



Mr Jose Manuel Barroso  
President of the European Commission  
B-1049 Bruxelles  
BELGIUM  
E-mail: Jose-manuel.barroso@ec.europa.eu

The Hague, 30 August, 2010

Dear President Barroso,

### **Proposed changes to the European Information Society Directive regarding Orphan Works**

I am writing to you in my capacity as President of EBLIDA, the European Bureau of Library, Information and Documentation Associations. We are an independent umbrella association of national library, information, documentation and archive associations and institutions in Europe, representing organisations in all EU member states.

I understand that a draft amendment to the European Information Society Directive regarding Orphan Works is about to be issued by the Commission and that the proposal will include the following provisions for cultural and educational bodies (i.e. not commercial organisations):

1. A solution for Orphan Works for literary works only (including illustrations bound in the object);
2. A requirement for a diligent search in line with the Orphan Works recommendations produced as part of the i2010 European Digital Libraries Initiative - due diligence to be performed by the digitising body;
3. Cross border recognition of national solutions;
4. A way for fair compensation to be paid to right holders;
5. The need to publish information about works that are digitised for rights holders to be able to approach the digitising body.

EBLIDA submits the following comments on these proposals:

We welcome the new Digital Agenda and the commitment of the European Commission to find a solution for Orphan Works.

This is an important issue for us, since without a way forward, Europe's libraries and archives will be left housing works which it is not possible to digitise because of issues over rights clearance. We believe firmly in creating, and contributing to a digital Europe and one of the major ways in which libraries and archives can help is by unlocking the content they hold in materials whose right holders cannot be located and which currently fall into the category of Orphan Works.

../

In this context, points 1 and 2 above are very disappointing.

Point 1 only concerns literary works (and those visual works, including photographs, diagrams, charts and maps that are embedded within them). Any solution to the challenge of dealing with Orphan Works will be counter-productive if it does not also cover audiovisual materials (film and sound recordings) and standalone visual works. Researchers, teachers and learners in many fields of Arts, Humanities and Social Sciences make heavy use of audiovisual materials and the full range of standalone visual works. A solution to the Orphan Works problem that omits these classes of works will be in conflict with the recommendations given by the High Level Expert Group on Digital Libraries, which was established by the Commission in February 2006. It would severely disadvantage users since many early to mid-20<sup>th</sup> century works are orphaned and will not enter the public domain until mid to late 21<sup>st</sup> century (indeed some 19<sup>th</sup> century works also are orphaned). Furthermore, their inclusion is essential if Europeana is to become a world class authoritative and comprehensive public sector portal to Europe's culture.

Point 2 talks of the requirement for diligent searches in line with the i2010 European Digital Libraries Initiative recommendations for Orphan Works – these searches to be performed by the body undertaking the digitisation. We submit that these criteria are only relevant for the digitization of a small number of single literary works (monographs); they are simply not fit for purposes of mass digitization. EBLIDA had pointed this out to the Commission on several occasions. For holders of material who wish to undertake mass digitisation of, for example, newspapers and journals or radio and television broadcasts as well as very large numbers of books, pamphlets and ephemera, not to mention material deposited in archives, it is impossible to undertake work on rights clearance in the way being suggested by the Commission; it is too expensive in terms of staff time and will take too long. Particularly in these very straitened economic conditions, libraries and archives are likely to shy away from mass digitisation projects if such unsupportable costs are required.

Our efforts to promote digitisation will be severely hampered if the suggested amendments for Orphan Works are made to the European Information Society Directive. We urge the Commission to think again and to consult more closely with representatives of European libraries and archives.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Leitner', with a stylized flourish at the end.

Gerald Leitner  
President of EBLIDA

../3

cc:

Ms Catherine Day  
Secretary-General of the European Commission  
B-1049 Bruxelles BELGIUM  
E-mail: Catherine.day@ec.europa.eu

Ms Neelie Kroes  
Commissioner for the Digital Agenda  
European Commission  
B-1049 Bruxelles BELGIUM  
E-mail: Neelie.kroes@ec.europa.eu

Ms Androulla Vassiliou  
Commissioner for Education, Culture, Multilingualism and Youth  
European Commission  
B-1049 Bruxelles BELGIUM  
E-mail: Androulla.vassiliou@ec.europa.eu

Mr Michel Barnier  
Commissioner for the Internal Market and Services  
European Commission  
B-1049 Bruxelles BELGIUM  
E-mail: Michel.barnier@ec.europa.eu

Mr Joaquin Almunia  
Commissioner for Competition  
European Commission  
B-1049 Bruxelles BELGIUM  
E-mail: Joaquin.almunia@ec.europa.eu