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From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	10199/12 PI 59 AUDIO 58 CULT 84 CODEC 1385
No. Cion prop.:	10832/11 PI 61 AUDIO 18 CULT 37 CODEC 926
Subject:	Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works - Approval of the final compromise text

1. On 26 May 2011, the Commission presented the above mentioned Directive, the main objective of which is to create a legal framework to ensure the digitisation and lawful, cross-border online access to orphan works contained in the collections of publicly accessible libraries, educational establishments, museums, archives, film or audio heritage institutions and public service broadcasting organisations when orphan works are used in the pursuance of the public interest mission of these organisations.

2. With the aim of reaching an agreement at first reading on the proposed Directive, a series of informal trilogues took place during the Danish Presidency.

3. On 1 June 2012, the Permanent Representatives Committee agreed on a compromise package and mandated the Presidency to defend that package at the following informal trilogue.

4. At the informal trilogue on 6 June 2012, an agreement *ad referendum* was reached among the representatives of the three Institutions on the above-mentioned package, a consolidated version of which is contained in the Annex to this Note (changes compared to the Commission's proposal are marked)[1].

5. The Permanent Representatives' Committee is therefore invited to **:**
   - approve the final compromise text as set out in the Annex to this Note, and
   - authorise its Chairman to inform the Chair of the European Parliament's Legal Affairs Committee that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this Note (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

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[1] Deletions in comparison to the original proposal from the Commission are indicated by […], new text is in ***bold italics***.

PE-CONS No/YY - 2011/0136(COD)

DIRECTIVE 2012/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on certain permitted uses of orphan works

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular ***Articles 53(1), 62 and 114*** thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure[2],

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[1] OJ C ***376, 22.12.2011, p. 66.***
[2] Position of the European Parliament of …

Whereas:

(1) Libraries, museums, archives, educational establishments, film ***or audio*** heritage institutions and public service broadcasting organisations ***established in the Member States*** are engaged in large-scale digitisation of their collections or archives in order to create European Digital Libraries***. They*** contribute to the preservation and dissemination of European cultural heritage, which is also important for the creation of European Digital Libraries, such as Europeana. Technologies for mass scale digitisation of print materials and for search and indexing enhance the research value of the libraries' collections.

(2) The need to promote free movement of knowledge and innovation in the internal market is an important component of the Europe 2020 Strategy, as set out in the Communication from the Commission "Europe 2020: A strategy for smart, sustainable and inclusive growth" [...], which includes as one of its flagship initiatives the development of a Digital Agenda for Europe.

(3) Creating a legal framework to facilitate the digitisation and dissemination of works ***and other subject matter which are protected by copyright or related rights and*** for which no ***rightholder*** is identified or, even if identified, is not located, so called orphan works, is a key action of the Digital Agenda for Europe, as set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions - A Digital Agenda for Europe […]. ***This action targets the concrete problem of the legal determination of the orphan works status and its consequences in terms of the permitted users and uses of the work or phonogram that has been considered to be orphan.***

(3a) This Directive is without prejudice to specific solutions being developed in the Member States to address larger mass scale digitisation issues, such as in the case of so called "out of commerce" works. Such solutions take into account the specificities of different types of content and different users and build upon the consensus of the relevant stakeholders. This approach has also been followed in the Memorandum of Understanding on key principles on the digitisation and making available of out-of-commerce works, signed on September 20, 2011 by representatives of European libraries, authors, publishers and collecting societies and witnessed by the European Commission. This Directive is without prejudice to that Memorandum of Understanding which calls on Member States and the Commission to ensure that voluntary agreements concluded between users, rightholders and collective rights management organisations to licence the use of out of commerce works on the basis of the principles contained in the Memorandum of Understanding, benefit from the required legal certainty in a national and cross border context.

(3b) Copyright is the economic foundation for the creative industry, since it stimulates innovation, creation, investment and production. Mass digitisation and dissemination of works is therefore a means of protecting Europe's cultural heritage. Copyright is an important tool for ensuring that the creative sector is rewarded for its work.

(4) The exclusive rights for ***rightholders*** of reproduction and of making available to the public of their works ***and other protected subject matter***, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society[1], require the consent of ***rightholders*** prior to the digitisation and making available of a work ***and other protected subject matter***.

