

EUIPO Out of Commerce Works Portal launch event – a summary

On 7 June 2021 - the deadline for EU Member States to implement the EU's Copyright in the Digital Single Market ("DSM") Directive - IFRRO, Europeana, EVA and FEP and together organised an event to mark the launch of the European Union Intellectual Property Office (EUIPO) out-of-commerce works (OOCW) [Portal](#). A recording of the event is available [here](#).

Articles 8-11 of the Directive aim to make it easier for Cultural Heritage Institutions (CHIs) to obtain licences from Collective Management Organisations (CMOs) for certain uses of OOCW that are permanently in the collections of CHIs.

The OOCW Portal provides access to information about OOCW that could be used under the new mechanisms introduced by the Directive (i.e., a licence or a 'fall-back' exception where no "sufficiently representative" CMO exists). This information must be available 6 months before works are made available under the licence or exception. The Portal also makes it easier for rightholders to opt-out of the new mechanisms (although it is not in itself an opt-out instrument).

Ariadna Matas (Europeana) underlined that another key element of the success of the new OOCW provisions will be collaboration across stakeholders at national level, namely CHIs, CMOs and rightholders [e.g., in the application of the provisions and negotiation of licences]. She thanked IFRRO, the other partners and the EUIPO for their collaboration.

Krzysztof Nichczynski (European Commission) explained the OOCW provisions in the DSM Directive. He said the Portal was an example of the good cooperation amongst stakeholders.

Gyta Berasneviciute-Singh of the EUIPO demonstrated how the Portal works and in particular how CHIs, CMOs and rights holders can engage with it (see further details [here](#)). The Portal currently includes minimum features, such as user registration, record creation, upload, notification and search functions, as well as facilitating opt-out (both nationally and EU wide). Although there is an 'alerts' function, rightholders are advised to regularly check the Portal. Phase 2 of the Portal's development is expected to bring about an automated data exchange solution and usability improvements in 2022.

Representatives from the visual arts (Arlette Bekink from Dutch CMO Pictoright), book publishing (Matthias Ulmer, CEO, Ulmer Verlag) and novelist and EWC President Nina George explained their perspectives regarding the new OOCW provisions and the Portal, emphasising, amongst other things, the importance of properly assessing if a work is OOC. There is concern that there will be challenges regarding publicity at national level, and also as regards opt-out and moral rights.

Szabolcs Dancs, from the Hungarian Library Institute at the National Széchényi Library, explained their approach to assessing works (some are already listed in the Portal) and said they are negotiating with a CMO. Walter Swagemakers, from the EYE Film Institute welcomed the Portal and said he wanted to see more detail about the role of the creators in the bulk upload function, especially when it comes to audiovisual works and collections.

Several speakers remarked on the good cooperation between the different stakeholders and recognised the importance of stakeholder dialogue for national implementation of the rules.

IFRRO's Guide on the Licensing of Out of Commerce Works ([here](#)) provides an in-depth explanation about the new rules, as well as suggestions for implementation at national level, including how to constructively approach the stakeholder dialogue foreseen under Article 11.