

Convened by CILIP: the Chartered Institute of Library and Information Professionals

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Mr Jose Manuel Barroso
President of the European Commission
B-1049 Brussels
BELGIUM

27th August 2010

cc. Catherine Day, Neelie Kroes, Androulla Vassiliou, Michel Barnier and Joaquin Almunia

Dear President Barroso

Orphan Works - Proposed amendment to the European Information Society Directive

LACA: the Libraries and Archives Copyright Alliance, brings together the United Kingdom's major professional organisations and experts representing librarians and archivists to advocate a fair and balanced copyright regime. LACA works with government and stakeholders to address the copyright and related rights issues affecting the ability of library, archive and information services to fully deliver access to knowledge in the digital age.

We have learned that the Commission is contemplating the publication of a draft amendment to the European Information Society Directive regarding Orphan Works and that the proposal is to include provisions for non-commercial cultural and educational organisations as below:

1. A solution for Orphan Works for literary works only (including illustrations bound in the object);
2. A requirement for a diligent search in line with the Orphan Works recommendations produced as part of the i2010 European Digital Libraries Initiative - due diligence to be performed by the digitising body;
3. Cross border recognition of national solutions;
4. A mechanism for fair compensation to be paid to rightholders;
5. A requirement to publish information about digitised works to enable rightholders to approach the digitising body.

We support the new Digital Agenda and we welcome the Commission's commitment to find a solution for Orphan Works. This matters greatly to our members, as otherwise UK and other European libraries and archives will be unable to digitise a great many works still in copyright because of the inability to locate the rightholder to clear the rights and the high transaction costs involved in searching for them. Libraries and archives lie at the heart of the Digital Agenda so a truly workable solution is needed for Orphan Works, if Europe's knowledge institutions are to be able to fully contribute to the creation of a digital Europe. That said, while we appreciate the Commission's attempt to find that solution, we are very disappointed about the proposals in items (1) and (2) above.

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Representing ARA – The Archives & Records Association, ARLIS/UK & Ireland - The Art Libraries Society of the UK and Ireland, BIAL - British and Irish Association of Law Librarians, The British Library, CILIP: the Chartered Institute of Library and Information Professionals, The Collections Trust, IAML (UK & Irl) – The International Association of Music Libraries, Archives and Documentation Centres, The National Archives, The National Library of Scotland, The National Library of Wales, Royal National Institute of Blind People (RNIB) National Library Service, Society of Chief Librarians in England and Wales, and SCONUL – Society of College, National and University Libraries.

Item (1) is limited to only literary works (and embedded visual works, including charts, diagrams, maps and photographs). This is insufficient to effectively meet the challenge presented by Orphan Works and will be counterproductive if the provisions do not also apply to film and sound recordings (audiovisual materials) and standalone visual works. Researchers, teachers and learners extensively use the complete array of audiovisual materials and standalone visual works. If these classes of works are omitted, the proposed Amendment will conflict with the recommendations of the Commission's High Level Expert Group on Digital Libraries (2006-2009).¹ Users would be badly disadvantaged through being denied access to digital versions of a large body of early to mid-20th century works, and even some 19th century works, because they are orphaned and will not enter the public domain until mid to late 21st century. Additionally, the inclusion of *all* classes of Orphan Works is vital to ensure the success of Europeana in its aim to become the world's most comprehensive and authoritative public sector portal to Europe's culture.

Item (2) concerns the requirement for diligent searches in line with the i2010 European Digital Libraries Initiative recommendations for diligent search guidelines for Orphan Works – to be carried out by the organisation that wishes to digitise. This is unfortunate since we, and no doubt other library and archive bodies, must emphatically point out that these guidelines are only appropriate for use when digitising small numbers of single literary works (monographs) and are quite unsuitable for mass digitisation projects.

With regard to the mass digitisation of materials such as newspapers and journals or radio and television broadcasts or very large numbers (thousands and millions) of books, pamphlets, ephemera and archive materials, it will just not be feasible to conduct rights clearances in the way that the Commission is proposing; not only will it take too long but the transaction costs of rights clearance will be far too expensive in terms of staff time as is borne out by the findings of the Commission's recently published report, *Assessment of the Orphan works issue and Costs for Rights Clearance*.² Even if the current economic conditions were less severe than they are, libraries and archives would be forced to retreat from mass digitisation in the face of such intolerable costs. This would be very detrimental to major digitisation projects of all kinds, including Europeana.

We strongly advise the Commission to seriously reconsider and to consult much more closely with representatives of European libraries and archives and their professional associations.

Yours sincerely

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¹ i2010: Digital Libraries High Level Expert Group – Copyright Subgroup: Final report on digital preservation, orphan works, and out-of-print works, June 2008. bit.ly/dD8eOJ

² Vuopala, Anna: Assessment of the orphan works issue and costs for rights clearance. European Commission DG Information Society and Media, May 2010. <http://bit.ly/bYnXLo>