



**COUNCIL OF  
THE EUROPEAN UNION**

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#### **INFORMATION NOTE**

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from: General Secretariat  
to: Permanent Representatives Committee/Council  
Subject: Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works  
- Outcome of the European Parliament's first reading  
(Strasbourg, 10 to 13 September 2012)

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#### **I. INTRODUCTION**

The Committee on Legal Affairs adopted sixty-one amendments to the proposal for a Directive.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the Committee submitted a further compromise amendment (amendment 62) to the proposal for a Directive. This amendment had been agreed during the informal contacts referred to above.

## II. VOTE

When it voted on 13 September 2012, the plenary adopted compromise amendment 62. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto <sup>1</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position. The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>1</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

## **Permitted uses of orphan works \*\*\*I**

**European Parliament legislative resolution of 13 September 2012 on the proposal for a directive of the European Parliament and of the Council on certain permitted uses of orphan works (COM(2011)0289 – C7-0138/2011 – 2011/0136(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0289),
  - having regard to Article 294(2) and Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0138/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 21 September 2011<sup>1</sup>,
  - having regard to the undertaking given by the Council representative by letter of 14 June 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on the Internal Market and Consumer Protection, and the Committee on Culture and Education (A7-0055/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 376, 22.12.2011, p. 66.

**P7\_TC1-COD(2011)0136**

**Position of the European Parliament adopted at first reading on 13 September 2012 with a view to the adoption of Directive 2012/.../EU of the European Parliament and of the Council on certain permitted uses of orphan works**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular *Articles 53(1), 62 and 114* thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C 376, 22.12.2011, p. 66.

<sup>2</sup> Position of the European Parliament of 13 September 2012.

Whereas:

- (1) Publicly accessible libraries, educational establishments and museums, as well as archives, film *or audio* heritage institutions and public-service broadcasting organisations, ***established in the Member States***, are engaged in large-scale digitisation of their collections or archives in order to create European Digital Libraries. ***They*** contribute to the preservation and dissemination of European cultural heritage, which is also important for the creation of European Digital Libraries, such as Europeana. Technologies for mass digitisation of print materials and for search and indexing enhance the research value of the libraries' collections. Creating large online libraries facilitates electronic search and discovery tools which open up new sources of discovery for researchers and academics who would otherwise have to content themselves with more traditional and analogue search methods.
- (2) The need to promote free movement of knowledge and innovation in the internal market is an important component of the Europe 2020 Strategy, as set out in the Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth", which includes as one of its flagship initiatives the development of a Digital Agenda for Europe.
- (3) Creating a legal framework to facilitate the digitisation and dissemination of works ***and other subject-matter which are protected by copyright or related rights and*** for which no ***rightholder*** is identified or for which the rightholder, even if identified, is not located — so-called orphan works — is a key action of the Digital Agenda for Europe, as set out in the Communication from the Commission entitled "A Digital Agenda for Europe". ***This Directive targets the specific problem of the legal determination of orphan work status and its consequences in terms of the permitted users and permitted uses of works or phonograms considered to be orphan works.***
- (4) ***This Directive is without prejudice to specific solutions being developed in the Member States to address larger mass digitisation issues, such as in the case of so-called "out-of-commerce" works. Such solutions take into account the specificities of different types of content and different users and build upon the consensus of the relevant stakeholders. This approach has also been followed in the Memorandum of Understanding on key principles on the digitisation and making available of out-of-commerce works, signed on 20 September 2011 by representatives of European libraries, authors, publishers and collecting societies and witnessed by the Commission. This Directive is without prejudice to that Memorandum of Understanding, which calls on Member States and the Commission to ensure that voluntary agreements concluded between users, rightholders and collective rights management organisations to licence the use of out-of-commerce works on the basis of the principles contained therein benefit from the requisite legal certainty in a national and cross-border context.***

