
On 18 April 2007, the Copyright Subgroup of the High Level Expert Group (HLEG) on Digital Libraries adopted a “Report on Digital Preservation, Orphan Works and Out-of-Print Works”. The HLEG, which was set up to assist the European Commission in implementing the “i2010: Digital Libraries” initiative (see [IRIS 2005-10: 5]), formed a Copyright Subgroup to analyse and discuss the relevant copyright issues arising in this context. The present report follows an Interim Report presented by the Copyright Subgroup on 17 October 2006.

The report concludes that digitisation may be essential in order to enable continued access to cultural material. Digital preservation, however, may be jeopardised by recording media becoming technologically obsolete and current digital media being more short-lived than analogue media. As a result, content must be shifted to other formats on a recurring basis. The Copyright Subgroup therefore recommends that Member States that have implemented a copyright exception for the digital preservation by libraries and other cultural institutions allow multiple digital copies to be made if this is necessary for ensuring the preservation of the work. The exception should only apply to works that are no longer commercially available. Furthermore, preservation initiatives should be coordinated to avoid duplication and copy protection devices should be disabled to allow permanent and unhindered access to works for preservation by libraries.

Orphan works are works where the copyright owners cannot be identified or located. The Copyright Subgroup unanimously concludes that this issue must be resolved, at least for literary and audiovisual works. Non-legislative solutions may include: establishing databases concerning information on orphan works; improved inclusion of rights management information in digital content; and enhanced contractual practices. In addition, the Copyright Subgroup suggests that the Commission recommend that Member States encourage contractual arrangements in an appropriate manner, taking into account the role of cultural institutions. Finally, solutions in the Member States may be different, on the condition that they fulfil certain commonly accepted core principles. A prerequisite is that the solutions in the different Member States are interoperable. Member States should agree to mutually recognise any mechanism that fulfils the prescribed core principles.

Out-of-print works are defined as works that are not commercially available, as declared by the appropriate rightsholders. The Copyright Subgroup is united in recommending a solution to facilitate the use of out-of-print works by libraries. This solution includes a model licence, the establishment of a database of out-of-print works, a joint clearance centre, and a procedure to clear rights. The Model Licence is attached to the report. It grants libraries a non-exclusive and non-transferable licence to digitise and make the licensed work available to users in closed networks. Rightsholders are accorded a waivable right to payment. They may at any time revoke the licence, thereby withdrawing the licensed material. If such withdrawal represents more than ten per cent of a title, the library is entitled to reimbursement of its costs. To encourage the adoption of the Model Licence, the Copyright Subgroup urges the Commission to use its communication resources and to publish best practices on the use of the Model Licence.

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