



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0055/2012

28.3.2012

*****I**
REPORT

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

Committee on Legal Affairs

Rapporteur: Lidia Joanna Geringer de Oedenberg

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Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0289),
 - having regard to Article 294(2) and Articles 49, 56 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0138/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 21 September 2011¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection, and the Committee on Culture and Education (A7-0055/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) Libraries, museums, archives,

Amendment

(1) Libraries, museums, archives,

¹ OJ C 376, 22.12.2011, p. 66.

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.

educational establishments, film heritage institutions and public service broadcasting organisations ***established in the Member States*** are engaged in large-scale digitisation of their collections or *archives* in order to create European Digital Libraries. ***They*** 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 2

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 ***subject to copyright or related rights*** 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.

Amendment 3

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 **rightholder** prior to the digitisation and making available of a work.

Amendment 4

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 5

Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

(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

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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 6
Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) It is essential to prevent the creation of new orphan works in the future, taking into account the ever-increasing production and dissemination of creative content online in the digital era. A clear indication on how to identify and locate the rightholders is required, as well as specific registration, as a precondition for the full exercise of rights. It is also necessary to create a solid framework for the acquisition of rights. The legal framework should be open to technical developments and sufficiently flexible to allow for future contracts between rightholders.

Amendment 7

Proposal for a directive
Recital 9

Text proposed by the Commission

Amendment

(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.

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

Amendment 8

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

Amendment 9

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 ***authorised*** organisations.

Amendment 10

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

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***

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.

first published or broadcast. Moreover, in order to avoid duplication of costly digitisation *and ascertain whether a work has been granted orphan status in another Member State*, Member States should ensure that *the results of the diligent search on their territory and* use of orphan works by the organisations referred to in this Directive *are* recorded in a publicly accessible database. To the extent possible, *free*, publicly accessible databases of search results and use of orphan works should be designed and implemented so as to permit interlinkage with each other *and interoperability* on a pan-European level and consultation thereof through a single entry point.

Amendment 11

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.

Amendment 12

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,

Amendment

deleted

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

Amendment 13

Proposal for a directive

Recital 16

Text proposed by the Commission

(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.

Amendment

(16) *Where rightholders come forward to claim their works, they should be* entitled to put an end to the orphan status *of those* works *in respect of themselves. Member States should ensure that such rightholders receive appropriate and fair remuneration for the past use of their* works.

Amendment 14

Proposal for a directive

Recital 16 a (new)

Text proposed by the Commission

(16a) *If a work has been wrongly found to be an orphan work, following a search which was not diligent and reasonable or not carried out in good faith, Member States should provide that the user be held liable, for breach of copyright, in accordance with the relevant national provisions and Union law.*

Amendment

Amendment 15

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) In order to promote learning and

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.

culture, Member States should permit libraries, educational establishments and museums which are publicly accessible, as well as archives, film **and audio** heritage institutions and public service broadcasting organisations, to **reproduce and to** make available, **within the meaning of Directive 2001/29/EC**, orphan works, provided **that** such use fulfils their public interest missions **and guarantees** cultural and educational access to **them**. Film **and audio** heritage institutions should, for the purposes of this Directive, cover organisations designated by Member States to collect, catalogue, preserve and restore films **and phonograms** forming part of their cultural heritage.

Amendment 16

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 and film **and audio** heritage institutions **and public service broadcasting organisations** 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 17

Proposal for a directive Recital 19

Text proposed by the Commission

(19) In order to foster the Union's citizens' access to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available to the public in one Member State are also available in other Member States. **Publicly accessible** libraries, educational establishments, museum, archives, film heritage institutions and public service broadcasting organisations that use an orphan work in order to achieve their public interest missions should be able to make the orphan work available to the public in other Member States.

Amendment

(19) In order to foster the Union's citizens' access to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available to the public in one Member State are also available in other Member States. Libraries, educational establishments, museum, archives, film heritage institutions and public service broadcasting organisations that use an orphan work in order to achieve their public interest missions should be able to make the orphan work available to the public in other Member States.

