**

**Amendment 12**

**Proposal for a directive  
Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

**(19a) The economic basis for the creative sector is laid by the interplay of action to protect and promote existing cultural heritage, quality education and manufacturing with the creative sector. The adoption by the Member States of a coherent policy in all these areas is needed for a quality creative sector.**

## Amendment 13

### Proposal for a directive Recital 20

*Text proposed by the Commission*

(20) This Directive should be without prejudice to existing arrangements in the Member States concerning the management of rights such as extended collective licences.

*Amendment*

(20) This Directive should be without prejudice to existing ***and future legally recognised*** arrangements in the Member States concerning the management of rights such as extended collective licences.

## Amendment 14

### Proposal for a directive Recital 21

*Text proposed by the Commission*

(21) Member States should also be allowed to permit the use of orphan works for purposes which go beyond the public interest missions of the organisations covered by this Directive. ***In such circumstances, the rights and legitimate interests of rightholders should be protected.***

*Amendment*

(21) Member States should also be allowed to permit the use of orphan works for purposes which go beyond the public interest missions of the organisations covered by this Directive.

*Justification*

*This amendment replaces AM 7.*

## Amendment 15

### Proposal for a directive Recital 22

*Text proposed by the Commission*

(22) When a Member State authorises, under the conditions established in this Directive, the use of orphan works by publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service

*Amendment*

(22) When a Member State authorises, under the conditions established in this Directive, the use of orphan works by publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service

broadcasting organisations for purposes beyond their public interest mission, rightholders who come forward to claim their works should be remunerated. Such remuneration should **take** account of the type of work and the use concerned. Member States may provide that revenues collected from such use of orphan works for the purpose of remuneration but which are unclaimed after the expiry of the period fixed in accordance with this Directive should contribute to financing rights information sources that will facilitate diligent search, by low-cost and automated means, in respect of categories of works that fall actually or potentially within the scope of application of this Directive.

broadcasting organisations for purposes beyond their public interest mission, rightholders who come forward to claim their works should be remunerated. Such remuneration should **be equitable, taking** account of the type of work and the use concerned. Member States may provide that revenues collected from such use of orphan works for the purpose of remuneration but which are unclaimed after the expiry of the period fixed in accordance with this Directive should contribute to financing rights information sources that will facilitate diligent search, by low-cost and automated means, in respect of categories of works that fall actually or potentially within the scope of application of this Directive.

## Amendment 16

### Proposal for a directive

#### Article 1 – paragraph 2 – introductory wording

##### *Text proposed by the Commission*

2. This Directive applies to works first published **or** broadcast in a Member State and which are:

##### *Amendment*

2. This Directive applies to works **protected by copyright which were first** published, broadcast **or communicated or distributed to the public** in a Member State and which are:

## Amendment 17

### Proposal for a directive

#### Article 1 – paragraph 2 – point 2 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

**(2a) Works in the form of stand-alone photographs and other images which are contained in the collections of organisations referred to in Article 1(1), where it is possible for the diligent search to proceed due to some identifying information attached to such works (for**

*example, stamps of the photographer's studio, etc.) and where the personality rights do not represent any legal obstacle, or*

*Justification*

*This amendment extends the scope of this proposal at least on those photographs and other images, where the diligent search can be preceded and there are no personality rights touched (e.g. landscape photographs).*

**Amendment 18**

**Proposal for a directive**

**Article 1 – paragraph 2 – point 3**

*Text proposed by the Commission*

(3) Cinematographic, audio or audiovisual works produced by public service broadcasting organisations ***before the 31 December 2002*** and contained in their archives.

*Amendment*

(3) Cinematographic, audio or audiovisual works produced by public service broadcasting organisations and contained in their archives.

**Amendment 19**

**Proposal for a directive**

**Article 2 – paragraph 1**

*Text proposed by the Commission*

1. A work shall be considered an orphan work if the rightholder in the work is not identified or, even if identified, is not located after a diligent search for the rightholder has been carried out and recorded in accordance with Article 3.

*Amendment*

1. A work shall be considered an orphan work if the rightholder in the work is not identified or, even if identified, is not located after a ***reasonably*** diligent search for the rightholder has been carried out ***in good faith*** and recorded in accordance with Article 3.

**Amendment 20**

**Proposal for a directive**

**Article 3 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. In the event that the diligent search is carried out by an organisation other than an organisation referred to in Article 1(1), the latter shall remain liable for the search performed.***

## **Amendment 21**

### **Proposal for a directive Article 3 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. A diligent search is required to be carried out only in the Member State of first publication *or* broadcast.