(5) In the case of orphan works, such prior consent to carry out acts of reproduction or of making available to the public cannot be obtained.

(6) Different approaches in the Member States to the recognition of orphan work status can present obstacles to the functioning of the internal market and the use ***of*** and cross-border access to orphan works. Such different approaches can also result in restrictions on the free movement of goods and services which incorporate cultural content. Therefore, ensuring the mutual recognition of such status is appropriate***, since it would allow access to the orphan works in all Member States***.

[1] OJ L 167, 22.6.2001, p. 10.

(7) In particular, a common approach to determine the orphan status and the permitted uses of orphan works is necessary to ensure legal certainty in the internal market with respect to the use of orphan works by libraries, museums, educational establishments, archives, film ***or audio*** heritage institutions and public service broadcasting organisations.

(8) Cinematographic ***or*** audiovisual works ***and phonograms*** in the archives of public service broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of ***phonograms*** and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the works ***and phonograms*** in the archives of broadcasting organisations are concerned.

(9) Cinematographic and audiovisual works ***and phonograms contained*** in the archives of public service broadcasting organisations***, and which are*** commissioned by such organisations for ***the*** exclusive exploitation ***by them or other co-producing public service broadcasting organisations should fall within the scope of this Directive. Cinematographic and audiovisual works and phonograms contained in the archives of public service broadcasting organisations which have not been produced or commissioned by such organisations but which those organisations have been authorized to use under a licensing agreement should not fall within the scope of this Directive***.

(10) The creation of large online libraries facilitate electronic search and discovery tools which open up new sources of discovery for researchers and academics that would otherwise have to content themselves with more traditional and analogue search methods.

(11) For reasons of international comity, this Directive should only apply to works ***and phonograms*** that are first published in ***the territory of*** a Member State ***or, in the absence of publication, first broadcast in the territory of a Member State or, in the absence of publication or broadcast, made publicly accessible by the beneficiaries of this Directive with the consent of the rightholders. With regard to works and phonograms, which have neither been published nor broadcast but which have been made publicly accessible by the beneficiaries of this Directive with the consent of the rightholders this Directive should only apply provided that it is reasonable to assume that the rightholders would not oppose the use allowed by this Directive***.

(12) Before a work ***or phonogram*** can be considered an orphan work, a diligent search for ***the rightholders in the work or phonogram, including rightholders in works and other protected subject matter that are embedded or incorporated in the work or phonogram,*** should be carried out ***in good faith***. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations. ***Such other organisations may charge for the service of carrying out a diligent search.***

(13) It is appropriate to provide for a harmonised approach concerning such diligent search in order to ensure a high level of protection of copyright ***and related rights*** in the Union. A diligent search should involve the consultation of ***sources*** that supply information on ***the works and other protected subject matter as determined, in accordance with*** this Directive***, by the Member State where the diligent search has to be carried out. In so doing Member States could refer to the diligent search guidelines agreed in the context of the High Level Working Group on Digital Libraries established in the context of the i2010 digital library initiative. In order to avoid duplication of search efforts, a diligent search should be carried out in the Member State where the work or phonogram was first published or, in the case where no publication has taken place, was first broadcast. The diligent search for cinematographic or audiovisual works the producer of which has his headquarters or habitual residence in a Member State should be carried out in that Member State. In the case of cinematographic or audiovisual works which are co-produced by producers established in different Member States, the diligent search should be carried out in each of those Member States. With regard to works and phonograms, which have neither been published nor broadcast but which have been made publicly accessible by the beneficiaries of this Directive with the consent of the rightholders, the diligent search should be carried out in the Member State where the organisation that made the work or phonogram publicly accessible with the consent of the rightholder is located. Diligent searches for rightholders of works and other protected subject matter that are embedded or incorporated in a work or phonogram should be carried out in the Member State where the diligent search for the work or phonogram, which contains the embedded or incorporated work or other protected subject matter, is carried out. Consultation of sources of information available in other countries should also be undertaken if there is evidence to suggest that relevant information on rightholders is to be found in those other countries. Diligent searches may generate different information such as a search record and the result of the search. The search record should be kept on file in order for the organisations to be able to substantiate that the search was diligent.***