Amendment 18

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 arrangements in the Member States concerning **any form of rights'** management **systems**, such as extended collective licences.

Amendment 19

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

Amendment

deleted

covered by this Directive. In such circumstances, the rights and legitimate interests of rightholders should be protected.

Amendment 20

Proposal for a directive Recital 22

Text proposed by the Commission

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.

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Amendment 21

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. This Directive concerns certain uses of orphan works undertaken by publicly

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.

accessible libraries, educational establishments or museums as well as by archives, film *and audio* heritage institutions, *publishers* and public service broadcasting organizations *established in the Member States*.

Amendment 22

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 *subject to copyright or related rights, which were first published or broadcast in the territory of a Member State, and which are contained in the own collection and archives of the organisations referred to in paragraph 1, and which are:*

Amendment 23

Proposal for a directive

Article 1 – paragraph 2 – point 1

Text proposed by the Commission

1) Works *published* in the form of books, journals, newspapers, magazines or other writings, *and which are contained in the collections of publicly accessible libraries, educational establishments, museums or archives, or*

Amendment

1) Works in the form of books, journals, newspapers, magazines or other writings *and printed materials, or*

Amendment 24

Proposal for a directive

Article 1 – paragraph 2 – point 2

Text proposed by the Commission

2) *Cinematographic* or audiovisual works *contained in the collections of film*

Amendment

2) *Phonograms, cinematographic* or

heritage institutions, or

audiovisual works.

Amendment 25

Proposal for a directive

Article 1 – paragraph 2 – point 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 26

Proposal for a directive

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive shall also apply to works that constitute an integral or embedded part of works referred to in paragraph 2, including fine art, photographs, illustrations, designs, architecture, sketches of these works and other works.

Amendment 27

Proposal for a directive

Article 2 – paragraph 1

Text proposed by the Commission

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 and recorded in accordance with Article 3.

1. A work *subject to copyright and related rights* shall be considered an orphan work if the rightholder in the work is not identified or, even if identified, *cannot be* located *despite* a diligent search *having* been carried out and recorded in accordance with Article 3.

Amendment 28

Proposal for a directive Article 2 – paragraph 2

Text proposed by the Commission

2. Where a work has more than one rightholder, and one of the rightholders has been identified and located, that work shall **not** be considered an orphan work.

Amendment

2. Where a work has more than one rightholder, and **at least** one of the rightholders has **not** been identified, **or even if identified, has not been** located **after a diligent search has been carried out and recorded in accordance with Article 3**, that work shall be considered an orphan work **insofar as the rights of the non-identified or non-located rightholders are concerned**.

Amendment 29

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

Text proposed by the Commission

Amendment

2a. Paragraph 2 shall be without prejudice to the rights in the work of a rightholder who has been identified and located.

Amendment 30

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

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 **for each work**, by consulting the appropriate sources for the category of works in question.

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 **in good faith**, by consulting the appropriate sources for the category of works in question.

Amendment 31

Proposal for a directive Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In the event that the cinematographic and audiovisual work subject to a good faith diligent search is known to be a co-production, such a search must be carried out in each of the Member States involved in the coproduction.

Amendment 32

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

Amendment

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.

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

Amendment 33

Proposal for a directive Article 3 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The sources listed in the 'Due Diligence Guidelines' which are referred to in point 1 of the 'Memorandum of Understanding on Diligent Search Guidelines for Orphan Works' shall also be consulted.

Amendment 34

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 35

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 ***shall*** be carried out only ***on the territory of*** the Member State of first publication or broadcast. ***It shall be carried out in good faith prior to the use of the work.***

Amendment 36

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

Text proposed by the Commission

Amendment

If there is evidence to suggest that rightholders from the territory of other Member States were involved in the creation of the work, the diligent search shall be deemed to have been concluded only if it also encompassed the territories of those Member States.

