



Audiovisual Orphan Works in Europe – national survey

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EXECUTIVE SUMMARY

As recognised by the recently published European strategy on Intellectual Property Rights, facilitating the preservation and dissemination of Europe's rich cultural and intellectual heritage is key for the development of the Knowledge Economy. Film archives, broadcasters and also commercial operators are willing to invest their efforts in the digitisation and making available projects to ensure that the public has access to audiovisual heritage. However, the impossibility to identify or locate the rights holder(s) and then to obtain their permission hinders digitisation projects.

In order to promote the digitisation and availability of the European cultural heritage, the European Commission issued on 24 May 2011 the proposal Directive on certain permitted uses of orphan works. The Proposal calls on the Member States to permit certain kinds of uses of orphan works by cultural heritage institutions. Against all predictions, it also includes the audiovisual sector.

This study provides a general overview on how the different EU Member States deal with the problem of audiovisual works. The research revealed that the majority of the European countries (EU27 and Norway) do not have mechanisms in place that allow the use of orphan works and in particular of audiovisual orphan works. Only the Czech Republic, France, Hungary, the Netherlands and the Scandinavian countries have implemented solutions to deal, at least partly, with orphan works.

Extended collective licensing schemes are in place in the Czech Republic, Hungary and the Scandinavian countries (Denmark, Finland, Norway and Sweden). However, in most of these countries the scope of the licences is restricted to certain uses and in the case of the Czech Republic it excludes audiovisual works. Denmark is the only country that has adapted its extended collective licensing scheme to be applied in a general way to any type of use and thus to any type of orphan work.

In France **contractual agreements** concluded by the National Audiovisual Institute with collecting societies of authors, performers and journalists, on the one hand, and with trade unions representing performers and audiovisual directors, on the other hand, allow for the use of audiovisual orphan works.

In 2008 Hungary introduced a **new system** allowing for a broad use of orphan works. After a proved due diligence search for rights holders users can deposit a licence fee at the Hungarian patent office permitting them to use orphan works. If the rights holder reappears, it is his/her right to grant a licence on the work. The Hungarian system is the only one that is specifically addressed to orphan works.

Similarly, in the Netherlands, the EYE Film Institute has concluded a **voluntary agreement** on extended collective licensing for digital exploitation of audiovisual works with the relevant collecting societies, which allows the use of orphan works in EYE's own VOD platform.

While in all the other European countries no legislative or contractual provisions have been put in place to permit the use of orphan works, some countries are in the process of discussing measures in the field. These include the Czech Republic, Germany, Greece, Norway, Romania, Slovakia and Sweden.

However, the recent implementation of these national mechanisms and the lack of reliable data on the extent of the orphan works problem in the audiovisual sector do not allow to conclude which of the existing solutions better fits the specificities of the sector. In the meantime, many thousands of audiovisual works contained in the holdings of cultural heritage institutions are not available to the general public.

The European Film Agency Directors (EFADs) gathering the directors of the national film agencies should have a common position on the Proposal Directive on certain permitted uses of orphan works and related initiatives at the national or European level. To this end, EFADs should conduct further research and have a clear view in relation to:

- the extent of the orphan works problem in the audiovisual sector;
- the evaluation of the possible (legislative or contractual) mechanisms to be implemented at European and national level;
- the assessment of the business opportunities and models for digitisation of the audiovisual heritage; and
- the impact of each solution on cultural heritage institutions, commercial and non commercial users and the public in general.

INTRODUCTION

The so-called orphan works have been defined as copyrighted works¹ whose rights holder(s) cannot be identified and/or located. This definition, provided by the High Level Expert Group on Digital Libraries advising the European Commission in the framework of the i2010 Digital Libraries Initiative², has been nuanced by the Joint Report Sector-Specific Guidelines on Due Diligence Criteria for Orphan Works that integrates the notion of 'prior diligent search of the rights holder(s)'. Accordingly, "a work is orphan with respect to rights holders whose permission is required to use it and who can either not be identified, or located based on diligent search on the basis of due diligence guidelines. This search must be both in good faith (subjectively) and reasonable in light of the type of rights holder (objectively)".³

Some institutions like the French Commission on Orphan Works within the High Council of the Literary and Artistic Property have referred to "orphan rights", in particular in relation to works protected by neighbouring rights such as audiovisual and music works where multiple persons hold different rights on the work (i.e. authors), the performances (i.e. performers) and/or the fixations of the works (i.e. producers). The same applies to works where rights owners are identified but contain other works for which rights holders cannot be identified. It is notably the case of pictures contained in books or of audiovisual works containing extracts from archives or images.⁴

Whereas the phenomenon of orphan works is not new, the advent of new technologies has made the related management difficulties more acute. Rights clearance for content to be made available online through digital libraries and archives (such as Europeana), on commercial VoD platforms and catch-up TV or on smartphones applications has become a major concern for cultural institutions as well as businesses.

The fact that it is sometimes impossible to identify or locate the rights holder(s) means that archives, libraries, museums, broadcasters, commercial operators and other media providers cannot ask for permission to make use of the orphan work and therefore digitisation projects and online access are hindered. Orphan works therefore remain unavailable to the general public, entombed in public or private archives and new business models are hampered from making use of them.⁵

The problem of missing or inaccurate information in relation to rights holders and their works was already pointed out by the High Level Expert Group on Digital Libraries as one of the main barriers to exploit orphan works. In order to avoid future orphan works and support the European Digital Library, Europeana, the EU-funded project ARROW (Accessible Registries of Rights Information and Orphan Works towards Europeana) was launched in 2007. ARROW aims at developing tools to enable media providers to obtain information on rights holders, the relevant rights concerned, the person who manages the rights and the process and place to seek permission to digitise and/or make available the work to users.⁶ The European Commission has qualified ARROW as a key tool to ease the search of rights holders and contribute to increase the number of copyrighted works in Europeana.⁷ Whereas ARROW has so far been dealing solely with print works, its scope has been recently extended to include visual orphan works (ARROW+). It is expected that the project expands at a later stage to the audiovisual sector.

¹ The term « works » refers in this document to works protected by copyright (including economic and moral rights) as well as subject matter protected by related rights such as performances, audiovisual recordings, sound recordings, broadcasts and databases.

² Copyright Subgroup, High Level Expert Group on Digital Libraries, Final Report on Digital Preservation, Orphan Works and Out-of-Print Works, 4 June 2008, p. 10.

