



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0136(COD)

27.10.2011

AMENDMENTS

16 - 98

Draft opinion
Toine Manders
(PE473.720v01-00)

Permitted uses of orphan works

Proposal for a directive
(COM(2011)0289 – C7-0138/11 – 2011/0136(COD))

AM\881941EN.doc

PE475.793v01-00

EN

United in diversity

EN

AM_Com_LegOpinion

Amendment 16
Phil Prendergast

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) Libraries, museums, archives, educational establishments, film heritage institutions and **public service** broadcasting organisations are engaged in large-scale digitisation of their collections or archives in order to create European Digital Libraries. Libraries, museums, archives, educational establishments, film heritage institutions and **public service** broadcasting organisations in the Member States contribute to the preservation and dissemination of European cultural heritage, which is also important for the creation of European Digital Libraries, such as Europeana. Technologies for mass scale digitisation of print materials and for search and indexing enhance the research value of the libraries' collections.

Amendment

(1) Libraries, museums, archives, educational establishments, film heritage institutions and broadcasting organisations are engaged in large-scale digitisation of their collections or archives in order to create European Digital Libraries. Libraries, museums, archives, educational establishments, film heritage institutions and broadcasting organisations in the Member States contribute to the preservation and dissemination of European cultural heritage, which is also important for the creation of European Digital Libraries, such as Europeana. Technologies for mass scale digitisation of print materials and for search and indexing enhance the research value of the libraries' collections.

Or. en

Amendment 17
Philippe Juvin, Róza Gräfin von Thun und Hohenstein, Marielle Gallo, Zuzana Roithová, Andreas Schwab

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

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.

European Economic and Social Committee and the Committee of Regions – A Digital Agenda for Europe.

(This amendment applies throughout the text.)

Or. en

Amendment 18
Ashley Fox

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.

Or. en

Amendment 19
Phil Prendergast

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

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.

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.

Or. en

Amendment 20
Zuzana Roithová

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.)

Or. en

Amendment 21
Ashley Fox

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) The exclusive rights for **authors** of reproduction and of making available to the public of their works, as harmonised under Directive 2001/29/EC of the

Amendment

(4) The exclusive rights for **rightholders** of reproduction and of making available to the public of their works, as harmonised under Directive 2001/29/EC of the

European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, require the consent of the author prior to the digitisation and making available of a work.

European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, require the consent of the author prior to the digitisation and making available of a work.

Or. en

Amendment 22
Phil Prendergast

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) The exclusive rights for **authors** of reproduction and of making available to the public of their works, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, require the consent of the author prior to the digitisation and making available of a work.

Amendment

(4) The exclusive rights for **rightholders** of reproduction and of making available to the public of their works, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, require the consent of the author prior to the digitisation and making available of a work.

Or. en

Amendment 23
Toine Manders

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, investments and productions. Mass digitisation and dissemination of works is therefore a means of protecting Europe's

cultural heritage.

Or. en

Justification

This amendment replaces AM 1.

Amendment 24
Cornelis de Jong

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Copyright is an important tool for ensuring that the creative sector is rewarded for its work.

Or. nl

Amendment 25
Phil Prendergast

Proposal for a directive
Recital 7

Text proposed by the Commission

Amendment

(7) In particular, a common approach to determine the orphan status and the permitted uses of orphan works is necessary to ensure legal certainty in the internal market with respect to the use of orphan works by libraries, museums, educational establishments, archives, film heritage institutions and ***public service*** broadcasting organisations.

(7) In particular, a common approach to determine the orphan status and the permitted uses of orphan works is necessary to ensure legal certainty in the internal market with respect to the use of orphan works by libraries, museums, educational establishments, archives, film heritage institutions and broadcasting organisations.

Or. en

Amendment 26
Phil Prendergast

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) Cinematographic, audio and audiovisual works in the archives of **public service** broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the works in the archives of broadcasting organisations are concerned.

Amendment

(8) Cinematographic, audio and audiovisual works in the archives of broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the works in the archives of broadcasting organisations are concerned.

Or. en

Amendment 27
Zuzana Roithová

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

(9) *(Does not affect English version)*

Or. cs

Amendment 28
Philippe Juvin, Marielle Gallo

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Musical works, included those embedded in the audio, audiovisual, and cinematographic works referred to in Article 1.2 (2) and (3) should be excluded from the scope of this Directive.