(13a) Member States should ensure that the organisations concerned keep records of their diligent searches and that the results of such searches, consisting in particular of any finding that a work or phonogram is to be considered an orphan work within the meaning of this Directive, as well as information on the change of status and on the use they make of orphan works, are collected and made available to the public at large, in particular through the relevant information being recorded in an online database. Considering in particular the pan-European dimension of this issue and in order to avoid duplication of efforts, it is appropriate to make provision for the creation of a single EU online database containing the aforementioned information and making it available to the public at large in a transparent manner. This enables both organisations which are carrying out diligent searches and rightholders to easily access this information. As such, the database can play an important role in preventing and bringing to an end possible copyright infringements, particularly in the case of changes to the orphan status of the works and phonograms. Under Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonisation in the Internal Market (Trade marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private sector representatives as a European Observatory on Infringements of Intellectual Property Rights[1], the Office for Harmonisation in the Internal Market is entrusted with certain tasks and activities, financed by making use of its own budgetary means, aiming at facilitating and supporting the activities of national authorities, the private sector and the Union institutions in the fight against infringement of intellectual property rights, including the prevention thereof. In particular, pursuant to Article 2(1)(g) of that Regulation, these tasks include providing mechanisms which help to improve the online exchange of relevant information between the Member States' authorities concerned and fostering cooperation between these authorities. It is therefore appropriate to rely on the Office for Harmonisation in the Internal Market to establish and manage the European database containing information related to orphan works referred to in this Directive.

[1] *OJ L 129, 16.5.2012, p. 1.*

(14) Works ***and phonograms*** may have several ***rightholders*** or include other works or protected subject matter. This Directive should not affect the rights of identified ***and located*** rightholders. ***If at least one rightholder has been identified and located, a work or phonogram should not be considered an orphan work. The beneficiaries of this Directive should only be permitted to use a work or phonogram in which one or more of the rightholders are not identified or not located, if they are authorised to carry out the acts of reproduction and of making available covered by Articles 2 and 3 respectively of Directive 2001/29/EC by those rightholders which have been identified and located, including rightholders of works and other protected subject matter that are embedded or incorporated in the works or phonograms. Rightholders that have been identified and located can only give this authorisation in relation to the rights that they hold themselves, either because the rights are their own rights or because the rights were transferred to them, and cannot authorise under this Directive any use on behalf of rightholders that have not been identified and located. Correspondingly, when previously non identified or non-located rightholders come forward in order to claim their rights in the work or phonogram, the use of the work or phonogram by the beneficiaries can only continue if these rightholders give their authorisation to do so under Directive 2001/29/EC in relation to the rights that they hold.***

(16) It is appropriate to provide that ***rightholders*** are entitled to put an end to the orphan status in case they come forward to claim ***their rights in the work or other protected subject matter. Rightholders that put an end to the orphan status of a work or other protected subject matter should receive fair compensation for the use that has been made of*** their works ***or other protected subject matter, to be determined by the Member State where the organisation that uses an orphan work is established. Member States should be free to determine the circumstances under which the payment of such compensation may be organised, including the point in time in which the payment is due. When determining the possible level of fair compensation, due account should be taken, inter alia, of Member States' cultural promotion objectives, of the non-commercial nature of the use made by the organisations in question in order to achieve aims related to their public interest missions, such as promoting learning and disseminating culture, as well as of the possible harm to rightholders***.

(16a) If a work or phonogram has been wrongly found to be an orphan work, following a search which was not diligent, the remedies for copyright infringement in Member States' legislation in accordance with the relevant national provisions and Union law remain available.

