

Unlocking information

Around 43 per cent of available materials are orphan and therefore unattainable, writes Lidia Geringer de Oedenberg

Until 25 years ago an apple was known simply as a fruit, a Mac was a nickname and “googling” was not even a part of our daily vocabulary. Today all this has changed as a large majority of our work, education and culture concentrates on digital documents, pictures, audiovisual and other extensions.

The mass digitalisation process of works presents us a ‘catch 22’ situation: on one hand we win easier access to information, on the other, our access is restricted to works which rightholder is known. Works whose rightholder cannot be identified or found are regarded to be “orphan”, therefore are unavailable to us due to copyright limitations.

Thus, while it may appear we are surrounded by endless information, a recent research project conducted by the British Library shows that about 43 per cent of available materials are orphan, and, in the absence of legal certainties these works may never see daylight.

This is the background to my draft report on permitted uses of orphan works, presented last week at the legal affairs committee. In this report I provide a legal framework for ensuring

the good use of orphan works with respect to the rights of their unknown owners.

Based on my proposal, if an institution wishes to use an orphan work it must first complete a “diligent searching” for finding the rightholder of the work. The searching must be reasonable and extensive to also include each category of works, and it must be carried out in good faith.

Considering the probability that a work has more than one rightholder, I introduced a new concept, “half orphan”. This definition recognises a case where at least one of the rightholders cannot be identified or located.

In view of the fact that diligent searching can be costly and time consuming, I offer institutions the possibility to use public-private partnership for performing the research. For example: a public library can hire the services of a private company for the diligent searching, providing that the rights of the orphan work remains, still, in the hands of the public institution.

With the completion of the diligent searching and classification of work as orphan by one member state, the principle of mutual recognition will apply on the work, meaning that a work classified as orphan in France will have the same status in Belgium.

The classification of the work will apply on the current territory of the member state in order to avoid complications retrieving the rightholder. I will use my hometown Wroclaw to demonstrate this principle. Today a Polish city, Wroclaw used to be a German territory.

If nowadays a public institution wishes to use a work from Wroclaw achieve, the diligent searching will be performed in Poland, not in Germany.

To conclude, the current proposal provides member states, which lack a legal system for digitalising orphan works, a solution while giving member states with existing legal extended licensing system, like the Scandinavian countries, an alternative.

While I believe in the strengths of this directive my report encountered a tad of bad luck where various occasions, such as the parliament’s emergency evacuation and injury of a colleague, postponed the work in the committee.

It would be a shame not to make use of the window of opportunities presented by the Polish presidency for completing our work on this regard.

This window is still wide open, so let’s use it to take an important step towards a reform in EU copyrights system. ★

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