³ European Digital Libraries Initiative, *Joint Report Sector-Specific Guidelines on Due Diligence Criteria for Orphan Works*, 2008, p. 3.

⁴ Commission on Orphan Works, High Council of the Literary and Artistic Property, Report 2008, pp. 10-11.

⁵ Iglesias, María, 'Digital libraries and silent works', in ed. Casanovas Sartor et al., *Law and Technology: Looking into the Future Selected Essays*, European Press Academic Publishing, 2009.

⁶ More info on <http://www.arrow-net.eu/>

⁷ Speech of European Commissioner Neelie Kroes at the conference 'Addressing the orphan works challenge' organised by IFRRO (The International Federation of Reproduction Rights Organisations) and the launch of ARROW+ (Accessible Registries of Rights Information and Orphan Works towards Europeana) Brussels, 10 March 2011.

In relation to audiovisual works, the chain of rights holders (co-authors such as script writers, directors, and also producers and performers) and the different layers of protection (copyright and neighbouring rights) further complicate the exploitation of the work if one of the rights holder(s) cannot be identified or located. Several stakeholders, such as the Association of European Film Archives (hereinafter ACE-Association des Cinématèques Européennes), have claimed on several occasions the adoption of remedies to give audiovisual orphan works a new life.

Orphan works have become a political priority for the European Commission and the Member States. At EU level, the European Commission addressed the issue of orphan works in the framework of the i2010 Digital Libraries Initiative. The High Level Expert Group on Digital Libraries established in the framework of this initiative investigated the question of orphan works. The Group highlighted that until the adoption of a European solution, Member States should agree on several core principles when dealing with orphan works, related to a definition of orphan works, diligent search criteria, provisions on the use and licensing of orphan works. It also identified the lack of common search criteria for rights holder(s) to facilitate the cross-border usage of orphan works as one of the main problems in the field.⁸ The definition of common criteria to conduct a prior diligent search of the rights holder(s) was one of the goals of the specific-sector working groups on orphan works composed by cultural institutions and right holder(s) organisations. Joint guidelines⁹ were issued by the working groups along with a Memorandum of Understanding¹⁰ signed by most participating stakeholders in June 2008. The orphan works problem was also acknowledged by the Green Paper on Copyright in the Knowledge Economy¹¹ and by the Communication from the Commission on Copyright in the Knowledge Economy¹² that announced the impact assessment exploring a variety of approaches to facilitate the digitisation and dissemination of orphan works.

As part of the Digital Agenda flagship¹³ of the Europe 2020 Strategy¹⁴ and the Commission strategic vision for delivering the Single Market for Intellectual Property¹⁵, the European Commission published on 24 May 2011 a proposal for a Directive on certain permitted uses of orphan works¹⁶ (hereinafter 'proposal for a Directive on Orphan Works') to facilitate the digitisation and online dissemination of cultural works in Europe.¹⁷ The Proposal was preceded by the Report of the Comité des Sages: "The New Renaissance"¹⁸ that points out the need of a European legal instrument to tackle the issue of orphan works from all sectors (audiovisual, sound, text and visual arts) and advises the new legal instrument to comply with the so-called 8 step test.¹⁹ These 8 steps have been no doubt a source of inspiration for the Proposal.

⁸ Copyright Subgroup, High Level Expert Group on Digital Libraries. Report on Digital Preservation, Orphan Works, and Out-of-Print Works. Selected Implementation Issues, adopted at the third meeting on 18 April 2007, pp. 6-7.

⁹ Ibid.

¹⁰ European Digital Libraries Initiative. *Memorandum of Understanding on Orphan Works*, signed on 4 June 2008. Note that the Joint Report contains as appendixes four specific-sector reports, the first one dealing with specific guidelines for the audiovisual sector.

¹¹ COM(2008) 466 final. 16.07.2008.

¹² COM(2009) 532 final. 19.10.2009.

¹³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Agenda for Europe. COM(2010) 245 final/2, 26.08.2010.

¹⁴ Communication from the European Commission, Europe 2020- A European strategy for smart, sustainable and inclusive growth. COM (2010) 2020, 03.03.2010, p.12.

¹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe. COM(2011) 287 final. 24.05.2011.

¹⁶ Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works COM(2011) 289 final. 2011/0136 (COD). 24.05.2011.

¹⁷ Communication on a Digital Agenda for Europe, *op. cit.*, p. 9.

¹⁸ Comité de Sages on Bringing Europe's Cultural Heritage On-line. Report The New Renaissance, January 2011, available on http://ec.europa.eu/information_society/activities/digital_libraries/comite_des_sages/index_en.htm

¹⁹ According to the report of the *Comité des Sages*, in order to be effective the European legal instrument for orphan works should simultaneously:

i) ensure that a solution for dealing with orphan works is in place in all the Member States. Where no national instrument is in place, national legislation needs to be implemented.

ii) cover all the different sectors: audiovisual, text, visual arts, sound.

iii) ensure cross-border recognition of orphan works: An orphan work recognised as such in one Member State on the basis of a search in the country of origin, should be recognised as orphan across the EU. The Member State of origin is to be defined based on today's geography, not on the basis of the historical borders at the time of publication. If there is no obvious country of origin, a search has to be conducted until a satisfactory solution is found.

The main objective of this study is to report on the existing national solutions for making use of audiovisual orphan works around Europe. It will firstly provide a general overview on the recent developments in the different Member States. To this end, it will present the existing initiatives in the European countries (EU27 and Norway), refer to the lack of reliable data as concerns the extent of the problem for audiovisual orphan works and report on the Member States' positions as regards the proposal for a Directive on Orphan Works. It will then focus on four case studies of countries with established mechanisms of legislative and contractual nature to use orphan works. Main conclusions will be summarised at the end of the study. Please note that the survey conducted by the research team took place before the publication of the Proposal, so information provided by the Member States as regards their positions should be read in this context.