- (5) ***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.***
- (6) The ***rightholders’*** exclusive rights of reproduction of their works ***and other protected subject-matter*** and of making them available to the public, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society<sup>1</sup>, necessitate the prior consent of ***rightholders*** to the digitisation and the making available to the public of a work ***or other protected subject-matter***.
- (7) In the case of orphan works, it is not possible to obtain such prior consent to the carrying-out of acts of reproduction or of making available to the public.
- (8) Different approaches in the Member States to the recognition of orphan work status can present obstacles to the functioning of the internal market and the use ***of***, and cross-border access to, orphan works. Such different approaches can also result in restrictions on the free movement of goods and services which incorporate cultural content. Therefore, ensuring the mutual recognition of such status is appropriate, ***since it will allow access to orphan works in all Member States***.
- (9) In particular, a common approach to determining the orphan work status and the permitted uses of orphan works is necessary in order to ensure legal certainty in the internal market with respect to the use of orphan works by publicly accessible libraries, educational establishments and museums, as well as by archives, film ***or audio*** heritage institutions and public-service broadcasting organisations.
- (10) Cinematographic ***or*** audiovisual works ***and phonograms*** in the archives of public-service broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of ***phonograms*** and audiovisual material and the need to adopt measures to limit the phenomenon of orphan works in the future, it is appropriate to set a cut-off date for the application of this Directive to works ***and phonograms*** in the archives of broadcasting organisations.
- (11) **■ Cinematographic ■ and audiovisual works *and phonograms contained*** in the archives of public-service broadcasting organisations and produced by them, ***should for the purposes of this Directive be regarded as including cinematographic and audiovisual works and phonograms which are*** commissioned by such organisations for ***the*** exclusive exploitation ***by them or other co-producing public-service broadcasting organisations***. ***Cinematographic and audiovisual works and phonograms contained in the archives of public-service broadcasting organisations which have not been produced or commissioned by such organisations, but which those organisations have been authorised to use under a licensing agreement, should not fall within the scope of this Directive.***

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<sup>1</sup> OJ L 167, 22.6.2001, p. 10.

- (12) For reasons of international comity, this Directive should apply only to works *and phonograms* that are first published in *the territory of a Member State or, in the absence of publication, first broadcast in the territory of a Member State or, in the absence of publication or broadcast, made publicly accessible by the beneficiaries of this Directive with the consent of the rightholders. In the latter case, this Directive should only apply provided that it is reasonable to assume that the rightholders would not oppose the use allowed by this Directive.*
- (13) Before a work *or phonogram* can be considered an orphan work, a **■** diligent search for *the rightholders in the work or phonogram, including rightholders in works and other protected subject-matter that are embedded or incorporated in the work or phonogram,* should be carried out *in good faith.* Member States should be permitted to provide that such diligent search may be carried out by the organisations referred to in this Directive or by other organisations. *Such other organisations may charge for the service of carrying out a diligent search.*
- (14) It is appropriate to provide for a harmonised approach concerning such diligent search in order to ensure a high level of protection of copyright *and related rights* in the Union. A diligent search should involve the consultation of *sources* that supply information on *the works and other protected subject-matter as determined, in accordance with this Directive, by the Member State where the diligent search has to be carried out. In so doing, Member States could refer to the diligent search guidelines agreed in the context of the High Level Working Group on Digital Libraries established as part of the i2010 digital library initiative.*
- (15) *In order to avoid duplication of search efforts, a diligent search should be carried out in the Member State where the work or phonogram was first published or, in cases where no publication has taken place, where it was first broadcast. The diligent search in respect of cinematographic or audiovisual works the producer of which has his headquarters or habitual residence in a Member State should be carried out in that Member State. In the case of cinematographic or audiovisual works which are co-produced by producers established in different Member States, the diligent search should be carried out in each of those Member States. With regard to works and phonograms which have neither been published nor broadcast but which have been made publicly accessible by the beneficiaries of this Directive with the consent of the rightholders, the diligent search should be carried out in the Member State where the organisation that made the work or phonogram publicly accessible with the consent of the rightholder is established. Diligent searches for the rightholders in works and other protected subject-matter that are embedded or incorporated in a work or phonogram should be carried out in the Member State where the diligent search for the work or phonogram containing the embedded or incorporated work or other protected subject matter is carried out. Sources of information available in other countries should also be consulted if there is evidence to suggest that relevant information on rightholders is to be found in those other countries. The carrying-out of diligent searches may generate various kinds of information, such as a search record and the result of the search. The search record should be kept on file in order for the relevant organisation to be able to substantiate that the search was diligent.*