Amendment 37

Proposal for a directive
Article 3 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Member States shall ensure that the results of diligent searches carried out in their territories are recorded in a publicly accessible database. ***The Member States' databases shall be designed and implemented so as to permit interlinkage with each other on a pan-European level.***

Amendment 38

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

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

1. Member States shall ensure that ***each*** rightholder in a work considered to be orphan ***is***, at any time, ***entitled to put*** an end to the orphan status ***in respect of the rights to which such rightholder is entitled.***

Amendment 39

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

Text proposed by the Commission

Amendment

1a. ***A work shall cease to be an orphan work only if all the rightholders to that work are identified and located.***

Amendment 40

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

Text proposed by the Commission

Amendment

2. However, unless otherwise provided in Article 7, the organisations referred to in

2. The organisations referred to in Article 1(1) may not use orphan works in order to

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.

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 41

Proposal for a directive Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If, in the case of an orphan work, one or more rightholders has been identified but not located, the name(s) of the rightholder(s) shall be indicated every time a work is used.

Amendment 42

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public interest missions.

3. This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public interest missions, ***particularly public-private partnership agreements.***

Amendment 43

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

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

deleted

accessible records of use.

Amendment 44

Proposal for a directive

Article 6 – paragraph 4 a (new) – subparagraph 1 (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that the organisations referred to in Article 1(1) using an orphan work in accordance with Article 6(1):

1) maintain records of their diligent searches;

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

3) indicate, in any use of an orphan work where one or more rightholder has been identified but not located, the name of such rightholder;

Amendment 45

Proposal for a directive

Article 6 – paragraph 4 a (new) – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that a rightholder who put an end to the orphan status of the work in respect of the rights to which he is entitled, as referred to in Article 5 paragraph 1, receives an appropriate and fair remuneration for the use of the work.

Amendment 46

Proposal for a directive

Article 6 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. 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.

Amendment 47

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.

Amendment 48

Proposal for a directive Article 7

Text proposed by the Commission

Amendment

Article 7

deleted

Authorised uses of orphan works

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:

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

search;

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

(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;

(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);

(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.

2. Member States may chose the means for authorising use within the meaning of paragraph 1 and remain free to decide on the use of any revenues which are unclaimed after the expiry of the period fixed in accordance with paragraph 1(5).

Amendment 49

Proposal for a directive Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Arrangements concerning rights' management systems

This Directive shall be without prejudice to arrangements in the Member States concerning any form of rights' management systems, such as extended collective licences.

Amendment 50

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 all preventive measures likely to limit the occurrence of orphan works in the future and to reduce their number.

Amendment 51

Proposal for a directive Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This Directive shall be without prejudice to the Member States' arrangements concerning mass-scale digitisation of works, such as those relating to out-of-commerce works.

Amendment 52

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. The provisions of this Directive shall apply in respect of all works referred to in Article 1 which are, *on [transposition date]*, protected by the Member States' legislation in the field of copyright.

1. The provisions of this Directive shall apply in respect of all works referred to in Article 1 which are protected by the Member States' legislation in the field of copyright *on or after [transposition date]*.

Amendment 53

Proposal for a directive

Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] **at the latest**. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**two years after this Directive enters into force**]. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment 54

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 stand alone photographs and other images, **as well as unpublished works of all kinds created in Europe**.

Amendment 55

Proposal for a directive Annex – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 56

Proposal for a directive Annex – point 1 – subpoint a)

Text proposed by the Commission

a) Legal deposit;

Amendment

a) Legal deposit *catalogues*;

Amendment 57

Proposal for a directive Annex – point 3 – point a

Text proposed by the Commission

(a) The publishers association in the respective country and the authors and journalists associations;

Amendment

(a) The publishers *and the publishers'* association in the respective country and the authors and journalists associations;

Amendment 58

Proposal for a directive Annex – point 3 – subpoint b)

Text proposed by the Commission

b) Legal deposit;

Amendment

b) Legal deposit *catalogues*;

Amendment 59

Proposal for a directive Annex – point 5 – subpoint a)

Text proposed by the Commission

a) Legal deposit;

Amendment

a) Legal deposit *catalogues*;

Amendment 60

Proposal for a directive Annex – point 5 – point d a (new)

Text proposed by the Commission

Amendment

*(da) Credits and other information
appearing on the work's packaging;*

Amendment 61

Proposal for a directive Annex – point 5 – point d b (new)

Text proposed by the Commission

Amendment

*(db) Databases/membership lists of all
relevant associations or institutions
representing the relevant category of
rightholder.*

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

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/EC¹ 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.²

The present legislative initiative builds on the Commission's 2006 Recommendation on the digitisation and online accessibility of cultural content and digital preservation.³ 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

¹ 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).