3. A diligent search is required to be carried out, ***in good faith and in a reasonable manner***, only in the Member State of first publication, broadcast *or other form of communication or distribution to the public. Where the first publication, broadcast or other form of communication or distribution to the public took place simultaneously in two or more Member States, the diligent search shall be carried out in all those Member States.*

## **Amendment 22**

### **Proposal for a directive Article 3 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. In cases where the territorial boundaries of a Member State have changed over time, the diligent search in the Member State of first publication may necessitate consultation of information in another Member State with which the work is most closely associated on account of geographical, linguistic or other relevant factors.***

*Justification*

*In cases where the borders of the Member States changed during the history the diligent search should be linked to the Member State to which the work is the most closely associated because of geographical, linguistic or other relevant reasons.*

**Amendment 23**

**Proposal for a directive**

**Article 3 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. Where a cinematographic or audiovisual work is known to be a co-production, the diligent search shall be carried out in each of the Member States involved in the co-production.***

**Amendment 24**

**Proposal for a directive**

**Article 3 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Member States shall ensure that the results of diligent searches carried out in their territories are recorded in a publicly accessible database.

4. Member States ***may appoint public bodies entitled to check that diligent searches have been properly carried out in good faith and in a reasonable manner, and*** shall ensure that the results of diligent searches carried out in their territories are recorded in a publicly accessible database, ***to be made available free of charge.***

**Amendment 25**

**Proposal for a directive**

**Article 5**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that a rightholder in a work considered to be orphan has, at any time, the possibility of

Member States shall ensure that a rightholder in a work considered to be orphan has, at any time, the ***real*** possibility



putting an end to the orphan status.

of putting an end to the orphan status *in a speedy, uniform and cost-effective manner, from the Member State of his choice.*

## Amendment 26

### Proposal for a directive Article 6 – paragraph 1 – point b

#### *Text proposed by the Commission*

(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for *the* purposes *of digitization*, making available, indexing, cataloguing, preservation or restoration.

#### *Amendment*

(b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for purposes *such as searching, digitisation*, making available, indexing, cataloguing, preservation or restoration.

#### *Justification*

*This amendment allows the open list of purposes in order to give the possibility to react on the development of information technologies in coming years without the need to amend this legislation for all single useful purposes, which would be offered in the future. Moreover, in the line with the recitals 1 and 10 it adds searching among the examples of purposes of permitted acts of reproduction.*

## Amendment 27

### Proposal for a directive Article 6 – paragraph 2

#### *Text proposed by the Commission*

2. However, unless otherwise provided in Article 7, the organisations referred to in Article 1(1) may not use orphan works in order to achieve aims other than their public interest missions, notably preservation, restoration and the provision of cultural and educational access to works contained in their collections.

#### *Amendment*

2. However, unless otherwise provided in Article 7, the organisations referred to in Article 1(1) may not use orphan works in order to achieve aims other than their public interest missions, notably preservation, restoration and the provision of cultural, *research-related* and educational access to works contained in their collections.

### *Justification*

*In the line with the recitals 1 and 10 this amendment highlights the access to orphan works also for the research purposes.*

### **Amendment 28**

#### **Proposal for a directive Article 6 – paragraph 4**

##### *Text proposed by the Commission*

4. Member States shall ensure that the organisations referred to in Article 1(1), when using orphan works in accordance with paragraph 1, maintain records of their diligent search and publicly accessible records of use.

##### *Amendment*

4. Member States shall ensure that the organisations referred to in Article 1(1), when using orphan works in accordance with paragraph 1, maintain records of their diligent search and publicly accessible records of use ***and that those organisations ensure, in the case of an orphan work where a rightholder has been identified but not located, that the name of the rightholder is indicated in any use of the work.***

### **Amendment 29**

#### **Proposal for a directive Article 6 – paragraph 4 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***4a. Member States shall communicate to the Commission the list and the online location of the databases in their territory, and any subsequent modification thereof, where the organisations referred to in Article 1(1) maintain records of their diligent searches and of the use they make of orphan works. The Commission shall transmit this information to all Member States.***

### *Justification*

*In order to facilitate the access to the databases or records of diligent searches and of the use of orphan works, especially in cross-border context, the Member States will have to cooperate*

*with the Commission.*

### **Amendment 30**

#### **Proposal for a directive**

#### **Article 6 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. Together with the Commission, Member States shall put in place practical arrangements to ensure that the databases referred to above can be consulted through a single on-line entry point at Union level.***

*Justification*

*In order to facilitate the access to the databases or records of diligent searches and of the use of orphan works, the Member States and the Commission will have to cooperate towards the creation of a single on-line entry point at Union level.*

### **Amendment 31**

#### **Proposal for a directive**

#### **Article 6 – paragraph 4 c (new)**

*Text proposed by the Commission*

*Amendment*

***4c. In order to avoid duplication of costly digitisation, Member States shall permit the organisations referred to in Article 1(1) to interlink for the purpose of making available to each other the orphan works contained in their respective collections.***

