

“Proposal for an EU Directive on certain permitted uses of Orphan Works”

CHANGES TO THE DRAFT TEXT PROPOSED BY IFRRO

1. New Recital 5 to read:

This Directive shall be without prejudice to the author's right to claim authorship of his/her work, to acknowledge this authorship when known, and the author's right to object to any distortion, mutilation or other modification of his/her work. The author's right to object to other derogatory action in relation to the said work, which would be prejudicial to his honour or reputation, shall also be safeguarded.

2. Recital 12 (current) should read:

Before a work can be considered an orphan work, a good faith and reasonable diligent search for the author should be carried out in the manner decided by the authors and publishers or their representatives in the Member State where the work was first published. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations.

3. Recital 18 (current) should read:

Contractual arrangements to enable Public Private Partnerships 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 arrangements ~~may~~ should include financial contributions by such partners to be collected by collective management organisations representing a substantial number of authors and publishers of the same category of works concerned and in relation to the same rights, such as to digitise the work and make it available to the public, by such partner without the acquisition of any rights.

4. Recital 20 (current) should read:

This Directive ~~should~~ shall be without prejudice to ~~existing~~ arrangements in the Member States concerning the management of rights such as collective management based on legal presumption, extended collective licences, compulsory collective management of rights or similar legal techniques, provided that the schemes cover only orphan works first published in the territory of the collective management organisation which grants the licence.

5. Recital 21 (current) should read:

Member States should also be allowed to permit use of orphan works which go beyond public interest missions of ~~the organisations~~ publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service broadcasting organisations covered by this Directive. ~~In such circumstances, the rights and legitimate interests of the rightholders should be protected.~~

6. Recital 22 (current) is modified to read:

When, under the conditions established in this Directive, publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service broadcasting organisations get a licence for the use of orphan works ~~for purposes beyond their public interest mission~~, they should pay a remuneration to the collective management organisation representing authors and publishers of the same category of work for the use so as to allow authors and publishers who come forward to claim their works should to 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~~ for the digitisation and / or making available of orphan works for the purpose of remuneration but which are unclaimed should be used as decided by authors and publishers of the same category of work or, when appropriate, the licensing collective management organisation, and may include that funds may be used to 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.

7. New Recital 23

When a Member State authorises a use under the conditions established in this Directive, it must ensure that the rights and legitimate interests of the rightholders are protected.

8. Article 3.1 and 3.2 should read:

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 in accordance with what has been established by the authors and publishers of the same category of works, or their representatives, in the Member State where the work was first published, by consulting the appropriate sources for the category of works in question.
2. The sources that are appropriate for each category of works shall be determined by each Member State, in agreement with ~~rightholders~~ authors and publishers, collective management organisations and users, and include, the sources listed in the Annex.

9. Article 5 should read:

Member States shall ensure that an author or publisher rightholder of a work considered to be orphan has, at any time, the possibility of putting an end to the orphan status. They shall also ensure that efficient mechanisms be put in place to ascertain that organisations referred to in Article 1(1) stop using the work concerned and that all remuneration due is paid to the author and / or publisher

10. New Article 6.1 (current 6.1 and 6.2 become 6.2 and 6.3; 6.3 and 6.4 become 6.6-6.7):

1. Member States shall foresee that permission to digitise and/or make available an orphan work shall be granted by a collective management organisation which represents a substantial number of authors and publishers of the same category of works as those which are declared orphan and in relation to the same rights for which the digitising and/or making available is sought.

11. New Article 6.2 (current 6.1) should read:

Member States shall ensure that the organisations referred to in Article 1(1) require a licence to use an orphan work by the appropriate collective management organisation, in the following ways:

- (a) by making the orphan work available, within the meaning of Article 3 of Directive 2001/29/EC;
- (b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

12. New Article 6.4

Member States shall require that organisations referred to in Article 1(1) shall pay remuneration as determined by authors and publishers of the same category of works in the Member State of first publication for uses referred to in Articles 6(2) and 6(3).

13. New Article 6.6

Member States shall require that any payment due for the digitising or making available of the orphan work shall be paid to the appropriate collective management organisation representing a substantial portion of authors and publishers of the same category of works as for the digitisation and making available concerned.

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