² 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.

³ OJ L 236, 31.8.2006, p. 28-30.

to facilitate availability of information¹. In its resolution of 6 April 2011 on a Single Market for Enterprises and Growth², 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 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 instead³, 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

¹ 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).

² 2010/2277(INI), point 56.

³ http://thepublicindex.org/docs/amended_settlement/opinion.pdf, page 23.

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.

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

(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

(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

| | |
|---|--|
| Title | Permitted uses of orphan works |
| References | COM(2011)0289 – C7-0138/2011 – 2011/0136(COD) |
| Committee responsible Date announced in plenary | JURI 23.6.2011 |
| Committee(s) asked for opinion(s) Date announced in plenary | IMCO 23.6.2011 |
| Rapporteur(s) Date appointed | Toine Manders 11.7.2011 |
| Date adopted | 5.12.2011 |
| Result of final vote | +: 30 –: 0 0: 0 |
| Members present for the final vote | 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 |
| Substitute(s) present for the final vote | Anna Hedh, María Irigoyen Pérez, Othmar Karas, Constance Le Grip, Morten Løkkegaard, Emma McClarkin, Konstantinos Poupakis, Amalia Sartori, Wim van de Camp, Kerstin Westphal |

6.12.2011

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

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 – C7-0138/2011 – 2011/0136(COD))

Rapporteur: Sabine Verheyen

SHORT JUSTIFICATION

Background:

The European Union has an exceptionally rich cultural heritage. Much of this heritage, however, lies unused in the archives and libraries of the Member States and is inaccessible to the people of Europe. In order to maintain the diversity of European culture, it is essential to make these works available across borders.

At present only on their respective national territories are EU Member States able to digitise works where the rightholder cannot be identified. In future, new legislation will make it possible to have Europe-wide online access to such orphan works.

The European Commission's Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works provides a basis governing books, newspapers, journals, films, musical works, TV productions etc., which are in fact covered by copyright, but for which the rightholder cannot be identified.

The rapporteur considers the following points to be particularly important:

Objectives:

If a work proves to be an orphan work, it can be digitised and therefore made available to the public throughout Europe.

Through publication via the internet or other distribution channels, Europe's cultural variety will be strongly promoted and become accessible to everyone. This will benefit not only museums, libraries, broadcasting organisations, archives, universities and similar educational or scientific establishments. Private individuals, too, will profit greatly from the provision of

digital access to orphan works.

The digitisation of orphan works is a central component of conserving the European Union's cultural heritage, since the Directive allows citizens of the Member States cross-border access to orphan works which is backed up by the law.

Requests:

A work should be considered as an orphan work until all of its rightholders can be identified. However, care should be taken to ensure that the claims of known rightholders are not adversely affected.

In order to establish whether a work is an orphan work, a diligent search has to be carried out. This involves costly research carried out at the highest technical and scientific level.

Broadcasting organisations usually have extremely short-term search enquiries on the topics of the day and due to limits on time would not be able to carry out adequate research. Small museums, archives and institutes do not always have the appropriate resources in terms of both staff and infrastructure and for this reason would sometimes be unable to carry out a diligent search.

It is therefore absolutely essential to integrate collecting societies into the process. These should be authorised to carry out a diligent search at any time whenever an archive, a museum, a broadcasting organisation etc. is unable to undertake this task.

Collecting societies also perform one more purpose: if a work has not just one but several right owners, the collecting societies represent as trustees the rightholder who cannot be identified. Television productions, for example, not infrequently involve contacting 50 - 100 rightholders, and here it is very rare that every single one can be identified.

Digital libraries such as Europeana and other large-scale European digitisation projects are dependent on an EU-wide access. An integrated solution that links up the different territories of the Member States is therefore imperative.