For the purpose of the study, the research team has extensively reviewed the existing literature and conducted several interviews with different stakeholders. A list of persons contacted is provided as an annex together with the list of contact persons for orphan works in each European country (EU27 and Norway). KEA would like to thank all these persons for their kind collaboration.

iv) ensure the cross-border effect of this recognition: an orphan work that is made accessible online in one Member State should also be made accessible online in all Member States or even globally.
v) be compatible with the implementation of PPPs for digitisation.
vi) foresee, in the case of commercial use, a remuneration for the rights holders if after some time they are found or make themselves known. This remuneration can be kept in an escrow account. Also in the case of non-commercial use by cultural institutions the payment of an appropriate fee can be expected. For example, a one-off payment could be envisaged if the work is licensed under an extended collective license and the collecting society has to indemnify the rights holders if they are found or make themselves known.
vii) ensure reasonable transaction costs for dealing with orphan works, commensurate with the commercial value of the work. This implies for example that a search for rights holders of older works can be less intense than for more recent works.
viii) be supported by rights information databases, such as the Arrow system currently under construction. These databases and a European list of established orphan works should be linked to Europeana as a key reference point for Europe's cultural heritage.
Ibid., page 18.

NATIONAL OVERVIEW

Two major questions arise when dealing with the issue of orphan works. First, the question concerning the way in which orphan works are dealt with in the different Member States and whether there are mechanisms in place that allow their use. Secondly, the real extent of the problem and whether the number of truly orphaned works justifies public intervention in the field. The following section will present our main findings in relation to these two questions. In addition, we will briefly refer to the unofficial and therefore not definitive positions of Member States regarding the scope of the proposal for a Directive on Orphan Works and the inclusion therein of audiovisual works. These findings rely on extensive desk research and a survey conducted among 27 Member States²⁰ and Norway.

EXISTING INITIATIVES

The research revealed that the majority of European countries (EU27 and Norway) analysed for this assignment do not have mechanisms that allow the use of orphan works and in particular of audiovisual orphan works, meaning legislative provisions or contractual agreements that would make the use of these works possible. Only the Czech Republic, France, Hungary, the Netherlands and the Scandinavian countries have implemented solutions to deal at least partly with orphan works. Detailed information on four of these countries (Denmark, France, Hungary and the Netherlands) is provided in the next section.

In the Czech Republic, Hungary and the Scandinavian countries (Denmark, Finland, Norway and Sweden) extended collective licensing schemes allow certain uses of orphan works. However, in the majority of these countries (all but Denmark) the scope of the licences is restricted to certain uses (reproduction for educational uses, in professional context, for handicapped persons, etc.) and in the case of the Czech Republic to certain kinds of works (excluding audiovisual works). In Hungary, in addition to the extended collective licensing, a new system allowing for a broad use of orphan works was implemented in 2008. In France contractual agreements concluded by the National Audiovisual Institute (hereinafter INA- Institut National de l'Audiovisuel) with collecting societies of authors, performers and journalists, on the one hand, and with trade unions representing performers and audiovisual directors, on the other hand allow for the use of audiovisual (and music) orphan works. Similarly, in the Netherlands, the EYE Film Institute has concluded a voluntary agreement on extended collective licensing for digital exploitation of audiovisual works (this covering orphan) with the relevant collecting societies.

While all the other European countries have not put in place any mechanism to deal with orphan works, a few of them are in the process of implementing measures in the field. These include Germany, Greece, Romania and Slovakia. In addition, other countries like the Czech Republic, France, Norway and Sweden where there is already a mechanism in place, are discussing the adoption of new solutions. Also the UK has considered the possibility to introduce a legislative solution to render licit the use of orphan works. The Digital Economy Bill proposed to insert a new section in the Copyright Law on licensing of orphan works²¹

²⁰ The survey among 27 Member States and Norway was conducted during the last week of March and the first week of April 2011, in the form of interviews with officials from ministries, in particular from intellectual property departments of ministries of culture or economy. For some countries, such as France or the Netherlands employees of other relevant institutions such as the National Library and the National Audiovisual Institute were contacted. Information has been collected for 23 Member States. No information could be collected from Cyprus, Malta, Spain and the UK.

²¹ The Digital Economy Bill (HL, Session 2009-10) proposed to insert after section 116 of the Copyright, Designs and Patents Act 1988 (the "1988 Act") a section 116A on licensing of orphan works:

(1) The Secretary of State may by regulations provide for authorising a licensing body or other person to do, or to grant licences to do, acts in relation to an orphan work which would otherwise require the consent of the copyright owner.

(2) An authorisation or licence under the regulations in favour of any person must not preclude any authorisation or licence in favour of another person.

(3) The regulations may provide for the treatment of royalties or other sums paid in respect of an authorisation or licence, including—

(a) the deduction of administrative costs;

but the provision failed to be included in the law finally adopted²² due to opposition from photographers' lobbies. However, this has not closed the discussion on orphan works in the UK. In May 2011 Prof. Hargreaves published its independent Review of IP and Growth, commissioned by the UK Prime Minister. The report calls on the UK government to legislate to enable licensing of orphan works.²³ Prof. Hargreaves suggests establishing extended collective licensing for mass licensing of orphan works, and a clearance procedure for use of individual works. The Government has broadly accepted the recommendations contained in the report²⁴ and in a document assessing the economic impact of Hargreaves' recommendations, it estimates that the proposal on orphan works would save costs to 320 million pounds per annum and would have an immediate growth impact of 0.2 billion to 0.3 billion pounds per annum.²⁵

The following pages provide a summary of the initiatives under discussion in some Member States to tackle orphan works.

Czech Republic

Although the Czech Copyright Act²⁶ does not include any special provision on the use of orphan works, it provides the general rule of so-called extended collective licensing (Art. 101 Sec. 9) applicable to generally any kind of works. On this basis a collecting society can grant a licence for certain uses even in the cases, when this society does not represent a relevant author of the work and this author is unknown. However, there are some exceptions concerning types of works and certain uses in particular in relation to audiovisual works or to works used audiovisually through broadcasting. Currently, the Ministry of Culture is working on the draft amendment of the Czech Copyright Act, which introduces mechanisms for licensing orphan works. Yet, no concrete information is available at the moment.²⁷

Germany

In Germany, amendments to the Urheberrechtswahrnehmungsgesetz (UrhWahrnG – Law on the administration of authors' rights) to deal with the electronic exploitation of orphan works and out of print works are being prepared. While the Ministry of Justice has not been able to provide any details about the planned new rules, a publicly available draft of the amendment from November 2010 gives a description of the system to be introduced by the new article 13e.²⁸ Basically, if, after a diligent search of the rights holder(s) of a work could not be found, the responsible collecting society would have the right to administer the rights for electronic reproduction and communication to the public. Should the rights holder appear after a time, the collecting society would have to pay back to the rights holder the royalties collected. The rights holder would also have the right to manage his/her rights individually. The draft

(b) the period for which sums must be held for the copyright owner;

(c) the treatment of sums after that period (as bona vacantia or otherwise).

