

**Voting List recommendation by Audiovisual Coalition/ EP CULT Committee
Proposal for an orphan works Directive**

Text	AM	Author	Content	Comments	Recom. vote
Recital 1	38	Petra Kammerevert	(1) Libraries, museums, archives, educational establishments, film heritage institutions and public-service broadcasting organisations as well as private collections are engaged in large-scale digitisation of their collections or archives in order to create European Digital Libraries. Libraries, museums, archives, educational establishments, film heritage institutions and public-service broadcasting organisations in the Member States. They contribute to the preservation and dissemination of European cultural heritage, which is also important for the creation of European Digital Libraries, such as Europeana. Technologies for mass scale digitisation of print materials and for search and indexing enhance the research value of the libraries' collections.	Private collections should not be included in the scope of the Directive.	-
Recital 3	44, 45, 46	Jean-Marie Cavada, Róza Gräfin von Thun und Hohenstein, Piotr Borys, Emma McClarkin	(3) Creating a legal framework to facilitate the digitisation and dissemination of works for which no author right holder is identified or, even if identified, is not located, so called orphan works, is a key action of the Digital Agenda for Europe, as set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – A Digital Agenda for Europe	Clarifies scope of OW and achieves consistency with Article 2 and Directive 2001/29/EC.	+
Recital 4	50, 51,52	Jean-Marie Cavada, Róza Gräfin von Thun und Hohenstein, Piotr Borys, Emma McClarkin	(4) The exclusive rights for authors right holders of reproduction and of making available to the public of their works, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, require the consent of the author right holder prior to the digitisation and making available of a work.	Clarifies scope of OW and achieves consistency with Article 2 and Directive 2001/29/EC.	+
	53	Maria Badia i Cutchet	(4) The exclusive rights for authors of reproduction and of making available public dissemination of their works, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain	Not consistent with Directive 2001/29/EC. Enlarges the scope of the concerned rights.	-

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			aspects of copyright and related rights in the information society, require the consent of the author prior to the digitisation and making available of a work.		
	54	Helga Trüpel	(4) The exclusive rights for authors of reproduction and of making available communication to the public of their works, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, require the consent of the author prior to the digitisation and making available of a work.	Enlarges the scope of the concerned rights.	-
	55	Petra Kammerevert	(4) The exclusive rights for authors of reproduction, of communication to the public and of making available to the public of their works, as harmonised under Directive 2001/29/EC of the European Parliament and Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, require the consent of the author prior to the digitisation and making available of a work.	Enlarges the scope of the concerned rights.	-
Recital 5	57	Helga Trüpel	(5) In the case of orphan works, such prior consent to carry out acts of reproduction or of making available communication to the public cannot be obtained.	Enlarges the scope of the concerned rights.	-
	58	Maria Badia i Cutchet	(5) In the case of orphan works, such prior consent to carry out acts of reproduction or of making available to the public public dissemination cannot be obtained.	Not consistent with Directive 2001/29/EC. Enlarges the scope of the concerned rights.	-
	59	Zoltán Bagó	(5) In the case of orphan works, such prior author's consent to carry out acts of reproduction or of making available to the public cannot be obtained.	Not consistent with Article 2 and Directive 2001/29/EC.	-
Recital 7	61	Petra Kammerevert	(7) In particular, a common approach to determine the orphan status and the permitted uses of orphan works is necessary to ensure legal certainty in the internal market with respect to the use of orphan works by libraries, museums, educational establishments, archives, film heritage institutions and public service broadcasting organisations.	The inclusion of all kind of commercial beneficiaries is not compatible with the public policy objectives of the Directive.	-
	62, 63	Róza Gräfin von Thun und Hohenstein, Piotr Borys, Helga Trüpel	(7) In particular, a common approach to determine the orphan status and the permitted uses of orphan works is necessary to ensure legal certainty in the internal market with respect to the use of orphan works by libraries, museums, educational establishments, archives, film heritage institutions and public service broadcasting organisations.	The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-

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Recital 8	67	Petra Kammervert	(8) Cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the works in the archives of broadcasting organisations are concerned.	AV works should not be included in the scope of this Directive.	+
	68, 69	Morten Løkkegaard, Marietje Schaake	(8) Cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the works in the archives of broadcasting organisations are concerned.	The Directive should provide incentives for avoiding the creation of orphans.	-
	70	Jean-Marie Cavada	(8) Cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations and produced by them may include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future should be adopted. it is appropriate to set a cut off date relating to the application of this Directive as far as the works in the archives of broadcasting organisations are concerned.	Enlarges the scope of works to commercial broadcasters' archives. The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-
	71	Maria Badia i Cutchet	(8) Cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the look into how works in the archives of broadcasting organisations are concerned. are managed, for the purposes of the application of this Directive.	The management of the public broadcasters' archives should be subject to an adequate evaluation.	+
Recital 8	72	Marie-Christine	(8) Cinematographic, audio and audiovisual works in the archives of public service	Limits the scope of works to the	+