The search for orphan works as well as their digitisation and publication must be based on state-of-the art science and technology. That is why it is necessary for the Directive to make it possible to apply the latest methods in the future. Therefore an intensive exchange of best practice views is essential within the Member States

AMENDMENTS

The Committee on Culture and Education 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 -1 (new)

Text proposed by the Commission

Amendment

(-1) The Union is required by the Treaty on the Functioning of the European Union to take cultural aspects into account in its actions, in particular in order to respect and to promote the diversity of its cultures.

Amendment 2
Proposal for a directive
Recital -1 a (new)

Text proposed by the Commission

Amendment

(-1a) Cross-border online access throughout the Union to orphan works contained in the collections of libraries, records offices, educational establishments, archives, museums, film heritage institutions, broadcasting organisations, other cultural organisations and private collections in the Member States, as well as works contained in archives from public service broadcasting organisations, contributes to the promotion and protection of the Union's cultural and linguistic diversity.

Amendment 3
Proposal for a directive
Recital 1

Text proposed by the Commission

Amendment

(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***

(1) Libraries, museums, ***records offices***, archives, *educational* establishments, film heritage institutions, broadcasting organisations ***and other cultural organisations in the Member States, as well as private collections***, are engaged in digitisation of their collections or *archives*. ***They also*** contribute to the preservation and dissemination of European cultural

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.

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 4

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 **so-called orphan** works for which no **rightholder** is identified or, even if identified, is not located, 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 5

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**

Amendment

(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,

making available of a work.

making available *and communication to the public* of a work.

Amendment 6
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) In the case of orphan works, such prior consent to carry out acts of reproduction *or* of making available to the public cannot be obtained.

Amendment

(5) In the case of orphan works, such prior consent to carry out acts of reproduction, of making available *or of communicating* to the public cannot be obtained.

Amendment 7

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Different approaches in the Member States to the recognition of orphan work status can present obstacles to the functioning of the internal market and the use and cross-border access to orphan works. Such different approaches can also result in restrictions on the free movement of goods and services which incorporate cultural content. Therefore, ensuring the mutual recognition of such status is appropriate.

Amendment

(6) Different approaches in the Member States to the recognition of orphan work status can present obstacles to the functioning of the internal market and the use and cross-border access to orphan works. Such different approaches can also result in restrictions on the free movement of goods and services which incorporate cultural content, *and make it difficult for the public to access and benefit from such goods and services*. Therefore, ensuring the mutual recognition of such status is appropriate.

Amendment 8
Proposal for a directive
Recital 7

Text proposed by the Commission

(7) In particular, a common approach to determine the orphan status and the permitted uses of orphan works is

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.

necessary to ensure legal certainty in the internal market with respect to the use of orphan works by libraries, museums, *records offices*, archives, *educational establishments*, film heritage institutions, broadcasting organisations *and other cultural organisations in the Member States, as well as private collections*.

Amendment 9
Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

(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.

deleted

Amendment 10
Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) It is essential to prevent the creation of new orphan works in the future, taking into account the ever-increasing production and dissemination of creative content online in the digital era. A clear indication on how to identify and locate the rightholders is required, as well as specific registration, as a precondition for the full exercise of rights. It is also

necessary to create a solid framework for the acquisition of rights. The legal framework should be open to technical developments and sufficiently flexible to allow for future contracts between rightholders.

Amendment 11
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) For the purposes of this Directive, cinematographic **works and works forming a part of** audio and audiovisual works, **photographs and other images, or contributions to works contained therein, held** in the archives of broadcasting organisations **and other cultural organisations** should be understood as including works commissioned by such organisations for their exclusive exploitation.

Amendment 12
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

deleted

Amendment 13

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) Before a work can be considered an

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. 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.

orphan work, a reasonable diligent search for *its rightholders* should be carried out. Member States should provide that organisations *wishing to use it are given the choice of either carrying out such a diligent search by their own means* or *having it carried out* by other organisations, *including collecting societies*.