- (16) *Member States should ensure that the organisations concerned keep records of their diligent searches and that the results of such searches, consisting in particular of any finding that a work or phonogram is to be considered an orphan work within the meaning of this Directive, as well as information on the change of status and on the use which those organisations make of orphan works, are collected and made available to the public at large, in particular through the recording of the relevant information in an online database. Considering in particular the pan-European dimension, and in order to avoid duplication of efforts, it is appropriate to make provision for the creation of a single online database for the Union containing such information and for making it available to the public at large in a transparent manner. This can enable both the organisations which are carrying out diligent searches and the rightholders easily to access such information. The database could also play an important role in preventing and bringing to an end possible copyright infringements, particularly in the case of changes to the orphan work status of the works and phonograms. Under Regulation (EU) No 386/2012<sup>1</sup>, the Office for Harmonisation in the Internal Market ("the Office") is entrusted with certain tasks and activities, financed by making use of its own budgetary means, aimed at facilitating and supporting the activities of national authorities, the private sector and the Union institutions in the fight against, including the prevention of, infringement of intellectual property rights. In particular, pursuant to point (g) of Article 2(1) of that Regulation, those tasks include providing mechanisms which help to improve the online exchange of relevant information between the Member States' authorities concerned and fostering cooperation between those authorities. It is therefore appropriate to rely on the Office to establish and manage the European database containing information related to orphan works referred to in this Directive.*
- (17) **█** There can be several rightholders in respect of a particular work or phonogram, and works and phonograms can themselves include other works or protected subject-matter. This Directive should not affect the rights of **█** identified *and located* rightholders. *If at least one rightholder has been identified and located, a work or phonogram should not be considered an orphan work. The beneficiaries of this Directive should only be permitted to use a work or phonogram one or more of the rightholders in which are not identified or not located, if they are authorised to carry out the acts of reproduction and of making available to the public covered by Articles 2 and 3 respectively of Directive 2001/29/EC by those rightholders that have been identified and located, including the rightholders of works and other protected subject-matter which are embedded or incorporated in the works or phonograms. Rightholders that have been identified and located can give this authorisation only in relation to the rights that they themselves hold, either because the rights are their own rights or because the rights were transferred to them, and should not be able to authorise under this Directive any use on behalf of rightholders that have not been identified and located. Correspondingly, when*

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<sup>1</sup> *Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonisation in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012, p. 1).*



*previously non-identified or non-located rightholders come forward in order to claim their rights in the work or phonogram, the lawful use of the work or phonogram by the beneficiaries can continue only if those rightholders give their authorisation to do so under Directive 2001/29/EC in relation to the rights that they hold.*

- █
- (18) *Rightholders* should be entitled to put an end to the orphan work status in the event that they come forward to claim *their rights in the work or other protected subject-matter*. *Rightholders that put an end to the orphan work status of a work or other protected subject-matter should receive fair compensation for the use that has been made of their works or other protected subject-matter under this Directive, to be determined by the Member State where the organisation that uses an orphan work is established. Member States should be free to determine the circumstances under which the payment of such compensation may be organised, including the point in time at which the payment is due. For the purposes of determining the possible level of fair compensation, due account should be taken, inter alia, of Member States' cultural promotion objectives, of the non-commercial nature of the use made by the organisations in question in order to achieve aims related to their public-interest missions, such as promoting learning and disseminating culture, and of the possible harm to rightholders.*
- (19) *If a work or phonogram has been wrongly found to be an orphan work, following a search which was not diligent, the remedies for copyright infringement in Member States' legislation, provided for in accordance with the relevant national provisions and Union law, remain available.*
- (20) In order to promote learning and *the dissemination of culture*, Member States *should provide for an exception or limitation in addition to those provided for in Article 5 of Directive 2001/29/EC. That exception or limitation should permit certain organisations, as referred to in point (c) of Article 5(2) of Directive 2001/29/EC and film or audio heritage institutions which operate on a non-profit making basis, as well as public-service broadcasting organisations, to reproduce and make available to the public, within the meaning of that Directive, orphan works, provided that such use fulfils their public interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, █ their collections, including their digital collections. Film or audio heritage institutions should, for the purposes of this Directive, cover organisations designated by Member States to collect, catalogue, preserve and restore films and other audiovisual works or phonograms forming part of their cultural heritage. Public-service broadcasters should, for the purposes of this Directive, cover broadcasters with a public-service remit as conferred, defined and organised by each Member State. The exception or limitation established by this Directive to permit the use of orphan works is without prejudice to the exceptions and limitations provided for in Article 5 of Directive 2001/29/EC. It can be applied only in certain special cases which do not conflict with the normal exploitation of the work or other protected subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.*

