



Creators' Statement
On the Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works

The undersigned organisations representing the interests of writers, literary translators, screenwriters, journalists, photographers and visual artists welcome the initiative of the European Commission to create a legal framework to establish an orphan work status and find solutions to facilitate the cross-border digitisation and dissemination of orphan works in the EU single market.

We note the aim of the *Directive proposal on certain permitted uses of orphan works* to ensure “the lawful cross-border online access to orphan works contained in online digital libraries or archives operated by a variety of institutions in the pursuance of the public interest mission of such institutions.”

As representatives of several hundreds of thousands of Europe’s creative talent, these issues are of crucial concern to us as they have direct implications on the use which is made of the content created by our members.

Indeed, creators own exclusive economic rights over the work that they create, including reproduction and making available rights. The use of these rights is subject to remuneration.

Creators also own unwaivable moral rights in the work that they create which allows them to oppose any modification and alteration of their work.

While we retain the opportunity to raise our specific concerns with the text of the directive proposal separately, we would like to stress a few points of common concern which, we believe are crucial to best balance the interests of public institutions and those of creators in the use of orphan works that are the result of their creativity. We hope that Members of the European Parliament will take due consideration of these points in the up-coming discussions over the Directive proposal above mentioned.

1. **Confusion between authors and rightholders:** the current Directive proposal confuses the terms “author” and “right holder”. While an author falls under the category of rightholders a right holder is not necessarily an author. The directive should ensure in particular that diligent search should be conducted in order to identify authors who may come forward and put an end to the orphan status and its exploitation.

2. **Remuneration of authors:** Authors have a right to be remunerated for the use of their exclusive rights. Remuneration of known and unknown authors should be secured for *any* use of orphan works including commercial and non- commercial uses. This is important to ensure that the proposed Directive does not have the unintended side-effect of undercutting the market for licensing the (non-orphan) works of identifiable authors. Licence fees paid for use of works by currently unidentified authors should be held in trust awaiting their identification, and if they are not identified, such fund should be allocated to the welfare of authors in general.
3. **Licencing option: in countries where there is no extended collective licencing schemes in place** permitted use of orphan works should be done by licence applied for in advance only, with evidence of diligent search. The licence can only be issued by a collective management organisation that represents a substantial amount of authors of the concerned work category on its board. Licences allow for legal certainty for uses of works with several authors.
4. **Diligent search should not conflict with the right of authors to remain anonymous** (for example as a "source" in countries where it is forbidden for public authorities to try to reveal the name of an anonymous author/source).
5. **Protecting moral rights:** much of the debate around orphan works has failed to address both the issue of reducing the number of works orphaned in the future, and the role of laws protecting authorship – and in particular the *droit moral* – in doing this. Too many works are being made accessible both off- and on-line without attribution or credit to their authors. Remedying this is the key to reducing the number of works orphaned in future, and offers other benefits for the information society in guaranteeing the authenticity of works and authors' responsibility for them. Secured enforceable right of identification is essential to preventing works being orphaned in the future.
6. **Sustainability of authors:** The Directive should not affect the sustainability of careers of known authors and should not impede the functioning of the internal market. The directive must therefore provide mechanisms that respect the rights of these *known* authors.

Suggested amendments

NEW Recital 5: This Directive should be without prejudice to the author's moral right, including the right to claim authorship of his/her work, to acknowledge this authorship when known, and the right to object to any distortion, mutilation or other modification of his/her work. The author's right to object to other derogatory action in relation to the said work, which would be prejudicial to his/her honour or reputation, shall also be safeguarded. Secured enforceable right of identification is essential to preventing works being orphaned in the future.

New Recital 6: Authors should receive equitable remuneration to compensate them adequately for the use made of their protected works. These remunerations must be managed by duly accredited collecting management organisations until the relevant authors come forward to claim their rights.

Current Recital 6 becomes Recital 8

New article on remuneration

Remuneration must be paid for any use made of an orphan work by the organisation referred to in Article 1(1), through a duly accredited collective management organisation. Unknown authors who come forward should claim their remuneration to a duly representative collective management organisation.

List of signatories

European Federation of Journalists (EFJ)
Arne König, President

European Visual Artists (EVA)
Carola Streul, Secretary-General

European Writers' Council (EWC)
Myriam Diocaretz, Secretary-General

Federation of Screenwriters in Europe (FSE)
Christina Kallas, President