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		Vergiat	broadcasting organisations and produced by them include orphan works. Taking into account the special position of broadcasters as producers of audio and audiovisual material and the need to adopt measures to limit the phenomena of orphan works in the future, it is appropriate to set a cut off date relating to the application of this Directive as far as the works in the archives of public service broadcasting organisations are concerned.	archives of public service broadcasting organisations.	
Recital 9	73	Jean-Marie Cavada	(9) For the purposes of this Directive, cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations should be understood as including works-productions commissioned and funded by such broadcasting organisations for their exclusive exploitation. and over which they had editorial control.	Enlarges the scope of works to commercial broadcasters' archives. The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-
	74	Petra Kammerevert	(9) For the purposes of this Directive, cinematographic, audio and audiovisual works, or contributions to works contained therein in the archives of public service broadcasting organisations should be understood as including works commissioned by such organisations for their exclusive exploitation.	Enlarges the scope of works to commercial broadcasters' archives. The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-
	75	Róza Gräfin von Thun und Hohenstein, Piotr Borys	(9) For the purposes of this Directive, cinematographic, audio and audiovisual works in the archives of public service broadcasting organisations should be understood as including works commissioned by such organisations for their exclusive exploitation.	Enlarges the scope of works to private broadcasters' archives. The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-
	76	Helga Trüpel	(9) For the purposes of this Directive, cinematographic, works forming part of audio and audiovisual works in the archives of public service broadcasting organisations should be understood as including works commissioned by such organisations for their exclusive exploitation.	The scope of orphan works should not be extended.	-
Recital 11	79	Maria Badia i Cutchet	(11) For reasons of international comity, this Directive should only apply to works that are first published or broadcast in a Member State.	Enlarges the scope of orphans to third countries / Inconsistent	-

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				with International copyright law.	
	80	Helga Trüpel	(11) For reasons of international comity, this Directive should only apply to works that are first published, exhibited or broadcast in a Member State.	The MS of production may not be the MS of first exhibition (ex: Festival) / May cover third countries works first exhibited in a Member State.	-
Recital 12	81	Helga Trüpel	(12) Before a work can be considered an orphan work, a good faith and reasonable diligent search for the author should be carried out. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations, in particular duly entitled collecting societies .	Deletes the requirement of a good faith diligent search	-
	82	Sabine Verheyen	(12) Before a work can be considered an orphan work, a good faith and reasonable diligent search for the author its right holders should be carried out. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or are given the choice of either carrying out such a diligent search by their own means or having it carried out by other organisations, including collecting societies .	Deletes the requirement of a good faith diligent search	-
	83	Emma McClarkin	(12) Before a work can be considered an orphan work, a good faith and reasonable diligent search for the author right holder(s) should be carried out. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other non-profit organisations.	Clarifies scope of OW and achieves consistency with Article 2 and Directive 2001/29/EC / Only non-profit organisations should benefit from this Directive	+
	84,85	Róza Gräfin von Thun und Hohenstein Jean-Marie Cavada	(12) Before a work can be considered an orphan work, a good faith and reasonable diligent search for the author right holder should be carried out. Member States should be permitted to provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations.	Clarifies scope of OW and achieves consistency with Article 2 and Directive 2001/29/EC	+
Recital 12	86, 87	Petra	(12) Before a work can be considered an orphan work, a good faith and reasonable	Inconsistent with Article 2 and	-

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		Kammerevert Maria Badia i Cutchet	diligent search for the author <i>or holder of related rights</i> should be carried out. Member States should be permitted to may provide that such a diligent search may be carried out by the organisations referred to in this Directive or by other organisations, <i>in particular duly entitled collecting societies</i> .	Directive 2001/29/EC We suggest replacing the terms 'duly entitled' by 'duly mandated and accredited'.	
Recital 13	89	Petra Kammerevert	(13) It is appropriate to provide for a harmonised approach concerning such diligent search in order to ensure a high level of protection of copyright in the Union. A diligent search should involve the consultation of publicly accessible databases that supply information on the copyright status of a work. Moreover, in order to avoid duplication of costly digitisation, Member States should ensure that use of orphan works by the organisations referred to in this Directive is recorded in a publicly accessible database. To the extent possible, publicly accessible databases of search results and use of orphan works should be designed and implemented so as to permit interlinkage with each other on a pan-European level and consultation thereof through a single entry point.	Enlarges the scope of beneficiaries to potentially all users.	-
	90	Helga Trüpel	(13) It is appropriate to provide for a harmonised approach concerning such diligent search in order to ensure a high level of protection of copyright in the Union. A diligent search should involve the consultation of publicly accessible databases that supply information on the copyright status of a work. Moreover, in order to avoid duplication of costly digitisation, Member States should ensure that use of orphan works by the organisations referred to in this Directive, <i>in particular duly entitled collecting societies</i> , is recorded in a publicly accessible database. To the extent possible, publicly accessible databases of search results and use of orphan works should be designed and implemented so as to permit interlinkage with each other on a pan-European level and consultation thereof through a single entry point.	We suggest to replace the terms 'duly entitled' by 'duly mandated and accredited'	-
Recital 14	91 (=amended 92)	McClarkin	(14) Orphan works may have several authors right holders or include other works or protected subject matter. This Directive should not affect the rights of known or identified right holders.	Clarifies scope of OW and achieves consistency with Article 2 and Directive 2001/29/EC	+
Recital 15	95	Helga Trüpel	(15) In order to avoid duplication of search efforts, a diligent search should be conducted only in the Member State where the work was first published or broadcast. In order to enable other Member States to ascertain whether the orphan status of a work has been established in another Member State, Member States should ensure	Clarifies that it may be possible to conduct a diligent search not only in the MS of first publication or broadcast /	+