(17) In order to promote learning and ***the dissemination of*** culture Member States ***should provide for an exception or limitation in addition to those provided for in Article 5 of Directive 2001/29/EC. These exceptions and limitations*** should permit ***certain organisations, namely those referred to in Article 5(2)(c) of Directive 2001/29/EC and*** film ***or audio*** heritage institutions***, which operate on a non-profit making basis, as well as*** public service broadcasting organisations, to ***reproduce and*** make available***, within the meaning of Directive 2001/29/EC,*** orphan works, provided ***that*** such use fulfils their public interest missions, notably preservation, restoration and the provision of cultural and educational access to their collections***, including their digital collections***. Film ***or audio*** heritage institutions should, for the purposes of this Directive, cover organisations designated by Member States to collect, catalogue, preserve and restore films ***and other audiovisual works or phonograms*** forming part of their cultural heritage. ***Public service broadcasters should, for the purposes of this Directive, cover broadcasters with a public service remit as conferred, defined and organised by each Member State. The exception or limitation established by this Directive to permit the use of orphan works is without prejudice to the exceptions and limitations provided for in Article 5 of Directive 2001/29/EC. It shall only be applied in certain special cases which do not conflict with the normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.***

(17a) In order to incentivise digitisation, the beneficiaries of this Directive may generate revenues in relation to their use of orphan works under this Directive in order to achieve aims related to their public interest missions, including in the context of public private partnership agreements.

(18) Contractual arrangements may play a role in fostering the digitisation of European cultural heritage, it being understood that libraries, educational establishments, museums or archives, film ***or audio*** heritage institutions ***and public service broadcasting organisations*** may, with a view to undertake the uses permitted under this Directive, conclude agreements with commercial partners for the digitisation and making available of orphan works. These agreements may include financial contributions by such partners. ***The agreements should not impose any restrictions on the beneficiaries of this Directive as to their use of orphan works and should not grant the commercial partner any rights to use or control the use of the orphan works.***

(19) In order to foster the Union's citizens' access to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available to the public in one Member State ***may*** also ***be made*** available in other Member States. Publicly accessible libraries, educational establishments, museums, archives, film ***or audio*** heritage institutions and public service broadcasting organisations that use an orphan work in order to achieve their public interest missions should be able to make the orphan work available to the public in other Member States.

(20) This Directive ***is*** without prejudice to ***the*** arrangements in the Member States concerning the management of rights such as extended collective licences***, legal presumptions of representation or transfer, collective management or similar arrangements or a combination of them, including for mass digitisation***.

(23) Since the objectives of the action to be taken, namely legal certainty with respect to the use of orphan works, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity of the rules governing the use of orphan works be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not exceed what is necessary to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter and scope

1. This Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums, as well as by archives, film ***or audio*** heritage institutions and public service broadcasting organisations ***established in the Member States in order to achieve aims related to their public interest missions***.

2. This Directive applies to:

   (a) Works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments ***or*** museums ***as well as in the collections of*** archives or ***of film or audio heritage institutions***

   (b) Cinematographic or audiovisual works ***and phonograms*** contained in the collections ***of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or*** of film ***or audio*** heritage institutions, ***and***

(c) Cinematographic or audiovisual works ***and phonograms*** produced by public service broadcasting organisations before the 31 December 2002 and contained in their archives

which are protected by copyright or related rights and which are first published in a Member State or, in the absence of publication, first broadcast in a Member State.

2a. This Directive also applies to works and phonograms referred to in paragraph 2 that have never been published or broadcast but which have been made publicly accessible by the organisations referred to in paragraph 1 with the consent of the rightholders provided that it is reasonable to assume that the rightholders would not oppose the uses referred to in Article 6. Member States may limit the application of this provision to works and phonograms which have been deposited with these organisations before [the date referred to in Art. 10(1) of this Directive].

2b. This Directive shall also apply to works and other protected subject matter that are embedded, incorporated or constitute an integral part of the works or phonograms referred to in paragraph 2 and 2a.

2c. This Directive does not interfere with any arrangements concerning the management of rights at national level.

Article 2
Orphan works

1. A work ***or a phonogram*** shall be considered an orphan work if ***all the rightholders*** in the work ***or phonogram are*** not identified or, even if identified, ***are*** not located ***despite*** a diligent search for ***the rightholders having*** been carried out and recorded in accordance with Article 3.