Amendment 14

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. Moreover, in order to avoid duplication of costly digitisation, Member States should ensure that use of orphan works 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 15

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Orphan works may have several *authors* or include other works or

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.

protected subject matter. This Directive should not affect the rights of known or identified rightholders.

Amendment 16
Proposal for a directive
Recital 16

Text proposed by the Commission

(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.

Amendment

deleted

Amendment 17

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) In order to promote learning and culture, Member States should permit libraries, educational establishments and museums which are publicly accessible, as well as archives, ***records offices***, film heritage institutions and public service broadcasting organisations, to make available, ***to communicate to the public*** and ***to*** 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 18

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, *records offices* or archives, film heritage institutions, *broadcasting organisations and other cultural institutions in the Member States, as well as private collections*, may, with a view to undertake the uses permitted under this Directive, conclude agreements with commercial partners for the digitisation, *the* making available *and the communication to the public* of orphan works. These agreements may include financial contributions by such partners.

Amendment 19

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) In order to foster the Union's citizens' access to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available to the public in one Member State are also available in other Member States. *Publicly accessible libraries, educational establishments, museum, archives, film heritage institutions and public service broadcasting organisations that use an orphan work in order to achieve their public interest missions should be able to make the orphan work available to the public in other Member States.*

Amendment

(19) In order to foster the Union's citizens' access to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available *or communicated* to the public in one Member State are also available in other Member States.

Amendment 20

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 21

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 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 22

Amendment

(20) This Directive should be without prejudice to existing *and future* arrangements concerning the management of rights *in the Member States*.

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 *serve socio-cultural purposes for the public good. Member States may provide for those revenues to be used to cover the costs of diligent search or of maintenance and servicing the data banks required for that purpose*.

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 ***in the Member States.***

Amendment 23

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 first published, broadcast, ***exhibited, made available or communicated to the public*** in a Member State and which are:

Amendment 24

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

Text proposed by the Commission

(1) Works published in the form of books, journals, newspapers, magazines or other writings, ***and which are contained in the collections of publicly accessible libraries, educational establishments, museums or archives,*** or

Amendment

(1) Works published in the form of books, journals, newspapers, magazines or other writings, ***photographs and artworks,*** or

Amendment 25

Proposal for a directive
Article 1 – paragraph 2 – point 3

Text proposed by the Commission

(3) Cinematographic, audio or audiovisual

Amendment

(3) Cinematographic ***works or works***

works produced by *public service* broadcasting organisations *before the 31 December 2002* and contained in their archives.

forming a part of audio or audiovisual works produced by broadcasting organisations and contained in their archives.

Amendment 26

Proposal for a directive Article 1 – paragraph 2 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) Recordings of live performances, or photographs and other images of public performances, contained in the collections of other cultural institutions.

Amendment 27

Proposal for a directive Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Definition

For the purposes of this Directive, ‘rightholders’ means creators of works and holders of the rights to related protected subject-matter.

Amendment 28

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

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 and

1. A work shall be considered an orphan work if ***one or more of the rightholders*** ***are*** not identified or, even if identified, ***are*** not located after a diligent search for the rightholder has been carried out and

recorded in accordance with Article 3.

recorded in accordance with Article 3.

Amendment 29

Proposal for a directive Article 2 – paragraph 2

Text proposed by the Commission

2. Where a work has more than one rightholder, **and one of the rightholders has been identified and located, that work shall not be considered** an orphan work.

Amendment

2. Where a work has more than one rightholder, **authorisation given by those rightholders who could be located shall be deemed sufficient to enable the work as a whole to be used if other rightholders as defined by this Directive could not be identified or located. In the case of works whose individual parts can be clearly attributed to different rightholders, each part of the work shall be the subject of a specific investigation to determine whether it is an orphan work within the meaning of paragraph 1.**

Amendment 30

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 *right holders* and users, and include, the sources listed in the Annex.

