



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

32nd Session: Geneva, 09 June - 13 May 2016

Agenda item 6: Limitations and exceptions for libraries and archives

Topic 7: Orphan Works, retracted and withdrawn works and out of commerce works.

Thank you Mr Chair

EBLIDA is the independent association of European library, information and documentation associations.

Former EU Vice-President Viviane Reding had identified Orphan Works to be the cause of a “20th century black hole” in online digitised content from library and archive collections.¹ Orphan Works and Out-of-Commerce Works form a significant proportion of library collections, but because it is very difficult to locate rightholders or their heirs (often the grandchildren) to clear rights in these typically small press, self-published or ephemeral works even 10 years after publication², fewer are digitised, so, despite their historical value, they are under-used for online research, education, or cultural purposes.

The EU Orphan Works Directive 2012³ was introduced to facilitate large-scale digitisation projects and provide cross-border access to the millions of orphaned works and multimedia in the collections of European libraries, archives and museums, particularly through Europeana, the European Commission’s flagship digital library portal. The Directive is the first to have cross-border application in the European Economic Area (EEA), since an Orphan Work registered in one Member State is recognised in all other EEA Member States, but evidence is emerging that its ‘Diligent Search’ requirements are too burdensome, discouraging mass digitisation to the extent that the Directive has failed to deliver its objectives:

¹ SPEECH/05/566, 29 September 2005 http://europa.eu/rapid/press-release_SPEECH-05-566_en.htm?locale=en

² Seeking New Landscapes: A rights clearance study in the context of mass digitisation of 140 books published between 1870 and 2010, British Library and ARROW, 2011 <http://www.arrow-net.eu/sites/default/files/Seeking%20New%20Landscapes.pdf>

³ Directive 2012/28/EU on certain permitted uses of orphan works

- The report last February⁴ on research conducted in the UK, Italy and the Netherlands from the EnDOW project at Bournemouth University Centre for Intellectual Property Policy & Management, has revealed evidence indicating (quote) "the overly burdensome nature of the "Diligent Search" requirement for cultural institutions willing to make use of orphan works."⁵
- Secondly, Europeana analysed a 45 million object dataset in order to establish the online availability of these collections. The Europeana Factsheet⁶ of September 2015 based on this analysis, demonstrates that (quote) "*there is a clear gap in availability of digitized material from the 20th century [...]. From the 1950s onwards, the amount of material that is made available online falls dramatically. While the first half of the 20th century represents 35% of the sample [of the Europeana Dataset], the second half is only around 11%. These findings reinforce [Europeana's] earlier research (from 2012) and illustrate once more that cultural heritage institutions are hampered in their ability to make collections from the 20th century available online.*"

The EU experience shows the need for a carefully crafted legislative framework with cross-border impact which doesn't impose a disproportionate 'diligent search' burden. Two years ago, EBLIDA's response to the European Commission's Consultation on EU Copyright Rules⁷ was that the question of online cross-border access to works would be better solved by enabling an exception for the mass digitisation and communication to the public of library and archive held content. The international dimension of this lesson is that without the establishment of **a minimum level of international norms for exceptions for the cross-border use of Orphan Works and Out-of-Commerce works**, the digitisation and making available on the web of these works in the collections of the world's great libraries and archives will continue to be patchy without benefit to anyone.

[End of the Document]

⁴ *Requirements for Diligent Search in the United Kingdom, the Netherlands, and Italy*, EnDOW, 2016
<https://microsites.bournemouth.ac.uk/cippm/2016/02/15/orphan-works-report-backs-up-the-overly-burdensome-nature-of-the-diligent-search-requirement/>

⁵ EnDOW Press Release 05/02/16 http://diligentsearch.eu/wp-content/uploads/2016/02/Report-1_Press-release.pdf

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http://pro.europeana.eu/files/Europeana_Professional/Advocacy/Twentieth%20Century%20Black%20Hole/copy-of-europeana-policy-illustrating-the-20th-century-black-hole-in-the-europeana-dataset.pdf

⁷ <http://www.eblida.org/news/eblida-response-on-the-european-union-consultation-on-copyright-rules.html>