2. Where a work ***or phonogram*** has more than one rightholder, and ***not all of them have been identified or, even if identified, located after a diligent search has been carried out and recorded in accordance with Article 3, the work or phonogram may be used in accordance with this Directive provided that the rightholders that have*** been identified and located ***have, in relation to the rights they hold, authorised the organisations referred to in Article 1(1) to carry out the acts of reproduction and making available covered by Articles 2 and 3 respectively of Directive 2001/29/EC***.

2a. Paragraph 2 shall be without prejudice to the rights in the work or phonogram of rightholders who have been identified and located.

2b. Article 5 shall apply mutatis mutandis to the rightholders that have not been identified and located in the works referred to in paragraph 2.

2c. This Directive is without prejudice to national provisions on anonymous or pseudonymous works.

Article 3
Diligent search

1. For the purposes of establishing whether a work ***or phonogram*** is an orphan work, the organisations referred to in Article 1(1) shall ensure that a diligent search is carried out ***in good faith*** for each work ***or other protected subject matter***, by consulting the appropriate sources for the category of works ***and other protected subject matter*** in question.

2. The sources that are appropriate for each category of works ***or phonogram in question*** shall be determined by each Member State, in consultation with rightholders and users, and include ***at least*** the ***relevant*** sources listed in the Annex.

3. A diligent search ***shall*** be carried out in the Member State of first publication or***, in the absence of publication, first*** broadcast. ***In the case of cinematographic or audiovisual works the producer of which has his headquarters or habitual residence in a Member State, the diligent search shall be carried out in that Member State. In the case referred to in Article 1(2a) the diligent search shall be carried out in the Member State where the organisation that made the work or phonogram publicly accessible with the consent of the rightholder is located. It shall be carried out prior to the use of the work or phonogram. If there is evidence to suggest that relevant information on rightholders is to be found in other countries the consultation of sources of information available in those other countries shall also be undertaken.***

4a. Member States shall ensure that the organisations referred to in Article 1(1) maintain records of their diligent searches and that these organisations provide the following information to the competent national authorities:

(a) the results of the diligent searches that these organisations have carried out and which have led to the conclusion that a work or a phonogram is considered an orphan work;

(b) the use that the organisations make of orphan works in accordance with this Directive;

(c) any change of the orphan work status pursuant to Article 5 of works and phonograms that the organisations use;

(d) the relevant contact information of the organisation concerned.

4b. Member States shall take the necessary measures to ensure that the information referred to in paragraph 4a is recorded in a single publicly accessible online database established and managed by the Office for Harmonisation in the Internal Market in accordance with Regulation (EU) No 386/2012. To this end, they shall forward this information to the Office without delay upon receiving it from the organisations referred to in Article 1(1).

Article 4
Mutual recognition of orphan work status

A work ***or phonogram*** which is considered an orphan work according to Article 2 in a Member State shall be considered an orphan work in all Member States ***and may be used and accessed in accordance with this Directive in all Member States. This applies also to works and phonograms as defined in Article 2(2) insofar as the rights of the non-identified or non-located rightholders are concerned***.

Article 5
End of orphan work status

Member States shall ensure that a rightholder in a work ***or phonogram*** considered to be orphan has, at any time, the possibility of putting an end to the orphan status ***insofar as his rights are concerned***.

Article 6
Permitted uses of orphan works

1. Member States shall ***provide for an exception or limitation to the reproduction and the making available rights provided for in Articles 2 and 3 of Directive 2001/29/EC respectively to*** ensure that the organisations referred to in Article 1(1) are permitted to use orphan ***works contained in their collections*** in the following ways:

   (a) by making the orphan work available, within the meaning of Article 3 of Directive 2001/29/EC;

   (b) by acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC, for the purposes of digitization, making available, indexing, cataloguing, preservation or restoration.

2. The organisations referred to in Article 1(1) ***shall*** use ***an*** orphan ***work in accordance with paragraph 1 only*** in order to achieve aims ***related to*** their public interest mission, notably preservation, restoration and the provision of cultural and educational access to works ***and phonograms*** contained in their ***collection***. ***Such organisations may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising and making available orphan works.***

2a. Member States shall ensure that the organisations referred to in Article 1(1) indicate the name of identified authors and other rightholders in any use of an orphan work.

3. This Directive is without prejudice to the freedom of contract of such organisations in the pursuit of their public interest missions***, particularly public-private partnership agreements***.