Amendment

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

Amendment 31

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. A diligent search is required to be

Amendment

3. A diligent search is required to be

carried out only in the Member State of first publication *or* broadcast.

carried out only in the Member State of first publication, broadcast, *exhibition, making available or communication to the public, prior to the use of the work; however, where there is reasonable uncertainty as to the location of the first publication, broadcast, exhibition, making available or communication to the public, diligent searches may be extended to other Member States.*

Amendment 32

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

Text proposed by the Commission

Amendment

4a. In the event that the cinematographic and audiovisual work subject to a diligent search is known to be a co-production, the search must be carried out in each of the Member States where the co-production took place.

Amendment 33

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

Text proposed by the Commission

Amendment

4b. Persons wishing to use a work whose rightholders cannot, even after a diligent search, be located, may empower duly authorised collecting societies to operate on behalf of those rightholders.

Amendment 34

Proposal for a directive Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Where this is compatible with Union law and with international agreements on copyright and related rights, Member States may adopt comprehensive arrangements providing for simple and extended systems for the declaration of rights.

Amendment 35
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 putting an end to the orphan status.

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

Amendment 36
Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Remuneration of rightholders

Rightholders who put an end to the orphan status of a work in accordance with Article 5 shall be remunerated for the use that has been made of the work by the organisations that have utilised it. Rightholders may claim their remuneration within a period fixed by Member States, which shall not be less than five years from the date of the act giving rise to the claim. If a collecting society as referred to in Article 3(4b) was entitled to collect the remuneration for the rightholders as a trustee, the claim for remuneration must be brought against

that collecting society.

Amendment 37

Proposal for a directive

Article 6 – paragraph 1 – introductory wording

Text proposed by the Commission

1. Member States shall ensure that ***the organisations referred to in Article 1(1) are permitted to use an orphan work*** in the following ways:

Amendment

1. Member States shall ensure that orphan ***works or orphan contributions to works may be used*** in the following ways:

Amendment 38

Proposal for a directive

Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) by ***making*** the orphan work available, within the meaning of Article 3 of Directive 2001/29/EC;

Amendment

(a) by ***communicating*** the orphan work ***to the public and making it*** available, within the meaning of Article 3 of Directive 2001/29/EC;

Amendment 39

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, organisations ***using orphan works shall not do so*** in order to achieve aims other than their public interest missions, notably ***the preservation and restoration of works contained in their collections*** and the provision of ***access to those works for*** cultural, educational ***and research purposes.***

Amendment 40

Proposal for a directive
Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall be free to choose a given method for the management of rights, such as extended collective licensing. This Directive shall be without prejudice to existing or future arrangements in the Member States in this regard.

Amendment 41

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

Text proposed by the Commission

Amendment

4a. In order for this Directive to be fully effective, broadcasting organisations need to be able to use works recognised as orphan works, under the conditions established by this Directive, in the course of their normal activities.

Amendment 42
Proposal for a directive
Article 7 – title

Text proposed by the Commission

Amendment

Article 7

deleted

Authorised uses of orphan works

Amendment 43
Proposal for a directive
Article 7 – paragraph 1 – introductory wording

Text proposed by the Commission

Amendment

1. Member States may authorise the

deleted

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 44
Proposal for a directive
Article 7 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

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

Amendment 45
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**

Amendment 46
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**

Amendment 47
Proposal for a directive
Article 7 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) rightholders which put an end to the **deleted**

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);

Amendment 48
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 49
Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may chose the means for authorising use within the meaning of paragraph 1 and remain free to decide on the use of any revenues which are unclaimed after the expiry of the period fixed in accordance with paragraph 1(5).

deleted

Amendment 50

Proposal for a directive
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Records of use and remuneration

1. Member States shall ensure that diligent searches for orphan works or orphan contributions to works are recorded in a publicly accessible form. To

that end they shall, in collaboration with the Commission, devise Union-wide uniform minimum standards and seek to set up or use a central data bank.

2. In the case of orphan works or orphan contributions to works where rightholders have been identified but not located, the names of those persons shall be indicated whenever the works are used.

3. Revenues available within collecting societies which are unclaimed after the expiry of the period fixed in accordance with Article 5a shall be used for the purposes for which collecting societies normally use such revenues. Member States may provide for those revenues to be used to cover the costs of diligent search or of maintenance and servicing the data banks required for that purpose.

