



LIGUE DES BIBLIOTHÈQUES EUROPÉENNES DE RECHERCHE
ASSOCIATION OF EUROPEAN RESEARCH LIBRARIES

Mr Jose Manuel Barroso
President of the European Commission
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The Hague, 16 August 2010

Dear President Barroso,

Proposed changes to the European Copyright Directive regarding Orphan Works

I am writing to you in my capacity as President of LIBER (Association of European Research Libraries).

I understand that a draft amendment to the European Copyright Directive regarding Orphan Works is about to be issued by the Commission. We believe that the proposal will include the following for cultural and educational bodies (i.e. not commercial organisations):

1. A solution for Orphan Works for literary works only (including illustrations bound in the object);
2. A diligent search in line with the recommendations produced as part of the Orphan Works i2010 - due diligence to be performed by the digitising body;
3. Cross border recognition of national solutions;
4. A way for fair compensation to be paid to rights holders;
5. The need to publish what is being digitised for rights holders to approach the digitising body.

On behalf of LIBER, the main association of European Research Libraries, I am writing to submit comments on these proposals.

We welcome the new Digital Agenda and the commitment of the European Commission to find a solution for Orphan Works.

This is clearly an important issue for us, since without a way forward Europe's libraries, museums, galleries and cultural institutions will be left housing works which it is not possible to digitise because of issues over rights clearance. We believe firmly in creating, and contributing to a digital Europe and one of the ways in which Universities and National Libraries can help is by unlocking the content they hold in materials which currently fall under the banner of Orphan Works.

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In this context, points 1 and 2 above are very disappointing. Any solution to the challenge of dealing with Orphan Works will be counter-productive if it does not cover audiovisual materials. In anything like the form outlined in point 1, such regulation will severely disadvantage researchers, teachers and learners in many fields of Arts, Humanities and Social Sciences who make heavy use of audiovisual materials. The general European user will also be disadvantaged if audiovisual materials are not covered by new arrangements for Orphan Works. It is just this type of material which appeals to groups such as School children who would use the material as part of educational projects.

Point 2 talks of the requirement for diligent searches in line with recommendations produced for Orphan Works i2010 – searches to be performed by the body undertaking the digitisation. We submit that these proposals in their present form are unworkable. The diligent search criteria created for i2010 are not fit for purpose for mass digitisation. As Universities and cultural institutions move to digitise their holdings, it is becoming clear that rights clearance is one of the most time-consuming and, therefore, one of the most expensive actions in the digitisation workflow. For holders of material who wish to undertake mass digitisation, it is virtually impossible to undertake work on rights clearance in the way being suggested by the Commission because it is too expensive in terms of staff time and will take too long. The effect would be to limit the scale of digitisation activity which is undertaken, which runs counter to the high level objectives of the Digital Agenda. We strongly urge the Commission to re-consider this proposal as a matter of urgency.

The institutions, on whose behalf I am writing, feel strongly about these issues. Most of our institutions have undertaken digitisation of rare and unique holdings in a number of thematic areas – both to support our teaching, learning and research and also to make an offering to the European user and citizen. LIBER is involved in important European projects such as Europeana Travel and Europeana Libraries (currently under negotiation) which will bring in more than 6,000,000 items in Europeana, the European Digital Library. We would like to digitize more, but these proposals on Orphan Works in their present form do not encourage us to move forward.

Our efforts to promote digitisation will be hampered if the suggested amendments for Orphan Works are made to the European Copyright Directive. We strongly urge the Commission to think again and to consult more closely with Europe's Universities and cultural bodies on this crucial issue.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Paul Ayrís', with a long, sweeping horizontal line extending from the end of the signature across the page.

Dr. Paul Ayrís
LIBER President

cc. Ms Catherine Day, Secretary-General of the European Commission
Ms Neelie Kroes, Commissioner for the Digital Agenda
Ms Androulla Vassiliou, Commissioner for Education, Culture, Multilingualism and Youth
Mr Michel Barnier, Commissioner for the Internal Market and Services
Mr Joaquin Almunia, Commissioner for Competition