

# Orphan works: permitted uses

2011/0136(COD) - 28/03/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Lidia Joanna GERINGER de OEDENBERG (S&D, PL) on the proposal for a directive of the European Parliament and of the Council on certain permitted uses of orphan works.

The committee recommends that the European Parliament's position in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

**Copyright as the basis of innovation:** report stresses that 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.

**Purpose and scope:** the Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums as well as by archives, film and audio heritage institutions, publishers and public service broadcasting organisations **established in the Member States**.

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 the text, and which are:

1. **Works in the form of books, journals, newspapers, magazines or other writings and printed materials, or**
2. **Phonograms, cinematographic or audiovisual works.**

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

The directive will not apply to cinematographic, audio or audiovisual works produced by public service broadcasting organisations before the 31 December 2002 and contained in their archives, as the Commission had proposed.

Orphan works: Members state that 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 the directive.

**Diligent search for rightholders:** for the purposes of establishing whether a work is an orphan work, a diligent search must be carried out in good faith. 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.

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.

In the event that the diligent search is carried out by an organisation other than an organisation referred to in the directive, the latter shall remain liable for the search performed.

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

**End of orphan status:** Members inserted a clause stating that a work shall cease to be an orphan work only if all the rightholders to that work are identified and located.

A rightholder who put an end to the orphan status of the work in respect of the rights to which he is entitled must receive an appropriate and fair remuneration for the use of the work.

**Permitted uses of orphan works:** an amendment states that 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.

The organisations using an orphan work shall:

- maintain records of their diligent searches;
- maintain publicly accessible records of their use of orphan works;
- indicate, in any use of an orphan work where one or more rightholder has been identified but not located, the name of such rightholder.

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 the directive 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.

In order to avoid duplication of costly digitisation, Member States shall permit the organisations to interlink for the purpose of making available to each other the orphan works contained in their respective collections.

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

**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.

**Retention of other provisions:** Members state that the 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.