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			that the results of diligent searches carried out in their territories are recorded in a publicly accessible database.	Useful in the case of coproduction.	
Recital 16	96, 97	Róza Gräfin von Thun und Hohenstein, Piotr Borys Emma McClarkin	(16) It is appropriate to provide that authors right holders are entitled to put an end to the orphan status in case they come forward to claim their works.	Clarifies scope of OW and achieves consistency with Article 2 and Directive 2001/29/EC	+
	98	Zoltán Bagó	(16) It is appropriate to provide that authors are entitled to put initiate putting an end to the orphan status in case they come forward to claim their works.	Limits the possibility of effectively putting an end to the orphan status	-
New recital 16 a)	99	Emma McClarkin	(16a) The ending of orphan work status allows for the payment of remuneration normally due for the exploitation of a work, including past uses. It should be for Member States to decide whether a time limit is to be set for the recovery of royalties by right holders.	Remuneration should be due for the exploitation of a work.	+
Recital 17	100	Petra Kammerevert	(17) In order to promote learning and culture, Member States should permit libraries, educational establishments and museums which are publicly accessible, as well as archives, film heritage institutions and public service broadcasting organisations, authorise measures to make available and reproduce orphan works, provided such use fulfils their public interest missions, notably preservation, restoration also with the aim of preserving and restoring works and the provision of providing cultural and educational access to works contained in their collections. Film heritage institutions should, for the purposes of this Directive, cover organisations designated by Member States to collect, catalogue, preserve and restore films forming part of their cultural heritage.	Enlarges the scope of beneficiaries and permitted uses.	-
Recital 18	102	Petra Kammerevert	(18) Contractual arrangements may play a role in fostering the digitisation of European cultural heritage, it being understood that libraries, educational establishments, museums or archives and film heritage institutions broadcasting organisations and other cultural institutions may, with a view to undertake the uses permitted under this Directive, conclude agreements with commercial partners for the digitisation and making available of orphan works. These agreements may include	The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-

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			financial contributions by such partners.		
	103	Silvia Costa	(18) Contractual arrangements may play a role in fostering the digitisation of European cultural heritage, it being understood that libraries, educational establishments, museums or archives and film heritage institutions may, with a view to undertake the uses permitted under this Directive, conclude agreements with commercial partners for the digitisation and making available of orphan works. These agreements may include financial contributions by such partners, provided the works are not used for secondary commercial purposes.	The works mentioned should not be used for secondary commercial purposes.	+
Recital 19	104	Petra Kammerevert	(19) In order to foster the Union's citizens' access to Europe's cultural heritage, it is also necessary to ensure that orphan works which have been digitised and made available to the public in one Member State are also available in other Member States. Publicly accessible libraries, educational establishments, museum, archives, film heritage institutions and public service broadcasting organisations that use an orphan work in order to achieve their public interest missions should be able to make the orphan work available to the public in other Member States.	The inclusion of all kind of commercial beneficiaries is not compatible with the public policy objectives of the Directive.	-
Recital 20	107	Silvia Costa	(20) This Directive should be without prejudice to existing promote existing arrangements in the Member States concerning the management of rights such as by means of compulsory licences or extended collective licences.	MS should be free to choose any specific solution for the management of rights	-
	108, 109	Morten Løkkegaard, Hannu Takkula, Marietje Schaake	(20) This Directive should be without prejudice to existing arrangements in the Member States concerning the management of rights such as extended collective licences.	MS should be free to choose any specific solution for the management of rights	+
Recital 20	110	Helga Trüpel	(20) This Directive should be without prejudice to existing arrangements in the Member States concerning the management of rights such as extended collective licences.	MS should be free to choose any specific solution for the management of rights	+
	111	Jean-Marie Cavada	(20) This Directive should be without prejudice to existing arrangements in by the Member States concerning the management of rights such as extended collective licences, legal presumptions of representation or transfer, mandatory collective licensing, or any combination thereof.	MS should be free to choose any specific solution for the management of rights	+
	112,	Petra	(20) This Directive should be without prejudice to existing and future arrangements in	MS should be free to choose	N

