

ROADMAP

Title of the initiative: **Legislative initiative on "orphan" works for digital libraries**
Type of initiative (CWP/Catalogue/Comitology): **CWP (Non-strategic)**
Lead DG/contact person/details: **DG MARKT/ D1**
Expected date of adoption of the initiative (month/year): **November 2010**
Date of modification:
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Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The EU has undertaken to develop Europeana, a pan-European digital library and archive, in order to make Europe's cultural heritage available online. Europe's cultural heritage comprises the large stock of materials held in libraries, such books, manuscripts, pamphlets, maps. In 2006, the Commission adopted a Recommendation on the digitisation and online accessibility of cultural content and digital preservation encouraging the Member States to create mechanisms to facilitate the use of orphan works (i.e. those works that are in copyright but whose right holders cannot be identified or located). However, the majority of Member States have not yet developed a regulatory approach with respect to orphan works. The present initiative seeks to build on the 2006 Recommendation and, by means of binding legislation, introduce an obligation on Member States to identify orphan works published in their territories and to establish mechanisms for their online display. The entire system would then allow seamless EU accessibility.

What are the main problems identified?

An issue that has come to the fore in large scale digitisation projects is the so-called orphan works phenomenon. Orphan works are works that are in copyright but whose right holders cannot be identified or located. Digital libraries cannot comprise orphan works as no right holder is known that can grant permission for their online display. The U.S. Google Books Settlement, which comprises the unhindered use of orphan works in the Google Books Library, has put pressure on the EU to introduce suitable mechanisms for the digital display of orphan works.

Who is affected?

This initiative will affect cultural institutions, right holders, scholars, researchers and consumers.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

Orphan works legislation limited to national territories does not provide the EU wide access on which Europeana depends. National approaches to orphan works have therefore to be coordinated. The EU is clearly placed to ensure such coordination in the most effective way.

B. Objectives of EU initiative

What are the main policy objectives?

To ensure the cross-border online accessibility of orphan works thereby making Europe's cultural and intellectual heritage available in all EU Member States to EU citizens.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered?

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

The Commission is currently examining possible options for the identification and online display of orphan works. Possible approaches include the stipulation of a diligent search requirement that precedes the display of orphan works. Limiting the cost of diligent searches by, e.g., confining the search to the Member State of first publication is also being considered. Costly duplication of searches can also be tackled by relying on mutual recognition of national search results. For online accessibility, a variety of options ranging from a statutory exception collective licensing to Government authorisations are being considered. As explained above, the soft law approach of the 2006 Recommendation has not proved sufficient to foster the development of Europeana or the development of orphan works legislation in the Member States.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The proposed action is related to the development of digital libraries and the diffusion of Europe's cultural heritage. It is therefore closely related to and complementary to the Europeana initiative.

Explain how the options respect the proportionality principle

The options chosen will not go beyond what is required to achieve the stated goal – a pan-European digital library. This could for instance be achieved with an option based on avoiding duplication of searches by mutual recognition of national search results.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

With the introduction of orphan works legislation, libraries would get copyright permissions to scan and display these works across the entire EU. Clear rules on orphan works would thus provide libraries with the required legal certainty that their activities are in line with copyright rules across the EU.

The easy cross-border availability of orphan works would boost European digital libraries. Researchers, academics and consumers would have unlimited access to knowledge and culture. The development of Europeana and national digital library projects would contribute to the 'knowledge economy' and also allow Europe to compete with Google, thereby strengthening the EU's overall competitiveness.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

Mutual recognition of orphan work status obtained in the country of first publication avoids needless cost of duplicate searches.

E. Planning of further impact assessment work

When will the impact assessment work start?

Work on the impact assessment is currently underway.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The impact assessment will build on previous work carried out by the Commission services, notably the High Level Expert Group on Digital Libraries, a hearing and public consultation organised by the European Commission, the Commission's Green Paper on the Knowledge Economy and subsequent consultation, two hearings organised by the European Parliament, as well as a wide variety of studies on orphan works.

Which stakeholders & experts have been/will be consulted, how and at what stage?

Two expert hearings were held on 26 October and 10 November 2009. These hearings provided a broad view of the different stakeholder interests. In addition, considerable preparatory work on orphan works has been conducted by the High Level Expert Group on Digital Libraries. In particular the 2008 consultation on the Green Paper 'Copyright in the Knowledge Economy' yielded a significant amount of comments on the orphan works issue.