

Discussion Paper: Providing online access to out of commerce works in the collections of cultural heritage institutions by way of updating the relevant exceptions contained in the InfoSoc directive.

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This discussion paper contains suggested language for updating/broadening the exceptions contained in the InfoSoc directive that benefit cultural heritage institutions (art 5(2)c and art 5(3)n). The objective of such an update would be to enable these institutions to digitize in copyright collections (5(2)c) and to make available online those parts of their in copyright collections that are out of commerce and not actively managed by rights holders anymore. The approach outlined in this document attempts to stay as close as possible to the structure and purpose of the existing exceptions. We have chosen to ignore the exception provided for by the Orphan Works directive as it is constructed much too narrowly. Implementing the approach outlined below would also cover the uses of orphan works by cultural heritage institutions enabled by the OW directive.

This is a revised version of the original discussion paper that was discussed at the 4th Europeana Licensing workshop Luxembourg, it reflects the input provided by the workshop participants but does not represent the position of anyone other than the authors listed above.

Update of 5(2)c (reproductions)

- **Beneficiaries:** Publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and broadcasting archives, established in the Member States.
- **Scope:** All acts of reproduction of the works and other subject matter in the collections of beneficiary institutions for all non-commercial purposes related to their public-interest missions.

Update of 5(3)n (making available for research and private study)

- **Beneficiaries:** Publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and broadcasting archives, established in the Member States.
- **Permissible acts:** use by communication or making available for the purpose of research or private study, to individual members of the public on the premises via local networks and by remote access via closed networks.
- **Scope:** works and other subject-matter contained in their collections which are not subject to purchase or licensing terms.

New 5(3)x (making available online)

- **Beneficiaries:** Publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and broadcasting archives, established in the Member States.
- **Permissible acts:** use by making available online by the beneficiaries.
- **Scope:** Unless the right holders have explicitly objected, works and other subject-matter contained in their collections which are not commercially available. Whereby commercially available means:
 1. available on the European market within a reasonable time and for a reasonable price and may be located with reasonable effort, or
 2. a licence to reproduce, perform in public or making available to the public is available from a collective society or independent management entity¹.

¹ Independent Management Entity is used in the same way as it is used in the 2014 Collective Management Directive (Directive 2014/26/EU)