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		Kammerevert	the Member States concerning the management of rights such as extended collective licences	any specific solution for the management of rights	
	113	Sabine Verheyen	(20) This Directive should be without prejudice to existing <i>or future</i> arrangements in the Member States concerning the management of rights such as extended collective licences.	MS should be free to choose any specific solution for the management of rights	-
Recital 21	114	Petra Kammerevert	(21) Member States should also be allowed to permit the use of orphan works for purposes which go beyond the public interest missions of the organisations covered by this Directive. In such circumstances, the rights and legitimate interests of rightholders should be protected.	Consistent with the deletion of Art 7 / The use of orphan works should not go beyond the public interest mission of the organizations mentioned in the directive	+
Recital 21	115	McClarkin	(21) Member States should also be allowed to permit the use of orphan works for purposes which go beyond the public interest missions of the publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service broadcasting organisations covered by this Directive. In such circumstances, the rights and legitimate interests of right holders should be protected.	Recital 21 (like Article 7) should be deleted. Incomplete reference to the three steps test	-
Recital 22	116	Petra Kammerevert	(22) When a Member State authorises, under the conditions established in this Directive, the use of orphan works by publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service broadcasting organisations for purposes beyond their public interest mission, rightholders who come forward to claim their works should be remunerated. Such remuneration should take account of the type of work and the use concerned. Member States may provide that revenues collected from such use of orphan works for the purpose of remuneration but which are unclaimed after the expiry of the period fixed in accordance with this Directive should contribute to financing rights information sources that will facilitate diligent search, by low-cost and automated means, in respect of categories of works that fall actually or potentially within the scope of application of this Directive.	The use of orphan works should not go beyond the public interest mission of the organizations mentioned in the directive.	-
	117	Helga Trüpel	(22) When a Member State authorises, under the conditions established in this Directive, the use of orphan works by publicly accessible libraries, educational establishments, museums, archives, film heritage institutions or public service	Revenues collected after the expiry of the period fixed in accordance with this Directive	-

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			broadcasting organisations for purposes beyond their public interest mission, right holders authors who come forward to claim their works should be remunerated. Such remuneration should take account of the type of work and the use concerned. Member States may provide that revenues collected from such use of orphan works for the purpose of remuneration but which are unclaimed after the expiry of the period fixed in accordance with this Directive should be used to finance those cultural institutions contribute to financing rights information sources that will facilitate diligent search, by low-cost and automated means, in respect of categories of works that fall actually or potentially within the scope of application of this Directive. or facilities which help to promote cultural diversity.	should contribute to financing rights information sources that will facilitate diligent search.	
New recital 22a)	122	Sabine Verheyen	(22a) Member States should, in conjunction with different stakeholders in the content creation and rights ownership chain, implement a policy to prevent works from becoming orphan works, in order to limit the appearance of orphan works and reduce their number. Effective identification of works, exchanges of information on orphan works, and promotion of collective management or extended collective management are necessary in order to prevent the appearance of orphan works.	Aims at promoting extended collective licensing / MS should be free to choose any specific solution for the management of rights.	-
Recital 23a (new)	123	McClarkin	(23a) This Directive is without prejudice to Directive 2001/29/EC and deals specifically with certain permitted uses of orphan works. It does not introduce new exceptions or limitations to copyright and related rights,	Introduces clarification that the Directive only deals with orphan works and does not amend Dir. 2001/29/EC.	+
Article 1 – paragraph 1	124	Petra Kammervert	1. This Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums as well as by archives, film heritage institutions and public service broadcasting organizations.	The use of orphan works should not go beyond the public interest mission of the public organizations mentioned in the directive.	-
	125	Cavada	1. This Directive concerns certain uses of orphan works undertaken by publicly accessible libraries, educational establishments or museums as well as by archives, film heritage institutions and public service broadcasting organizations.	The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-
	126	Sabine	1. This Directive concerns certain uses of orphan works undertaken by publicly	The inclusion of commercial	-

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		Verheyen	accessible libraries, educational establishments or museums as well as by archives, film heritage institutions and public service <i>publishers</i> broadcasting <i>organizations</i> .	broadcasters is not compatible with the public policy objectives of this proposal.	
Article 1 – paragraph 2 – introductory wording	130	Maria Badia i Cutchet	2. This Directive applies to works first published or broadcast in a Member State and which are:	Aims at including non-EU works / Inconsistent with International copyright law.	-
	131	Jean-Marie Cavada	2. This Directive applies to <i>orphan</i> works first published or broadcast <i>or fixed</i> in a Member State and which are:	Not adapted to the AV sector. May accidentally cover unpublished works.	-
	132	Petra Kammerevert	2. This Directive applies to works first published, <i>exhibited</i> or broadcast in a Member State and which are:	May accidentally cover non-EU works (works first <u>exhibited</u> in the EU within the scope).	-
	133	Malika Benarab-Attou	2. This Directive applies to works first published, broadcast <i>or presented</i> in a Member State and which are:	May accidentally cover non-EU works (works first <u>presented</u> in the EU within the scope).	-
Article 1 – paragraph 2 – point 3	139	Petra Kammerevert	(3) Cinematographic, audio or audiovisual works produced by public service broadcasting organisations before the 31 December 2002 and contained in their archives.	Excludes AV works from the scope of the Directive.	+
	140	Helga Trüpel	(3) Cinematographic, audio or audiovisual works produced by public service broadcasting organisations before the 31 December 2002 and contained in their archives.	Enlarges the scope of works to commercial broadcasters' archives. The inclusion of commercial broadcasters' archives is not compatible with the public policy objectives of this proposal.	-
	141	Jean-Marie Cavada	3) Cinematographic, audio or audiovisual works produced by public service broadcasting organisations before the 31 December 2002 and contained in their archives.	Enlarges the scope of works to commercial broadcasters' archives. The inclusion of commercial broadcasters' archives is not compatible with the public policy objectives of this proposal	-

