

Access for all

The Polish presidency has a unique opportunity to pioneer new intellectual property rights that will help transform EU copyright law, says **Lidia Geringer de Oedenberg**

Grzegorz Turnau, one of the most talented Polish jazz singers, said after his recent performance in Brussels, he has never imagined Poland will one day lead Europe. This statement in many ways demonstrates the pride and honours we, Polish citizens, feel at this occasion. Poland's democratic and economic transformation is not only a success story to Poland, but also to Europe, for it demonstrates the power of European integration. Integration and solidarity are the principles driving Poland as it assumes the leadership of the European Union's council and these principles are well reflected in the priorities and plans of action for the upcoming six months. The ambitious goals set by the Polish presidency can be abridged into three areas: economic growth, a secure Europe, and an open Europe.

One of the priorities set by the presidency, on which I have a specific interest in, is in the field of intellectual property rights (IPR). The presidency has expressed good will to advance legislation on a single EU patent act and pursue a reform concerning copyright, by prioritising one of its elements, the directive on "orphan works". As a member of the legal affairs committee, I would be interested to use the momentum set by the presidency in order to highlight and evolve this particular issue.

Orphan works are copyright works whose author cannot be found. The most known example relates to collections of libraries, archives and museums which are not able to display much of this work online as long as they don't have the author's consent for digitalisation. The European commission has already acknowledged the problems posed by digitalisation of orphan works and has presented a draft directive for introducing legislation on this matter.

Before elaborating more on the proposal, I would like to make a preliminary remark that the European Union is one of the sole actors in the world which has placed this dossier on their political agenda. This provides the EU with a unique opportunity to be a pioneer in this field and set an example to other countries. For this reason, the commission's proposal is an important step to ensuring wider access to copyright-protected works.

The main objective of the proposal is to facilitate digi-

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copyright

be included in



alisation for libraries, whose collections already contain many orphan works – books, journals, newspapers, magazines, certain films produced by public broadcasters. While the proposal is correct, wishing to categorise types of work considered orphan, the term and classification proposed excludes other classifications, such as photos or the majority of audiovisual material. Moreover, it fails to cover works in private collections as it focuses only on libraries. These, in my opinion, are two shortcomings of this directive.

The status of orphan work will be granted once the diligent search for the author, has taken place and the author has not been identified. If, however, the author presents himself after the orphan work has been used by the library, he or she will have the right to be remunerated.

The principle of mutual recognition would also apply, meaning that once a work has been defined as orphan in one member state, it has the same status in all the other member states. However, the draft directive is not entirely clear on whether mutual recognition is limited to the search, or will also allow libraries to “import” a foreign orphan work from

each other without a further authorisation from relevant national bodies.

Finally, as the directive applies exclusively to the public sector, private companies, such as Google, will not be able to use this copyright exception in their work. This limitation might acquire another proposal adapted to the private sector or an extension of the current directive. Lastly, I am hesitant regarding the ability of libraries to use mass digitalisation without asking for financial support from the state or the EU. Therefore, the commission proposal on orphan works should be accompanied with safeguarding funds for digitalisation in the next financial perspective.

To sum up, I believe the European Union under the Polish presidency has a unique opportunity to be a pioneer in IPR. The commission proposal on orphan works is not a giant leap for EU copyright reform, but a small step in the right direction. As many legal and political issues still need to be clarified, the Polish presidency will have the opportunity to practice their negotiating skills and hopefully contribute to a reasonable compromise on this dossier. ★

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