- (21) *In order to incentivise digitisation, the beneficiaries of this Directive should be allowed to generate revenues in relation to their use of orphan works under this Directive in order to achieve aims related to their public-interest missions, including in the context of public-private partnership agreements.*
- (22) Contractual arrangements may play a role in fostering the digitisation of European cultural heritage, it being understood that publicly accessible libraries, educational establishments and museums, as well as archives, **film or audio** heritage institutions **and public-service broadcasting organisations**, should be allowed, with a view to undertaking the uses permitted under this Directive, to conclude agreements with commercial partners for the digitisation and making available to the public of orphan works. Those agreements may include financial contributions by such partners. *Such agreements should not impose any restrictions on the beneficiaries of this Directive as to their use of orphan works and should not grant the commercial partner any rights to use, or control the use of, the orphan works.*
- (23) In order to foster access by the Union's citizens to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available to the public in one Member State *may also be made* available to the public in other Member States. Publicly accessible libraries, educational establishments and museums, as well as archives, **film or audio** heritage institutions and public-service broadcasting organisations that use an orphan work in order to achieve their public-interest missions should be able to make the orphan work available to the public in other Member States.
- (24) This Directive *is* without prejudice to *the* arrangements in the Member States concerning the management of rights such as extended collective licences, *legal presumptions of representation or transfer, collective management or similar arrangements or a combination of them, including for mass digitisation.*
- I**
- (25) Since the objective of this Directive, namely ensuring legal certainty with respect to the use of orphan works, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for uniformity of the rules governing the use of orphan works, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1  
Subject-matter and scope

1. This Directive concerns certain uses made of orphan works by publicly accessible libraries, educational establishments and museums, as well as by archives, film *or audio* heritage institutions and public-service broadcasting organisations, ***established in the Member States, in order to achieve aims related to their public-interest missions.***
2. This Directive applies to **■** :
  - (a) works published in the form of books, journals, newspapers, magazines or other writings **■** contained in the collections of publicly accessible libraries, educational establishments *or* museums ***as well as in the collections of*** archives *or of film or audio heritage institutions*;
  - (b) cinematographic or audiovisual works ***and phonograms*** contained in the collections ***of publicly accessible libraries, educational establishments or museums as well as in the collections of*** archives *or of film or audio* heritage institutions; ***and***
  - (c) cinematographic **■** or audiovisual works ***and phonograms*** produced by public-service broadcasting organisations up to and including 31 December 2002 and contained in their archives

***which are protected by copyright or related rights and which are first published in a Member State or, in the absence of publication, first broadcast in a Member State.***
3. ***This Directive also applies to works and phonograms referred to in paragraph 2 which have never been published or broadcast but which have been made publicly accessible by the organisations referred to in paragraph 1 with the consent of the rightholders, provided that it is reasonable to assume that the rightholders would not oppose the uses referred to in Article 6. Member States may limit the application of this paragraph to works and phonograms which have been deposited with those organisations before ... \****
4. ***This Directive shall also apply to works and other protected subject-matter that are embedded or incorporated in, or constitute an integral part of, the works or phonograms referred to in paragraphs 2 and 3.***
5. ***This Directive does not interfere with any arrangements concerning the management of rights at national level.***

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\* ***OJ: Please insert the date - two years after the date of entry into force of this Directive.***