(4) The regulations may provide for determining the rights and obligations of any person if a work ceases to be an orphan work.

(5) The regulations may provide for the Secretary of State to determine whether any requirement of the regulations for a person's becoming or remaining authorised has been met or ceased to be met.

(6) In this Part references to a work as or as ceasing to be an orphan work are to be read in accordance with regulations made by the Secretary of State.

(7) Regulations under subsection (6) may operate by reference to guidance published from time to time by any person^{*}

²² Digital Economy Act 2010.

²³ Hargreaves I, DigitalOpportunityA Review of Intellectual Property and Growth, May 2011, on <http://www.ipg.gov.uk/ipreview-finalreport.pdf>.

²⁴ HM Government, The Government Response to the Hargreaves: Review of Intellectual Property and Growth, August 2011, on <http://www.bis.gov.uk/assets/biscore/innovation/docs/g/11-1199-government-response-to-hargreaves-review>.

²⁵ HM Government, Supporting Document EE Economic Impact of Recommendations, on <http://www.ipg.gov.uk/ipreview/ipreview-documents.htm>.

²⁶ Zakon c.121/2000 Sb. O pravu auterskem, o pravech souvisejicich s pravem autorskym a o zmene nekterych zakonů (autorsky zakon) ze dne 7.Dubna 2000., Act on Copyright and Neighbouring Rights (Nr. 121/2000 Coll.) of 7 April 2000 and subsequent changes.

²⁷ Information provided by Adela Faladova, Copyright Department, Ministry of Culture.

²⁸ Entwurf eines Gesetzes zur Änderung des Gesetzes über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten, Druck 17/3991, 30.11.2010.

amendment does not make any distinction between types of works, including thereby also audiovisual orphan works.

The drafting of these amendments, under preparation by the Ministry of Justice, should be influenced by the proposal for a Directive on Orphan Works in order to be in conformity with the EU legislation. The amended law should be published in December 2011.

Greece

In the draft bill modifying the Copyright Act²⁹ there will be a provision regulating orphan works. However, no more details can be revealed at this stage. The publication of the bill is expected before the end of the year.

Norway

As in other Scandinavian countries, Norway has an extended collective licensing scheme in place. However, for the moment it is limited to certain uses, such as reproduction for educational uses, online transfer of texts via libraries, recording and distribution of radio and television programmes for visually handicapped persons, etc. Norway has indicated that there is a reflection going on in order to expand the system to general uses, as has been done in Denmark (see country profile).³⁰

Romania

Amendments to the current Copyright Act³¹ have been drafted to address the issue of orphan works. As the draft amendments are still under discussion in the Ministry of Culture, no details about the provisions could be provided. All safeguards developed at EU level, such as due diligence search criteria of rights holders, a waiting period of three years before the collective management society distributes collected money and the possibility of authors to terminate the agreement if they are identified would in principle be respected. Yet the adoption of the amendments has been delayed and it was not clear when it will be rescheduled.³²

Slovakia

Slovakia plans to review its Copyright Act in 2013 and will probably also include mechanisms that allow to deal with orphan works, in accordance with the proposal for a Directive on Orphan Works.³³

²⁹Law No. 2121/1993 of 3 March 1993 on Copyright, Related Rights and Cultural Matters, as last amended by Law No. 2435 of 2 August 1996.

³⁰Information provided by Constance Ursin, National Library.

³¹Lege nr. 8 din 14 martie 1996 privind dreptul de autor si drepturile conexe, Romanian Law No. 8 of 14 March 1996 on Copyright and Neighboring Rights.

³²Information provided by Delia Mucica, Ministry of Culture.

³³Information provided by Natasa Slavikova, Department of Audiovisual and Copyright, Ministry of Culture.

Sweden

An inquiry on the Copyright Act in Sweden was conducted in 2010 for the purpose of reviewing certain aspects of copyright law. One of its objectives was to bring forward new proposals on extended collective licences to facilitate rights clearance in connection with various forms of mass use of works and performances protected by copyright so as to make the repertoire available in organised form and on terms acceptable to users, authors and other rights holders.³⁴

The inquiry proposes (among other) to broaden article 42d of the current Copyright Act³⁵ so that governmental and municipal archival authorities, scientific and research libraries that are operated by public authorities, and public libraries³⁶ can digitise works contained in their collections and make them available through the Internet³⁷, for instance. The government may allow other organisations to carry out these acts in specific cases.

Whereas the current system of extended collective licences can already be applied to certain specific uses of orphan works, (reproduction for educational uses, online transfer of texts via libraries, recording and distribution of radio and television programmes for visually handicapped persons) the new provision which may enter into force by 1 July 2011 will certainly help to exploit orphan works.

In all other EU Member States there are no mechanisms enabling the use of orphan works. However, this should change following the adoption of the proposal for a Directive on Orphan Works. Indeed the Proposal calls on Member States to permit libraries, educational establishments and museums which are publicly accessible as well as archives, film heritage institutions and public service broadcasting organisations to make available and reproduce orphan works, provided such use fulfils their public interest missions (recital 17 and article 6).

³⁴ Inquiry on Copyright, Ministry of Justice, Sweden, 2010, pp. 26–27.

³⁵ Act 1960:729 of 30 December 1960 on Copyright in Literary and Artistic Works, as amended up to 1 April 2009.

³⁶ *Ibid.*, article 16.

³⁷ Inquiry on Copyright, *op. cit.*, p. 35.