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	142, 143, 144	Maria Badia i Cutchet, Marietje Schaake, Morten Løkkegaard	(3) Cinematographic, audio or audiovisual works produced by public service broadcasting organisations before the 31 December 2002 and contained in their archives.	The Directive should provide incentives for avoiding the creation of orphans.	-
Article 2 paragraph 1	147	Jean-Marie Cavada	1. A work shall be considered an orphan work if one or more of the copyright or related rights are rightsholder in the work is not identified or, even if identified, is are not located after a good faith and diligent search for the rightholder has been carried out and recorded in accordance with Article 3	Enlarges the scope of orphan works. However it also reinforces the diligent search (good faith).	First half - Second half +
	148	Petra Kammerevert	1. A work shall be considered an orphan work if the rightsholder in the work author or the holder of a related copyright is not identified or, even if identified, is not located after a diligent search for the rightsholder them has been carried out and recorded in accordance with Article 3. In the case of cinematographic, audio and audiovisual works, this may also apply to individual, discrete contributions to the work; in that event, only the part in question shall be considered an orphan work.	Not consistent with Article 2 and Directive 2001/29/EC. Fragments the work and seems to not recognise the presumptions of transfer.	-
	149	Maria Badia i Cutchet	1. A work shall be considered an orphan work if the rightholder in the work is not identified or, even if identified, is not cannot be located after a diligent search for the rightholder has been carried out and recorded in accordance with Article 3.	Aims at strengthening the need to find the rightholder.	+
	150	Zoltán Bagó	1. A work shall be considered an orphan work if the rightholder in the work is not identified or, even if identified, is not located after a diligent search for the rightholder has been carried out within a reasonable time and recorded in accordance with Article 3.	Would weaken the diligent search.	-
Art 2 –par 1 (2)	151	Jean-Marie Cavada	2. Where a work has more than one rightholder or includes other works or protected subject-matter , and at least one of the rightholders has been neither identified nor located, that work shall not continue to be considered an orphan work for the purposes of this Directive. The rights of known or identified rightholders, in particular with regard to their rights to payment, shall not be affected. Member States shall ensure that the organisations referred to in Article 1(1) or, more particularly, duly entitled collecting societies, pursue a diligent search to identify	Enlarges the scope of orphan works. We suggest the alternative wording: The exclusive rights of known or	-

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			<i>and locate the other holders of rights to the work..</i>	identified rightholders shall not be affected, including their right to remuneration. Member States shall ensure that the organisations referred to in Article 1(1) or, more particularly, duly mandated and accredited collecting societies, pursue a diligent search to identify and locate the other holders of rights to the work.	
	152	Petra Kammerevert	2. Where a work has more than one rightholder, and one of the rightholders has been author or holder of a related copyright, authorisation given by those authors or rightholders who could be located shall be deemed sufficient for the work as a whole to be used if other authors or holders of related copyright in accordance with this Directive could not be identified and or located. In the case of works whose individual parts can be clearly attributed to different authors or holders of related copyright, each part of the work shall be the subject of a specific investigation to determine whether it is that work shall not be considered an orphan work within the meaning of Article 2(1).	Not consistent with Article 2 and Directive 2001/29/EC. Enlarges the scope of orphan works.	-
Article 3 – paragraph 1	153	Petra Kammervert	1. For the purposes of establishing whether a work or contribution to a work is an orphan work, the organisations referred to in Article 1(1) owner shall ensure that a diligent search is carried out for each work, by consulting the appropriate sources for the category of works in question. Owners may ask copyright collection societies to	The concept of owner is not consistent with Article 2 and Directive 2001/29/EC.	-

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			<i>carry out this task.</i>		
	154	Helga Trüpel	1. For the purposes of establishing whether a work is an orphan work, the organisations or copyright collection societies referred to in Article 1(1) shall ensure that a diligent search is carried out for each work, by consulting the appropriate sources for the category of works in question.	Copyright collecting societies are not included in Article 1 (1) and are not meant to be beneficiaries of the Directive.	-
	155	Jean-Marie Cavada	1. For the purposes of establishing whether a work is an orphan work, the organisations referred to in Article 1(1) shall ensure that a good faith and diligent search is carried out for each individual work or any other protected subject-matter , by consulting the appropriate sources for the category of works in question.	Reinforces the diligent search requirements.	+
Art 3-par 1 (new)	156	Verheyen	1a. The organisations referred to in Article 1(1) may have the diligent search carried out by other organisations, including collecting societies.	Collecting societies can play a role in helping identify and locate the rightholder of a work but there is no reason why these should be singled out. Moreover, collecting societies should be duly mandated and accredited by the relevant authorities.	N
Article 3 paragraph 2	157	Petra Kammerevert	2. The sources that are appropriate for each category of works shall be determined by each Member State, in consultation with rightholders and users, and should include, the sources listed in the Annex.	- Deletes the consultation with rightholders. - Intends to weaken the importance of the sources listed in the Annex.	-
	158	Helga Trüpel	2. The sources that are appropriate for each category of works shall be determined by each Member State, in consultation agreement with rightholders authors and users, and include, the sources listed in the Annex.	We favor the intention to require the agreement and not merely the consultation of rightholders on the appropriate sources. However, the term rightholders should be kept in order to ensure consistency with Article 2 and Directive	-

