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***“Proposal for a Directive of the European Parliament and of the Council on Certain Permitted Uses of Orphan Works” - ACE comments on the European Parliament Draft Report***

The JURI amendments affect two key points of the Commission’s proposal by

- 1) introducing a remuneration obligation even for uses in the pursuance of the public interest mission of the beneficiary organisations (Article 6)
- 2) removing Article 7 “Authorized Uses”

**We urge the EP to not change the scope of Article 6 and Article 7 of the Commission proposal. Otherwise we strongly believe that instrument will be useless in practice.**

**Art. 6 “Permitted Uses”**

Beneficiaries of the proposed Directive should be allowed to use an orphan work in order to fulfil their public interest mission without a remuneration obligation. There is a strong presumption that non-commercial uses in accordance with Paragraph 1 of the proposed Directive will not harm the interests of the rightsholder as there is obviously no intention to exploit these works. As a consequence, no financial damages will be caused.

Remuneration, if any, should be subject to strict conditions. If the rightsholder reappears claiming that his/her interests have been harmed by using an orphan work, the burden of proof for the harm caused lies on the rightsholder. Any remuneration should be limited to the harm caused, otherwise the beneficiaries will remain exposed to unquantifiable levels of financial risks.

**Art. 7 “Authorized Uses”**

The proposed removal of Article 7 restricts the scope of the Commission’s proposal. The need to promote free movement of knowledge and innovation in the internal market is an important component of the Europe 2020 Strategy. Instead of fully embracing the opportunities created by digitisation and online access to content, the Parliament draft report unnecessarily limits the new possible uses of orphaned knowledge and culture. Restrictions on commercial use must be sufficiently flexible to allow for commercial funding of digitization projects.

**General remarks:**

Although the film heritage sector is included in the proposed Directive, the specific nature of film works is not always taken into consideration. The wording “publish” or “broadcast” is not appropriate, therefore we propose to use “country of origin”. The fact that many films are co-produced should also be taken into account:

**Art. 3 “Diligent Search”**

(3) “A diligent search shall be carried out only in the Member State of first publication, broadcast or in the Member State where the major production company (producer) is located, or in case the producer cannot be located, where the filmmaker resides. If the country of origin cannot be determined, a search should be carried out in the Member State of the institution holding the work. The same should apply to unpublished works. For co-produced works, a search should first be carried out in the Member State where the institution that holds the work is seated, as long as this is also where one of the production companies is located. If the search is unsuccessful, it should be carried out in the Member State where the other co-production company is located.”

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