THE EXTENT OF THE ORPHAN WORKS PROBLEM IN THE AUDIOVISUAL SECTOR

The real extent of the orphan works problem in the audiovisual sector is still uncertain. Little research has been done and existing data are not comprehensive enough.³⁸ In its survey of February 2010, the Association of European Film Archives (ACE) indicated that the presumed number of audiovisual orphan works within 24 archives across Europe amounts to around 225.000 (21 of the total number of films in archives).³⁹ The survey revealed that approximately 100.000 of the presumed audiovisual orphan works could be made available via Europeana or the European Film Gateway if "a pragmatic or legal solution for rights clearing would exist".⁴⁰ According to the same report, 34 of approx. 225.000 works are non-fiction whereas 30 represent feature long fiction works. On the other hand, the European Federation of Audiovisual Directors (hereinafter FERA – Fédération Européenne des Réalisateur Audiovisuels) estimates that "there are very few audiovisual works that are truly orphaned".⁴¹

Representatives from the Member States have been asked by our research team on their views about the question of the extent of the problem. Unfortunately, none of the respondents were able to give precise data. The main reason invoked was the huge amount of works held in national archives, libraries as well as in broadcasters' archives. Also, although some respondents indicated that they had some data, they had concerns about their quality and reliability. This was mainly due to difficulties in defining a data collection methodology and subsequently to conduct a meaningful assessment. As a consequence, statistics available cannot be seen as representative or scientifically proven. The impact assessment on the cross-border online access to orphan works prepared by the European Commission and accompanying the proposal for a Directive on Orphan Works has pointed out a lack of standardised methodology that libraries, archives and museums can use to establish what an orphan work is. This renders their quantification very difficult.⁴²

As regards estimations on orphan works held by public broadcasters' archives, the European Broadcasting Union (EBU) indicated that it did not have enough information regarding the amount of orphan works in public broadcasters' archives. It highlighted, however, the fact that for public broadcasters the problem of orphan works was rather a problem of "orphan rights" than of orphan works. For public broadcasters it is difficult to quantify the number of orphan rights in archive material given the number of contributors to a production and the number of contracts.⁴³

The EBU also insists on the fact that usually audiovisual works are not orphan as such, but only parts of the work are. These parts can be the music, excerpts of films or documentaries, photographs, etc. If rights on these little parts cannot be cleared, the entire work cannot subsequently be exploited. In this context, the impact assessment conducted for the European Commission in 2010 lists estimates relating to the BBC showing that around 1 million hours of programmes cannot be cleared due to unknown rights holders.⁴⁴

38 Research conducted includes Vuopala, Anna, Assessment of the orphan works issue and costs for rights clearance, for the European Commission, DG Information Society and Media, May 2010, and Association des Cinémathèques Européennes (ACE), Results of the Survey on Orphan Works 2009/10, Frankfurt/Brussels, 29 March 2010.

39 ACE, Results of the Survey on Orphan Works 2009/10, Frankfurt/Brussels 29 March 2010.

40 *Ibid.*, p. 1.

41 See FERA's submission to the Reflection Document on Creative Content in a European Digital Single Market: Challenges for the Future, A Reflection Document of DG INFSO and DG MARKT, 22 October 2009, p. 9, accessible at http://ec.europa.eu/avpolicy/docs/other_actions/col_2009/assoc/fera_en.pdf

42 Commission staff working paper – Impact assessment on cross-border online access to orphan works accompanying the document Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works, Document SEC(2011) 615/2, 24.05.2011, p. 11.

43 *Op. cit.*, p. 12.

44 Vuopala, Anna, *op.cit.*, p. 27.

THE PROPOSAL FOR A EUROPEAN DIRECTIVE ON ORPHAN WORKS

In addition to questions on national schemes, all respondents were asked if their Member State was in favour of the inclusion of the audiovisual sector in the proposal for a Directive on Orphan Works. The survey revealed that it was far too early to ask this question, as most Member States would not decide on a formal position without having seen the Proposal first. Nevertheless, respondents from Austria, the Czech Republic, Estonia, Ireland, Italy, Poland, Portugal, Romania and Slovakia indicated that their country would probably be pushing for the inclusion of audiovisual works in the scope of the Directive. This must however be taken with a pinch of salt, as in these countries no official position has been published yet.

A few days before submitting the final version of this report, the European Commission published its proposal for a Directive on Orphan Works.⁴⁵ The overall aim of the Proposal is to set a legal framework ensuring the lawful cross-border online access to orphan works contained in online digital libraries or archives operated by publicly accessible libraries, museums, archives, educational establishments, film heritage institutions and public service broadcasting organisations in the pursuance of their public interest mission. It calls on the Member States to permit libraries, educational establishments and museums which are publicly accessible as well as archives, film heritage institutions and public service broadcasting organisations to make available and reproduce orphan works, provided such use fulfils their public interest missions (recital 17 and article 6).

The Proposal defines an orphan work as work whose rights holder is not identified or, even if identified, is not located after a diligent search. It explicitly refers to the issue of orphan rights and specifies that where a work has more than one rights holder, and one of the rights holder has been identified and located, that work shall not be considered an orphan work. In addition to print works,⁴⁶ the Proposal has finally included audiovisual and cinematographic works contained in the collections of film heritage institutions as well as certain audiovisual, cinematographic works and audio works produced by public services broadcasting organisations and contained in their archives.

The lawful cross-border online access to orphan works should be achieved according to the Proposal through a system of mutual recognition of the orphan status of a work throughout the EU after a diligent search for the rights holder(s) has been conducted by the organisations above-mentioned in the Member State of first publication or broadcast of the work. Once the orphan status of the work has been established in this country, it will be recognised the same status throughout the EU avoiding thus the conduction of multiple diligent searches. On this basis, orphan works shall be made available online for cultural and educational purposes without prior authorisation unless the owner of the work puts an end to the orphan status.⁴⁷

The Proposal is addressed solely to public institutions. However, it goes beyond the public interest mission inherent to these institutions (preservation of, restoration of and access to cultural goods) and allows Member States to authorise these organisations to carry out other uses provided that, among other conditions, rights holders who come forward are remunerated.⁴⁸ Behind this provision, it lays the European Commission acknowledgement of the role played by commercial partners of cultural heritage institutions in fostering the digitisation of European cultural heritage. These other uses permitted under the Proposal should serve as an incentive to encourage public-private partnerships. The Proposal does not apply to the use of orphan works by commercial operators.

⁴⁵ Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works, COM(2011) 289 final 2011/0136 (COD), 24.5.2011.

⁴⁶ Books, journals, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments, museums or archives.

⁴⁷ Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works, op. cit., p. 1.

⁴⁸ Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works, op. cit., recital 22 and article 7.

CASE STUDIES

While most EU countries have not implemented mechanisms to address orphan works, Denmark, France, Hungary and the Netherlands have found different solutions to deal entirely or partly with the issue. Denmark and Hungary have created a proper legal basis to enable the use of orphan works in line with their legal system and tradition. In France and the Netherlands contractual solutions have been implemented.