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				2001/29/EC (see AM 159)	
	159	Sean Kelly	2. The sources that are appropriate for each category of works shall be determined by each Member State, in consultation with agreement with right holders and users, and include, the sources listed in the Annex.	Reinforces the participation of rightholders in deciding the sources for diligent search	+
	161	McClarkin	2. The sources that are appropriate for each category of works shall be determined by each Member State, in consultation with right holders and users, and include all the sources listed in the Annex.	All sources in the annex should be referred to as the basic elements of any diligent search.	+
Art 3-par 3	162	Helga Trüpel	3. A diligent search is required to be carried out only in the Member State of first publication or broadcast	In case of co-productions, the diligent search is needed in more than one MS.	+
	163	Jean-Marie Cavada	3. A diligent search is required to be carried out only in the Member State of first publication or broadcast or fixation .	Unnecessary precision: the copyright term protection directive refers to the concept of publication. Could accidentally cover unpublished works.	-
	164	Petra Kammerevert	3. A diligent search is required to be carried out only in the Member State of first publication, exhibition , or broadcast.	May accidentally cover non EU works. Inconsistent with international treaties.	-
	165	Malika Benarab-Attou	3. A diligent search is required to be carried out only in the Member State of first publication, broadcast or public performance .	May accidentally cover non EU works / Inconsistent with international treaties.	-
	166	McClarkin	3. A diligent search is required to be carried out only in the Member State of first publication or broadcast; however, where there is reasonable uncertainty as to the location of the first publication or broadcast, diligent searches may be extended to other Member States .	Searches should extend beyond the country of first publication, where there is reasonable doubt as regards the location / Useful in the case of coproductions.	+
Article 3 – paragraph 3 a (new)	167	Iosif Matula	3a. Should the work have more than one rightholder, including from states outside the EU, the organisation carrying out the diligent search shall take steps to locate such rightholders.	Searches should extend beyond the country of first publication in the case of coproductions.	+
	168, 176	Róza Gräfin von Thun und	3a. In the event that a cinematographic or audiovisual work is known to be a co-production, the diligent search must be carried out in each of the Member States	In case of co-productions, diligent search needed in all MS	+

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		Hohenstein Piotr Borys	<i>where the co-production took place.</i>	of coproduction.	
Art 3-par 3a(new)	169	Jean-Marie Cavada	3a. If a cinematographic or audiovisual work for which a diligent search is being carried out is presumed to be the fruit of a co-production, then the diligent search shall be carried out in the country with the majority participation in the co-production, identifying said country by taking account of material factors such as the language used in the film or the film's original title. In the event that the search in said country proves unsuccessful, continuing the search in the countries where there is a strong presumption that minority co-producers may be found shall be mandatory.	In case of co-productions, diligent search needed in the country with the majority participation in the co-production. But this may not be the country where the relevant information is available.	-
Article 3 – paragraph 4	170	Rolandas Paksas	4. Member States shall ensure that the results of diligent searches carried out in their territories are recorded and preserved in an officially approved and publicly accessible database register.	Provides clarity / harmonises the functioning of the “publicly accessible database”.	+
Art 3-par 4 a (new)	175	Verheyen	4a. Duly authorised collecting societies shall be entitled to operate on behalf of those right holders who, even after a diligent search, cannot be located.	Aims at introducing extended collective licensing / MS should be free to choose any specific solution for the management of rights.	-
Article 4 paragraph 1 a (new)	177	Helga Trüpel	1a. Where this is compatible with Community law and international agreements on copyright and related rights, Member States may adopt comprehensive arrangements providing for simple and extended systems for the declaration of rights.	The Directive provides for a specific solution to a specific problem. The idea that Member States should introduce new wide systems to facilitate clarification of rights is too vague and could lead to confusion.	-
Article 5 – paragraph 1	178	Helga Trüpel	Where a work considered to be orphan has only one author Member States shall ensure that a rightholder in a work considered to be orphan that that author has, at any time, the possibility of putting an end to the orphan status.	Inconsistent with Article 2 and Directive 2001/29/EC.	-
	179	Helga Trüpel	Member States shall ensure that a rightholder in a work considered to be orphan the	Consistent with Article 2 and	N