4a. Member States shall provide that a fair compensation is due to rightholders that put an end to the orphan status of their works and other protected subject matter for the use that has been made by the organisations referred to in Article 1(1) of such works and other protected subject matter in accordance with paragraph 1. Member States shall be free to determine the circumstances under which the payment of such compensation may be organised. The level of that compensation shall be determined, within the limits imposed by European Union law, by the law of the Member State in which the organisation which uses the orphan work in question is established.

Article 8
Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular patent rights, trade marks, design rights, utility models, topographies of semi-conductor products, type faces, conditional access, access to cable of broadcasting services, protection of national treasures, legal deposit requirements, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract***, rules on the freedom of the press and freedom of expression in the media***.

Article 9
Application in time

1. The provisions of this Directive shall apply in respect of all works ***and phonograms*** referred to in Article 1 which are protected by the Member States' legislation in the field of copyright ***on or after [transposition date]***.

2. This Directive shall apply without prejudice to any acts concluded and rights acquired before [transposition date].

Article 10
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **...***[...]*[*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

[*] ***Two years after the date of entry into force of this Directive.***

Article 11
Review clause

The Commission shall keep under constant review the development of rights information sources and shall, at the latest one year after ***[transposition date]***, and at annual intervals thereafter, submit a report concerning the possible inclusion in the scope of application of this Directive ***of publishers and*** of works or other protected subject matter not currently included in such scope, and in particular stand alone photographs and other images.

By [one year after transposition date], the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee, a report on the application of this Directive, in the light of the development of digital libraries.

When necessary, in particular to ensure the functioning of the Internal Market, the Commission shall submit proposals for the amendment of this Directive.

A Member State that has valid reasons to consider that the implementation of this Directive hinders one of the national arrangements concerning the management of rights referred to in Article 1(2c) may bring the matter to the attention of the Commission alongside with all relevant evidence. The Commission shall take such evidence into account when drawing up the report referred to in paragraph 2 and when assessing the necessity to submit proposals for the amendment of the Directive.

Article 12
Entry into Force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 13
Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament *For the Council*

The President *The President*

ANNEX

The sources referred to in Article 3(2) ***include*** the following:

(1) For published books:

(a) Legal deposit***, library catalogues and authority files maintained by libraries and other institutions***;

(aa) The publishers` and authors` associations in the respective country;

(b) Existing databases and registries, WATCH (Writers, Artists and their Copyright Holders), the ISBN (International Standard Book Number) ***and books in print databases***;

(c) The databases of the relevant collecting societies, in particular reproduction rights organisations;

(ca) Sources that integrate multiple databases and registries, including VIAF (Virtual International Authority Files) and ARROW (Accessible Registries of Rights Information and Orphan Works).

(2) For ***newspapers, magazines,*** journals and periodicals :

(a) The ISSN (International Standard Serial Number) for periodical publications;

(b) Indexes and catalogues from library holdings and collections;

(ba) Legal deposit;

(bb) The publishers associations and the authors and journalists associations in the respective country;

(bc) The databases of relevant collecting societies including reproduction rights organisations.

(4) For visual works, including fine art, photography, illustration, design, architecture, sketches of the latter works and others that are contained in books, journals, newspapers and magazines ***or other works***:

(a) The sources referred to in ***points (1) and (2)*** ;

(b) The databases of the relevant collecting societies in particular for visual arts and including reproduction rights organisations;

(c) The databases of picture agencies where applicable.

(5) For audiovisual works ***and phonograms***:

(a) Legal deposit;

(aa) The producers' associations in the respective country;

(b) Databases of film ***or audio*** heritage institutions and national libraries;

(c) Databases with relevant standards and identifiers such as ISAN ***(International Standard Audiovisual Number)*** for audiovisual material***, ISWC (International Standard Music Work Code) for musical works and ISRC (International Sound Recording Code) for phonograms***;

(d) The databases of the relevant collecting societies in particular for authors, performers, phonogram producers and audiovisual producers;

(da) Credits and other information appearing on the work's packaging;

(db) Databases of other relevant associations representing a specific category of rightholders.