The following pages will examine the different systems in more detail.

DENMARK

In Denmark, as in all other Scandinavian countries, the issue of orphan works can be handled within the extended collective licence scheme. However, while in all Scandinavian countries the extended collective licensing schemes apply to specific uses only (such as reproduction for educational uses, online transfer of texts via libraries, recording and distribution of radio and television programmes for visually handicapped persons, etc.), Denmark has introduced a new provision in its Copyright Act⁴⁹, which allows to use an extended collective licence in a general way for any type of use. This amendment justifies the choice of Denmark for this case study.

In the current Danish scheme users and collecting societies representing a substantial number of rights holders can conclude agreements for the exploitation of specific categories of works and specific uses. Once an agreement for a specific use is defined, and approved by the Ministry, it is extended to encompass all rights holders in that specific category, domestic or foreign, even if they are not members of the collecting society.⁵⁰ Thus, even though not explicitly mentioned in the law, orphan works can also be included in the agreement, provided that several specific conditions are met. These conditions are that mass exploitation of the defined category of the work in the use occurs, that there is no possibility in practice to conclude individual agreements, that the organisation concluding the agreement is representative of rights holder(s) and that the agreement is fair.⁵¹ In practice, the collecting societies collect royalties on behalf of all right holders, and if they have not been claimed for a certain time period, they are used for special public welfare programmes. Yet, rights holders are always allowed to opt out from the system, as specified in section 50(2) of the Copyright Act.

Since the amendments of the Copyright Act in 2008 extended licensing agreements can be concluded for any type of use, and are therefore applicable to digital exploitation of audiovisual works.

Denmark's extended collective licensing scheme is the only one in the world that could apply to digital exploitation of audiovisual orphan works, as changes to the Copyright Act in 2008 made possible that extended collective licensing can apply in an unspecified manner to all rights. Agreements between users and rights holders therefore could be made for any right and any use of any type of work.⁵²

In January 2009 the first agreement was reached between all cable operators on interactive online services "with start-over" services and an on-demand "channel from the Danish Broadcasting Corporation. The agreement has been signed by the Union of broadcasting organisations in Denmark (UBOD), the collecting societies KODA, NCB and Copydan Kabel-TV and the operators.⁵³

49 Bekendtgørelse af lov om ophavsret, LBK nr 202 af 27/02/2010 Gældende (Ophavsretsloven), Danish Consolidated Act No. 202 of 27 February 2010 on Copyright.

50 For further details see Gervais, Daniel. Study on application of an extended collective licensing regime in Canada: principles and issues related to implementation. Prepared for the Department of Canadian Heritage Faculty of Law University of Ottawa June, 2003 appendix on Denmark pp. 47-51 http://aix1.uottawa.ca/~dgervais/publications/extended_licensing.pdf and Liedes, Jukka, and Wager, Hannu (et al.), Extended Collective License, the Nordic solution to complex copyright questions, June 1991, published by Kopinor.

51 M.-M Krust, Danemark-Sommaire, quoted in Gervais, Daniel, op.cit., p. 48.

52 For further details see also Foged, Terese. Licensing schemes in an on-demand world, Lassen Ricard law firm, 29 September 2009.

53 Foged, Tereseop. cit., p. 21.

Finland, Norway and Sweden also have extended collective licensing schemes. But their systems apply only to certain uses. In Norway and Sweden discussions exist in order to introduce a similar system as in Denmark.

FRANCE

In France the INA has concluded agreements with rights holders in order to digitise and make available online audiovisual and music works held in its collection, thus including orphan works.

The INA has negotiated agreements with on the one hand, the French collecting societies of authors (SACEM for musical works, SACD for dramatic works, SCAM for documentaries and ADAGP for graphic and plastic works) and journalists (SCAM); and on the other hand, the trade unions of performers and audiovisual directors.

According to the agreement concluded with the French collecting societies of authors⁵⁴, the INA can digitise and make available online orphan works on a commercial and non-commercial basis. The INA is also allowed to grant licences on these works to third parties for their distribution through mobile phones, for instance. INA is authorised to use the orphan work for the duration of the contract agreement. Should the rights holder of the orphan work reappear, the collecting society will pay him/her the due remuneration previously paid by the INA. The reappearance of the rights holder(s) does not affect the INA's exploitation of the orphan work. The collecting society acts as guarantor for the orphan work part of its repertoire on which it has granted a licence (on behalf of the unidentified or non-located rights holder) to the INA whereby the latter can exploit it.

The agreements concluded with the collecting societies apply to all the works contained in INA's holdings (including orphan works) which are part of their repertoires and only to the rights holders for whom they manage the rights.

The contracts concluded with the other French collecting societies of authors of graphic and plastic works and of journalists apply in the same manner.

With regard to the agreements concluded between the INA and the trade unions of audiovisual directors⁵⁵ and performers⁵⁶, the INA is allowed to carry out the same acts as foreseen in the agreements with collecting societies.⁵⁷ The conclusion of the agreements with trade unions is justified by the fact that audiovisual directors and performers in France have the status of employees (and rights holders at the same time) by virtue of the labour contract signed with their employer (e.g. the producer vis-à-vis audiovisual directors and performers) and that their remuneration is usually foreseen in agreements concluded for each sector with employers' organisations. The agreements signed with these trade unions enable the INA to exploit by any means the contribution of audiovisual directors and performers to the work or subject-matter in exchange for the due remuneration.

⁵⁴ This agreement has also been signed by the SDRM, in charge of receiving the payments for the exploitation of copyrights managed by the SACEM and also collecting society managing the right of mechanical reproduction; and the SESAM, collecting society managing the multimedia rights of SACEM, SACD and SCAM.

⁵⁵ Please note that the notion of 'audiovisual director' in French includes directors of films as well as of television.

⁵⁶ The INA has negotiated the agreement with trade unions of performers by virtue of article 44 of the Law 2006-961 of 1 August 2006 on copyright and neighbouring rights in the information society which modifies article 49 of the Law on the freedom of communication.

⁵⁷ Debarnot, Jean-François, De l'influence de l'article 44 de la loi du 1er août 2006 sur l'exploitation par l'INA des programmes de son fonds intégrant des prestations audiovisuelles et sonores d'artistes-interprètes, *Communication-Commerce électronique*, Revue mensuelle Lexis Nexis juriscasseur, janvier 2007, pp. 9-13.