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			<i>author or the holder of a right related to copyright</i> has, at any time, the possibility of putting an end to the orphan status.	Directive 2001/29/EC.	
	180	Georgios Papanikolaou	Member States shall ensure that a rightholder <i>or rightholders</i> in a work considered to be orphan has <i>have</i> , at any time, the possibility <i>and exclusive right</i> of putting an end to the orphan status.	Ensures that rightholders have the exclusive right of putting an end to the orphan status.	+
	181	Zoltán Bagó	Member States shall ensure that a rightholder in a work considered to be orphan <i>who has meanwhile been located</i> has, at any time, the possibility of <i>initiating</i> putting an end to the orphan status.	Weakens the rightholder's ability to effectively putting an end to the orphan status	-
Art 5-par 1 a (new)	182	Jean-Marie Cavada	1a. The loss of a work's orphan status shall not affect existing contracts for the use, in accordance with this Directive, of the work in question.	Existing contracts should provide for the fact that an orphan might be 'de-orphan'	-
Article 6 – paragraph 1 – introductory wording	183	Petra Kammervert	1. Member States shall ensure that the organisations referred to in Article 1(1) are permitted to use an orphan work works or orphan contributions to works may be used in the following ways:	The inclusion of all kind of commercial beneficiaries is not compatible with the public policy objectives of the Directive.	-
Art 6-par 1 (a)	184	Cavada	(a) by making by providing the public with the orphan work including its availability to the public at any time and in any place ; available, within the meaning of Article 3 of Directive 2001/29/EC;	Enlarges potential uses / Inconsistent with Directive 2001/29/EC	-
	185	Maria Badia i Cutchet	(a) by making disseminating the orphan work available to the public , within the meaning of Article 3 of Directive 2001/29/EC;	Enlarges potential uses/ Inconsistent with Directive 2001/29/EC	-
	186	Helga Trüpel	(a) by making communicating the orphan work available to the public , within the meaning of Article 3 of Directive 2001/29/EC;	Enlarges potential uses.	-
	187	Petra Kammervert	(a) communicating the orphan work to the public and making it available, within the meaning of Article 3 of Directive 2001/29/EC;	Enlarges potential uses.	-
Article 6 paragraph 2	188	Petra Kammervert	2. However, unless otherwise provided in Article 7, the organisations referred to in Article 1(1) may not use orphan works in order to achieve aims other than their public interest missions, notably preservation, restoration and the provision of cultural and educational access to works contained in their collections.	Enlarges the list of beneficiaries. The inclusion of all kind of commercial beneficiaries is not compatible with the public policy objectives of the	-

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				Directive.	
	189	Jean-Marie Cavada	2. However, unless otherwise provided in Article 7, the organisations referred to in Article 1(1) may not use orphan works in order to achieve aims other than their public interest missions, notably preservation, restoration and the provision of cultural and educational access to works contained in their collections for educational and research purposes.	Consistent with Directive 2001/29/EC. However, the reference to Art 7 should be deleted.	+
	190	Róza Gräfin von Thun und Hohenstein, Piotr Borys	2. However, unless otherwise provided in Article 7, the organisations referred to in Article 1(1) may not use orphan works in order to achieve aims other than their public interest missions, notably preservation, and restoration of works contained in their collections and the provision of access to those works for cultural and educational access to works contained in their collections. and research purposes.	Limits the permitted uses. However, the reference to Art 7 should be deleted.	+
Article 6 paragraph 2 a (new)	191	Sabine Verheyen	2a. Member States shall be free to choose a given method for the management of rights, such as extended collective licensing.	Aims at promoting extended collective licensing / MS should be free to choose any specific solution for the management of rights.	-
Article 6 – paragraph 4	194	Petra Kammervert	4. Member States shall ensure that the organisations referred to in Article 1(1), when using orphan works in accordance with paragraph 1, maintain records of their diligent search and publicly accessible records of use.	MS should maintain records of their diligent search and publicly accessible records of use.	-
Art 6-par 4a (new)	195	Jean-Marie Cavada	4a. For this Directive to be fully effective, broadcasting organisations need to be able to use recognised orphan works, under the conditions established by this directive, in the course of their normal activities.	The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-
Article 6 paragraph 4 a (new)	197	Silvia Costa	4a. This Directive is without prejudice to existing arrangements in the Member States concerning the management of rights, such as extended collective licences.	MS should be free to choose any specific solution for the management of rights but there is no need to make a specific reference to ECL in the article (the reference in recital 20 is sufficient)	-
Art 7	198, 199	Róza Gräfin von	Article 7	Permitted uses should be dealt	+

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		Thun und Hohenstein, Piotr Borys Kammerevert	Authorised uses of orphan works	with in Article 6.	
	200, 201 204 to 207, 209 to 212, 214 to 217	Róza Gräfin von Thun und Hohenstein, Piotr Borys Kammerevert		Permitted uses should be dealt with in Article 6.	+
Article 7 a (new)	219	Petra Kammerevert	<p style="text-align: center;">Article 7a Possibility of extended collective management of rights</p> <p>1. Member States shall ensure that collective assignments of rights applying between collecting societies and large operators, for example broadcasters, for the purposes of communication to the public, including acts of making works available to the public within the meaning of Article 3 of Directive 2001/29/EC, in respect of given categories of works or other copyright works may be extended to authors and holders of related rights in the same categories of works who are not represented by the collection society concerned, whether or not the work in question is an orphan work within the meaning of Article 2, provided that</p> <p>(a) a rightholder not represented by the collecting society is able at any time to object to collective exploitation and exercise his rights directly, and</p> <p>(b) any such agreement between a collecting society and a large operator is confined to productions first published in the Member State where the operator is established.</p> <p>2. Paragraph 1 of this Article is not applicable to cinema films.</p> <p>3. Member States shall ensure that where rights have been assigned collectively in accordance with paragraph 1, the collecting society concerned keeps publicly</p>	<p>This amendment aims at applying to other works than orphan works. It goes beyond the scope of the Directive.</p> <p>We believe that Member States should be free to choose any specific solution for the management of rights. We are however opposed to the introduction of overly broad measures setting aside the diligent search requirement and undermining exclusive rights, such as extended collective licensing schemes at pan-European level.</p>	-

