European Commission: Memorandum of Understanding on Orphan Works and Other Developments in the European Digital Libraries Framework

On 4 June 2008, the High Level Expert Group on Digital Libraries (HLEG) held its 5th Meeting in Brussels. At this meeting, the HLEG presented the achievements so far with regard to a number of matters that were identified as urgent and of high priority in order to make the “i2010: European Digital Libraries” initiative a success.

First, with regard to the issue of orphan works (i.e. works whose rightsholders cannot be identified or located), the HLEG welcomed a Memorandum of Understanding on Diligent Search Guidelines for Orphan Works, which was signed by representatives of libraries, (audiovisual) archives and rightsholders. The due diligence guidelines were established by four sector specific working groups (text, audiovisual, visual/photography and music/sound), in which stakeholders voluntarily collaborated. They contain a definition of orphan works, recommendations regarding the procedure and methodology to be applied, and a list of appropriate and generic information resources available for research. This should provide a practical tool to assist cultural institutions in identifying and locating rightsholders. The guidelines are not prescriptive, but should as far as possible be observed when searching for rightsholders. The stakeholders have also agreed to refine the guidelines if necessary and, in general, to encourage and support measures to facilitate the lawful use of orphan works and to prevent works from becoming orphaned. The implementation of the guidelines shall be reviewed after an appropriate period of time (e.g. a year).

In addition, the HLEG adopted a Final Report on Digital Preservation, Orphan Works and Out-of-Print Works. This report partly consolidates the recommendations made in previous reports (see IRIS 2007-6: 5). What is new here is the recommendation for Member States to provide for web-harvesting (i.e. the technique for collecting material from the Internet for preservation purposes) under national legal deposit legislation. As regards orphan works, the report lists a number of measures, including voluntary and regulatory measures to be taken at Member State level, which are to be mutually recognised at the inter-state level. Moreover, the HLEG endorsed two model licenses for making works that are out-of-print or out-of-distribution accessible for all: the first for authorised users in secure networks, the other for online access over open networks. Finally, the report describes certain key principles for the development of rights clearance centres and databases of orphan works and out-of-print works.

Lastly, the HLEG adopted a Final Report on Public Private Partnerships (PPP). On the basis of case studies, this report offers practical guidelines and includes a set of recommendations for partnerships between public institutions, such as libraries, archives and museums and private organisations. While currently PPPs are not widespread within the cultural sectors in Europe, the report concludes that these partnerships are essential to provide funding, technology, software and expertise for large-scale digitisation projects. It is recommended, therefore, that public institutions actively engage with private institutions when developing and implementing mass digitisation strategies. This will bring significant additional benefits to all parties involved, including the partners, citizens, rightsholders and users.

- Memorandum of Understanding on Diligent Search Guidelines for Orphan Works
  http://merlin.obs.coe.int/redirect.php?id=15349
- Sector-Specific Guidelines on Diligence Search Criteria for Orphan Works - Joint Report
  http://merlin.obs.coe.int/redirect.php?id=15350
- Final Report on Digital Preservation, Orphan Works, and Out-of-Print Works
  http://merlin.obs.coe.int/redirect.php?id=15351
- Final Report on Public Private Partnerships for the Digitisation and Online Accessibility of Europe’s Cultural Heritage
  http://merlin.obs.coe.int/redirect.php?id=15352

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