Or. en

Amendment 29
Zuzana Roithová

Proposal for a directive
Recital 11

Text proposed by the Commission

Amendment

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

(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 in a state outside the European Union.***

Or. en

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 30
Philippe Juvin, Marielle Gallo

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. ***In the latter case, organisations referred to in this Directive should remain liable for the diligent search performed. Member States should appoint entities entitled to certify that diligent searches have been properly carried out in good faith.***

Or. en

Amendment 31
Ashley Fox

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.

Or. en

Amendment 32
Phil Prendergast

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.

Or. en

Amendment 33
Róza Gräfin von Thun und Hohenstein

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 author should be carried out ***in the manner decided by the authors and publishers or their representatives in the Member State where the work was first published.*** 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.

Or. en

Amendment 34
Zuzana Roithová

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. ***In the latter case, organisations referred to in this Directive should remain liable for the diligent search performed.***

Or. en

Amendment 35
Louis Grech

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 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

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. 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 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 ***within a clear and user-friendly framework*** so as to permit interlinkage ***and interoperability*** on a pan-

entry point.

European level *between the different Member States, as well as* consultation thereof through a single entry point.

Or. en

Amendment 36
Toine Manders

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* 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.

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 diligent search should be conducted only in the Member State where the work was first published, broadcast or communicated to the public.*** 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 of search results, ***available free of charge,*** and use of orphan works should be designed and implemented so as to permit interlinkage ***and interoperability*** with each other on a pan-European level and consultation thereof through a single entry point.

Or. en

Justification

This amendment replaces AM 3.

Amendment 37
Zuzana Roithová

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) 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 such information is shared by the Commission with other Member States. Practical arrangements should be found to permit the on-line consultation and the interlinkage of these databases through a single European entry point accessible at a distance and by electronic means by the general public and to facilitate access to information contained therein, in particular through technical mechanisms such as machine translations to ease language barriers.

Or. en

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 38
Ashley Fox

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Orphan works may have several **authors** or include other works or protected subject matter. This Directive should not affect the rights of known or identified rightholders.

Amendment

(14) Orphan works may have several **rightholders** or include other works or protected subject matter. This Directive should not affect the rights of known or identified rightholders.

Or. en

Amendment 39
Phil Prendergast

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) **Orphan** works may have several **authors** or include other works or protected subject matter. This Directive should not affect the rights of known or identified rightholders.

Amendment

(14) **Creative** works may have several **rightholders** or include other works or protected subject matter. This Directive should not affect the rights of known or identified rightholders.

Or. en

Amendment 40
Ashley Fox

Proposal for a directive
Recital 15

Text proposed by the Commission

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

Amendment

(15) In order to avoid duplication of search efforts, a diligent search should be conducted only in the Member State where the work was first published or broadcast **or, where relevant, in the country most associated with the work**. In order to enable other Member States to ascertain

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

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.

Or. en

Justification

Permits unpublished/unbroadcasted works to be included within the scope of the Directive, and addresses the case where a work was first published outside of the EU (for example many UK publications were first published in India) or where it is not known where a work was first published.

Amendment 41 **Zuzana Roithová**

Proposal for a directive **Recital 15**

Text proposed by the Commission

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

Amendment

(15) In order to avoid duplication of search efforts, a diligent search should be conducted only in the Member State where the work was first published or broadcast. ***A good faith and reasonable diligent search carried out in the sources of the Member State of first publication or broadcast may in some cases lead to the additional consultation of information available in other Member States.***

Or. en

Justification

This amendment serves to further clarify where the diligent search has to proceed.

Amendment 42
Christel Schaldemose

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) This Directive should also cover works or other protected subject matter which are contained in works, which have first been published or broadcasted in a Member State.

Or. en

Amendment 43
Ashley Fox

Proposal for a directive
Recital 16

Text proposed by the Commission

Amendment

(16) It is appropriate to provide that ***authors*** are entitled to put an end to the orphan status in case they come forward to claim their works.

(16) It is appropriate to provide that ***rightholders*** are entitled to put an end to the orphan status in case they come forward to claim their works.

