



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the proposal for a Directive of the European Parliament and the Council on certain permitted uses of Orphan Works {COM(2011) 289 final} and apologises for the long delay in presenting this response.

The Senato della Repubblica recommends that the prior diligent search provided for in Article 3 of the proposal be defined in such a way as not to impose an excessive burden on the beneficiaries of the Directive. The Senato della Repubblica also invites the Commission to evaluate the possibility of introducing in the Directive mechanisms of management of rights such as so-called "extended collective licences".

In its impact assessment, the Commission carried out a very careful analysis of the possible options to allow the use of orphan works and is convinced that the proposed mechanism, based on the requirement of a prior diligent search, is the solution that best responds to the need to fully take into account the position of rightholders while permitting the digitisation and use of works whose authors cannot be identified and located. At the same time, it is clear that the Directive will not prevent Member States from applying specific arrangements for the management of rights in particular in the context of mass digitisation projects, including extended collective licences used especially in the Nordic Member States.

As regards the requirements for the diligent search, the Commission is fully aware of the need to take a balanced approach and not to impose an excessive burden on the beneficiaries of the Directive. It is precisely in this spirit that the proposal has foreseen that the diligent search only needs to be carried out in the Member State of first publication of the work and that the appropriate sources to be consulted for each category of work will be determined by each Member State in consultation with relevant stakeholders and on the basis of the list contained in the Annex to the Directive.

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The Senato della Repubblica also elaborates on the mechanisms for the use of orphan works laid down in Articles 6 and 7 of the proposed directive. In particular it recommends that orphan works should be made available free of charge, save for the possibility for the beneficiaries to impose a fee as reimbursement for the costs incurred. The Senato della Repubblica also proposes to limit the remuneration of rightholders (foreseen in Article 7 for past uses outside a public interest mission) to an amount corresponding to uses made in the five years preceding the end of the orphan status.

In this respect the Commission stresses that the main objective of the proposal is to create a legal framework for the use of orphan works in the pursuance of the public interest mission of the beneficiary institutions. Accordingly, for permitted uses made in the context of a public interest mission (Article 6) the proposal does not foresee the remuneration of rightholders for the uses that have been made of their works in the past. While Article 6 does not envisage the commercial exploitation of orphan works, it does not exclude the possibility to charge a fee which does not exceed what is necessary to cover the costs. On the other hand, the remuneration of rightholders for past uses made of their works is foreseen under Article 7 for cases – which may be authorised by Member States under the conditions set out in that provision – of uses made by beneficiaries beyond the remit of their public interest mission.

The Commission appreciates that the Senato della Repubblica agrees with the proposal that rightholders should be remunerated for past commercial uses of their works and takes note of its proposal to limit such remuneration to the last five years of use.

The Commission believes that the proposed Directive, which is currently being discussed in the European Parliament and the Council in the framework of the ordinary legislative procedure, will bring, once adopted, a substantial contribution to facilitate the preservation and the cross border dissemination of Europe's rich and diverse cultural heritage.

I hope that these explanations serve to clarify the points raised in the opinion and I look forward to continuing our political dialogue with the Senato della Repubblica.

Yours faithfully,

*Maroš Šefčovič
Vice-President*