

# Green Paper – Copyright in the Knowledge Economy

## Follow-up

DG MARKT  
Unit D1  
18 June 2009

European Commission   
Internal Market & Services DG

# Green Paper Rationale

- To foster a debate on how best to disseminate scholarly, scientific and cultural works in the online environment
- Specific focus on copyright exceptions for libraries and archives, including orphan works, teaching and research, disabilities, and user-created content

# Replies/submissions

- About 360 replies received
- Main groups of stakeholders:
  - libraries, museums, archives
  - universities
  - publishers, collecting societies, other right holders organisations
  - commercial entities, trade and industry associations
  - organisations representing disabled
  - Members States
  - others

# Divergent views

## **Publishers and collecting societies**

- generally satisfied with the current legal framework
- strongly against a re-opening of the Directive
- advocate flexible and more 'custom-made' contractual approach over the legislative one

## **Libraries, universities, archives and museums**

- call for mandatory exceptions and a legislative approach for the sake of legal certainty

# Issues Important for the Film Community

- Digitisation (preservation)
- Making Available
- Orphan Works

# Digitisation – identified problems

## Libraries & Archives

- Preservation should be allowed without authorisation of right holders
- No limit to the number of copies necessary for preservation purposes
- TPMs should not hamper the preservation process

**“Public Interest”**

# Making Available - identified problems by libraries & archives

- Public expects publicly funded libraries, archives and museums to increase online access to their collections
- Digital information is independent of physical location
- Current exception to access works only on premises of libraries, archives etc. is uncontroversial but too restrictive for works that are not offered commercially

# Orphan Works – identified problems

- Commission Recommendation 2006/585/EC, Memorandum of Understanding on Orphan Works and related Diligent Search Guidelines
  - libraries and archives point to legal uncertainty - these are not legally binding acts and they did not address issue of mass digitisation
- Non-legislative initiatives
  - libraries and archives argue these do not solve the problem of copyright infringement when using orphan works



# Orphan Works – identified problems (cont.)

- Contractual approaches
  - not possible since the other party by definition cannot be identified and/or located
- Obstacles to intra-Community trade in orphan works
  - may emerge if each Member State adopted its own set of rules to deal with the problem
- Possible solution
  - legislation at the European (and subsequently national level) to allow uses of works within the limitations of the three-step test

# Identified problems – Right Holders Perspective

- **Digitisation and Making Available**

- Prior authorization required (scanning etc.)
- Limit number of copies
- Restrict to non-commercially available works
- Online access only on premises unless licensed
- Competition with commercial business models

# Identified problems – Right Holders Perspective

- **Orphan Works**

- Rights clearance issue not to be treated as an exception
- Due diligence must be carried out
- No need for legislative intervention
- MoU & due diligence guidelines sufficient

**Solution:**

- sector specific and national solutions for due diligence guidelines with mutual recognition
- database at European level

# Orphan Works - possible solutions

- Build on the work of the High Level Expert Group on Digital Libraries
- Need more quantitative data on all orphan media – books, film, photographs etc.
- Analysing the scale of the problem and possible solutions (impact assessment)
- Important for stakeholders to provide data and evidence to the Commission

# Orphan works – possible solutions

- **Extended collective licensing model**
  - designated licensing entity represents right holders belonging to a certain category even if they are not members of that entity
  - right holder has a right to claim remuneration once he reappears
- **Centrally granted non-exclusive licensing**
  - designated body grants non-exclusive license for certain uses after a reasonable due diligence search has been made
  - licensee to make a one-off or royalty payment if right holder reappears
- **Mutual recognition of national approaches of Member States on orphan status**
  - entails mutual recognition on basis of due diligence search

# Digitisation / Making Available – possible solutions

- Extended collective licensing model - may also facilitate the more general digitisation and making available issues
- Digitisation and making available objectives need to be reconciled with commercial interests of right holders - the 'commercially available' debate

# THANK YOU!

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