Or. en

Amendment 44
Phil Prendergast

Proposal for a directive
Recital 16

Text proposed by the Commission

Amendment

(16) It is appropriate to provide that ***authors are*** entitled to put an end to the orphan status in case they come forward to claim their works.

(16) It is appropriate to provide that ***rightholders be*** entitled to put an end to the orphan status in case they come forward to claim their works.

Amendment 45
Zuzana Roithová

Proposal for a directive
Recital 17

Text proposed by the Commission

(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.

Amendment

(17) *(Does not affect English version)*

Amendment 46
Zuzana Roithová

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

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 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.

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. ***These agreements should not include restrictions to the manner in which libraries, educational establishments, museums or archives and film or audio heritage institutions are allowed under this Directive to use the orphan works to fulfil their public interest mission, in particular as regards the provision of access to the orphan works in a non-exclusive and non discriminatory manner.***

Or. en

Justification

The amendment clarifies that public private partnerships should not impose on public institutions restrictions as to who should have access to orphan works once they are digitised and made available.

Amendment 47 **Ashley Fox**

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.

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 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.

These agreements may include financial contributions by such partners ***but shall not vest in them any exploitation rights of the works.***

Or. en

Amendment 48
Phil Prendergast

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 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.

Or. en

Amendment 49
Cornelis de Jong

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. Coherent Member State policy in all these

areas is needed for a quality creative sector¹.

¹ TNO, 12 September 2011, 'Vormgeving verder op de kaart', study on behalf of Preamsela.org:
<http://www.preamsela.org/sbeos/doc/file.php?nid=7350>

Or. nl

Amendment 50
Christel Schaldemose

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 **is** without prejudice to arrangements in the Member States concerning the management of rights such as extended collective licences, **legal presumptions of representation or transfer, mandatory collective management, or combinations of them.**

Or. en

Amendment 51
Phil Prendergast

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 **legally recognised** arrangements in the Member States concerning the management of rights such as extended collective licences.

Or. en

Amendment 52
Toine Manders

Proposal for a directive
Recital 21

Text proposed by the Commission

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

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.

Or. en

Justification

This amendment replaces AM 7.

Amendment 53
Phil Prendergast

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 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

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 ***be fair and proportionate, taking*** account of the type of work and the use concerned. Member

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.

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.

Or. en

Amendment 54
Phil Prendergast

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums as well as by archives, film heritage institutions and **public service** broadcasting organizations.

Amendment

1. This Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums as well as by archives, film heritage institutions and broadcasting organizations.

Or. en

Amendment 55
Ashley Fox

Proposal for a directive
Article 1 – paragraph 2 – introductory part

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 first published or broadcast in a Member State **or, where relevant, in the country most associated with the work**, and which are:

Justification

Permits unpublished/unbroadcasted works to be included within the scope of the Directive. It may also not be known where a work was first published, and resolves the issue that many UK publications were first published in India.

Amendment 56
Phil Prendergast

Proposal for a directive
Article 1 – paragraph 2 – introductory part

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 or broadcast in a Member State and which are:

Or. en

Amendment 57
Zuzana Roithová

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, when the diligent search can proceed due to some identifying information attached to such works (e.g. stamps of the photographer's atelier, etc.) and where the personality rights do not represent the legal obstacle, which are contained in the collections of organisations referred to in Article 1(1), or

Or. en

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 58

Christel Schaldemose

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.

Or. en

Amendment 59

Phil Prendergast

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 diligent search for the rightholder has been carried out, ***in good faith and in reasonable terms***, and recorded in accordance with Article 3.

Or. en

Amendment 60

Philippe Juvin, Róza Gräfin von Thun und Hohenstein, Marielle Gallo, Zuzana

Roithová, Andreas Schwab

**Proposal for a directive
Article 3 – paragraph 1**

Text proposed by the Commission

1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a diligent search is carried out for each work, by consulting the appropriate sources for the category of works in question.

Amendment

1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a **good faith and reasonable** diligent search is carried out for each work, by consulting the appropriate sources for the category of works in question.

Or. en

**Amendment 61
Ashley Fox**

**Proposal for a directive
Article 3 – paragraph 1**

Text proposed by the Commission

1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a diligent search is carried out **for each work**, by consulting the appropriate sources for the category of **works** in question.