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			<i>accessible registers of rightholders who either cannot be identified or cannot be located.</i>		
Article 7 b (new)	220	Petra Kammerevert	<p style="text-align: center;">Article 7b Records of use and remuneration</p> <ol style="list-style-type: none"> 1. Member States shall ensure that diligent searches for orphan works or orphan contributions to works are recorded in a publicly accessible form. To that end they, in collaboration with the Commission, shall devise EU-wide uniform minimum standards and seek to set up or use a central data bank. 2. Member States shall ensure that the use of orphan works or orphan contributions to works is recorded in a publicly accessible form. To that end they, in collaboration with the Commission, shall devise EU-wide uniform minimum standards and seek to set up or use a central data bank. 3. In the case of orphan works or orphan contributions to works where authors or holders of copyright-related rights have been identified but not located, the names of those persons shall be indicated whenever the works are used. 4. Authors or holders of copyright-related rights who put an end to the orphan status of a work in accordance with Article 5 shall be remunerated for the use previously made of the work. They may claim their remuneration within a period fixed by Member States, which shall not be less than five years from the date of the act giving rise to the claim. If a collecting society as referred to in Article 3 was entitled to collect remuneration as a trustee, claims for remuneration shall be made against the collecting society. 5. Revenues available within collecting societies which are unclaimed after the expiry of the period fixed in accordance with paragraph 4 shall be used for the purposes for which collecting societies normally use such revenues. Member States may provide for those revenues to be used to cover the costs of diligent search or of maintenance and servicing of the data banks required for that purpose. 	<p>Creates an undue incentive for collecting societies to increase the number of orphans.</p> <p>However, we support the idea that 'Member States may provide for those revenues to be used to cover the costs of diligent search or of maintenance and servicing of the data banks required for that purpose'.</p>	-
Art 8 par 1 a	222	Cavada	1a. This Directive shall apply without prejudice to provisions on the management of	MS should be free to choose	+

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(new)			<i>rights over works and other protected subject matter, notably provisions on collective licensing, legal presumptions of representation or transfer, mandatory collective licensing, or any combinations thereof, whether said works or protected subject matter are orphan works or not within the meaning of Article 2, in accordance with EU laws and international treaties on copyright and related rights. Where such provisions exist or are introduced, each of the other Member States shall ensure that the beneficiaries referred to in Article 1(1) are legally protected in regard to their use of works or other protected subject matter that is the subject of a licence or authorisation in accordance with these provisions.</i>	any specific solution for the management of rights.	
Art 8.1.a (new)	223	Kammerevert	1a. This Directive shall be without prejudice to existing or future arrangements in Member States for the management of rights in respect of objects protected by copyright or related rights, in particular collective licensing systems, presumptions concerning the representation of rightholders or the transfer of rights, legally obligatory management systems, or combinations thereof	MS should be free to choose any specific solution for the management of rights.	+
Article 8a(new)	224	Róza Gräfin von Thun und Hohenstein, Piotr Borys	Article 8a Preventive measures In coordination with the parties concerned, the Member States shall promote all preventive measures likely to limit the appearance of orphan works and to reduce their number.	MS should promote measures to limit the appearance of orphans in the future.	+
Article 9	225	Róza Gräfin von Thun und Hohenstein, Piotr Borys,	Article 9 Application in time 1. The provisions of this Directive shall apply in respect of all works referred to in Article 1 which are, on [transposition date], protected by the Member States' legislation in the field of copyright 2. This Directive shall apply without prejudice to any acts concluded and rights acquired before [transposition date].	This provision ensures legal certainty. It should not be deleted.	-
Article 9 paragraph 1	226	Marek Henryk Migalski	Article 9 Application in time 1. The provisions of this Directive shall apply in respect of all works referred to in	This provision ensures legal certainty. It should not be deleted.	-

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			Article 1 which are, on [transposition date], protected by the Member States' legislation in the field of copyright		
Annex – point 5 – introductory wording	229	Cavada	5) For audiovisual works contained in the collections of film heritage institutions and public service broadcasting organisations:	The inclusion of commercial broadcasters is not compatible with the public policy objectives of this proposal.	-
Annex – point 5 – point d a (new)	230	Helga Trüpel	<i>(da) Professional associations in relevant Member States.</i>	The list of sources should be agreed with professional associations	+