*Justification*

*This amendment aims to avoid the duplication of digitisation in cases that the particular organisations already have the physical copies of the orphan works in their collections, so they can interlink the digital copies of these orphan works without the need to repeat the digitisation process.*

### **Amendment 32**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point 5**

*Text proposed by the Commission*

*Amendment*

**(5) rightholders may claim their remuneration under point (4) within a period fixed by Member States and which shall not be less than five years from the date of the act giving rise to the claim.**

**deleted**

**Amendment 33**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**(5a) where Member States choose to permit the commercial use of orphan works, the organisations referred to in Article 1(1) may market the orphan work in a reasonable manner and in good faith until such time as the act giving rise to entitlement by the rightholder thereto first occurs. Until that time, the rightholder shall not be remunerated and copyright law shall not apply.**

*Justification*

*Commercialization will have the advantage that organisations referred to in Article 1(1) will be encouraged to digitize orphan works. Rightholders will be stimulated to claim their works, and the public will have the possibility to enjoy orphan works earlier in time.*

**Amendment 34**

**Proposal for a directive**  
**Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Member States may choose to use existing or future national schemes to facilitate the mass digitisation of orphan works and to permit the commercial use**

*of orphan works.*

### **Amendment 35**

#### **Proposal for a directive Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 7a**

#### **Arrangements concerning the management of rights**

***This Directive shall not prejudice existing and future legally recognised arrangements in the Member States concerning the management of rights such as extended collective licences.***

### **Amendment 36**

#### **Proposal for a directive Article 7 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 7b**

#### **Preventive measures**

***In coordination with the parties concerned, Member States shall promote measures to prevent the occurrence of orphan works in the future.***

### **Amendment 37**

#### **Proposal for a directive Article 8**

*Text proposed by the Commission*

*Amendment*

This Directive shall be without prejudice to provisions concerning in particular patent rights, trade marks, design rights, utility models, topographies of semi-conductor

*(Does not affect English version)*

products, type faces, conditional access, access to cable of broadcasting services, protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract.

### **Amendment 38**

#### **Proposal for a directive Article 11 – paragraph 1**

##### *Text proposed by the Commission*

The Commission shall keep under constant review the development of rights information sources and shall, at the latest one year after the entry into force of this Directive, and at annual intervals thereafter, submit a report concerning the possible inclusion in the scope of application of this Directive of works or other protected subject matter not currently included in such scope, and in particular phonograms and stand alone photographs and other images.

##### *Amendment*

The Commission shall keep under constant review the development of rights information sources and shall, at the latest one year after the entry into force of this Directive, and at annual intervals thereafter, submit a report concerning the possible inclusion in the scope of application of this Directive of ***beneficiaries other than those listed in Article 1(1), and of*** works or other protected subject matter not currently included in such scope, and in particular phonograms and stand alone photographs and other images.

##### *Justification*

*Other beneficiaries than the museums, libraries etc. are necessary if orphan works are to be available to e.g. documentary film makers who want to include historic footage, or to any entrepreneurs in the cultural sector who might want to make use of Europe's common cultural heritage in new works. Although the present Directive is a good starting point for addressing the issue of orphan works, it is far from being a complete solution.*

### **Amendment 39**

#### **Proposal for a directive Article 11 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission shall keep under constant review the development of works which are out of commerce, and shall, at the latest two years after the entry into force of this Directive, and at regular intervals thereafter, publish a report concerning possible solutions with regard to digitisation and wide public access throughout the Member States to such works.***

#### **Amendment 40**

##### **Proposal for a directive Article 11 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission shall regularly (at least every two years) update the list of bodies referred to in Article 1(1) which are responsible for managing orphan works.***

#### **Amendment 41**

##### **Proposal for a directive Annex – introductory part**

*Text proposed by the Commission*

*Amendment*

The sources referred to in Article 3(2) shall ***be*** the following:

The sources referred to in Article 3(2) shall ***include*** the following:

## PROCEDURE

<b>Title</b>	Permitted uses of orphan works
<b>References</b>	COM(2011)0289 – C7-0138/2011 – 2011/0136(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 23.6.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	IMCO 23.6.2011
<b>Rapporteur(s)</b> Date appointed	Toine Manders 11.7.2011
<b>Date adopted</b>	5.12.2011
<b>Result of final vote</b>	+:                 30 -:                 0 0:                 0
<b>Members present for the final vote</b>	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Lara Comi, Anna Maria Corazza Bildt, Jürgen Creutzmann, Cornelis de Jong, Christian Engström, Sandra Kalniete, Edvard Kožušník, Kurt Lechner, Toine Manders, Phil Prendergast, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler
<b>Substitute(s) present for the final vote</b>	Anna Hedh, María Irigoyen Pérez, Othmar Karas, Constance Le Grip, Morten Løkkegaard, Emma McClarkin, Konstantinos Poupakis, Amalia Sartori, Wim van de Camp, Kerstin Westphal