⁵⁸ Debarnot, Jean-François, L'expérience de l'Ina relative à l'utilisation d'œuvres audiovisuelles et sonores éventuellement orphelines, *Communication-Commerce électronique*, Revue mensuelle Lexis Nexis juriscasseur, janvier 2010, pp. 6-12.

An important difference in relation to the agreements concluded with collecting societies is the method of payment. For performers the INA opens a bank account into which it pays their remuneration, this is available for the performer during a 10-year period. Once this period has expired and if unclaimable remuneration remains on the account, the INA will allocate 75 % of the money to the Social Union for Spectacles in France. The remaining 25 % will be kept in the bank account for 20 more years at the disposal of performers or their heirs. Once the complementary period of 20 years has expired the INA will give the remaining 25 % (after deduction of the money that the INA may have already paid to performers or their heirs) to the Social Union for Spectacles in France.⁵⁸ As far as audiovisual directors are concerned their remuneration will be at their disposal (or of their heirs') for 30 years in a bank account opened by the INA. The conditions and modalities to allocate such remuneration have still to be negotiated between the INA and the trade union of audiovisual directors.⁵⁹

In addition to these agreements, a second mechanism of a legal nature has been enshrined in the French Code of Intellectual Property. Users are offered the possibility to request the court of first instance (*tribunal de grande instance*) the application of measures enabling the exploitation of protected works whose rights holders are not known or cannot be traced (any type of orphan work in general) (article L. 122-9). The Ministry of Culture in France can also address this request to the judge (article L. 211-2).

Finally it is worth mentioning that in October 2010 the French Senate passed a bill on visual orphan works which still has to pass through the General Assembly.⁶⁰ The orphan work has been defined as a protected work which has been disclosed to the public, whose rights holder(s) could not be identified or located despite the conduction of diligent searches. The bill foresees the set up of a body composed of authors and users in charge of setting the criteria to qualify a work as orphan. According to the bill the licences to use an orphan work will be granted by a collecting society.

Following the report of the French Commission on Orphan Works of 2008, the bill will not cover audiovisual works on the grounds that there is already in France a public register for audiovisual and cinematography works where producers register their works as well as the contracts concerning the exploitation of rights on the work. The registration is mandatory for the producer to obtain the visa to screen the work in cinemas. According to the French Commission on Orphan Works the problem in identifying the rights owner(s) of an audiovisual work has been largely solved by this system. The few remaining audiovisual orphan works concern mainly works pre-dating 1944 or not exploited since then, or foreign works not screened in cinemas (but exploited on video support).⁶¹ The French Commission insists as well on the fact that the number of orphan works in the audiovisual sector is quite limited due to the fact that the producer holds the rights on the audiovisual work (copyright and neighbouring rights) on the one hand, and to the collective management of rights and databases, on the other hand.

⁵⁸ Article 8, Agreement between the INA and the French trade unions of performers, 16 June 2005.

⁵⁹ Article 7, Agreement between the INA and the French trade unions of audiovisual directors, 23 November 2006.

⁶⁰ Visual orphan works have been defined by the bill in a broad sense. They include designs, pictures, graphic works, illustrations, or the reproductions of works of art.

⁶¹ Commission on Orphan Works, High Council of the Literary and Artistic Property, Report, 2008, p. 12.

HUNGARY

In 2009 Hungary introduced a new system to tackle orphan works of any type. This system completes already existing provisions that allow the use of orphan works to a certain extent. These provisions include an extended collective licensing system for some specific uses, provisions on exceptions and limitations, and provisions on anonymous and pseudonymous works.⁶²

The amended Copyright Act entered into force on 1 February 2009. The new articles 57/A, 57/B, and 57/C enable the legitimate exploitation of orphan works not covered by the above mentioned provisions. The amendment has been completed by a government decree which entered into force on 16 May 2009. Since then, non-profit or commercial users can obtain a non-exclusive 5 year term licence to use orphan works of any type, including audiovisual works, from the Hungarian Patent Office (HPO) if they can prove due diligence search of the rights holder. This licence does not permit any adaptation of the work and is limited to the territory of Hungary. It does not involve any entitlement to transfer or to issue other licences on the use of the orphan work in question.⁶³

The government decree defines the criteria under which it can be examined whether a diligent search has been performed. It establishes a non-exhaustive list of measures for a diligent search. These include, for instance, searching the databases of collective rights management organisations, searching databases available on the Internet, advertising in national daily newspapers, etc.

In order to use an orphan work, users have to pay a public administration fee for the service of the HPO and must deposit a licence fee set by the HPO. However, those who intend to undertake non for profit uses do not need to deposit fees and will pay a preferential administrative fee. If the rights holder reappears his/her right to licence is revived (the licensee may use the work under the HPO licence for an additional one year period). The deposited licence fee shall be due to the emerged rights holder. If the rights holder does not reappear, the licence fee will be transferred to the respective collective management society or in the absence of such a society to the National Cultural Fund after the expiry of the five years' term.

The new Hungarian legislation also foresees the creation of a register of orphan works containing detailed information of those works that have been licensed by the HPO.

THE NETHERLANDS

In the Netherlands there is no legislative provision concerning orphan works so far. Nevertheless, due to a lack of legal solutions, national heritage institutions have started to establish contractual agreements with right holders' organisations.

In relation to audiovisual works, the EYE Film Institute has set up the VOD platform XIMON⁶⁴ offering over 500 audiovisual works online. An agreement has been concluded between EYE and the collecting societies of performing artists (NORMA), writers (LIRA), directors (VEVAM), producers (SEKAM) and music composers (BUMA/STEMRA) on a voluntary extended collective licensing model. This scheme allows the EYE Film Institute to use works of all represented rights holders on its VOD platform, but also works of those not represented by the collecting societies, including orphan works. There is an opt-out possibility for non-represented rights holders. The scheme is valid for three years.⁶⁵

⁶² Gyenge, Aniko, The Hungarian model of licensing orphan works, presentation at the Spanish Presidency conference on 'Digitisation of culture material, digital libraries and copyright', 14 March 2010, Madrid.

⁶³ All information regarding the system have been provided by Dr. Ildikó Sarkady, Director-Head of Department for Copyrights, Hungarian Intellectual Property Office (HIPO).

