

Directive:

Ad art. 1.2

“Works First published or broadcast”

What about unpublished works such as amateur film? That is by far the greatest category of Orphan Works for which it should be possible to apply the Directive. This could be solved for audiovisual works by using the term “of which the country of origin is a Member State..”

That however poses another problem (see below)

Ad art. 1.2.2

“Cinematographic or audiovisual works”

It has been suggested by the NATIONAL AUDIOVISUAL ARCHIVE of Finland that photographs and other film related materials in the collections of film heritage institutions should be added. I disagree. From the standpoint of the EU there is (probably) a very good reason not to include photographs and such. To ask for a limitation to those materials in the collections of film heritage institutions, is in my opinion at least, not practical. You should then formulate a distinction based on topic (film) and not on materials alone: a sheer impossibility. Furthermore it would be overstretching our welcome: films were only added last minute, let's not push it.

The only option is adding photographs etc. full stop without the distinction filmrelated/non-filmrelated.

Ad art.2.2

“...more than one rightholder...”

It has already been suggested by ACE that if only one of multiple rightholders has been found, the work should be considered orphan for the part that has not been cleared. This is in line with how we clear at EYE: if we find only one (of multiple) rightholder, we use the work anyway. Consequently any emerging rightholder has a right to be remunerated (for commercial use) but can't orphan the work if there are still more rightholders missing. Question: should he be remunerated from the already found rightholders cut, or additional?

Ad art. 3.1 jo. 3.2

“... diligent search....appropriate sources...”

Too much is left to Member States in this respect. There should be a uniform search (like a ten step search to be conducted) using pre-determined local sources (Chamber of Commerce etc.). This way, there will be no shopping around for the Member State with the easiest search criteria (as feared by collection societies).

Ad art. 3.3

“first publication or broadcast”

See above: “country of origin” would be better. Also it should be taken into account that with films there often is no clue as to what the country of origin is (films with no titles whatsoever for instance). Additional provisions are necessary to determine how to proceed if there are no clues; in which country should the search be performed? Country where the film was found? Also extra provisions for unpublished films (such as amateur film) are needed.

Ad art. 3.4 jo art.6.4

“ensure ...database” & “...publicly accessible records of use..”

Is it left to Member States to determine the requisites for those databases? And how about funding? Who is going to pay for them?

Ad art. 6.2

“..public interest missions..”

What exactly is considered a public interest mission and what not? It is important to establish this as using orphan works for anything other than those missions is prohibited unless authorized by Member States.

Ad art. 7.2

“Member States may choose the means for authorizing use”

Possible problem: if they choose an ECL model this may not work for cross-border permission and thus prohibit online use. (Note: as far as we know some already existing ECL models don't apply to film and/or don't apply cross-border but you may want to look into that a bit further yourself)