Amendment 51

Proposal for a directive Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Preventive measures

In coordination with the relevant stakeholders, the Member States shall promote all preventive measures likely to limit the appearance of orphan works and to reduce their number.

Amendment 52

Proposal for a directive Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Application in time

1. The provisions of this Directive shall apply in respect of all works referred to in Article 1 which are, on [transposition date], protected by the Member States' legislation in the field of copyright.

2. This Directive shall apply without prejudice to any acts concluded and rights acquired before [transposition date].

Amendment 53

Proposal for a directive Annex – point 3 – point a

Text proposed by the Commission

(a) The *publishers* association in the respective country and the *authors* and *journalists* associations;

Amendment

(a) The ***publishers and the publishers'*** association in the respective country and the *authors'* and *journalists'* associations;

Amendment 54

Proposal for a directive Annex – point 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) *The publishing company.*

Amendment 55

Proposal for a directive Annex – point 5 – introductory wording

Text proposed by the Commission

Amendment

(5) For audiovisual works contained in the collections of film heritage institutions and ***public service*** broadcasting organisations:

(5) For audiovisual works contained in the collections of film heritage institutions and broadcasting organisations:

PROCEDURE

| | |
|---|---|
| Title | Permitted uses of orphan works |
| References | COM(2011)0289 – C7-0138/2011 – 2011/0136(COD) |
| Committee responsible Date announced in plenary | JURI 23.6.2011 |
| Committee(s) asked for opinion(s) Date announced in plenary | CULT 23.6.2011 |
| Rapporteur(s) Date appointed | Sabine Verheyen 13.7.2011 |
| Discussed in committee | 4.10.2011 |
| Date adopted | 23.11.2011 |
| Result of final vote | +: 27 –: 0 0: 4 |
| Members present for the final vote | Magdi Cristiano Allam, Maria Badia i Cutchet, Zoltán Bagó, Malika Benarab-Attou, Lothar Bisky, Piotr Borys, Silvia Costa, Santiago Fisas Ayxela, Mary Honeyball, Petra Kammerevert, Morten Løkkegaard, Emma McClarkin, Marek Henryk Migalski, Doris Pack, Chrysoula Paliadeli, Marie-Thérèse Sanchez-Schmid, Marco Scurria, Joanna Senyszyn, Emil Stoyanov, Hannu Takkula, Sampo Terho, László Tökés, Helga Trüpel, Gianni Vattimo, Sabine Verheyen |
| Substitute(s) present for the final vote | Seán Kelly, Ramona Nicole Mănescu, Hans-Peter Martin, Mitro Repo |
| Substitute(s) under Rule 187(2) present for the final vote | Jaromír Kohlíček, Claudiu Ciprian Tănăsescu |

PROCEDURE

| | | | |
|---|--|-------------------|-------------------|
| Title | Permitted uses of orphan works | | |
| References | COM(2011)0289 – C7-0138/2011 – 2011/0136(COD) | | |
| Date submitted to Parliament | 24.5.2011 | | |
| Committee responsible Date announced in plenary | JURI 23.6.2011 | | |
| Committee(s) asked for opinion(s) Date announced in plenary | ITRE 23.6.2011 | IMCO 23.6.2011 | CULT 23.6.2011 |
| Not delivering opinions Date of decision | ITRE 15.6.2011 | | |
| Rapporteur(s) Date appointed | Lidia Joanna Geringer de Oedenberg 11.7.2011 | | |
| Discussed in committee | 11.10.2011 | 22.11.2011 | 25.1.2012 |
| Date adopted | 1.3.2012 | | |
| Result of final vote | +: –: 0: | 22 0 1 | |
| Members present for the final vote | Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka | | |
| Substitute(s) present for the final vote | Piotr Borys, Cristian Silviu Buşoi, Kurt Lechner, Eva Lichtenberger, Angelika Niebler, Dagmar Roth-Behrendt | | |
| Substitute(s) under Rule 187(2) present for the final vote | Oreste Rossi, Jacek Włosowicz | | |
| Date tabled | 28.3.2012 | | |