



International Federation of  
Library Associations and Institutions

## **WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

### **Orphan Works**

32nd Session, May 12, 2016

I am speaking on behalf of IFLA, the International Federation of Library Associations and Institutions, which represents the interests of librarians and library users in more than 150 countries.

Culture and knowledge are not just about money. If they were, a work deemed unlikely ever to yield any commercial value would be abandoned.

This is the case of orphan works, where the author or other relevant rights-holders is either unknown or cannot be contacted, let alone issue a licence. In other words, where there is no available rights-holder, no 'parent'.

Fortunately, we have libraries and archives, the adoptive parents. To serve the public interest, they must be permitted to proactively seek to collect these orphans – books, websites, records and other sources – and give the public access. They do this not for money, but for the benefit of humanity.

Orphan works pose a serious problem. They make up up to 30% of some library collections and 70% of some archive collections. These materials constitute a rich and growing source of information, most importantly digital, which can support and inspire understanding, science, education and creativity.

Indeed, accessibility may lead to a welcome revival of interest, something that my colleague's presentation at the side-event yesterday underlined is much more important to rights-holders than money.

But this only works if they are available.

As Professor Crews' study underlines, we are far from a situation where libraries and archives around the world are able to copy and give access to orphan works.

Even in the EU, there are still countries which have yet to implement the Orphan Works Directive. Exceptions are present only in a handful of countries elsewhere. In the rest, works, in particular digital ones, risk disappearing into a black hole.

We understand that the attribution of 'orphan work' status needs to be taken seriously, in order to avoid dispossessing rights-holders who remain known and contactable.

But the public interest demands that a balance be found.

An onerous, often-futile process will mean that only the biggest and best resourced institutions can undertake the effort to find elusive rights-holders. We welcome steps in the EU for example to develop simpler means of performing this task, and look forward to seeing results from this work.

Elsewhere, however, the search for rights-holders has been made infinitely more difficult due to the removal of recordation formalities and the extended terms of copyright protection.

In terms of a solution, libraries and archives are therefore asking for a provision that allows them, following a reasonable search for the author or rights holder, to be able to take appropriate steps to preserve orphan works and grant on-line public access.

The moral rights of the creator, if known, should be respected.

And if they or another legitimate rights-holder is subsequently identified then there can be provisions to offer fair remuneration or removal of the work from on-line access.

The text suggested in document SCCR 29/4 would address the problem to the satisfaction of libraries and archives.

Why include this in an international framework? The EU has led the way by providing that if a work, after a diligent search, is declared as orphan, this decision applies in all other EU member states.

Such a provision globally would free up vast amounts of knowledge internationally, boosting scholarship and creativity with no loss to rights-holders.