## Article 2 Orphan works

1. A work *or a phonogram* shall be considered an orphan work if *none of the rightholders* in that work *or phonogram is* identified or, even if one or more of them is identified, *none is* located *despite* a diligent search for *the rightholders having* been carried out and recorded in accordance with Article 3.
2. Where there is more than one rightholder in a work *or phonogram*, and *not all of them have been identified or, even if identified, located after a diligent search has been carried out and recorded in accordance with Article 3, the work or phonogram may be used in accordance with this Directive provided that the rightholders that have been identified and located have, in relation to the rights they hold, authorised the organisations referred to in Article 1(1) to carry out the acts of reproduction and making available to the public covered respectively by Articles 2 and 3 of Directive 2001/29/EC.*
3. *Paragraph 2 shall be without prejudice to the rights in the work or phonogram of rightholders that have been identified and located.*
4. *Article 5 shall apply mutatis mutandis to the rightholders that have not been identified and located in the works referred to in paragraph 2.*
5. *This Directive shall be without prejudice to national provisions on anonymous or pseudonymous works.*

## Article 3 Diligent search

1. For the purposes of establishing whether a work *or phonogram* is an orphan work, the organisations referred to in Article 1(1) shall ensure that a diligent search is carried out *in good faith* in respect of each work *or other protected subject-matter*, by consulting the appropriate sources for the category of works *and other protected subject-matter* in question. *The diligent search shall be carried out prior to the use of the work or phonogram.*
2. The sources that are appropriate for each category of works *or phonogram in question* shall be determined by each Member State, in consultation with rightholders and users, and shall include *at least* the *relevant* sources listed in the Annex.
3. A diligent search *shall* be carried out **■** in the Member State of first publication or, *in the absence of publication, first* broadcast, except in *the case of cinematographic or audiovisual works the producer of which has his headquarters or habitual residence in a Member State, in which case the diligent search shall be carried out in the Member State of his headquarters or habitual residence.*  
*In the case referred to in Article 1(3), the diligent search shall be carried out in the Member State where the organisation that made the work or phonogram publicly accessible with the consent of the rightholder is established.*
4. *If there is evidence to suggest that relevant information on rightholders is to be found in other countries, sources of information available in those other countries shall also be consulted.*

5. ***Member States shall ensure that the organisations referred to in Article 1(1) maintain records of their diligent searches and that those organisations provide the following information to the competent national authorities:***
- (a) ***the results of the diligent searches that the organisations have carried out and which have led to the conclusion that a work or a phonogram is considered an orphan work;***
  - (b) ***the use that the organisations make of orphan works in accordance with this Directive;***
  - (c) ***any change, pursuant to Article 5, of the orphan work status of works and phonograms that the organisations use;***
  - (d) ***the relevant contact information of the organisation concerned.***
6. ***Member States shall take the necessary measures to ensure that the information referred to in paragraph 5 is recorded in a single publicly accessible online database established and managed by the Office for Harmonisation in the Internal Market ("the Office") in accordance with Regulation (EU) No 386/2012. To that end, they shall forward that information to the Office without delay upon receiving it from the organisations referred to in Article 1(1).***

#### Article 4

##### Mutual recognition of orphan work status

A work ***or phonogram*** which is considered an orphan work according to Article 2 in a Member State shall be considered an orphan work in all Member States. That work or phonogram ***may be used and accessed in accordance with this Directive in all Member States. This also applies to works and phonograms referred to in Article 2(2) in so far as the rights of the non-identified or non-located rightholders are concerned.***

#### Article 5

##### End of orphan work status

Member States shall ensure that a rightholder in a work ***or phonogram*** considered to be an orphan work has, at any time, the possibility of putting an end to the orphan work status ***in so far as his rights are concerned.***

Article 6  
Permitted uses of orphan works

1. Member States shall ***provide for an exception or limitation to the right of reproduction and the right of making available to the public provided for respectively in Articles 2 and 3 of Directive 2001/29/EC*** to ensure that the organisations referred to in Article 1(1) are permitted to use **■ orphan works contained in their collections** in the following ways:
  - (a) by making the orphan work available to the public, 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.
2. **■** The organisations referred to in Article 1(1) ***shall use an orphan work in accordance with paragraph 1 of this Article only*** in order to achieve aims ***related to*** their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works ***and phonograms*** contained in their ***collection***. ***The organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.***
3. ***Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.***
4. This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public-interest missions, ***particularly in respect of public-private partnership agreements.***
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5. ***Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject-matter in accordance with paragraph 1 of this Article. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of the compensation shall be determined, within the limits imposed by Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.***

