

ZEGGAR Hicham (MARKT)

From: Olivia Regnier <Olivia.Regnier@ifpi.org>
Sent: 28 October 2011 11:51
To: MARTIN-PRAT Maria (MARKT)
Cc: OBROVSKI Nikolaus (MARKT); Agata Pavia; Marc Sundermann
Subject: Orphan Works Directive - letter rightholders
Attachments: OrphanWorksDirective rightholder letter 25Oct2011.pdf

Hi Maria,

Following our conversation, I enclose the letter signed by a number of organisations – including FEP – and sent to several MEPs (below), in addition to the Perm Reps and members of the Council working group.

Kind regards,

Olivia

MEPs

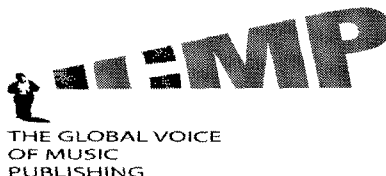
Angelika NIEBLER (EPP/ DE substitute in the JURI committee)
Lidia Joanna GERINGER de OEDENBERG (S&D/ PL)
Alexandra Thein (ALDE/ DE)
Marielle GALLO (EPP/FR)

CULT

Sabine VERHEYEN (EPP/DE)
Petra KAMMEREVERT (S&D/DE)
Emma McCLARKIN (ECR/UK)

IMCO

Toine MANDERS (ALDE/NL)
Zuzana ROITHOVÁ (EPP/CZ)
Phil PRENDERGAST (S&D/IE)
Ashley Fox (ECR/UK)



Current discussions on the EC's Proposal for an Orphan Works Directive

Dear Madam, Dear Sir,

The creative sector relies on copyright as the basis for the production, creation, financing and distribution of content in Europe. Copyright is the essential engine for human innovation and for financing creativity. **This is why we the undersigned – organizations of creators, authors, technical crew, performers, producers, distributors and publishers – are writing to share our concerns about the on-going discussions both in the Council and the European Parliament on the Commission Proposal for an Orphan Works Directive.**

The creative industries are fully committed to the European Union's Digital Agenda and the benefits it can deliver for European citizens. We are therefore strong supporters of measures to preserve and provide access to European heritage, promote the creation and licensing of new works and protect existing works. **We are convinced that these goals can only be achieved through respect for the basic principles of copyright, which include exclusive rights of authorization, remuneration and contractual freedom.**

On Orphan Works, we remain committed to balanced practical solutions, including MoUs, which recognise that copyright operates in the public interest and provides a source of knowledge, inspiration and entertainment for our societies.¹ It is particularly important to ensure that the provisions of the Proposal are proportionate to the size of the problem identified and empirically proven. They should take into account the specificities of each type of content and sector concerned.

The recent discussions related to the current draft Directive have become increasingly complex mixing issues of different nature. In particular, we understand that there have been proposals which would try to enlarge the scope of the directive well beyond the issue of orphan works to cover issues related to mass digitisation.

Copyright is protected at the EU level as a fundamental right and any suggestion to improve the text should respect the European Union copyright *acquis* as well as the European Union's, and the Member States', international treaty obligations.

We therefore urge both the Member States and the European Parliament to consider the following in a manner consistent with the European Digital Agenda:

- The initiative should deal **exclusively with genuine orphan works** and the public interest objectives related to such works that are pursued in the Proposal, with the support of and through public institutions. **The issue of mass-digitisation of archives is a separate one.**
- **Search for rightholders must be truly diligent** and undertaken **in good faith**. Rightholders should **agree at national level on the sources that will be used to conduct the diligent search and not merely be consulted.**
- We are opposed to the introduction in the Proposal of overly broad measures which would undermine exclusive rights, such as extended collective licensing schemes at European level. Such proposals would totally change the scope and nature of the Directive. These mechanisms would set aside the diligent search requirement and indeed might apply beyond orphan works. The inevitable result is that licenses would be granted for works that are not orphan, to the detriment of known right holders. **Imposing compulsory extended collective licensing at EU level in the Orphan Works proposal would go way beyond the scope of the proposed Directive.** As such, these mechanisms should not be used as a back door to introduce in the EU *acquis* issues totally unrelated to the orphan works problem. **Imposing compulsory forms of licensing would undermine exclusive rights for online exploitation - the most important right that rightholders have in the Digital Single Market.**

¹ Our commitment to achieving a balanced approach to the orphan works issue led many of the signatories to this letter to participate in the development of the Memorandum of Understanding on Diligent Search Guidelines for Orphan Works in 2008 by 27 signatories, including libraries, archives, and right holders representing text, audiovisual, music/sound and visual/photography sectors.

- In contrast, **we support the original proposal of the Commission and recent compromise proposals on Recital 20** aiming at ensuring that the proposed Directive is without prejudice to national arrangements concerning the management of rights, amongst them, extended collective licensing. Nothing in the Commission's proposal is precluding Member States to maintain existing or develop future arrangements to address specific issues at the national level. ECL are voluntary licensing solutions negotiated at national level by rightholders. However, these systems should not become the European standard for rights clearance with regards to orphan works.
- Right holders of works wrongly or negligently qualified as orphan must be given a real opportunity to **end that status throughout the European Union in a speedily and cost-effective manner**, and be able to exercise fully their individual rights.
- As proposed by the European Commission, the draft Directive on orphan works should provide for **a stand-alone instrument**. The issue of orphan works being mainly a rights clearance issue, it is **not appropriate to introduce a new statutory exception/ limitation** to the list provided for by the 2001 Copyright Directive;

The creative industries urge you to take our concerns on board and help to ensure a sustainable European content industry that is also free to flourish in the digital environment. The future viability of our industries depends on our individual creativity, innovation and entrepreneurial vision. But we can only thrive and reach our full potential with the support of a European Union legal regime which fully recognizes the value of copyright and its contribution to future economic growth, employment and European creativity.

We remain at your entire disposal for an elaboration of our views expressed above.

List of signatories

CEPI - European Coordination of Independent Producers

Elena Lai, Secretary General - cepi@europe-analytica.com

ICMP - International Confederation of Music Publishers

Alessandra Silvestro, Avvocato & Registered European Lawyer - Alessandra@silvestro.be

Ger Hatton, Secretary General - Ger.hatton@icmp-ciem.org

EGEDA - Audiovisual Producers' Rights Management Association

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EURO CINEMA – representing French film producers

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FERA - Federation of European Film Directors

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IFPI - International Federation of the Phonographic Industry

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EuroFIA – European Group of the International Federation of Actors

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FIAD - International Federation of film Distributors Associations

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FEP - Federation of European Publishers

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FIAPF - International Federation of Film Producers Associations

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IVF - International Video Federation – Publishers of Audiovisual Content on Digital Media and Online - *Charlotte Lund Thomsen, Director General – clthomsen@ivf-video.org*

MPA - Motion Picture Association

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Uni-Mei – Uni Global Union Media Entertainment and Arts

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