Amendment

1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a diligent search is carried out, by consulting the appropriate sources for the category of **work** in question.

Or. en

**Amendment 62
Zuzana Roithová**

**Proposal for a directive
Article 3 – paragraph 1**

Text proposed by the Commission

1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a diligent search is carried out for each work, by consulting the appropriate sources for the category of works in question.

Amendment

1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a ***good faith and reasonable*** diligent search is carried out for each work, by consulting the appropriate sources for the category of works in question.

Or. en

Amendment 63
Philippe Juvin, Marielle Gallo

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission

2. The sources that are appropriate for each category of works shall be determined by each Member State, in ***consultation*** with rightholders and users, and include, the sources listed in the Annex.

Amendment

2. The sources that are appropriate for each category of works shall be determined by each Member State, in ***agreement*** with rightholders and users, and include, the sources listed in the Annex.

Or. en

Amendment 64
Philippe Juvin, Marielle Gallo, Zuzana Roithová

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In case the diligent search is carried out by other organisations than those referred to in Article 1(1), the latter shall remain liable for the search performed.

Or. en

Amendment 65
Zuzana Roithová

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In case the diligent search is carried out by other organisations than those referred to in Article 1(1), the latter shall remain liable for the search performed.

Or. en

Amendment 66
Ashley Fox

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 only in the Member State of first publication or broadcast ***or, where relevant, in the country most associated with the work.***

Or. en

Justification

Permits unpublished/unbroadcasted works to be included within the scope of the Directive, and addresses the case where a work was first published outside of the EU (for example many UK publications were first published in India) or where it is not known where a work was first published.

Amendment 67
Phil Prendergast

Proposal for a directive
Article 3 – paragraph 3

Text proposed by the Commission

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

Amendment

3. A diligent search is required to be carried out, ***in good faith and in reasonable terms***, only in the Member State of first publication, ***broadcast*** or ***other form of public communication***.

Or. en

Amendment 68
Zuzana Roithová

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

Text proposed by the Commission

Amendment

3a. In particular cases, where territorial boundaries of Member State have changed over time, the diligent search in the Member State of first publication may lead to the consultation of information in another Member State to which the work is the most closely associated because of geographical, linguistic or other relevant reasons.

Or. en

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 69
Phil Prendergast

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

Text proposed by the Commission

Amendment

3a. When a cinematographic and 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.

Or. en

Amendment 70
Philippe Juvin, Marielle Gallo, Andreas Schwab

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 ***shall appoint entities entitled to certify that diligent searches have been properly carried out in good faith, and*** shall ensure that the results of diligent searches carried out in their territories are recorded in a publicly accessible database.

Or. en

Amendment 71
Christel Schaldemose

Proposal for a directive
Article 3 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States that choose an implementation method that imply a right to individual remuneration for the rightholders for the use made of their works, shall introduce an obligation of

diligent search a posteriori, and an obligation to reserve for a time to be prescribed by law a share of the remuneration to the rightholders of orphan works.

Or. en

Amendment 72
Christel Schaldemose

Proposal for a directive
Article 4

Text proposed by the Commission

A work which is considered an orphan work according to Article 2 in a Member State shall be considered an orphan work in all Member States.

Amendment

A work which is considered an orphan work according to Article 2 in a Member State shall be considered an orphan work in all Member States, *and Member States shall recognise the validity of each others' implementation, and recognise that the reproductions and the initial act of making available for the purposes of Articles 6 and 7, and the provision of access to protected works outside the Member State of the initial act, are lawful acts.*

Or. en

Amendment 73
Phil Prendergast

Proposal for a directive
Article 4

Text proposed by the Commission

A work which is considered an orphan work according to Article 2 in a Member State shall be considered an orphan work in all Member States.

Amendment

A work which is considered an orphan work according to Article 2 in a Member State shall be considered an orphan work in all Member States. *This Directive shall not prejudice legally recognised arrangements*

in the Member States which concern the management of rights, such as extended collective licensing.

Or. en

Amendment 74
Phil Prendergast

Proposal for a directive
Article 5

Text proposed by the Commission

Member States shall ensure that *a* rightholder *in* a work considered to be orphan has, at any time, the possibility *of putting an end* to the orphan status.