**■**

Article 7  
Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning, in particular, patent rights, trade marks, design rights, utility models, the topographies of semi-conductor products, type faces, conditional access, access to cable of broadcasting services, the protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract, *and rules on the freedom of the press and freedom of expression in the media.*

Article 8  
Application in time

1. This Directive shall apply in respect of all works *and phonograms* referred to in Article 1 which are  protected by the Member States' legislation in the field of copyright *on or after* ...\*.
2. This Directive shall apply without prejudice to any acts concluded and rights acquired before ...\*.

Article 9  
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...\*. They shall forthwith communicate to the Commission the text of those provisions .

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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\* *OJ: Please insert the date - two years after the date of entry into force of this Directive.*

\* *OJ: please insert the date - two years after the date of entry into force of this Directive.*

Article 10  
Review clause

The Commission shall keep under constant review the development of rights information sources and shall *by ...*<sup>\*</sup>, and at annual intervals thereafter, submit a report concerning the possible inclusion in the scope of application of this Directive *of publishers and* of works or other protected subject-matter not currently included in its scope, and in particular ■ stand-alone photographs and other images.

By ...<sup>\*</sup>, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive, in the light of the development of digital libraries.

When necessary, in particular to ensure the functioning of the internal market, the Commission shall submit proposals for amendment of this Directive.

***A Member State that has valid reasons to consider that the implementation of this Directive hinders one of the national arrangements concerning the management of rights referred to in Article 1(5) may bring the matter to the attention of the Commission together with all relevant evidence. The Commission shall take such evidence into account when drawing up the report referred to in the second paragraph of this Article and when assessing whether it is necessary to submit proposals for amendment of this Directive.***

Article 11  
Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 12  
Addressees

This Directive is addressed to the Member States.

Done at

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>\*</sup> ***OJ: please insert the date - three years after the date of entry into force of this Directive.***



(a) ANNEX

The sources referred to in Article 3(2) **include** the following:

- (1) For published books:
    - (a) legal deposit, **library catalogues and authority files maintained by libraries and other institutions**;
    - (b) **the publishers' and authors' associations in the respective country**;
    - (c) existing databases and registries, **WATCH (Writers, Artists and their Copyright Holders)**, **the ISBN (International Standard Book Number) and databases listing books in print**;
    - (d) the databases of the relevant collecting societies, in particular reproduction rights organisations;
    - (e) **sources that integrate multiple databases and registries, including VIAF (Virtual International Authority Files) and ARROW (Accessible Registries of Rights Information and Orphan Works)**;
  - (2) for **newspapers, magazines**, journals and periodicals:
    - (a) the ISSN (International Standard Serial Number) for periodical publications;
    - (b) indexes and catalogues from library holdings and collections;
    - (c) **legal deposit**;
    - (d) **the publishers' associations and the authors' and journalists' associations in the respective country**;
    - (e) **the databases of relevant collecting societies including reproduction rights organisations**;
- 1.1.1.1. **■**
- 1.1.1.2. (3) for visual works, including fine art, photography, illustration, design, architecture, sketches of the latter works and other such works that are contained in books, journals, newspapers and magazines **or other works**:
- (a) the sources referred to in **points (1) and (2)**;
  - (b) the databases of the relevant collecting societies, in particular for visual arts, and including reproduction rights organisations;
  - (c) the databases of picture agencies, where applicable;

- (4) for audiovisual works *and phonograms*:
- (a) legal deposit;
  - (b) *the producers' associations in the respective country*;
  - (c) databases of film *or audio* heritage institutions and national libraries;
  - (d) databases with relevant standards and identifiers such as ISAN (*International Standard Audiovisual Number*) for audiovisual material, *ISWC (International Standard Music Work Code) for musical works and ISRC (International Standard Recording Code) for phonograms*;
  - (e) the databases of the relevant collecting societies, in particular for authors, performers, phonogram producers and audiovisual producers;
  - (f) *credits and other information appearing on the work's packaging*;
  - (g) *databases of other relevant associations representing a specific category of rightholders*.