⁶⁴ <http://www.ximon.nl/>

⁶⁵ Information provided by Paul Keller and Presentation by Géraldine Vooren (Images for the Future), Leontien Bout (EYE Film Institute) on a voluntary ECL model in the audiovisual sector, Workshop on Extended Collective Licensing, 31 March 2011, Luxembourg.

In addition, the IViR (Institute for Information Law of Amsterdam University) finalised in April 2011 a study on model licences and fees for the digitisation of audiovisual material by heritage institutions commissioned by the Images for the Future Foundation.⁶⁶

In order to improve rights clearance the IViR has advanced two possible measures: 1) a compulsory collective licensing model or 2) an extended collective licensing model. In its study the IViR has come to the conclusion that both systems are viable solutions. However in order to satisfy the legitimate needs of rights holders (particularly film producers) to individually exercise their rights over recent films, the IViR has pointed out that in some cases restrictions of a different nature may apply (regardless of the fact that the measure adopted is a compulsory collective licence or an extended collective licence). For instance, the licence could be limited to cultural heritage institutions with a public mission to make available cultural works on a non-commercial basis. Another alternative would be to grant the licence on audiovisual heritage material older than ten years for example thus leaving film producers the opportunity to exploit the digital rights on their film without suffering 'unfair competition' from cultural heritage institutions.⁶⁷

Regarding the level of remuneration fees, the study proposes two methods of calculation: 1) on the actual use made by the end users of the digital material made available online or 2) on the expected usage by the end users and the expected (social) value of that use. Yet the study highlights that no objective criteria for determining fees exist, and that negotiations on fees will always play a major role.

In addition and relating to printed works and photographs, there are three examples of collective agreements concluded between the three national heritage institutions and trade holders, including the National Library, the National Archives and the Digital Library of Dutch Literature. Each institution has concluded its own agreements regarding different types of work.

The agreement between the National Library and the corresponding collecting societies concerns only newspapers until 1944. If the library wants to make use of the works, meaning display such newspapers on screens in the library buildings, it has to provide a licence fee to the collecting society. Similarly to the Scandinavian extended collective licensing model, in this case collecting societies are allowed to represent rights holders which are not their members. If the rights holder reappears, she/he can claim the fee. Rights holders can also opt out from the system. The National Library must use the licence only in the public interest and it is not allowed to exploit it commercially. This system is similar to the Google books settlement. The National Library has consulted a lawyer in order to set up its agreement with collecting societies. The National Archives and the Digital Library of Dutch Literature have concluded similar agreements in the field of photography.

⁶⁶ The main objective of this initiative, set up by four organisations (Dutch Institute for Sound and Vision, Eye Film Institute, National Archives and KnowledgeLand Foundation), is to digitise all of Dutch audiovisual heritage and make it accessible to the broad public. In this context, many audiovisual works and radiobroadcast materials have been digitised already.

⁶⁷ IViR, Digitization of Audiovisual Materials by Heritage Institutions: Models for Licenses and Compensations, summary of the study commissioned by Images for the Future/KnowledgeLand, April 2011, p. 3.

Comparative grid of case studies

Country	Legislative nature	Contractual nature	AV Orphan Works	All Orphan Works	Beneficiary	Non-commercial use	Commercial use	Remuneration	Specific provisions for reappearing Holder(s)
Denmark	x			x	No specific restrictions	x	x	x	(Opt out system)
France		x	x		INA	x	x	x	x
Hungary	x			x	No specific restrictions	x	x	x	x
The Netherlands		x	x	x	EYE Film Institute National Library National Archives Digital Library of Dutch Literature	x	x	x	(Opt out system)

CONCLUSION

The study shows that there is not yet a common European way to deal with the matter of orphan works. Indeed, only Hungary has so far developed mechanisms specifically designed for the digitisation and online access of any kind of orphan works, including audiovisual orphan works. In other countries different mechanisms have been implemented in order to facilitate rights management in the digital environment in general (the Czech Republic, France, the Netherlands and the Scandinavian countries) and while they mostly facilitate also the rights clearance for orphan works they have not been specifically designed for this purpose.

In Denmark and Hungary the solutions implemented are of legislative nature and could potentially apply to all types of uses of orphan works including uses for public interest purposes or business purposes. In France and the Netherlands, contractual agreements have been concluded with certain types of national heritage institutions for the use of orphan works on their own platforms as well as by third parties (in the case of France). Many other countries, such as the Czech Republic, Germany, Greece, Norway, Romania, Slovakia and Sweden, are in the process of reviewing existing legislation or reflecting on possible solutions, but only few details are accessible at this stage.

However, the recent proposal of a Directive for Orphan Works calls for a change. It requires the Member States to permit certain uses of print, audiovisual and certain audio orphan works by libraries, archives, film heritage institutions and public service broadcasting organisations. In the forthcoming months much debate is expected in the European Parliament and the Council. Both institutions will have to consider the approach taken by the European Commission and reflect on the mechanisms for the digitisation and online exploitation of orphan works across the EU. Once the Directive is adopted, those Member States that do not still have a system in place will have to adapt their legislation in order to render licit the uses referred to in the Directive.

The recent nature of the national ad hoc legislative or contractual mechanisms that specifically address the orphan works problem does not allow any conclusions on what kind of system would better fit the needs of each Member State. Moreover, despite of the impact assessment and the surveys conducted by the European Commission and other stakeholders, there is still too much uncertainty on the extent of the problem of orphan works in the audiovisual sector. Main challenges concern the quantification (i.e. standardised methodologies) of the audiovisual orphan works as well as their exploitation not only by public but also by commercial operators.

The main purpose of the recently published proposal of a Directive on orphan works is to facilitate certain uses of orphan works, also of audiovisual orphan works, throughout Europe. This will be at the core of the political discussions on audiovisual policies in the forthcoming months. The European Film Agency Directors (EFADs) should have a common position on the Proposal Directive on certain permitted uses of orphan works and related initiatives at the national or European level. However; further research must be done in relation to:

- the extent of the orphan works problem in the audiovisual sector;
- the evaluation of the possible (legislative or contractual) mechanisms to be implemented at European and national level;
- the assessment of the business opportunities and models for digitisation of the audiovisual heritage; and
- the impact of each solution on cultural heritage institutions, commercial and non commercial users and the public in general.

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