Amendment

Member States shall ensure that *each* rightholder *to* a work considered to be orphan has, at any time, the possibility to *claim the respective copyrights, without prejudice to the orphan status of the work in respect of the rights of rightholders which have not been identified or located. A work shall only lose its status as an orphan work if all the rightholders to that work are identified or located.*

Or. en

Amendment 75
Christel Schaldemose

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.

Or. en

Amendment 76
Zuzana Roithová

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**, digitization, making available, indexing, cataloguing, preservation or restoration.

Or. en

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 77
Phil Prendergast

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.

Or. en

Amendment 78
Zuzana Roithová

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** and educational access to works contained in their collections.

Or. en

Justification

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

Amendment 79
Ashley Fox

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 ensure that in the case of an orphan work where a rightholder has been identified but not located, the name of the rightholder is indicated in any use of the work.***

Or. en

Amendment 80
Phil Prendergast

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 **article 6(2)**:

- (a) maintain records of their diligent searches;**
- (b) maintain publicly accessible records of their use of orphan works;**
- (c) indicate the name of any rightholder which has been identified but not located.**

Or. en

Amendment 81
Zuzana Roithová

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 modification thereafter, 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.

Or. en

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 82
Zuzana Roithová

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 the European level.

Or. en

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 European level.

Amendment 83
Zuzana Roithová

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 among one another the orphan works which are contained in both

collections.

Or. en

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 84
Phil Prendergast

Proposal for a directive
Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States may authorise the organisations referred to in Article 1(1) to use an orphan work for purposes other than those referred to in Article 6(2), ***provided that:***

Amendment

1. Member States may authorise the organisations referred to in Article 1(1) to use an orphan work for purposes other than those referred to in Article 6(2), ***subject to compliance with Article 6(4):***

Or. en

Amendment 85
Phil Prendergast

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

Text proposed by the Commission

(1) the organisations referred to in Article 1(1) maintain records of their diligent search;

Amendment

deleted

Or. en

Amendment 86
Phil Prendergast

Proposal for a directive
Article 7 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(2) the organisations maintain publicly accessible records of their use of orphan works;

deleted

Or. en

Amendment 87
Phil Prendergast

Proposal for a directive
Article 7 – paragraph 1 – point 3

Text proposed by the Commission

Amendment

(3) in the case of an orphan work where a rightholder has been identified but not located, the name of the rightholder is indicated in any use of the work;

deleted

Or. en

Amendment 88
Phil Prendergast

Proposal for a directive
Article 7 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) rightholders which **put an end to the orphan status of the work**, within the meaning of Article 5, are remunerated for the use that has been made of the work by the organisations referred to in Article 1(1);

(4) rightholders which **claim their respective rights** within the meaning of Article 5 are **fairly and proportionately** remunerated for the use that has been made of the work by the organisations referred to in Article 1(1). **Rightholders are entitled to fair and proportionate 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;

Or. en

Amendment 89
Phil Prendergast

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

Or. en

Amendment 90
Ashley Fox

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

Text proposed by the Commission

Amendment

(5a) ultimate liability for payment of the remuneration lies with the Member State in which the work was used.

Or. en

Amendment 91
Toine Manders

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

Text proposed by the Commission

Amendment

(5b) The organisations referred to in Article 1(1) may commercialize the orphan work in a reasonable manner and in good faith until the day on which the act giving rise to entitlement by the rightholder thereto first occurs. Until this day the rightholder shall not be remunerated and copyright legislation shall not apply.

Or. en

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 92

Ashley Fox

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.

Or. en

Amendment 93

Philippe Juvin, Róza Gräfin von Thun und Hohenstein, Marielle Gallo, Andreas Schwab

Proposal for a directive

Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Preventive measures

In accordance with the parties concerned, Member States shall promote measures to prevent the development of orphan works in the future.

Or. en

Amendment 94
Zuzana Roithová

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 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.

(Does not affect English version)

Or. cs

Amendment 95
Christian Engström

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.

Or. en

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 96
Zuzana Roithová

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 regularly thereafter, submit a report concerning the possible solution on the digitisation and wide public access across the Member States to the out-of-commerce-works.

Or. en

Amendment 97
Rolandas Paksas

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

Text proposed by the Commission

Amendment

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

Or. lt

Amendment 98
Phil Prendergast

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:

Or. en